As filed with the Securities and Exchange Commission on July 9, 2021.

Registration No. 333-

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

FORM S-1
REGISTRATION STATEMENT
Under
The Securities Act of 1933

RxSIGHT, INC.
(Exact name of Registrant as specified in its charter)

Delaware	3851	94-3268801
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

100 Columbia
Aliso Viejo, CA 92656
(949) 521-7830
(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

Ron Kurtz, M.D.
President and Chief Executive Officer
RxSight, Inc.
100 Columbia
Aliso Viejo, CA 92656
(949) 521-7830
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Martin J. Waters **Jason Skolnik** **Wilson Sonsini Goodrich & Rosati, P.C.** **12235 El Camino Real,** **San Diego, CA 92130** **(858) 350-2300**	**Shelley Thunen** **Chief Financial Officer** **RxSight, Inc.** **100 Columbia** **Aliso Viejo, CA 92656** **(949) 521-7830**	**Alan F. Denenberg** **Emily Roberts** **Jason Bassetti** **Davis Polk & Wardwell** **1600 El Camino Real** **Menlo Park, CA 94025** **(650) 752-2000**

Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this registration statement.

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

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

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

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

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

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

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act. ☒

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Proposed maximum aggregate offering price(1)(2)	Amount of registration fee
Common Stock, $0.0001 par value per share	$100,000,000	$10,910.00

(1) Includes offering price of any additional shares of common stock that the underwriters have the option to purchase.

(2) 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, as amended, 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 in this preliminary prospectus is not complete and may be changed. These securities may not be sold until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell nor does it seek an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

Subject to completion, dated July 9, 2021

Shares

RxSIGHT
LIGHT ADJUSTABLE LENS

Common stock

This is the initial public offering of shares of common stock by RxSight, Inc. The initial public offering price is expected to be between $ and $ per share.

Prior to this offering, there has been no public market for our common stock. We have applied to list our common stock on the Nasdaq Global Market under the symbol "RXST."

We are an "emerging growth company" as defined under the federal securities laws and, as such, have elected to comply with certain reduced reporting requirements for this prospectus and may elect to do so in future filings.

	Per Share	Total
Initial public offering price	$	$
Underwriting discounts and commissions(1)	$	$
Proceeds, before expenses, to us	$	$

(1) See the section titled "Underwriting" for a description of the compensation payable to the underwriters.

We have granted the underwriters an option for a period of 30 days after the date of this prospectus to purchase, from time to time, in whole or in part, up to an aggregate of additional shares of common stock at the public offering price less underwriting discounts and commissions.

The underwriters expect to deliver the shares of common stock to purchasers on or about , 2021.

Investing in our common stock involves risks. See the section titled "Risk Factors" beginning on page 17 to read about factors you should consider before buying shares of our common stock.

Neither the Securities and Exchange Commission nor any other regulatory body has approved or disapproved of these securities, or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

J.P. Morgan **BofA Securities** **SVB Leerink**

Wells Fargo Securities **BTIG**

The date of this prospectus is , 2021.

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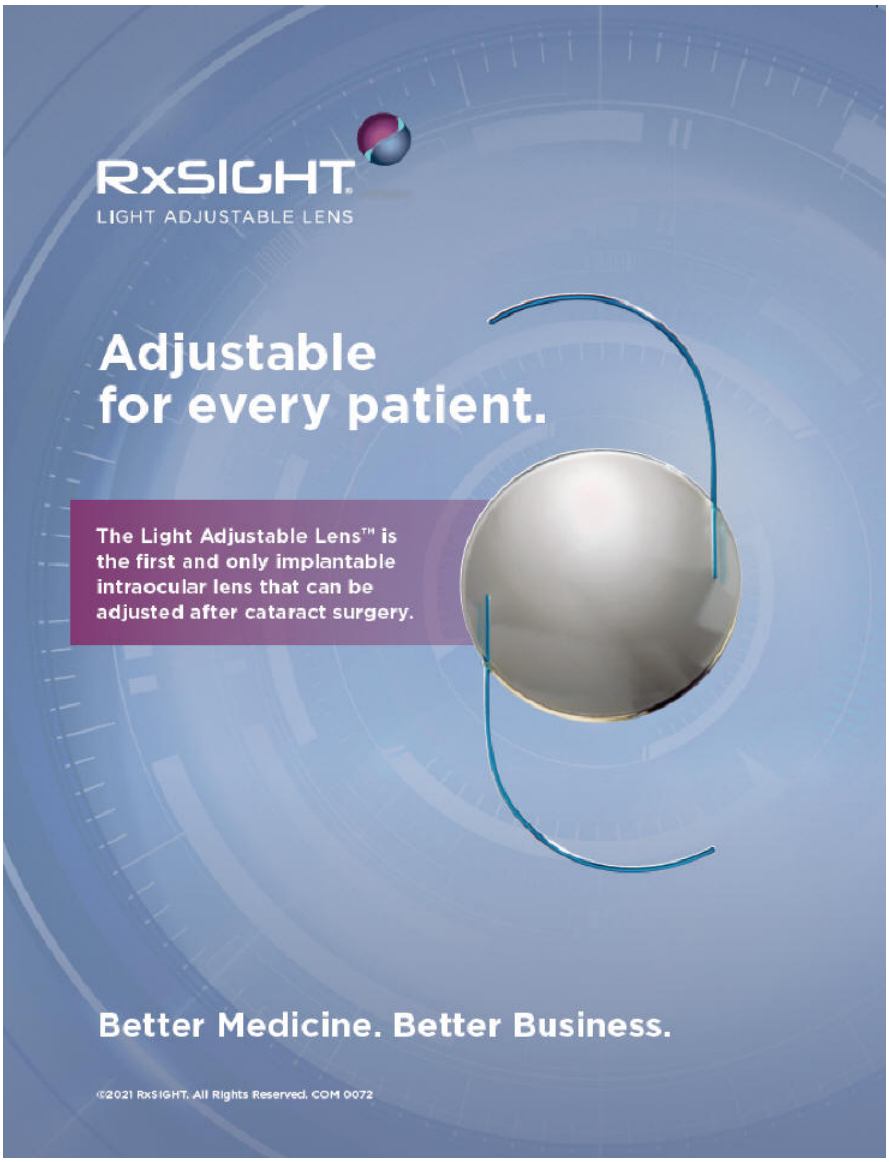

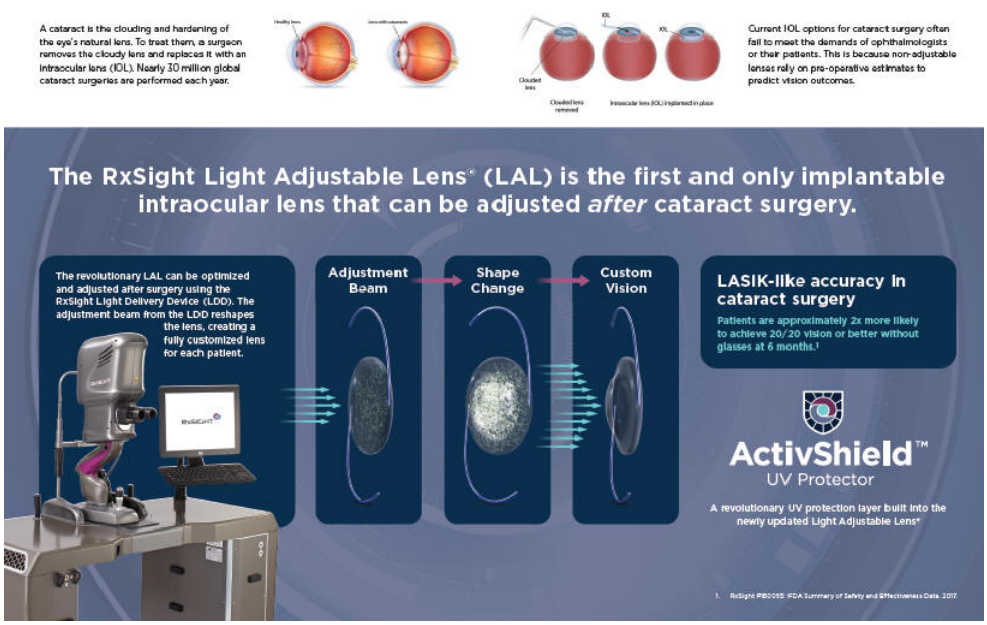
A cataract is the clouding and hardening of the eye's natural lens. To treat them, a surgeon removes the cloudy lens and replaces it with an intraocular lens (IOL). Nearly 30 million global cataract surgeries are performed each year.
Current IOL options for cataract surgery often fail to meet the demands of ophthalmologists or their patients. This is because non-adjustable lenses rely on pre-operative estimates to predict vision outcomes.
The RxSight Light Adjustable Lens® (LAL) is the first and only implantable intraocular lens that can be adjusted *after* cataract surgery.
The revolutionary LAL can be optimized and adjusted after surgery using the RxSight Light Delivery Device (LDD). The adjustment beam from the LDD reshapes the lens, creating a fully customized lens for each patient.
Adjustment Beam
Shape Change
Custom Vision
LASIK-like accuracy in cataract surgery
Patients are approximately 2x more likely to achieve 20/20 vision or better without glasses at 6 months.1
ActivShield™
UV Protector
A revolutionary UV protection layer built into the newly updated Light Adjustable Lens*
1. RxSight PB0055. FDA Summary of Safety and Effectiveness Data. 2017

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Through and including , 2021 (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

We and the underwriters have not authorized anyone to provide you any information other than that contained in this prospectus or in any free writing prospectus prepared by or on behalf of us or to which we have referred you. We take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. We and the underwriters are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this

prospectus is accurate only as of the date on the front cover of this prospectus. Our business, financial condition, results of operations and prospects may have changed since that date.

This prospectus includes industry and market data that we obtained from industry publications, third-party studies and surveys, filings of public companies in our industry and internal company surveys. These sources may include government and industry sources. Although we believe the industry and market data to be reliable as of the date of this prospectus, this information could prove to be inaccurate. Industry and market data could be wrong because of the method by which sources obtained their data and because information cannot always be verified with complete certainty due to the limits on the availability and reliability of raw data, the voluntary nature of the data gathering process and other limitations and uncertainties. In addition, we do not know all of the assumptions regarding general economic conditions or growth that were used in preparing the forecasts from the sources relied upon or cited herein.

For investors outside of the United States: we have not, and the underwriters have not, done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than the United States. Persons outside of the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of the shares of common stock and the distribution of this prospectus outside of the United States.

Prospectus summary

This summary highlights selected information contained elsewhere in this prospectus and is qualified in its entirety by the more detailed information and financial statements included elsewhere in this prospectus. It does not contain all of the information that may be important to you and your investment decision. You should carefully read this entire prospectus, including the sections titled "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and related notes. In this prospectus, unless context requires otherwise, references to "we," "us," "our," "RxSight," or "the Company" refer to RxSight, Inc.

Overview

We are a commercial-stage medical technology company dedicated to improving the vision of patients following cataract surgery. Our proprietary RxSight Light Adjustable Lens system ("RxSight system"), comprised of our RxSight Light Adjustable Lens ("LAL"), RxSight Light Delivery Device ("LDD") and accessories, is the first and only commercially available intraocular lens ("IOL") technology that enables doctors to customize and optimize visual acuity for patients after cataract surgery. Our LAL is made of proprietary photosensitive material that changes shape in response to specific patterns of ultraviolet ("UV") light generated by our LDD. With the RxSight system, the surgeon performs a standard cataract procedure to implant the LAL, determines refractive error with patient input after healing is complete, and then uses the LDD to modify the lens with the exact amount of visual correction needed to achieve the patient's desired vision outcomes. Alternative IOL technologies, in contrast, are not adjustable following the surgery and therefore require patients to make pre-operative choices about their visual preferences, which can often result in patient dissatisfaction when visual outcomes fail to meet expectations. We designed our system to maximize patient and doctor and other provider satisfaction through superior visual outcomes. In the pivotal study that formed the basis for our U.S. Food and Drug Administration, or FDA, approval, the observed rate of eyes with 20/20 or better uncorrected distance visual acuity for our LAL was 70.1%. This compares favorably to the results of pivotal studies with similar study designs and patient populations that supported FDA approval of Alcon's Acrysof Toric (38.4%), and J&J's Tecnis Toric (43.6%). We began commercializing our solution in the United States in the third quarter of 2019 and are focused on establishing the RxSight system as the standard of care for premium IOL procedures. As of March 31, 2021, we had an installed base of 105 LDDs in ophthalmology practices, and since our inception, surgeons have performed over 10,000 surgeries with our RxSight system.

Cataract surgery is the most common surgical procedure in the world, with approximately 22 million cataract surgeries performed worldwide in 2020, including 3.7 million in the United States. A cataract is a loss of transparency in the normally clear lens of the eye that can cause blurry or hazy vision, significantly interfering with daily activities and affecting quality of life. Cataracts increase in prevalence with age and develop in approximately 50% of individuals by age 60, affecting both eyes 80-90% of the time, and requiring surgery to restore vision in most cases. During cataract surgery, the patient's natural lens is replaced with a clear artificial lens called an intraocular lens. There are two broad categories of IOLs: conventional IOLs and premium IOLs. Based on the category of IOL used, cataract surgeries can be differentiated as either conventional or premium procedures. In conventional cataract surgery, patients receive conventional monofocal IOLs that are designed to provide vision at one distance, and do not correct for corneal astigmatism and presbyopia. Nearly all conventional IOL patients therefore will need spectacles to attain their best vision after surgery. With premium cataract surgery, patients receive premium IOLs designed to correct for corneal astigmatism and/or presbyopia and therefore to provide for reduced spectacle dependence. Because 60% of cataracts patients rate being spectacle free after cataract surgery as extremely important, we believe the premium IOL market is underpenetrated as only 11% and 14% of total procedures worldwide and in the United States in 2020,

respectively, were premium procedures. However, according to MarketScope, the premium IOL market represented 37% of the total IOL market for 2020, due to higher lens pricing, and is projected to grow significantly faster. According to MarketScope, the premium IOL market was an approximately $1.4 billion market worldwide in 2020, and while total worldwide cataract procedure volumes were down approximately 25% due to the COVID-19 pandemic, the total revenue from premium IOLs to manufacturers was unchanged from 2019. This market is expected to grow at a compound annual growth rate ("CAGR") of 14% from 2020 to 2026, relative to a CAGR of 10.5% for the conventional IOL market, which was an approximately $2.3 billion market in 2020 and a 10.5% CAGR for the conventional IOL market. Premium cataract procedures are between 10 and 15 times more profitable for doctors and ophthalmology practices than conventional cataract procedures. The premium IOL market is also less impacted by changes in reimbursement because patients are required to pay out-of-pocket to cover the full or incremental costs of premium cataract procedures (depending on the country), while healthcare payors typically cover the full cost of conventional cataract procedures.

We believe that the premium IOL market remains underpenetrated due to doctors' reluctance to recommend premium IOL offerings to the full universe of eligible patients and patients' confusion in assessing the tradeoffs associated with the wide range of commercially available premium IOL offerings. We believe current premium IOL offerings often cannot deliver on patient expectations with respect to the patient's ability to see at near, intermediate and far distances without reliance on spectacles. Once a patient has selected a premium IOL, the surgeon must rely on a series of pre-operative diagnostic tests and predictive formulae to choose a lens that delivers the accuracy and outcomes desired by the patient. According to published clinical data from the pivotal studies of alternative premium IOL technologies, the percentage of patients that achieved 20/20 vision with both eyes at all distances was only 40%. As a result, doctors often lack confidence in current premium IOL offerings given their inability to meet patients' expectations consistently.

We designed our RxSight system to address the shortcomings of existing premium IOL technologies and provide a solution that doctors can trust to improve visual outcomes. In contrast to alternative premium IOL solutions, for which patients are required (before surgery) to specify their visual priorities and willingness to accept optical trade-offs associated with those choices, our RxSight system offers peace of mind that patients can iterate their final vision characteristics with customized post-surgical adjustments. The surgeon first performs a standard cataract implant procedure, replacing the patient's natural lens with the LAL. Approximately three weeks post cataract surgery, after healing has occurred, the patient undergoes a standard post-operative refraction to determine the refractive error and the prescription required to give the patient the best vision. This prescription is much like that used for spectacle lenses, but instead is used as an input to the LDD. To adjust the LAL, the patient is positioned at the LDD for a treatment that lasts between approximately 30 seconds and 2.5 minutes, depending on the required prescription. The patient returns after approximately three to five days, at which time they can undergo another refraction and adjustment, if needed, to "dial in" their best vision. Once the patient and the doctor are satisfied, then the adjustment is locked in for life with another light treatment. While up to three post-surgical adjustment visits are offered by the doctor, in our pivotal clinical study, patients had an average of 1.6 adjustments. While many patients choose to have both eyes corrected for distance, approximately 80% elect for what is called a blended vision approach that takes advantage of the LAL's depth of focus to deliver a customized blended vision solution. By titrating the correction for near, intermediate or far in each eye, this approach provides excellent vision with both eyes at all distances.

Our RxSight system has FDA approval for the reduction of residual astigmatism to improve uncorrected visual acuity after removal of the cataractous natural lens by phacoemulsification and implantation of the intraocular lens in the capsular bag, in adult patients with pre-existing corneal astigmatism of > 0.75 diopters and without pre-existing macular disease. Our system has also received the CE mark and marketing approval in Mexico for

improving uncorrected visual acuity by adjusting the LAL power to correct residual postoperative refractive error, including for -2.0 to + 2.0 diopters of sphere and -3.0 to -0.50 diopters of cylinder and by changing lens curvature to introduce controlled amounts of spherical aberration (+/- 1 micron) and center near add (up to 2.0 diopters). We are currently focusing our commercial efforts in the United States. Our commercial strategy is focused on a "land and expand" model through which we aim to drive new customer adoption, which generally begins with the sale of an LDD, and then helps the customer incorporate the LAL into their practice to drive utilization and premium procedure growth. We believe this commercial strategy, over time, may provide a degree of predictability in terms of our commercial growth and a consumable revenue stream from sales of our LALs. We are currently focused on driving adoption with ophthalmology practices performing a high volume of premium cataract procedures. MarketScope estimates that there are approximately 4,000 surgeons that perform cataract surgeries in the United States, and we estimate approximately 1,600 surgeons performed approximately 70-80% of the premium procedures in the United States in 2020. We believe this provides an attractive and concentrated market opportunity addressable with a focused sales force. We currently employ a sales team that, as of March 2021 includes 6 sales directors, and a group of over 40 clinical specialists, field service and customer service personnel. While we intend to initially focus our growing commercial efforts in the United States, in the future, we may selectively pursue commercial expansion in Japan, Europe, Australia or other geographies with significant market opportunity for premium IOLs.

Our near-term research and development activities are focused on enhancements to the RxSight system to improve the patient and doctor and other provider experience, expand the range of patients that can be treated, as well as expand its indications. We believe that over time, our adjustable lens solution can be used to address a broad range of cataract surgery patients, including those that would otherwise elect for a conventional cataract procedure today.

Our success factors

We believe the following factors differentiate our company and will continue to be significant components of our success and growth:

- first and only commercially available IOL technology that allows customization and optimization of patient vision after surgery;
- superior visual outcomes and premium IOL experience for patients;
- large and growing premium IOL market underpenetrated within broader IOL industry;
- primarily out-of-pocket, cash-pay procedure, which we believe makes the premium IOL market less sensitive to reimbursement;
- concentrated potential customer base, addressable with a focused commercial organization; and
- proven management team with a track record of establishing adoption of multiple innovative technology platforms in ophthalmology.

Our growth strategies

Our vision is that a majority of the patients and surgeons that undergo or perform a cataract surgery procedure, will elect to use our RxSight technology that provides a customizable solution delivering better visual outcomes. Our growth strategies to achieve this vision include:

- strategically expanding our salesforce and marketing activities;
- establishing new customers and growing our installed base of LDDs;

- increasing the utilization of our LALs by empowering doctors and other providers to grow their practices;
- investing in platform enhancements to meet the evolving needs of doctors and other providers and patients;
- expanding the RxSight system's indications to address additional patients and procedures;
- growing our commercial operations in international markets; and
- scaling our business to achieve cost and production efficiencies.

Our market

Our market opportunity

In 2020, conventional cataract surgery represented 89% of procedures worldwide and 84% of procedures in the United States; however, the premium IOL market is approximately 37% of the total IOL market today, due to higher lens pricing, and is expected to grow significantly faster. According to MarketScope, the conventional IOL market was approximately $2.3 billion worldwide in 2020 and is expected to grow at a CAGR of 10.5% between 2020 and 2026. Premium IOL revenue was approximately $1.4 billion worldwide in 2020 and is expected to grow at a CAGR of 14% over the same period. The premium cataract surgery market is expected to grow at a meaningfully higher rate than the conventional cataract surgery market due to a number of factors including the growing number of patients who prefer to be spectacle-free post-surgery, technological innovations in premium IOLs, increased access to healthcare and rising disposable income. Premium cataract procedures are also between 10 and 15 times more profitable for doctors and ophthalmology practices than conventional cataract procedures and less impacted by changes in reimbursement because patients are required to pay out-of-pocket to cover the full or incremental costs of premium cataract procedures (depending on the country), while healthcare payors typically cover the full cost of conventional cataract procedures.

We believe there is an opportunity to not only gain share in the premium IOL segment of the market but also increase the penetration of premium IOLs in the broader IOL market, by converting doctors and patients currently electing for conventional cataract surgery to the RxSight system. While 60% of cataracts patients rate being spectacle-free after cataract surgery as extremely important, premium IOLs represented only 11% and 15% of the procedures worldwide and in the United States, respectively, in 2020. We believe that the premium cataract surgery market remains underpenetrated due to both doctors' reluctance to recommend premium IOL offerings to the full universe of eligible patients and patients' confusion in assessing the tradeoffs associated with the wide range of commercially available premium IOL offerings. Furthermore, we believe current premium IOL offerings often cannot deliver on patient expectations with respect to the patient's ability to see at near, intermediate and far distances without reliance on spectacles.

Overview of non-adjustable premium IOLs and their limitations

Premium IOLs are designed to correct for the shortcomings of conventional monofocal lenses by correcting for the additional visual problems of astigmatism and/or presbyopia. Astigmatism occurs when there is imperfection in the curvature of the cornea, resulting in blurred distance and near vision. Presbyopia is the gradual loss of the eyes' ability to focus on nearby objects. Individuals usually begin to experience the effects of presbyopia in their early 40s. The two primary categories of alternative premium IOLs are presbyopia-correcting IOLs, which include multifocal and extended depth of focus ("EDOF") lenses, and astigmatism-correcting, or toric, lenses. Each type of lens offers its own unique set of benefits but also trade-offs.

A key limitation of alternative premium IOLs is that they cannot be adjusted after surgery and, as such, require the patient to commit to a desired visual outcome prior to the procedure. However, in discussing vision

optimization options with patients ahead of the procedure, it is not easy to demonstrate different visual outcomes to patients with cataracts. Once a premium IOL is selected, another key limitation is the ability of the surgeon to implant the IOL with the level of accuracy required to deliver the patient's expected outcome. Because the lens power of alternative premium IOLs cannot be changed after implantation, doctors typically spend a great deal of time on preoperative measurements to estimate the most suitable lens power for the patient; however, the same diagnostic tests and predictive formulae used for selecting the spherical power of the premium IOL are also used for conventional IOLs. Additionally, the incision made to remove the cloudy lens and insert the IOL along with the resultant healing process often results in the creation of additional levels of astigmatism, which cannot be predicted with precision before cataract surgery. A separate LASIK procedure is the most common surgical procedure to correct any residual visual errors following the cataract procedure. In addition, in two recently published ESCRS clinical trend surveys, 44% of surgeons and 36% of surgeons reported factors that discourage them from offering premium IOLs due to concern over nighttime vision and loss of contrast sensitivity, respectively.

We believe that the need to commit to a visual outcome before surgery combined with the limited ability to adjust following the procedure are key factors contributing to the low levels of penetration of premium cataract surgery. When expectations regarding postoperative visual acuity and spectacle independence are not met, patients are often disappointed. As a result, surgeons are often less willing to recommend existing premium IOLs to their patients.

Our solution

We designed our RxSight Light Adjustable Lens system to address the shortcomings of existing premium IOL technologies and provide a solution that doctors can trust to improve visual outcomes. Our RxSight system is the first and only FDA-approved IOL technology that enables doctors and other providers to customize and optimize visual acuity for patients after cataract surgery. Our RxSight system is comprised of two key components, along with other intraoperative and postoperative accessories:

- **RxSight Light Adjustable Lens**: The LAL is our IOL that can be adjusted postoperatively to improve uncorrected visual acuity. Our novel IOL is made of proprietary photosensitive material that changes shape and power when a specific pattern of UV light is delivered from the LDD.

- **RxSight Light Delivery Device**: The LDD is our proprietary office-based light treatment device that delivers UV light in a precisely programmed pattern to induce a predictable change in the shape and refractive properties of the LAL, enabling doctors to precisely modify the LAL based on the visual correction needed to achieve the patient's desired vision after cataract surgery.

We have developed our RxSight system over the last 20 years and have incorporated expertise and proprietary technologies across multiple disciplines, including optics, material science, chemistry, software and hardware engineering.

The proprietary RxSight technology that enables post-operative adjustability is based on the principals of photochemistry. To create the LAL, we use a composition of silicone polymers and monomers, which we call "macromers", mixed with photo-active molecules and other compounds. The initial composition of our lens material is a viscous liquid that is then thermally cured in a lens mold. Thermal curing and photopolymerization use temperature and ultraviolet light, respectively, to initiate and propagate a polymerization reaction. To avoid polymerizing the macromers in the composition, the thermal curing is performed at a low temperature. The partial polymerization of the LAL results in a solid but soft silicone lens, leaving the photosensitive macromers unpolymerized and distributed throughout the lens. While the resulting lens is optically clear, the macromers and photo-active molecules remain free to continuously move within the lens. When UV light is directed to a specific portion of the lens, the exposed macromers in that portion of the lens are polymerized and become stationary. This creates an excess concentration of free macromers in the unexposed portion of the lens and sets up a diffusion gradient over which the unpolymerized macromers move from the concentrated area to the less concentrated area. Over the next one to two days, the unpolymerized macromers redistribute across the lens to achieve a uniform distribution. The redistribution of the macromers causes the exposed portion of the lens to swell relative to the unexposed portion of the lens, enabling refractive power change.

To achieve the desired refractive change in the LAL, our LDD uses proprietary software and algorithms to deliver a short UV exposure treatment that polymerizes specific portions of the lens according to a predefined pattern of light. Each UV light treatment consumes only a portion of the macromers in the lens, allowing the LAL to be adjusted multiple times. This process can be repeated up to three times over a period of several weeks, until the patient and doctor are satisfied. The entire lens is then polymerized to provide a stable correction. After adjustment light treatments are completed, one or two lock-in light treatments are applied to consume all remaining macromers and photo-active compounds. After lock-in treatment, the lens power can no longer be adjusted.

With the RxSight system, the surgeon first performs a standard cataract implant procedure, replacing the patients' natural lens with the LAL. Following the surgery, after a healing period of two to three weeks, the patient returns to the doctor's office and undergoes a standard post-operative refraction. Using a traditional phoropter and vision chart, the clinician determines the refractive error and the prescription required to give the patient the best vision. However, rather than giving the patient a prescription for glasses, the clinician inputs the prescription into the LDD's graphical user interface. The patient's eye is then dilated, and a contact lens is applied to the eye when they are seated in front of the LDD for a light treatment. Based on the prescription input, the LDD generates a programmed, predetermined exposure of UV light. For a period of approximately 30 seconds to 2.5 minutes, the light painlessly and non-invasively re-shapes the LAL in the eye to correct the measured refractive error. The patient then returns approximately three to five days later for additional possible light treatments to adjust their vision as desired or to lock-in the lens. Although a patient can receive up to three adjustments, the average number of adjustments in our clinical trial was just 1.6. The RxSight system enables a fully interactive and iterative process to optimize visual acuity, with patients able to compare possible vision outcomes based on their unique preferences and lifestyle requirements before selecting a final prescription for their adjustable lens.

Key benefits for patients

We believe RxSight offers significant patient benefits relative to other commercially available premium IOLs:

- superior vision outcomes;
- post-operative customization;
- no increase in glare and halo; and
- minimally invasive procedure.

Key benefits for doctors and other providers

We believe RxSight offers significant benefits to doctors relative to other commercially available premium IOLs, the primary benefits of which include the following:

- clear value proposition for patients so that doctors can build their premium cataract practices;
- doctor and other provider confidence;
- fewer intraoperative measurements;
- broad application across different patient needs; and
- satisfied patients leading to potential referrals.

We believe these compelling points of differentiation relative to other commercially available premium IOLs offer key benefits for patients and doctors that will drive broad adoption of the RxSight system.

Recent Developments

Preliminary financial and operating results as of and for the three months ended June 30, 2021.

On a preliminary unaudited basis, we expect our cash and cash equivalents and short-term investments to be approximately $ million and our long-term loan, net, to be approximately $ million as of June 30, 2021. We expect the quantity of LDDs sold to be units and the quantity of LALs sold to be units for the three months ended June 30, 2021. On a preliminary unaudited basis, we expect our sales to be between $ and $, our gross margin to be between $ and $ and our net loss to be

between $ and $ for the three months ended June 30, 2021. Sales increased % from the three months ended March 31, 2021 (based on the midpoint of the range described above), due to an increase in the quantity of LDDs and LALs sold. Our gross margin for the three months ended June 30, 2021 is significantly lower than the first quarter of 2021 primarily due to an inventory reserve for excess LAL inventory, due to the recent introduction of an updated LAL with the addition of a photosensitive anterior layer that protects the lens from unwanted UV exposure (ActivShield). Our net loss is % higher than the three months ended March 31, 2021 as the non-cash other income for the change in valuation of warrants is $ million lower than the three months ended March 31, 2021. As we complete our quarter-end financial statement close process and finalize our financial statements and accompanying notes for the three months ended June 30, 2021, we will be required to make significant judgments in a number of areas that may result in the estimates provided herein being different than the final reported amounts. These preliminary estimates have been prepared by and are the responsibility of our management. Our independent registered public accounting firm has not audited, reviewed or performed any procedures with respect to these preliminary estimates or the accounting treatment thereof and does not express an opinion or any other form of assurance with respect thereto. We expect to complete our financial statements for the three months ended June 30, 2021 subsequent to the completion of this offering. It is possible that we or our independent registered public accounting firm may identify items that require us to make adjustments to these preliminary estimates and those changes could be material. Accordingly, undue reliance should not be placed on these preliminary estimates. The preliminary estimates are not necessarily indicative of any future period and should be read together with the sections of this prospectus titled “Risk factors”, “Special note regarding forward-looking statements”, “Management’s discussion and analysis of financial condition and results of operations” and the “Financial statements”.

Risks related to our business

Our ability to execute our business strategy is subject to numerous risks, as more fully described in the section entitled “Risk factors” immediately following this prospectus summary. These risks include, among others:

- We have a limited operating history as a commercial company and if we fail to effectively train our sales force, increase our sales and marketing capabilities or develop broad brand awareness in a cost-effective manner, our growth will be impeded and our business will suffer.
- We have a history of net losses, and we expect to continue to incur losses for the foreseeable future. If we ever achieve profitability, we may not be able to sustain it.
- If we are unable to manage the anticipated growth of our business, our future revenue and operating results may be adversely affected.
- If we fail to maintain FDA clearance or approval to market and sell the RxSight system, maintain FDA regulatory compliance for our commercial products, or we fail to obtain FDA clearance or approval, or such approval is delayed, suspended, revoked or not issued, for our products in development, we will be unable to commercially distribute and market these products in the United States, or U.S.
- The commercial success of our products is substantially dependent on the FDA’s clearance or approval of our products in development, as well as market acceptance in the United States for the RxSight system and other product candidates in development. Our failure or delay to receive FDA clearance or approval of these product candidates or the failure of our cleared products to gain such market acceptance will negatively impact our business.

- If we are unable to obtain, maintain, protect and enforce patent protection or freedom to operate for any products we develop and for our technology, or if the scope of the patent protection obtained is not sufficiently broad, or if we are unable to obtain, protect, enforce and maintain our other intellectual property, our competitors could develop and commercialize products and technology similar or identical to ours, and our ability to successfully commercialize any products we may develop, and our technology and our business may be adversely affected.
- We must educate doctors and other providers on the safe and effective use of the RxSight system and our products in development once they become commercially available, and demonstrate their merits compared to the systems of our competitors. Adoption of our products depends upon appropriate training for doctors and other providers, and inadequate training may lead to negative patient outcomes, affect adoption of our products and adversely affect our business.
- We face significant competition from larger, well established companies with substantially greater resources and who have a long history of competing in the intraocular lens technology markets, which we believe will intensify as we continue to expand in the U.S. market and internationally. If we are unable to compete effectively, we may not be able to achieve or maintain significant market penetration or improve our results of operations.
- While we have limited international operations, we intend to further expand our business internationally, which exposes us to increased market, regulatory, political, operational, financial and economic risks associated with doing business outside of the United States.
- We may not be able to develop, license or acquire new products, enhance the capabilities of our existing products to keep pace with rapidly changing technology and customer requirements or successfully manage the transition to new product offerings, any of which could have a material adverse effect on our business, financial condition and results of operations.
- Our quarterly and annual results may fluctuate significantly and may not fully reflect the underlying performance of our business or be indicative of results to be expected in the future.
- We depend upon third-party suppliers, including single-source suppliers, making us vulnerable to supply disruptions and price fluctuations.
- Defects or failures associated with our products could lead to recalls, safety alerts or litigation, as well as significant costs and negative publicity.
- Coverage and adequate reimbursement may not be available for the procedures that utilize our products, which could diminish our sales or affect our ability to sell our products profitably.
- Regulatory compliance, including compliance with U.S. federal and state fraud and abuse and other healthcare laws and regulations, is expensive, complex and uncertain, and failure to comply could lead to enforcement actions against us and other negative consequences for our business.
- Our operations and financial results have been, and will continue to be, adversely impacted by the COVID-19 pandemic in the United States and the rest of the world.
- Our directors, officers and principal stockholders have significant voting power and may take actions that may not be in the best interests of our other stockholders.

Corporate information

We were incorporated in California on March 5, 1997 as Calhoun Vision, Inc. and changed our name to RxSight, Inc. in October 2016. We reincorporated in Delaware on July 6, 2021. Our principal executive offices are located at 100 Columbia, Aliso Viejo, CA 92656. Our telephone number is (949) 521-7830. Our website address is www.rxsight.com. Information contained on, or that may be accessed through, the website is not incorporated by reference into this prospectus and the inclusion of our website address in this prospectus is an inactive textual reference only.

"RxSight", the "RxSight" logo, "LAL", "LDD", "RxLAL", "ActivShield" and "RxSight Light Adjustable Lens" and our other registered or common law trademarks appearing in this prospectus are the property of RxSight, Inc. This prospectus contains references to our trademarks, trade names and service marks and to those belonging to other entities. Solely for convenience, trademarks, trade names, and service marks referred to in this prospectus, including logos, artwork and other visual displays, may appear without the ® or TM symbols, but such references are not intended to indicate in any way that we will not assert, to the fullest extent under applicable law, our rights or the rights of the applicable licensor to these trademarks, trade names and service marks. We do not intend our use or display of other entities' trade names, trademarks or service marks to imply a relationship with, or endorsement or sponsorship of us by, any other entity.

Implications of being an emerging growth company and a smaller reporting company

We are an "emerging growth company" as defined in the Jumpstart Our Business Startups Act of 2012, as amended (JOBS Act). We will remain an emerging growth company until the earliest to occur of: the last day of the fiscal year in which we have more than $1.07 billion in annual revenue; the date we qualify as a "large accelerated filer," with at least $700 million of equity securities held by non-affiliates; the issuance, in any three-year period, by us of more than $1.0 billion in non-convertible debt securities; and the last day of the fiscal year ending after the fifth anniversary of our initial public offering. As a result of this status the reduced reporting requirements that are otherwise applicable to public companies include, but are not limited to:

- Being permitted to present only two years of audited financial statements and only two years of related Management's Discussion and Analysis of Financial Condition and Results of Operations in this prospectus;
- Not being required to comply with the auditor attestation requirements on the effectiveness of our internal control over financial reporting;
- Not being required to comply with any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation or a supplement to the auditor's report providing additional information about the audit and the financial statements (auditor discussion and analysis);
- Reduced disclosure obligations regarding executive compensation arrangements; and
- Exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

We have taken advantage of reduced reporting requirements in this prospectus and may elect to take advantage of other reduced reporting requirements in our future filings with the SEC. In particular, in this prospectus, we have provided only two years of audited financial statements and have not included all of the executive compensation related information that would be required if we were not an emerging growth company. In addition, the JOBS Act provides that an emerging growth company can take advantage of an

extended transition period for complying with new or revised accounting standards, delaying the adoption of these accounting standards until they would apply to private companies. We have elected not to avail ourselves of this exemption and, as a result, upon completion of this offering, we will adopt new or revised accounting standards on the relevant dates on which adoption of such standards is required for other public companies that are not emerging growth companies.

We are also a "smaller reporting company" as defined in the Securities Exchange Act of 1934, as amended (the "Exchange Act"). We may continue to be a smaller reporting company even after we are no longer an emerging growth company. We may take advantage of certain of the scaled disclosures available to smaller reporting companies and will be able to take advantage of these scaled disclosures for so long as our voting and non-voting common stock held by non-affiliates is less than $250.0 million measured on the last business day of our second fiscal quarter, or our annual revenue is less than $100.0 million during the most recently completed fiscal year and our voting and non-voting common stock held by non-affiliates is less than $700.0 million measured on the last business day of our second fiscal quarter.

The offering

Common stock offered by us	shares.
Common stock to be outstanding immediately after this offering	shares (or shares if the underwriters exercise their option to purchase additional shares in full).
Underwriters' option to purchase additional shares	We have granted the underwriters an option for a period of 30 days to purchase up to additional shares of our common stock.
Use of proceeds	We estimate that the net proceeds to us from the sale of shares of our common stock in this offering will be approximately $ (or approximately $ if the underwriters exercise their option to purchase additional shares in full), based upon the assumed initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, and after deducting underwriting discounts and commissions and estimated offering expenses payable by us. We intend to use the net proceeds from this offering to expand our sales force and customer support and operations, increase our research and development activities, conduct or sponsor clinical studies and trials, expand internationally, and provide for working capital and other general corporate purposes. We may use a portion of the net proceeds we receive from this offering to acquire businesses, products, services, or technologies. However, we do not have agreements or commitments for any such acquisitions at this time. See the section titled "Use of Proceeds" for additional information.
Risk Factors	See the section of this prospectus titled "Risk Factors" beginning on page 17 and other information included in this prospectus for a discussion of factors you should carefully consider before deciding to invest in shares of our common stock.
Proposed Nasdaq trading symbol	"RXST"

The number of shares of our common stock to be outstanding after this offering is based on the 195,708,393 shares of our common stock outstanding as of March 31, 2021 (including an aggregate of 153,415,871 shares of common stock issuable upon the automatic conversion of our outstanding convertible preferred stock as of March 31, 2021), and excludes the following:

- 2,334,082 shares of our common stock issuable upon the exercise of warrants to purchase shares of convertible preferred stock outstanding as of March 31, 2021, which will be automatically converted into warrants to purchase shares of our common stock immediately prior to the completion of this offering, with a weighted-average exercise price of $1.20 per share;

- 47,866,502 shares of common stock issuable upon exercise of options to purchase shares of our common stock outstanding as of March 31, 2021, at a weighted-average exercise price of $1.05 per share;
- 75,000 shares of common stock issuable upon exercise of options to purchase shares of our common stock that we granted after March 31, 2021, at a weighted-average exercise price of $1.93 per share;
- 1,296,904 shares of common stock reserved for future issuance under our 2015 Equity Incentive Plan, as amended (the "2015 Plan"), as of March 31, 2021;
- shares of common stock reserved for future issuance under our 2021 Equity Incentive Plan (the "2021 Plan"), which will become effective on the business day immediately prior to the date of effectiveness of the registration statement of which this prospectus forms a part; and
- shares of common stock reserved for issuance under our 2021 Employee Stock Purchase Plan (the "2021 ESPP"), which will become effective on the business day immediately prior to the date of effectiveness of the registration statement of which this prospectus forms a part.

Each of our 2021 Plan and our 2021 ESPP provides for annual automatic increases in the number of shares reserved thereunder, and our 2021 Plan also provides for increases to the number of shares that may be granted thereunder based on awards under our 2015 Plan or 2006 Stock Plan (the "2006 Plan") that expire, are forfeited, or otherwise repurchased by us, as more fully described in the section titled "Executive Compensation—Employee Benefit and Stock Plans."

Unless otherwise indicated, this prospectus reflects and assumes the following:

- a 1-for- reverse split of our capital stock which was effected on , 2021;
- our reincorporation in the state of Delaware;
- no exercise of outstanding options or warrants after March 31, 2021;
- no exercise of the underwriters' option to purchase additional shares of common stock from us;
- the conversion of 153,415,871 outstanding shares of our convertible preferred stock as of March 31, 2021 into an aggregate of 153,415,871 shares of our common stock, which will occur immediately prior to the completion of this offering; and
- the filing and effectiveness of our amended and restated certificate of incorporation and the effectiveness of our amended and restated bylaws, which will occur immediately prior to the completion of this offering.

Summary financial data

The following tables summarize our financial data for the periods and as of the dates indicated. We have derived the statements of operations data for the years ended December 31, 2019 and 2020 (except for the pro forma net loss per share and the pro forma share information) from our audited financial statements and related notes included elsewhere in this prospectus. We derived the statement of operations data for the three months ended March 31, 2020 and March 31, 2021 and the balance sheet data as of March 31, 2021 from the unaudited interim financial statements included elsewhere in this prospectus. The unaudited interim financial statements have been prepared in accordance with U.S. generally accepted accounting principles on the same basis as our annual audited financial statements and, in the opinion of management, reflect all adjustments, which include only normal, recurring adjustments, that are necessary to present fairly the statement of financial position as of March 31, 2021 and our results of operations for the three months ended March 31, 2020 and 2021. Our historical results are not necessarily indicative of results that may be expected in the future, and the results for the three months ended March 31, 2021, are not necessarily indicative of results to be expected for the full year or any other period. You should read the following summary financial data together with our financial statements and the related notes appearing elsewhere in this prospectus and the information in the sections titled "Selected Financial Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations." The summary financial data in this section are not intended to replace the financial statements and are qualified in their entirety by the financial statements and related notes included elsewhere in this prospectus.

	Year ended December 31,		Three months ended March 31	
	(in thousands, except share and per-share data)			
	2019	2020	2020	2021
			(unaudited)	
Statements of Operations Data:				
Sales	$ 2,241	$ 14,678	$ 2,888	$ 3,484
Cost of sales	4,060	12,973	2,810	2,365
Gross profit (loss)	(1,819)	1,705	78	1,119
Operating Expenses				
Selling, general and administrative	15,203	15,176	3,698	5,611
Research and development	29,569	21,934	5,777	6,643
(Gain) loss on sale of equipment	(521)	7	—	—
Total operating expenses	44,251	37,117	9,475	12,254
Loss from operations	$ (46,070)	$ (35,412)	$ (9,397)	$ (11,135)
Change in fair value of warrants	169,230	63,011	(7,407)	—
Expiration of warrant	803	—	—	5,018
Interest expense	(26)	(510)	(5)	(698)
Interest and other income, net	2,307	543	312	17
Income (loss) before income taxes	126,244	27,632	(16,497)	(6,798)
Income tax expense	24	57	5	7

	Years ended December 31,		Three months ended March 31	
	(in thousands, except share and per-share data)			
	2019	2020	2020	2021
			(unaudited)	
Net income (loss)	$ 126,220	$ 27,575	$ (16,502)	$ (6,805)
Accretion to redemption value of redeemable preferred stock and redeemable stock options	(82,121)	(24,209)	(4,246)	—
Earnings allocated to redeemable preferred stock	(17,972)	—	—	—
Net income (loss) attributable to common stockholders	26,127	3,366	(20,748)	(6,805)
Unrealized gain (loss) on short-term investments	68	(49)	77	7
Foreign currency translation gain	5	—	(1)	(4)
Comprehensive income (loss)	$ 126,293	$ 27,526	$ (16,426)	$ (6,802)
Net income (loss) per share:				
Attributable to redeemable common stock, basic	$ 0.74	$ 0.09	$ (0.56)	$ —
Attributable to redeemable common stock, diluted	$ 0.58	$ 0.01	$ (0.56)	—
Attributable to Series G common stock, basic	$ 0.01	$ (0.39)	$ (0.66)	$ (0.16)
Attributable to Series G common stock, diluted	$ 0.01	$ (0.62)	$ (0.66)	$ (0.16)
Attributable to common stock, basic and diluted	—	—	—	$ (0.16)
Weighted-average shares used in computing net income (loss) per share:				
Attributable to redeemable common stock, basic	35,431,642	38,295,453	36,883,830	—
Attributable to redeemable common stock, diluted	212,591,455	57,148,725	36,883,830	—
Attributable to Series G common stock, basic and diluted	—	1	1	1
Attributable to common stock, basic and diluted	—	—	—	41,281,494
Pro forma net loss per share, basic and diluted (unaudited)(1)		$		$
Weighted-average shares used in computing pro forma net loss per share, basic and diluted (unaudited)(1)				

(1) See Note 2 to our audited consolidated financial statements and Note 2 to our unaudited interim condensed consolidated financial statements included elsewhere in this prospectus for an explanation of the method used to calculate basic and diluted net income (loss) per share and weighted average shares of common stock outstanding and the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations—Unaudited Pro Forma Information" for an explanation of the calculations of our pro forma net income (loss) per share, basic and diluted and the number of shares used in the computation of the per share amounts.

	As of March 31, 2021		
	Actual	Pro forma(1)	Pro forma as adjusted(2)(3)
		(in thousands) (unaudited)	
Balance Sheet Data:			
Cash and cash equivalents	$ 24,385		
Short-term investments	39,997		
Working capital(4)	70,987		
Total assets	96,291		
Total liabilities	44,890		
Redeemable common stock	—		
Convertible preferred stock	353,300		
Common stock and additional paid-in capital	136,311		
Accumulated deficit	(437,393)		
Total stockholders' (deficit) equity	(301,899)		

	As of December 31,		As of March 31,
	2019	2020	2021
		(in thousands) (unaudited)	
Balance Sheet Data:			
Cash and cash equivalents	$ 7,958	$ 13,994	$ 24,385
Short-term investments	72,710	54,981	39,997
Working capital(4)	81,742	69,900	70,987
Total assets	110,432	100,677	96,291
Total liabilities	87,462	44,906	44,890
Redeemable common stock	56,422	80,780	—
Redeemable convertible preferred stock	327,581	353,300	353,300
Common stock and additional paid-in capital	—	—	136,311
Accumulated deficit	(419,855)	(430,588)	(437,393)
Total stockholders' (deficit) equity	(419,809)	(430,591)	(301,899)

(1) The table above presents the actual balance sheet at March 31, 2021 and the pro forma balance sheet data gives effect to the conversion of all outstanding shares of our convertible preferred stock at March 31, 2021 into an aggregate of 153,415,871 shares of common stock, which will automatically occur immediately prior to the completion of this offering, and the filing and effectiveness of our amended and restated certificate of incorporation.

(2) Reflects the pro forma adjustments described in footnote (1) above and the receipt of estimated net proceeds of $ from the issuance and sale of shares of common stock in this offering at the assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting the underwriting discounts and commissions and estimated offering expenses payable by us.

(3) Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) the pro forma as adjusted amount of each of cash and cash equivalents, total assets, and total stockholders' (deficit) equity by approximately $ million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase (decrease) of 1.0 million shares in the number of shares offered by us at the assumed initial public offering price after deducting underwriting discounts and commissions and estimated offering expenses payable by us would increase (decrease) each of cash and cash equivalents, total assets, and total stockholders' (deficit) equity by approximately $ million. The pro forma information discussed above is illustrative only and will be adjusted based on the actual initial public offering price and other terms of our initial public offering determined at pricing.

(4) We define working capital as current assets less current liabilities. See our audited consolidated financial statements and related notes and unaudited interim condensed consolidated financial statements and related notes appearing at the end of this prospectus for further details regarding our current assets and current liabilities.

Risk factors

Investing in our common stock involves a high degree of risk. You should carefully consider the risks described below, as well as the other information in this prospectus, including our financial statements and the related notes and the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations," before deciding whether to invest in our common stock. The occurrence of any of the events or developments described below could harm our business, financial condition, results of operations and growth prospects. In such an event, the market price of our common stock could decline if one or more of these risks or uncertainties actually occur, and you may lose all or part of your investment. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations and the market price of our common stock. Certain statements below are forward-looking statements. See the section titled "Special Note Regarding Forward-Looking Statements" appearing elsewhere in this prospectus.

Summary of principal risk factors

The following risks and uncertainties are among the most significant we face. However, the risks and uncertainties identified in this subsection are not the only ones we face and are qualified in their entirety by reference to all of the risk factors described herein.

Risks related to our business and products

- We have a limited operating history, and if we fail to effectively train our sales force, increase our sales and marketing capabilities, or develop broad brand awareness in a cost-effective manner, our growth will be impeded, and our business will suffer.
- We have a history of net operating losses, and we expect to continue to incur losses for the foreseeable future. If we ever achieve profitability, we may not be able to sustain it.
- Our success depends in large part on our RxSight system. If we are unable to successfully market and sell our RxSight system, our business prospects will be significantly harmed, and we may be unable to achieve revenue growth.
- We face significant competition, and if we are unable to compete effectively, we may not be able to achieve or maintain significant market penetration or improve our results of operations.

Risks related to intellectual property

- If we are unable to obtain, maintain, protect and enforce patent and other intellectual property protection for our technology and products, or if the scope of the patent and other intellectual property protection obtained is not sufficiently broad, we may not be able to compete effectively in our markets.
- If we are unable to protect the confidentiality of our trade secrets and other proprietary information, our business and competitive position may be harmed.
- We may not be able to protect our intellectual property rights throughout the world, which could impair our business.

Risks related to government regulation

- If we fail to obtain and maintain necessary regulatory clearances or approvals for our products, or if clearances or approvals for future products and indications are delayed or not issued, our commercial operations may be harmed.

Risks related to reliance on third parties

- We depend on third parties, including single and sole source suppliers, to manufacture certain components and subcomponents of the RxSight system, making us vulnerable to supply disruptions and price fluctuations.

Risks related to our common stock and to this offering

- The price of our stock may be volatile, and you could lose all or part of your investment.
- We do not know whether an active, liquid and orderly trading market will develop for our common stock or what the market price of our common stock will be and as a result it may be difficult for you to sell your shares of our common stock or the price at which you are able to sell may not be at or above the initial public.
- Our principal stockholders and management own a significant percentage of our stock and will be able to exert significant control over matters subject to stockholder approval.

Risks related to COVID-19

- Our business, financial condition, results of operations and growth have been harmed by the effects of the COVID-19 pandemic and may continue to be harmed.

General risk factors

- We must recruit, retain, manage and motivate qualified executives as we build out the management team, and we are highly dependent on our management team.
- Future litigation proceedings may adversely affect our business.

Risks related to our business and products

We have a limited operating history and if we fail to effectively train our sales force, increase our sales and marketing capabilities or develop broad brand awareness in a cost-effective manner, our growth will be impeded, and our business will suffer.

We were incorporated in March 1997 and began commercializing our products in the second half of 2019, when we initiated a full launch of our light adjustable lenses and light delivery devices. Accordingly, our limited commercialization experience and limited number of approved or cleared products make it difficult to evaluate our current business and assess our prospects. We also currently have limited sales and marketing experience. If we are unable to establish or scale effective sales and marketing capabilities, or if we are unable to commercialize any of our products, we may not be able to generate sufficient product revenue, sustain revenue growth and compete effectively. In order to generate future growth, we plan to continue to expand and leverage our sales and marketing infrastructure to increase our customer base and grow our business.

Identifying and recruiting qualified sales and marketing personnel and training them on our product, applicable federal and state laws and regulations, and on our internal policies and procedures requires significant time, expense and attention. It often takes several months or more before a sales representative is fully trained and productive. Our business may be harmed if our efforts to expand and train our sales force do not generate a corresponding increase in revenue, or in the event we are unable to reduce costs in the face of an unexpected decline in demand for our products. Any failure to hire, develop and retain talented sales and marketing personnel, to achieve desired productivity levels in a reasonable timeframe or timely leverage our fixed costs could have a material adverse effect on our business, financial condition and results of operations. Moreover, the members of our direct sales force are at-will employees. The loss of these personnel to competitors or otherwise could materially harm our business. If we are unable to retain our direct sales force personnel or replace them with individuals of equivalent technical expertise and qualifications, or if we are unable to successfully instill technical expertise in replacement personnel, our revenue and results of operations could be materially harmed.

Our ability to increase our customer base and achieve broader market acceptance of our products will also depend to a significant extent on our ability to expand our marketing efforts. Our business may be harmed if our marketing efforts and expenditures do not generate a corresponding increase in revenue. In addition, we believe that developing and maintaining broad awareness of our brand in a cost-effective manner is critical to achieving broad acceptance of our products and penetrating new customer accounts. Brand promotion activities may not generate patient or doctor awareness or increased revenue, and even if they do, any increase in revenue may not offset the costs and expenses we incur in building our brand. If we fail to successfully promote, maintain and protect our brand, we may fail to attract or retain the doctor acceptance necessary to realize a sufficient return on our brand building efforts, or to achieve the level of brand awareness that is critical for broad adoption of our products.

These factors also make it difficult for us to forecast our financial performance and growth, and such forecasts are subject to a number of uncertainties, including our ability to successfully develop additional products that add functionality, reduce the cost of products sold, and broaden our commercial portfolio offerings and our ability to obtain the required regulatory approvals and clearances under applicable law both domestically and internationally, including FDA 510(k) clearance or pre-market approval, or PMA, for, and successfully commercialize, market and sell, our planned or future products in the United States or in international markets. If our assumptions regarding the risks and uncertainties we face, which we use to plan our business, are incorrect or change due to circumstances in our business or our markets, or if we do not address these risks successfully, our operating and financial results could differ materially from our expectations and our business could suffer.

We have a history of net losses, and we expect to continue to incur losses for the foreseeable future. If we ever achieve profitability, we may not be able to sustain it.

We have incurred losses from operations since our inception and expect to continue to incur losses from operations for the foreseeable future. We reported losses from operations of $46.1 million and $35.4 million for the years ended December 31, 2019 and 2020, respectively, and $11.1 million for the three months ended March 31, 2021. As a result of these losses, as of March 31, 2021, we had an accumulated deficit of $437.4 million. We expect to continue to incur significant sales and marketing, research and development, regulatory and other expenses as we expand our marketing efforts to increase adoption of our products, expand existing relationships with our customers, obtain regulatory clearances or approvals for our planned or future products, conduct clinical trials on our existing and planned or future products and develop new products or add new features to our existing products. In addition, we expect our general and administrative expenses to increase following this offering due to the additional costs associated with being a public company.

The net losses that we incur may fluctuate significantly from period to period. We will need to generate significant additional revenue in order to achieve and sustain profitability. Even if we achieve profitability, we cannot be sure that we will remain profitable for any substantial period of time.

In order to support our continued operations and the growth of our business, we may seek to raise additional capital, which may not be available to us on acceptable terms, or at all.

We expect capital expenditures and operating expenses to increase over the next several years as we continue to operate our business and expand our infrastructure, commercial operations and research and development activities. Our primary uses of capital are, and we expect will continue to be, investment in our commercial organization and related expenses, clinical research and development services, laboratory and related supplies, legal and other regulatory expenses, general administrative costs and working capital. In addition, we may in the future seek to acquire or invest in additional businesses, products, services or technologies that we believe could complement or expand our product portfolio, enhance our technical capabilities or otherwise offer growth opportunities. For further information regarding our recent strategic transactions, see the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources.”

Because of these and other factors, we expect to continue to incur substantial net losses and negative cash flows from operations for at least the next several years. Our future liquidity and capital funding requirements will depend on numerous factors, including:

- our revenue growth;
- our research and development efforts;
- our sales and marketing activities;
- our success in leveraging future strategic partnerships;
- our ability to raise additional funds to finance our operations;
- the outcome, costs and timing of any clinical trial results for our current or future products;
- the emergence and effect of competing or complementary products;
- the availability and amount of reimbursement for procedures using our products;
- our ability to maintain, expand, enforce and defend our intellectual property portfolio, including the amount and timing of any payments we may be required to make, or that we may receive, in connection with the licensing, filing, prosecution, maintenance, defense and enforcement of any patents or other intellectual property rights;
- our ability to retain our employees and the need and ability to hire additional management and sales, scientific and medical personnel;
- the terms and timing of any collaborative, licensing or other arrangements that we have or may establish;
- debt service requirements;
- the extent to which we acquire or invest in businesses, products or technologies; and
- the impact of the COVID-19 pandemic.

If we determine that we need to raise additional funds, we may do so through equity or debt financings, which may not be available to us when needed or on terms that we deem to be favorable. To the extent that we raise additional capital through the sale of equity or convertible debt securities, the ownership interests of our stockholders will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect the rights of common stockholders. Debt financing and preferred equity financing, if available, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making acquisitions or capital expenditures or declaring dividends. If we are unable to maintain sufficient financial resources, our business, financial condition and results of operations will be materially and adversely affected, including potentially requiring us to delay, limit, reduce or terminate certain of our product discovery and development activities or future commercialization efforts.

Moreover, in the event that we enter into collaborations or licensing arrangements to raise capital, we may be required to accept unfavorable terms. These agreements may require that we relinquish or license to a third party on unfavorable terms our rights to products or technologies we otherwise would seek to develop or commercialize ourselves, or reserve certain opportunities for future potential arrangements when we might be able to achieve more favorable terms.

As of March 31, 2021, and December 31, 2020, we had $64.4 million and $69.0 million, respectively, in cash, cash equivalents and marketable securities. While we believe the net proceeds from this offering, together with our existing cash, cash equivalents and marketable securities and anticipated cash generated from sales of our products will be sufficient to meet our anticipated cash needs for at least 12 months following the date of this prospectus, we cannot assure you that we will be able to generate sufficient liquidity as and when needed. We have based this estimate on assumptions that may prove to be wrong, and we could use our capital resources sooner than we currently expect. Changing circumstances, some of which may be beyond our control, could cause us to consume capital significantly faster than we currently anticipate, and we may need to seek additional funds sooner than planned.

The terms of our credit facility place restrictions on our operating and financial flexibility, and failure to comply with covenants or to satisfy certain conditions of the agreement governing the credit facility may result in acceleration of our repayment obligations and foreclosure on our pledged assets, which could significantly harm our liquidity, financial condition, operating results, business and prospects and cause the price of our securities to decline.

Our October 2020 loan and security agreement, or the Credit Agreement, with Oxford Finance LLC, or Oxford Finance, provides for a five-year $60.0 million term-loan facility, of which $30.0 million has been drawn as of March 31, 2021. $20.0 million of the term-loan facility is available in additional draws during 2021 and $10.0 million will be available in the first quarter of 2022 if we reach certain revenue milestones.

Our payment obligations under the Credit Agreement reduce cash available to fund working capital, capital expenditures, research and development and general corporate needs. In addition, indebtedness under the Credit Agreement bears interest at a variable rate, making us vulnerable to increases in market interest rates. If market rates increase, we will have to pay additional interest on this indebtedness, which would further reduce cash available for our other business needs.

Commencing in 2022, the Credit Agreement requires us to achieve certain revenue levels as compared to our board approved operating plan in order to avoid a default or access additional funds. When we are subject to this covenant, there can be no assurance of our ability to maintain compliance with this covenant as of any future date.

Our obligations under the Credit Agreement are secured by substantially all of our assets, excluding intellectual property. The security interest granted over our assets could limit our ability to obtain additional debt financing. The Credit Agreement also requires us to comply with a number of other covenants (affirmative and negative), including restrictive covenants that limit our ability to: incur additional indebtedness; encumber the collateral securing the loan; acquire, own or make investments; repurchase or redeem any class of stock or other equity interest; declare or pay any cash dividend or make a cash distribution on any class of stock or other equity interest; dispose of a portion of our assets; acquire other businesses; and merge or consolidate with or into any other organization or otherwise suffer a change in control, in each case subject to exceptions.

In addition to other specified events of default, the lenders could declare an event of default upon the occurrence of any event that they interpret as having a material impairment on their lien on the collateral under the agreement, a material adverse change in our business, operations or condition (financial or otherwise) or a material impairment in the prospect of repayment of our obligations under the agreement. If we default under the credit facility, the lenders may accelerate all of our repayment obligations and, if we are unable to access funds to meet those obligations or to renegotiate our agreement, the lenders could take control of our pledged assets and we would have to immediately cease operations. During the continuance of an event of default, the then-applicable interest rate on the then-outstanding principal balance will increase by 5.0%. Upon an event of default, the lenders could also require us to repay the loan immediately, together with a final payment charge of 5.0% of the total term loan advances we borrowed, together with other fees. If we were to renegotiate the agreement under such circumstances, the terms may be significantly less favorable to us. If we were liquidated, the lenders' right to repayment would be senior to the rights of our stockholders to receive any proceeds from the liquidation. Any declaration by the lenders of an event of default could significantly harm our liquidity, financial condition, operating results, business, and prospects and cause the price of our securities to decline.

We may incur additional indebtedness in the future. The debt instruments governing such indebtedness may contain provisions that are as, or more, restrictive than the provisions governing our existing indebtedness. If we are unable to repay, refinance or restructure our indebtedness when payment is due, the lenders could proceed against the collateral or force us into bankruptcy or liquidation.

Our success depends in large part on our RxSight system. If we are unable to successfully market and sell our RxSight system, our business prospects will be significantly harmed, and we may be unable to achieve revenue growth.

Our future financial success will depend substantially on our ability to effectively and profitably market and sell our RxSight system to ophthalmic practices and other providers. The commercial success of our RxSight system and any of our planned or future products will depend on a number of factors, including the following:

- the actual and perceived effectiveness and reliability of our RxSight system, especially relative to alternative products;
- the prevalence and severity of any adverse patient events involving our RxSight system;
- the results of clinical trials relating to our RxSight system;
- our ability to sustain meaningful clinical benefits for our patients;
- our ability to obtain regulatory approval to market our planned or future products for use in the United States or internationally;
- the availability, relative cost and perceived advantages and disadvantages of alternative technologies or treatment methods for conditions treated by our products;

- the degree to which treatments using our products are covered and receive adequate reimbursement from third-party payors, including governmental and private insurers, as well as patient willingness to pay for the additional costs associated with our premium intraocular lens out of pocket;
- the degree to which doctors and other providers adopt our RxSight system;
- the fact that governmental and private health care providers and payors around the world are increasingly utilizing managed care for the delivery of health care services, centralizing purchasing, limiting the number of vendors that may participate in purchasing programs, forming group purchasing organizations and integrated health delivery networks and pursuing consolidation to improve their purchasing leverage and using competitive bid processes to procure health care products and services;
- our ability to obtain, maintain, protect and enforce our intellectual property rights in and to our RxSight system;
- the degree to which patients value the customized vision delivered by the RxSight system and are satisfied with their results;
- achieving and maintaining compliance with regulatory requirements applicable to our products;
- the extent to which we are successful in educating doctors and other providers about IOLs in general, and the benefits of our RxSight system;
- our reputation among doctors and other providers;
- the strength of our marketing and commercial organization;
- the effectiveness of our marketing and sales efforts in the United States, including our efforts to build out our sales team;
- our ability to expand the commercialization of our products into international markets;
- our ability to continue to develop, validate and maintain a commercially viable manufacturing process that is compliant with the Quality Systems Regulations, or QSR, and other applicable foreign, federal and state regulatory requirements;
- the success of our ongoing or future clinical trials; and
- whether we are required by the FDA or comparable non-U.S. regulatory authorities to conduct additional clinical trials for current or future indications.

If we fail to successfully market and sell our products, we will not be able to grow our revenue or achieve profitability, which will have a material adverse effect on our business, financial condition and results of operations. Our ability to grow our revenue in future periods will depend on our ability to successfully penetrate our target markets and increase sales of our RxSight system and any new product or product indications that we introduce, which will, in turn, depend in part on our success in growing our user base and driving increased use of our products. New products or product indications will also need to be approved or cleared by the FDA and comparable non-U.S. regulatory agencies in any international markets we target in order to commercialize them. If we cannot achieve revenue growth or achieve or sustain profitability, it could have a material adverse effect on our business, financial condition and results of operations.

Adoption of our products depends upon appropriate training for doctors, and inadequate training may lead to negative patient outcomes, affect adoption of our products and adversely affect our business.

The success of our products depends in part on our customers' adherence to appropriate patient selection and proper techniques provided in training sessions conducted by our training faculty. For example, we train our

customers to ensure correct use of our RxSight system. However, doctors rely on their previous medical training and experience, and we cannot guarantee that all such doctors will have the necessary skills or training to effectively utilize our products. We do not control which doctors and other providers use our products or how much training they receive, and doctors who have not completed our training sessions may nonetheless attempt to use our products. In addition, doctors and other providers may use our products in a manner that is not consistent with their labeled indications for which no training is available. If doctors and other providers use our products in a manner that is inconsistent with their labeled indications, with components that are not compatible with our products or otherwise without adhering to or completing our training sessions, their patient outcomes may not be consistent with the outcomes achieved by other doctors and other providers or in our clinical trials. This result may negatively impact the perception of patient benefit and safety and limit adoption of our products, which would have a material adverse effect on our business, financial condition and results of operations.

We currently require limited training in the use of our products because we market primarily to doctors and other providers who are experienced in the specific techniques required to use our devices. If demand for our products continues to grow, less experienced doctors and other providers will likely use our products, potentially leading to more injury and an increased risk of product liability claims. The use or misuse of our products may in the future result in complications and potentially lead to product liability claims.

The commercial success of our RxSight system will depend upon attaining significant market acceptance of these products among patients, doctors and other providers.

Our success will depend, in part, on the acceptance of our RxSight system as safe, effective and, with respect to doctors and other providers, cost-effective. We cannot predict how quickly, if at all, patients, doctors and other providers, or payors will accept our RxSight system or, if accepted, how frequently it will be used. Our RxSight system and planned or future products we may develop or market may never gain broad market acceptance for some or all of our targeted indications. Patients, doctors and other providers must believe that our products offer benefits over alternative treatment methods. To date, a substantial majority of our product sales and revenue have been derived from a limited number of customers who have adopted our RxSight system. Our future growth and profitability largely depend on our ability to increase doctors' and other providers' awareness of our system and our products and on the willingness of patients, doctors and other providers to adopt them. These parties may not adopt our products unless they are able to determine, based on experience, clinical data, medical society recommendations and other analyses, that our products are safe, effective and, with respect to providers, cost-effective, on a stand-alone basis and relative to competitors' products. Patients, doctors and other providers must believe that our products offer benefits over alternative treatment methods. Even if we are able to raise awareness, doctors and other providers tend to be slow in changing their medical treatment practices and may be hesitant to select our products for recommendation to their patients for a variety of reasons, including:

- long-standing relationships with competing companies and distributors that sell other products;
- competitive response and negative selling efforts from providers of alternative products;
- lack of experience with our products and concerns that we are relatively new to market;
- lack or perceived lack of sufficient clinical evidence, including long-term data, supporting safety or clinical benefits;
- time commitment and skill development that may be required to gain familiarity and proficiency with our products;

- patient confusion regarding the wide range of commercially available premium IOL offerings and their ability to deliver promised results at near, middle and far distances without reliance on spectacles;
- patient reticence to select a premium IOL due to nonperformance and adverse side effects associated with competing products in the market;
- patient non-compliance with the RxSight system requirement to wear protective glasses following surgery until the LAL is locked to avoid UV exposure and an unintended change to the LAL, resulting in patient dissatisfaction with the results and possible need to remove the LAL; and
- an inability to generate patient referral due to dissatisfaction with results obtained through treatment with our products, the out-of-pocket cost of treatments using our products or otherwise.

In order for doctors and other providers to use our RxSight system, they must make a significant up-front investment to purchase the LDD. This can result in a lengthy sales cycle and require extensive negotiations and management time. If we are unsuccessful in placing LDDs with providers, our sales may decrease, and our operating results may be harmed.

Doctors play a significant role in determining the course of a patient's treatment, and, as a result, the type of treatment that will be utilized and provided to a patient. We focus our sales, marketing and education efforts primarily on doctors, and aim to educate referring doctors on the patient population that would benefit from our products. However, we cannot assure you that we will achieve broad market acceptance among doctors and other providers.

For example, some doctors and other providers may choose to utilize our RxSight system on only a subset of their total patient population or may not adopt our RxSight system at all. If we are not able to effectively demonstrate that the use of our RxSight system is beneficial in a broad range of patients, adoption of our product will be limited and may not occur as rapidly as we anticipate or at all, which would have a material adverse effect on our business, financial condition and results of operations. We cannot assure you that our products will achieve broad market acceptance among doctors and other providers. Additionally, even if our products achieve market acceptance, they may not maintain that market acceptance over time if competing products, procedures or technologies are considered safer or more cost-effective or otherwise superior. Any failure of our products to generate sufficient demand or to achieve meaningful market acceptance and penetration will harm our future prospects and have a material adverse effect on our business, financial condition and results of operations.

Our reputation among our current or potential customers, as well as among doctors and other providers, could also be negatively affected by safety or customer satisfaction issues involving us or our products, including product recalls. Future product recalls or other safety or customer satisfaction issues relating to our reputation could negatively affect our ability to establish or maintain broad adoption of our products, which would harm our future prospects and have a material adverse effect on our business, financial condition and results of operations.

Our RxSight system involves surgical risks and is contraindicated in certain patients, which may limit adoption.

Risks of using our products include those associated with cataract surgery and IOL implantation. There are also possible, but rare, complications due to the use of UV light from the LDD, including a temporary or long-lasting change to vision. We are aware of certain characteristics and features of our RxSight system that may prevent widespread market adoption, including the fact that doctors and other providers would need to adopt a new procedure, and training for doctors and other providers will be required to enable them to effectively operate our products.

We face significant competition, and if we are unable to compete effectively, we may not be able to achieve or maintain significant market penetration or improve our results of operations.

The medical device industry is intensely competitive, subject to rapid change and significantly affected by new product introductions and other market activities of industry participants. We compete with manufacturers and distributors of premium and conventional IOLs. Our most significant competitors in the IOL field include Alcon, Johnson & Johnson Vision, Bausch + Lomb, Hoya Corporation and Carl Zeiss AG. Many of our competitors are large, well-capitalized companies with significantly greater market share and resources than we have. Therefore, they can spend more on product development, marketing, sales and other product initiatives than we can. We also compete with smaller medical device companies that have a single product or a limited range of products. In addition, patients who receive an LAL will be required to wear UV protective spectacles until final lock-in which is approximately 4-5 weeks after surgery. They will also be required to return for an additional 2-3 clinic visits compared to traditional cataract surgery. The additional clinic visits are non-surgical but do require the patient's eyes to be dilated. Due to these additional requirements, market acceptance of the LAL may be impacted. We believe the principal competitive factors in our markets include:

- The quality of patient outcomes, oftentimes measured by visual acuity, and adverse event rates;
- Patient experience, including patient recovery time and level of discomfort;
- Acceptance by treating doctors and referral sources;
- Doctor and other provider learning curves and willingness to adopt new technologies;
- Ease-of-use and reliability;
- Economic benefits and cost savings;
- Strength of clinical evidence;
- Effective distribution and marketing to surgeons and potential patients; and
- Product price and qualification for coverage and reimbursement.

We compete primarily on the basis that our products are designed to enable more doctors and other providers to treat more patients more efficiently and effectively. Our continued success depends on our ability to:

- continue to develop innovative, proprietary products that address significant clinical needs in a manner that is safe and effective for patients and easy-to-use for doctors and other providers;
- obtain and maintain regulatory clearances or approvals;
- demonstrate safety and effectiveness in our sponsored and third-party clinical trials;
- expand our sales force across key markets to increase doctors' and other providers' awareness;
- obtain and maintain coverage and adequate reimbursement for procedures using our products;
- attract and retain skilled research, development, sales and clinical personnel;
- cost-effectively manufacture, market and sell our products;
- provide doctors and other providers with a sufficient return on investment as compared to alternative premium IOL procedures that justifies the upfront cost of our LDD; and
- obtain, maintain, enforce and defend our intellectual property rights and operate our business without infringing, misappropriating or otherwise violating the intellectual property rights of others.

We can provide no assurance that we will be successful in developing new products or commercializing them in ways that achieve market acceptance. If we develop new products, sales of those products may reduce revenue generated from our existing products. Moreover, any significant delays in our product launches may significantly impede our ability to enter or compete in a given market and may reduce the sales that we are able to generate from these products. We may experience delays in any phase of a product development, including during research and development, clinical trials, regulatory review, manufacturing and marketing. Delays in product introductions could have a material adverse effect on our business, financial condition and results of operations.

In addition, many medical device companies are consolidating to create new companies with greater market power. As the medical device industry consolidates, competition to provide goods and services to industry participants will become more intense. These industry participants may try to use their market power to negotiate price concessions or reductions for our products. If we reduce our prices because of consolidation in the healthcare industry, our revenue may decrease, which could have a material adverse effect on our business, financial condition and results of operations.

If our facilities become damaged or inoperable, or if we are required to vacate a facility, we may be unable to manufacture our products or we may experience delays in production or an increase in costs, which could adversely affect our results of operations.

We currently maintain our research and development, manufacturing and administrative operations in Aliso Viejo, California, and we do not have redundant facilities. We operate a single manufacturing facility, and should this facility be significantly damaged or destroyed by natural or man-made disasters, such as earthquakes, fires (both of which are prevalent in California) or other events, it could take months to relocate or rebuild, during which time our employees may seek other positions, our research, development and manufacturing would cease or be delayed and our products may be unavailable. A major interruption in the manufacturing operations at this facility would materially impact our ability to operate. Because of the time required to authorize manufacturing in a new facility under federal, state and non-U.S. regulatory requirements, we may not be able to resume production on a timely basis even if we are able to replace production capacity. While we maintain property and business interruption insurance, such insurance has limits and would not cover all damages, including losses caused by earthquakes or losses we may suffer due to our products being replaced by competitors' products. The inability to perform our research, development and manufacturing activities if our facilities become inoperable, combined with our limited inventory of materials and components and manufactured products, may cause doctors and other providers to discontinue using our products or harm our reputation, and we may be unable to re-establish relationships with such doctors and other providers in the future. Consequently, a catastrophic event at our current facility or any future facilities could have a material adverse effect on our business, financial condition and results of operations.

Furthermore, the current leases on our three facilities expire at the end of September 30, 2029 (including a five year option to extend), January 31, 2041 (including three-five year options to extend) and March 31, 2033 (including two extensions to extend for 5 years each), and we may be unable to renew our leases or find a new facility on commercially reasonable terms, or at all. If we were unable or unwilling to renew at the proposed rates, relocating our manufacturing facility would involve significant expense in connection with the movement and installation of key manufacturing equipment and any necessary recertification with regulatory bodies, and we cannot assure you that such a move would not delay or otherwise adversely affect our manufacturing activities or operating results. If our manufacturing capabilities were impaired by any such move, we may not be able to manufacture and ship our products in a timely manner, which would adversely impact our business.

Technological change may adversely affect sales of our products and may cause our products to become obsolete.

The medical device market is characterized by extensive research and development and rapid technological change. There can be no assurance that other companies, including current competitors or new entrants, will not succeed in developing or marketing products that are more effective than our products or that would render our products obsolete or noncompetitive. Additionally, new surgical procedures, medications and other therapies could be developed that replace or reduce the importance of our products. If we are unable to innovate successfully, our products could become obsolete and our revenue would decline as our customers purchase our competitors' products. Our failure to develop new products, applications or features could result from insufficient cash resources, high employee turnover, inability to hire personnel with sufficient technical skills, a lack of other research and development resources or other constraints. Our failure or inability to devote adequate research and development resources or compete effectively with the research and development programs of our current or future competitors could have a material adverse effect on our business, financial condition and results of operations.

We have limited data and experience regarding the safety and efficacy of our RxSight system. Results of earlier studies may not be predictive of future clinical trial results, and planned studies may not establish an adequate safety or efficacy profile for our RxSight system and other planned or future products, which would affect market acceptance of our RxSight system.

Because our RxSight system technology is a relatively new treatment to optimize vision after cataract surgery, we have performed clinical trials only with limited patient populations. The long-term effects of using our products in a large number of patients have not been studied and the results of short-term clinical use of such products do not necessarily predict long-term clinical benefits or reveal long-term adverse effects. The results of preclinical studies and clinical trials of our products conducted to date and ongoing or future studies and trials of our current, planned or future products may not be predictive of the results of later clinical trials, and interim results of a clinical trial do not necessarily predict final results. Our interpretation of data and results from our clinical trials do not ensure that we will achieve similar results in future clinical trials in other patient populations. In addition, preclinical and clinical data are often susceptible to various interpretations and analyses, and many companies that have believed their products performed satisfactorily in preclinical studies and earlier clinical trials have nonetheless failed to replicate results in later clinical trials and subsequently failed to obtain marketing approval. Products in later stages of clinical trials may fail to show the desired safety and efficacy despite having progressed through nonclinical studies and earlier clinical trials.

If our clinical trials are unsuccessful or significantly delayed, or if we do not complete our clinical trials, our business may be harmed.

Clinical development is a long, expensive and uncertain process and is subject to delays and the risk that products may ultimately prove unsafe or ineffective in treating the indications for which they are designed. We are currently engaged in post-market clinical trials of our RxSight system. Completion of clinical trials may take several years or more. Clinical trials can be delayed for a variety of reasons, including delays in obtaining regulatory approval to commence a trial, in reaching an agreement on acceptable clinical trial terms with prospective sites, in obtaining institutional review board approval at each site, in recruiting patients to participate in a trial or in obtaining sufficient supplies of clinical trial materials. We cannot provide any assurance that we will successfully, or in a timely manner, enroll our clinical trials, that our clinical trials will meet their primary endpoints or that such trials or their results will be accepted by the FDA or foreign regulatory authorities.

We may experience numerous unforeseen events during, or because of, the clinical trial process that could delay or prevent us from receiving regulatory clearance or approval for new products, modifications of existing products, or new indications for existing products, including:

- successful and timely completion of nonclinical studies or clinical development of our products, as well as the associated costs, including any unforeseen costs we may incur as a result of clinical trial delays due to the COVID-19 pandemic or other causes;
- enrollment in our clinical trials may be slower than we anticipate, or we may experience high screen failure rates in our clinical trials, resulting in significant delays;
- our clinical trials may produce negative or inconclusive results, and we may decide, or regulators may require us, to conduct additional clinical and/or preclinical testing which may be expensive and time-consuming;
- trial results may not meet the level of statistical significance required by the FDA or other regulatory authorities;
- the FDA or similar foreign regulatory authorities may find that one or more of our products is not sufficiently safe for investigational use in humans;
- the FDA or similar foreign regulatory authorities may interpret data from preclinical testing and clinical trials in different ways than we do;
- there may be delays or failure in obtaining approval of our clinical trial protocols from the FDA or other regulatory authorities;
- there may be delays in obtaining institutional review board approvals or governmental approvals to conduct clinical trials at prospective sites;
- the FDA or similar foreign regulatory authorities may find our or our suppliers' manufacturing processes or facilities unsatisfactory;
- the FDA or similar foreign regulatory authorities may change their review policies or adopt new regulations that may negatively affect or delay our ability to bring a product to market or receive approvals or clearances to treat new indications;
- we may have trouble in managing multiple clinical sites;
- we may have trouble finding patients to enroll in our trials;
- we may experience delays in agreeing on acceptable terms with third-party research organizations and trial sites that may help us conduct the clinical trials; and
- we, or regulators, may suspend or terminate our clinical trials because the participating patients are being exposed to unacceptable health risks.

Failures or perceived failures in our clinical trials will delay and may prevent our product development and regulatory approval process, damage our business prospects and negatively affect our reputation and competitive position.

Unauthorized third parties may seek to access our devices or other products and services, or related devices, products, and services, and modify or use them in a way inconsistent with our FDA clearances and approvals, which may create risks to users.

Medical devices are increasingly connected to the internet, hospital networks, and other medical devices to provide features that improve healthcare and increase the ability of healthcare providers to treat patients

and patients to manage their conditions. While currently bidirectional connectivity and interoperability of our RxSight system with other devices, local networks and the internet is not enabled, this may change in the future. Enablement of such features may increase cybersecurity risks and the risks of unauthorized access and use by third parties. For example, unauthorized third parties may seek to access our devices or other products and services, or related devices, products, and services, and modify or use them in a way inconsistent with our FDA clearances and approvals, which may create risks to users and potential exposure to the company.

We may expend our limited resources to pursue a particular product or indication and fail to capitalize on products or indications that may be more profitable or for which there is a greater likelihood of success.

Because we have limited financial and managerial resources, we focus on specific products and indications. As a result, we may forgo or delay pursuit of other opportunities with others that could have had greater commercial potential. Our resource allocation decisions may cause us to fail to capitalize on viable commercial products or profitable market opportunities. Our spending on current and future research and development programs for specific indications or enhancements may not yield any commercially viable products. If we do not accurately evaluate the commercial potential or target market for a particular potential product, we may relinquish valuable rights to that potential product through future collaborations, licenses and other similar arrangements in cases in which it would have been more advantageous for us to retain sole development and commercialization rights to such potential product.

We may not be able to develop, license or acquire new products, enhance the capabilities of our existing products to keep pace with rapidly changing technology and customer requirements or successfully manage the transition to new product offerings, any of which could have a material adverse effect on our business, financial condition and results of operations.

Our success depends on our ability to develop, license or acquire and commercialize additional products and to develop new applications for our technologies in existing and new markets, while improving the performance and cost-effectiveness of our existing products, in each case in ways that address current and anticipated customer requirements. We intend to develop and commercialize additional products through our research and development program and by licensing or acquiring additional products and technologies from third parties. Our success is dependent upon several factors, including functionality, competitive pricing, ease of use, the safety and efficacy of our products and our ability to identify, select and acquire the rights to products and technologies on terms that are acceptable to us.

The medical device industry is characterized by rapid technological change and innovation. New technologies, techniques or products could emerge that might offer better combinations of price and performance or better address customer requirements as compared to our current or future products. Competitors, who may have greater financial, marketing and sales resources than we do, may be able to respond more quickly and effectively than we can to new or changing opportunities, technologies, standards or customer requirements. Any new product we identify for internal development, licensing or acquisition may require additional development efforts prior to commercial sale, including extensive clinical testing and approval or clearance by the FDA and applicable foreign regulatory authorities. Due to the significant lead time and complexity involved in bringing a new product to market, we are required to make a number of assumptions and estimates regarding the commercial feasibility of a new product. These assumptions and estimates may prove incorrect, resulting in our introduction of a product that is not competitive at the time of launch. We anticipate that we will face increased competition in the future as existing companies and competitors develop new or improved products and as new companies enter the market with new technologies. Our ability to mitigate downward pressure on our selling prices will be dependent upon our ability to maintain or increase the value we offer to doctors and other providers as well as payors. All new products are prone to the risks of failure inherent in

medical device product development, including the possibility that the product will not be shown to be sufficiently safe and effective for approval or clearance by regulatory authorities. In addition, we cannot assure you that any such products that are approved or cleared will be manufactured or produced economically, successfully commercialized or widely accepted in the marketplace. The expenses or losses associated with unsuccessful product development or launch activities, or a lack of market acceptance of our new products, could adversely affect our business, financial condition and results of operations.

Our ability to attract new customer accounts depends in large part on our ability to enhance and improve our existing products and to introduce compelling new products. The success of any enhancement to our products depends on several factors, including adoption and continued use by doctors and other providers, competitive pricing and overall market acceptance. Any new product that we develop may not be introduced in a timely or cost-effective manner, may contain defects or may not achieve the market acceptance necessary to generate significant revenue. If we are unable to successfully develop, license or acquire new products, enhance our existing products to meet customer requirements or otherwise gain market acceptance, our business, financial condition and results of operations would be harmed.

The typical development cycle of new medical device products can be lengthy and complicated and may require complex technology and engineering. Such developments may involve external suppliers and service providers, making the management of development projects complex and subject to risks and uncertainties regarding timing, timely delivery of required components or services and satisfactory technical performance of such components or assembled products. If we do not achieve the required technical specifications or successfully manage new product development processes, or if development work is not performed according to schedule, then such new technologies or products may be adversely impacted, and our business and operating results may be harmed.

If we fail to identify, acquire and develop other products, we may be unable to grow our business.

As a significant part of our growth strategy, we intend to develop and commercialize additional products through our research and development program or by licensing or acquiring additional products and technologies from third parties. The success of this strategy depends upon our ability to identify, select and acquire the right to products and technologies on terms that are acceptable to us.

Any product we identify, license or acquire may require additional development efforts prior to commercial sale, including extensive clinical testing and approval or clearance by the FDA and applicable foreign regulatory authorities. All products are prone to the risks of failure inherent in medical device product development, including the possibility that the product will not be shown to be sufficiently safe and effective for approval or clearance by regulatory authorities. In addition, we cannot assure you that any such products that are approved or cleared will be manufactured or produced economically, successfully commercialized or widely accepted in the marketplace.

Proposing, negotiating and implementing an economically viable product or technology acquisition or license is a lengthy and complex process. Other companies, including those with substantially greater financial, marketing and sales resources, may compete with us for the acquisition or license of approved or cleared products. We may not be able to acquire or license the rights to additional approved or cleared products on terms that we find acceptable, or at all.

If we are unable to develop suitable potential products through internal research programs or by obtaining rights from third parties, it could have a material adverse effect on our business, financial condition and results of operations.

We may acquire other companies or technologies, which could fail to result in a commercial product or increased revenue, divert our management's attention, result in additional dilution to our stockholders and otherwise disrupt our operations and harm our operating results.

Although we currently have no agreements or commitments to complete any such transactions, we may in the future seek to acquire or invest in businesses, applications or technologies that we believe could complement or expand our portfolio, enhance our technical capabilities or otherwise offer growth opportunities. However, we cannot assure you that we would be able to successfully complete any acquisition we choose to pursue, or that we would be able to successfully integrate any acquired business, product or technology in a cost-effective and non-disruptive manner. The pursuit of potential acquisitions may divert the attention of management and cause us to incur various costs and expenses in identifying, investigating and pursuing suitable acquisitions, whether or not they are consummated. We may not be able to identify desirable acquisition targets or be successful in entering into an agreement with any particular target or obtain the expected benefits of any acquisition or investment.

To date, the growth of our operations has been largely organic, and we have limited experience in acquiring other businesses or technologies. We may not be able to successfully integrate any acquired personnel, operations and technologies, or effectively manage the combined business following an acquisition. Acquisitions could also result in dilutive issuances of equity securities, the use of our available cash, or the incurrence of debt, which could harm our operating results. In addition, if an acquired business fails to meet our expectations, our operating results, business and financial condition may suffer.

Coverage and adequate reimbursement and/or the ability of patients to pay for the difference between the price charged by practices and the reimbursement amount may not be available for our products in sufficient markets, which could diminish our sales or affect our ability to sell our products.

In both U.S. and non-U.S. markets, our ability to successfully commercialize and achieve market acceptance of our products depends, in significant part, on the availability of adequate financial remuneration to doctor practices and surgical centers. This remuneration can come from a combination of sources, including third-party payors, such as Medicare and Medicaid programs in the United States, managed care organizations and private health insurers. Third-party payors decide which treatments they will cover and establish reimbursement rates for those treatments. They also can preclude patients from paying extra to receive additional services, such as those associated with placement of premium IOLs. Our products are purchased by doctors and other providers who will then seek reimbursement from third-party payors and patients for the procedures performed using our products. Reimbursement systems and patient billing rules in international markets vary significantly by country and by region within some countries, and reimbursement and/or non-reimbursement approvals must be obtained on a country-by-country basis. In certain international markets, a product must be approved for reimbursement before it can be approved for sale in that country. Furthermore, many international markets have government-managed healthcare systems that control reimbursement for new devices and procedures, as well as the ability to charge patients directly for non-reimbursed devices and procedures. In most markets there are private insurance systems as well as government-managed systems.

While third-party payors currently cover and provide reimbursement for a portion of the cost of the procedures performed using our currently cleared or approved products, we can give no assurance that these third-party payors will continue to provide coverage and adequate reimbursement or permit patient payment for the non-reimbursed portion sufficient to permit doctors and other providers to offer procedures using our products to patients requiring treatment. If sufficient coverage and reimbursement or flexibility to enable patient payment is not available for the procedures performed using our products, in either the United States or any international markets we enter, the demand for our products and our revenue will be adversely affected.

Furthermore, although we believe there is potential to improve on the current reimbursement profile for our products in the future, the overall amount of reimbursement available for products and procedures intended to treat cataract and refractive conditions of the eye could remain at current levels or decrease in the future. Failure by doctors and other providers to obtain and maintain coverage and adequate reimbursement as well as patient charges for the procedures performed using our products would materially adversely affect our business, financial condition and results of operations.

Third-party payors are also increasingly examining the cost effectiveness of products, in addition to their safety and efficacy, when making coverage and payment decisions. Third-party payors have also instituted initiatives to limit the growth of healthcare costs using, for example, price regulation or controls and competitive pricing programs. Some third-party payors also require demonstrated superiority, on the basis of randomized clinical trials, or pre-approval of coverage, for new or innovative devices or procedures before they will reimburse healthcare providers who use such devices or procedures. Additionally, no uniform policy for coverage and reimbursement exists in the United States, and coverage and reimbursement can differ significantly from payor to payor. Third-party payors often rely upon Medicare coverage policy and payment limitations in setting their own reimbursement rates, but also have their own methods and approval process apart from Medicare determinations. It is uncertain whether our current products or any planned or future products will be viewed (or continue to be viewed) as sufficiently cost effective to warrant coverage and adequate reimbursement levels for procedures using such products in any given jurisdiction.

If product liability lawsuits are brought against us, we may incur substantial liabilities and may be required to limit or halt the marketing and sale of our products. The expense and potential unavailability of insurance coverage for liabilities resulting from our products could harm us and our ability to sell our products.

We face an inherent risk of product liability as a result of the marketing and sale of our products. For example, we may be sued if our products cause or are perceived to cause injury or are found to be otherwise unsuitable during manufacturing, marketing or sale. Any such product liability claim may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the product, negligence, strict liability or a breach of warranties. In addition, we may be subject to claims against us even if the apparent injury is due to the actions of others or the pre-existing health of the patient. For example, we rely on doctors and other providers in connection with the use of our products on patients. If these doctors and other providers are not properly trained or are negligent, the capabilities of our products may be diminished, or the patient may suffer critical injury. We may also be subject to claims that are caused by the activities of our suppliers, such as those who provide us with components and sub-assemblies.

If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities or be required to limit or halt commercialization of our products. Even successful defense would require significant financial and management resources. Regardless of the merits or eventual outcome, liability claims may result in:

- decreased demand for our products;
- injury to our reputation;
- initiation of investigations by regulators;
- costs to defend the related litigation;
- a diversion of management's time and our resources;
- substantial monetary awards to trial participants or patients;
- product recalls, withdrawals or labeling, marketing or promotional restrictions;

- loss of revenue;
- exhaustion of any available insurance and our capital resources; and
- the inability to market and sell our products.

We believe we have adequate product liability insurance, but it may not prove to be adequate to cover all liabilities that we may incur. Insurance coverage is increasingly expensive. We may not be able to maintain or obtain insurance at a reasonable cost or in an amount adequate to satisfy any liability that may arise. Our insurance policy contains various exclusions, and we may be subject to a product liability claim for which we have no coverage. The potential inability to obtain sufficient product liability insurance at an acceptable cost to protect against product liability claims could prevent or inhibit the marketing and sale of products we develop. We may have to pay any amounts awarded by a court or negotiated in a settlement that exceed our coverage limitations or that are not covered by our insurance, and we may not have, or be able to obtain, sufficient capital to pay such amounts, which would have a material adverse effect on our business, financial condition and results of operations. In addition, any product liability claims brought against us, with or without merit, could increase our product liability insurance rates or prevent us from securing continuing coverage, harm our reputation in the industry, significantly increase our expenses and reduce product sales.

Some of our customers and prospective customers may also have difficulty in procuring or maintaining liability insurance to cover their operations and use of our products. Medical malpractice carriers are withdrawing coverage in certain states or substantially increasing premiums. If this trend continues or worsens, our customers may discontinue using our products and potential customers may opt against purchasing our products due to the cost or inability to procure insurance coverage.

We intend to expand sales of our products internationally in the future, but we may experience difficulties in obtaining regulatory clearance or approval or in successfully marketing our products internationally even if approved. A variety of risks associated with marketing our products internationally could materially adversely affect our business.

Sales of our products outside of the United States would be subject to foreign regulatory requirements governing clinical trials and marketing approval. We will incur substantial expenses in connection with our international expansion. Additional risks related to operating in foreign countries include:

- differing regulatory requirements and reimbursement regimes in foreign countries;
- unexpected changes in tariffs, trade barriers, price and exchange controls and other regulatory requirements;
- economic weakness, including inflation, or political instability in particular foreign economies and markets;
- compliance with tax, employment, immigration and labor laws for employees living or traveling abroad;
- foreign taxes, including withholding of payroll taxes;
- foreign currency fluctuations, which could result in increased operating expenses and reduced revenue, and other obligations incident to doing business in another country;
- difficulties staffing and managing foreign operations;
- workforce uncertainty in countries where labor unrest is more common than in the United States;
- potential liability under the U.S. Foreign Corrupt Practices Act (FCPA) or comparable foreign regulations;

- challenges enforcing our contractual and intellectual property rights, especially in those foreign countries that do not respect and protect intellectual property rights to the same extent as the United States;
- production shortages resulting from any events affecting raw material supply or manufacturing capabilities abroad; and
- business interruptions resulting from geo-political actions, including war and terrorism.

These and other risks associated with international operations may materially adversely affect our ability to attain or maintain profitable operations in international markets, which would have a material adverse effect on our business, financial condition and results of operations.

In addition, there can be no guarantee that we will receive approval to sell our products in the international markets we target, nor can there be any guarantee that any sales would result even if such approval is received. Even if the FDA grants marketing approval for a product, comparable regulatory authorities of foreign countries must also approve the manufacturing or marketing of the product in those countries. Approval in the United States, or in any other jurisdiction, does not ensure approval in other jurisdictions. Obtaining foreign approvals could result in significant delays, difficulties and costs for us and require additional trials and additional expenses. Regulatory requirements can vary widely from country to country and could delay the introduction of our products in those countries. Clinical trials conducted in one country may not be accepted by other countries, and regulatory approval in one country does not mean that regulatory approval will be obtained in any other country. If we fail to comply with these regulatory requirements or to obtain and maintain required approvals, our target market will be reduced and our ability to generate revenue will be diminished. Our inability to successfully enter all our desired international markets and manage business on a global scale could negatively affect our business, financial results and results of operations.

We may not be able to achieve or maintain satisfactory pricing and margins for our products.

Manufacturers of medical devices have a history of price competition, and we can give no assurance that we will be able to achieve satisfactory prices for our products or maintain prices at the levels we have historically achieved. Any decline in the amount that payors reimburse doctors performing cataract procedures, or any reduction in the flexibility to charge patients for non-reimbursed procedures could make it difficult for us to convince our customers to make the up-front investment in our LDD and could create additional pricing pressure with respect to the patient's decision to pay the additional cost associated with our LALs and potentially a reduction in the number of procedures performed using the RxSight system and corresponding sales of LDDs, LALs, accessories and services. If we are forced to lower the price we charge for our products, our revenue and gross margins will decrease, which will adversely affect our ability to invest in and grow our business. If we are unable to maintain our prices, or if our costs increase and we are unable to offset such increase with an increase in our prices, our margins could erode. We will continue to be subject to significant pricing pressure, which could harm our business, financial condition and results of operations.

The sizes of the markets for our current and future products have not been established with precision and may be smaller than we estimate.

Our estimates of the annual total addressable markets for our current products and products under development are based on a number of internal and third-party estimates, including, without limitation, the number of patients who have undergone cataract surgery, and the assumed prices at which we can sell our RxSight system. While we believe our assumptions and the data underlying our estimates are reasonable, these assumptions and estimates may not be correct and the conditions supporting our assumptions or estimates may change at any time, thereby reducing the predictive accuracy of these underlying factors. In addition, our estimates of the sizes of the cataract surgery patient population include patients who might never be likely

candidates for treatment with our products. As a result, our estimates of the annual total addressable market for our current or future products may prove to be incorrect. If the actual number of patients who would benefit from our products, the price at which we can sell future products, or the annual total addressable market for our products is smaller than we have estimated, it may impair our sales growth and have an adverse impact on our business.

Changes in public health insurance coverage and government reimbursement rates for our products could affect the adoption of our products and our future revenue.

The federal government is considering ways to change, and has changed, the manner in which healthcare services are paid for in the United States. Individual states may also enact legislation that impacts Medicaid payments to doctors and other providers. In addition, Centers for Medicare & Medicaid Services (CMS) establishes Medicare payment levels for doctors and other providers on an annual basis, which can increase or decrease payment to such entities. Internationally, medical reimbursement systems vary significantly from country to country, with some countries limiting medical centers' spending through fixed budgets, regardless of levels of patient treatment, and other countries requiring application for, and approval of, government or third-party reimbursement. In addition, the ability to charge patients directly for premium IOLs and associated services also varies widely across different countries and could become more restricted. Even if we succeed in bringing our products to market internationally, uncertainties regarding future healthcare policy, legislation and regulation, as well as private market practices, could affect our ability to sell our products in commercially acceptable quantities at acceptable prices.

Our quarterly and annual results may fluctuate significantly and may not fully reflect the underlying performance of our business.

Our quarterly and annual results of operations, including our revenue, profitability and cash flow, may vary significantly in the future, and period-to-period comparisons of our operating results may not be meaningful. Accordingly, the results of any one quarter or period should not be relied upon as an indication of future performance. Our quarterly and annual financial results may fluctuate as a result of a variety of factors, many of which are outside our control and, as a result, may not fully reflect the underlying performance of our business. Fluctuations in quarterly and annual results may decrease the value of our common stock. Because our quarterly results may fluctuate, period-to-period comparisons may not be the best indication of the underlying results of our business and should only be relied upon as one factor in determining how our business is performing.

We expect to significantly expand our organization, including expanding our sales and marketing capability and creating additional infrastructure to support our operations as a public company, and as a result, we may encounter difficulties in managing our growth, which could disrupt our operations.

We expect to experience significant growth in the number of our employees and the scope of our operations, particularly in the areas of sales and marketing and finance and accounting. To manage our anticipated future growth, we must continue to implement and improve our managerial, operational and financial systems, expand our facilities and continue to recruit and train additional qualified personnel. Due to our limited financial resources and our limited experience in managing such anticipated growth, we may not be able to effectively manage the expansion of our operations or recruit and train additional qualified personnel. The expansion of our operations may lead to significant costs and may divert or stretch our management and business development resources in a way that we may not anticipate. Any inability to manage growth could delay the execution of our business plans or disrupt our operations.

Certain of our operating results and financial metrics may be difficult to predict as a result of seasonality.

While we have not yet experienced significant seasonality in our results, it is not uncommon in our industry to experience seasonally weaker revenue during the summer months and end-of-year holiday season. We may be affected by other seasonal trends in the future, including severe weather (which can impact the number of elective procedures performed), particularly as our business matures. Additionally, this seasonality may be reflected to a much lesser extent, and sometimes may not be immediately apparent, in our revenue. To the extent we experience this seasonality, it may cause fluctuations in our operating results and financial metrics and make forecasting our future operating results and financial metrics more difficult.

Our ability to use our net operating loss carryforwards and certain other tax attributes to offset future taxable income may be subject to certain limitations.

As of December 31, 2020, we had federal net operating loss carryforwards (NOLs) of approximately $230 million, which will begin to expire in various years ranging from 2021 to 2037. Our NOLs could expire unused and be unavailable to offset future income tax liabilities because of their limited duration or because of restrictions under U.S. tax law. Under the Tax Act, as modified by the Coronavirus Aid, Relief, and Economic Security Act, or the CARES Act, our federal NOLs generated in tax years ending after December 31, 2017 may be carried forward indefinitely, but the deductibility of such federal net NOLs in tax years beginning after December 31, 2020 is limited to 80% of taxable income. It is uncertain if and to what extent various states will conform to the Tax Act, as modified by the CARES Act. Additionally, California recently enacted legislation limiting our ability to use our state NOLs for taxable years 2020, 2021, and 2022.

In addition, under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended (Code), if a corporation undergoes an “ownership change” (generally defined as a cumulative change in our ownership by “5-percent shareholders” that exceeds 50 percentage points over a rolling three-year period), the corporation’s ability to use its pre-change NOLs and certain other pre-change tax attributes to offset its post-change income and taxes may be limited. Similar rules may apply under state tax laws. We may have experienced such ownership changes in the past, and we may experience an ownership change as a result of this offering or in the future as a result of subsequent shifts in our stock ownership, some of which are outside our control. We have not conducted any studies to determine annual limitations, if any, that could result from such changes in our stock ownership. Our ability to utilize those NOLs could be limited by an “ownership change” as described above and consequently, we may not be able to utilize a material portion of our NOLs and certain other tax attributes, which could have a material adverse effect on our cash flows and results of operations.

Risks related to intellectual property

If we are unable to obtain, maintain, protect and enforce patent and other intellectual property protection for our technology and products, or if the scope of the patent and other intellectual property protection obtained is not sufficiently broad, we may not be able to compete effectively in our markets.

Our success depends in large part on our ability to obtain, maintain, protect and enforce patent and other intellectual property protection in the United States and other countries with respect to our products and technology we develop. If we fail to obtain, maintain, protect and enforce our intellectual property, third parties may be able to compete more effectively against us, we may lose our technological or competitive advantage, or we may incur substantial litigation costs in our attempts to recover or restrict use of our intellectual property.

We seek to protect our position by in-licensing intellectual property relating to our products and filing patent applications in the United States and abroad related to our technologies and products that are important to our business. We also rely on a combination of contractual provisions, confidentiality procedures and copyright,

trademark, trade secret and other intellectual property rights to protect the proprietary aspects of our brands, products, technologies and data. These legal measures afford only limited protection, and competitors or others may gain access to or use our intellectual property and proprietary information. Our success will depend, in part, on obtaining and maintaining patents, copyrights, trademarks, trade secrets, data and know-how and other intellectual property rights.

We may not be able to obtain and maintain intellectual property or other proprietary rights necessary to our business or in a form that provides us with a competitive advantage. For example, our trade secrets, data and know-how could be subject to unauthorized use, misappropriation or disclosure to unauthorized parties, despite our efforts to enter into confidentiality agreements with our employees, consultants, contractors, clients and other vendors who have access to such information, and could otherwise become known or be independently discovered by third parties. In addition, the patent prosecution process is expensive, time-consuming and complex, and we may not be able to file, prosecute, maintain, enforce or license all necessary or desirable patent applications at a reasonable cost, in a timely manner, or in all jurisdictions where protection may be commercially advantageous, or we may not be able to protect our intellectual property at all. Despite our efforts to protect our intellectual property, unauthorized parties may be able to obtain and use information that we regard as proprietary.

The issuance of a patent is not conclusive as to its inventorship, scope, validity or enforceability and our owned and in-licensed issued patents may be challenged in courts or patent offices in the United States and abroad. For example, we may be subject to a third-party submission of prior art to the USPTO challenging the validity of one or more claims of our owned or in-licensed issued patents. Such submissions may also be made prior to a patent's issuance, precluding the granting of a patent based on one of our owned or in-licensed pending patent applications.

It is also possible that we will fail to identify patentable aspects of our research and development output in time to obtain patent protection. Although we enter into non-disclosure and confidentiality agreements with parties who have access to confidential or patentable aspects of our research and development output, such as our employees, consultants, contractors, collaborators, vendors and other third parties, any of these parties may breach the agreements and disclose such output before a patent application is filed, thereby jeopardizing our ability to seek patent protection. We may not be able to obtain or maintain patent applications and issued patents due to the subject matter claimed in such patent applications and issued patents being in disclosures in the public domain, and we may not be able to prevent any third party from using any of our technology that is in the public domain to compete with our technologies. In addition, publications of discoveries in the scientific literature often lag behind the actual discoveries, and patent applications in the United States and other jurisdictions are typically not published until 18 months after filing, or in some cases not at all. Therefore, we cannot be certain that we were the first to make the inventions claimed in our owned or in-licensed issued patents or pending patent applications, or that we were the first to file for patent protection of such inventions. If a third party can establish that we or our licensors were not the first to make or the first to file for patent protection of such inventions, our owned or in-licensed patent applications may not issue as patents and even if issued, may be challenged and invalidated or rendered unenforceable.

The patent position of medical device companies generally is highly uncertain, involves complex legal and factual questions, and has been the subject of much litigation in recent years. Changes in either the patent laws or their interpretation in the United States and other countries may diminish our ability to protect our inventions, obtain, maintain, and enforce our intellectual property rights and, more generally, could affect the value of our intellectual property or narrow the scope of our owned and in-licensed patents. With respect to both in-licensed and owned intellectual property, we cannot predict whether the patent applications we and our licensors are currently pursuing will issue as patents in any particular jurisdiction or whether the claims of any

issued patents will provide sufficient protection from competitors. As a result, the issuance, scope, validity, enforceability and commercial value of our patent rights are highly uncertain.

Moreover, the coverage claimed in a patent application can be significantly reduced before a patent is issued, and its scope can be reinterpreted after issuance. Even if patent applications we license or own currently or in the future issue as patents, they may not issue in a form that will provide us with any meaningful protection, prevent competitors or other third parties from competing with us, or otherwise provide us with any competitive advantage. Any patents that we hold or in-license may be challenged, narrowed or invalidated by third parties. Additionally, our competitors or other third parties may be able to circumvent our patents by developing similar or alternative technologies or products in a non-infringing manner. Third parties may also have blocking patents that could prevent us from marketing our own products and practicing our own technology. Alternatively, third parties may seek approval to market their own products similar to or otherwise competitive with our products. In these circumstances, we may need to defend and/or assert our patents, including by filing lawsuits alleging patent infringement. In any of these types of proceedings, a court or agency with jurisdiction may find our patents invalid, unenforceable or not infringed, in which case, our competitors and other third parties may then be able to market products and use manufacturing and analytical processes that are substantially similar to ours. Even if we have valid and enforceable patents, these patents still may not provide protection against competing products or processes sufficient to achieve our business objectives.

Given that patent applications are confidential for a period of time after filing, we cannot be certain that we were the first to file any patent application related to our products. Competitors may also contest our patents, if issued, by showing the U.S. Patent and Trademark Office, or USPTO, or the applicable other foreign patent agency that the invention was not original, was not novel or was obvious. In litigation, a competitor could claim that our patents, if issued, are not valid for a number of reasons. If a court agrees, we would lose our rights to those challenged patents.

In addition, given the amount of time required for the development, testing and regulatory review of new products, patents protecting such products might expire before or shortly after such products are commercialized. As a result, our intellectual property may not provide us with sufficient rights to exclude others from commercializing products similar or identical to ours. Moreover, some of our owned and in-licensed patents and patent applications may in the future be co-owned with third parties. If we are unable to obtain an exclusive license to any such third-party co-owners' interest in such patents or patent applications, such co-owners may be able to license their rights to other third parties, including our competitors, and our competitors could market competing products and technology. In addition, we may need the cooperation of any such co-owners of our patents in order to enforce such patents against third parties, and such cooperation may not be provided to us.

Our other intellectual property, including our trademarks, could also be challenged, invalidated, infringed and circumvented by third parties, and our trademarks could also be diluted, declared generic or found to be infringing on other marks, in which case we could be forced to re-brand our products, resulting in loss of brand recognition and requiring us to devote resources to advertising and marketing new brands, and suffer other competitive harm. Third parties may also adopt trademarks similar to ours, which could harm our brand identity and lead to market confusion.

We may in the future also be subject to claims by our former employees, consultants or contractors asserting an ownership right in our patents or patent applications, as a result of the work they performed on our behalf. Although we generally require all of our employees, consultants, contractors and any other partners or collaborators who have access to our proprietary know-how, information or technology to assign or grant similar rights to their inventions to us, we cannot be certain that we have executed such agreements with all

parties who may have contributed to our intellectual property, nor can we be certain that our agreements with such parties will be upheld in the face of a potential challenge, or that they will not be breached, for which we may not have an adequate remedy.

Failure to obtain and maintain patents, trademarks and other intellectual property rights necessary to our business and failure to protect, monitor and control the use of our intellectual property rights could negatively impact our ability to compete and cause us to incur significant expenses. The intellectual property laws and other statutory and contractual arrangements in the United States and other jurisdictions we depend upon may not provide sufficient protection in the future to prevent the infringement, use, violation or misappropriation of our patents, trademarks, data, technology and other intellectual property, and may not provide an adequate remedy if our intellectual property rights are infringed, misappropriated or otherwise violated. Any of the foregoing could have a material adverse effect on our competitive position, business, financial conditions, results of operations and prospects.

Furthermore, our owned and in-licensed patents may be subject to a reservation of rights by one or more third parties. For example, this could arise if the research resulting in certain of our owned or in-licensed patent rights and technology was funded in part by the U.S. government. As a result, the government may have certain rights, or march-in rights, to such patent rights and technology. When new technologies are developed with government funding, the government generally obtains certain rights in any resulting patents, including a non-exclusive license authorizing the government to use the invention for non-commercial purposes. These rights may permit the government to disclose our confidential information to third parties and to exercise march-in rights to use or allow third parties to use our licensed technology. The government can exercise its march-in rights if it determines that action is necessary because we fail to achieve practical application of the government-funded technology, because action is necessary to alleviate health or safety needs, to meet requirements of federal regulations, or to give preference to U.S. industry. In addition, our rights in such inventions may be subject to certain requirements to manufacture products embodying such inventions in the United States. Any exercise by the government of such rights could harm our competitive position, business, financial condition, results of operations and prospects.

Moreover, a portion of our intellectual property has been acquired from one or more third parties. While we have conducted diligence with respect to such acquisitions, because we did not participate in the development or prosecution of much of the acquired intellectual property, we cannot guarantee that our diligence efforts identified and/or remedied all issues related to such intellectual property, including potential ownership errors, potential errors during prosecution of such intellectual property, and potential encumbrances that could limit our ability to enforce such intellectual property rights .

Patent terms may be inadequate to protect our competitive position on technology for an adequate amount of time.

Patents have a limited lifespan. In the United States, if all maintenance fees are timely paid, the natural expiration of a patent is generally 20 years from its earliest claimed U.S. non-provisional or Patent Cooperation Treaty application filing date. Various extensions may be available, but the life of a patent, and the protection it affords, is limited. Even if patents covering our products are obtained, once the patent life has expired for a product, we may be open to competition. Given the amount of time required for the development, testing and regulatory review of new products, patents protecting such products might expire before or shortly after such products are commercialized. As a result, our patent portfolio may not provide us with sufficient rights to exclude others from commercializing products similar or identical to ours for a meaningful amount of time, or at all.

Obtaining and maintaining our patent protection depends on compliance with various procedural, document submission, fee payment, and other requirements imposed by governmental patent agencies, and our patent protection could be reduced or eliminated for noncompliance with these requirements.

Periodic maintenance fees, renewal fees, annuity fees and various other government fees on any issued patents and patent applications are due to be paid to the USPTO and other foreign patent agencies in several stages over the lifetime of such issued patents and patent applications. The USPTO and various foreign national or international patent agencies require compliance with a number of procedural, documentary, fee payment, and other similar provisions during the patent application process. While an inadvertent lapse can in many cases be cured by payment of a late fee or by other means in accordance with the applicable rules, there are situations in which noncompliance can result in abandonment or lapse of the patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. Noncompliance events that could result in abandonment or lapse of patent rights include, but are not limited to, failure to timely file national and regional stage patent applications based on our international patent application, failure to respond to official actions within prescribed time limits, non-payment of fees, and failure to properly legalize and submit formal documents. We are dependent on our licensors to take the necessary action to comply with these requirements with respect to certain of our in-licensed intellectual property, and if we or any of our current or future licensors fail to maintain the patents and patent applications covering our RxSight system or any future products, our competitors may be able to enter the market, which would have a material adverse effect on our business, financial condition, results of operations and prospects.

We may not identify relevant third-party patents or may incorrectly interpret the relevance, scope or expiration of a third-party patent, which might adversely affect our ability to develop and market our products.

We cannot guarantee that any of our patent searches or analyses, including the identification of relevant patents, the scope of patent claims or the expiration of relevant patents, are complete or thorough, nor can we be certain that we have identified each and every third-party patent and pending application in the United States and abroad that is relevant to or necessary for the commercialization of our current and future products in any jurisdiction.

The scope of a patent claim is determined by an interpretation of the law, the written disclosure in a patent and the patent's prosecution history. Our interpretation of the relevance or the scope of a patent or a pending application may be incorrect, which may negatively impact our ability to market our products. We may incorrectly determine that our products are not covered by a third-party patent or may incorrectly predict whether a third party's pending application will issue with claims of relevant scope. Our determination of the expiration date of any patent in the United States or abroad that we consider relevant may be incorrect, and our failure to identify and correctly interpret relevant patents may negatively impact our ability to develop and market our products.

Our future reliance on third parties may require us to share our trade secrets, which increases the possibility that a competitor will discover them or that our trade secrets will be misappropriated or disclosed.

Because we expect to rely on a third party to manufacture our RxSight system, and any future products, and we expect to collaborate with third parties on the continuing development of our RxSight system, and any future products, we must, at times, share trade secrets with them. We also expect to conduct R&D programs that may require us to share trade secrets under the terms of our partnerships or agreements with CROs. We seek to protect our proprietary technology in part by entering into agreements containing confidentiality and use restrictions and obligations with our advisors, employees, contractors, CMOs, CROs, other service providers and consultants prior to disclosing proprietary information. These agreements typically limit the rights of the third parties to use or disclose our confidential information, including our trade secrets. Despite the contractual

provisions employed when working with third parties, the need to share trade secrets and other confidential information increases the risk that such trade secrets become known by our competitors, are inadvertently incorporated into the technology of others, or are disclosed or used in violation of these agreements. Given that our proprietary position is based, in part, on our know-how and trade secrets, a competitor's discovery of our trade secrets or other unauthorized use or disclosure would impair our competitive position and may have an adverse effect on our business and results of operations.

In addition, these agreements typically restrict the ability of our advisors, employees, third-party contractors, CMOs, CROs, other service providers and consultants to publish data potentially relating to our trade secrets, although our agreements may contain certain limited publication rights. Despite our efforts to protect our trade secrets, our competitors may discover our trade secrets, either through breach of our agreements with third parties, independent development or publication of information by any of our third-party collaborators. A competitor's discovery of our trade secrets would impair our competitive position and have an adverse impact on our business.

We may be subject to claims that we or our employees have misappropriated the intellectual property of a third party, including trade secrets or know-how, or are in breach of non-competition or non-solicitation agreements with our competitors and third parties may claim an ownership interest in intellectual property we regard as our own.

Many of our employees and consultants were previously employed at or engaged by other medical device, biotechnology or pharmaceutical companies, including our competitors or potential competitors. Some of these employees, consultants and contractors, may have executed proprietary rights, non-disclosure and non-competition agreements in connection with such previous employment. Although we try to ensure that our employees and consultants do not use the intellectual property, proprietary information, know-how or trade secrets of others in their work for us, we may be subject to claims that we or these individuals have, inadvertently or otherwise, misappropriated the intellectual property or disclosed the alleged trade secrets or other proprietary information, of these former employers or competitors. Litigation may be necessary to defend against these claims, and if we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights. In addition, we may lose personnel as a result of such claims. Any such litigation, or the threat thereof, may adversely affect our ability to hire employees or contract with independent contractors. A loss of key personnel or their work product could hamper or prevent our ability to commercialize our products, which would have a material adverse effect on our business, results of operations, financial condition and prospects.

Additionally, we may be subject to claims from third parties challenging our ownership interest in intellectual property we regard as our own, based on claims that our employees or consultants have breached an obligation to assign inventions to another employer, to a former employer, or to another person or entity. Litigation may be necessary to defend against any other claims, and it may be necessary or we may desire to enter into a license to settle any such claim; however, there can be no assurance that we would be able to obtain a license on commercially reasonable terms, if at all. If our defense to those claims fails, in addition to paying monetary damages, a court could prohibit us from using technologies or features that are essential to our products, if such technologies or features are found to incorporate or be derived from the trade secrets or other proprietary information of the former employers.

In addition, we or our licensors may in the future be subject to claims by former employees, consultants or other third parties asserting an ownership right in our owned or in-licensed issued patents or patent applications. An adverse determination in any such submission or proceeding may result in loss of exclusivity or freedom to operate or in patent claims being narrowed, invalidated or held unenforceable, in whole or in part, which could limit our ability to stop others from using or commercializing similar technology and therapeutics, without payment to us, or could limit the duration of the patent protection covering our technology. Such

challenges may also result in our inability to develop, manufacture or commercialize our technology without infringing third-party patent rights. In addition, if the breadth or strength of protection provided by our owned or in-licensed issued patents and patent applications is threatened, it could dissuade companies from collaborating with us to license, develop or commercialize current or future products. Any of the foregoing could have a material adverse effect on our business, financial condition, results of operations and prospects.

An inability to incorporate technologies or features that are important or essential to our products could have a material adverse effect on our business, financial condition and results of operations, and may prevent us from selling our products. In addition, we may lose valuable intellectual property rights or personnel. Even if we are successful in defending against these claims, litigation could result in substantial costs and could be a distraction to management. Any litigation or the threat thereof may adversely affect our ability to hire employees or contract with independent sales representatives. A loss of key personnel or their work product could hamper or prevent our ability to commercialize our products, which could have an adverse effect on our business, financial condition and results of operations.

We may become a party to intellectual property litigation or administrative proceedings that could be costly and could interfere with our ability to sell and market our products.

The medical device industry has been characterized by extensive litigation regarding patents, trademarks, trade secrets and other intellectual property rights, and companies in the industry have used intellectual property litigation to gain a competitive advantage. It is possible that U.S. and foreign patents and pending patent applications, copyrights, or trademarks controlled by third parties may be alleged to cover our products, or that we may be accused of misappropriating third parties' trade secrets. Additionally, our products include components that we purchase from vendors, and may include design components that are outside of our direct control. Our competitors, many of which have substantially greater resources and have made substantial investments in patent portfolios, trade secrets, copyrights, trademarks and competing technologies, may have applied for or obtained, or may in the future apply for or obtain, patents, copyrights, or trademarks that will prevent, limit or otherwise interfere with our ability to make, use, sell and/or export our products or to use product names. Because patent applications can take years to issue and are often afforded confidentiality for some period of time, there may currently be pending applications, unknown to us, that later result in issued patents that could cover one or more of our products. Moreover, in recent years, individuals and groups that are non-practicing entities, commonly referred to as "patent trolls," have purchased patents and other intellectual property assets for the purpose of making claims of infringement in order to extract settlements. From time to time, we may receive threatening letters, notices or "invitations to license," or may be the subject of claims that our products and business operations infringe or violate the intellectual property rights of others. We may face patent infringement claims from non-practicing entities that have no relevant product revenue and against whom our owned or in-licensed patent portfolio may therefore have no deterrent effect. We may in the future become party to adversarial proceedings or litigation where our competitors or other third parties may assert claims against us, alleging that our products or services infringe, misappropriate or otherwise violate their intellectual property rights, including patents and trade secrets. The defense of these matters can be time consuming, costly to defend in litigation, divert management's attention and resources, damage our reputation and brand and cause us to incur significant expenses or make substantial payments. Vendors from whom we purchase hardware or software may not indemnify us in the event that such hardware or software is accused of infringing a third party's patent or trademark or of misappropriating a third party's trade secret, or any indemnification granted by such vendors may not be sufficient to address any liability and costs we incur as a result of such claims. Additionally, we may be obligated to indemnify our customers or business partners in connection with litigation and to obtain licenses or refund subscription fees, which could further exhaust our resources.

Even if we believe a third party's intellectual property claims are without merit, there is no assurance that a court would find in our favor, including on questions of infringement, validity, enforceability or priority of patents. The strength of our defenses will depend on the patents asserted, the interpretation of these patents, and our ability to invalidate the asserted patents. A court of competent jurisdiction could hold that these third-party patents are valid, enforceable and infringed, which could materially and adversely affect our ability to commercialize any products or technology we may develop, and any other products or technologies covered by the asserted third-party patents. In order to successfully challenge the validity of any such U.S. patent in federal court, we would need to overcome a presumption of validity. As this burden is a high one requiring us to present clear and convincing evidence as to the invalidity of any such U.S. patent claim, there is no assurance that a court of competent jurisdiction would invalidate the claims of any such U.S. patent. Conversely, the patent owner need only prove infringement by a preponderance of the evidence, which is a lower burden of proof.

Further, if patents, trademarks, copyrights, or trade secrets are successfully asserted against us, this may harm our business and result in injunctions preventing us from developing, manufacturing, marketing or selling our products, or result in obligations to pay license fees, damages, attorney fees and court costs, which could be significant. In addition, if we are found to willfully infringe third-party patents or trademarks or to have misappropriated trade secrets, we could be required to pay treble damages in addition to other penalties.

Although patent, copyright, trademark, trade secret and other intellectual property disputes in the medical device area have often been settled through licensing or similar arrangements, costs associated with such arrangements may be substantial and could include ongoing royalties. We may be unable to obtain necessary licenses on satisfactory terms, if at all. In addition, if any license we obtain is non-exclusive, we may not be able to prevent our competitors and other third parties from using the intellectual property or technology covered by such license to compete with us. If we do not obtain necessary licenses, we may not be able to redesign our products to avoid infringement. Any of these events could materially and adversely affect our business, financial condition and results of operations.

Similarly, interference or derivation proceedings provoked by third parties or brought by the U.S. Patent and Trademark Office, or USPTO, may be necessary to determine priority with respect to our patents, patent applications, trademarks or trademark applications. We may also become involved in other proceedings, such as reexamination, *inter partes* review, derivation or opposition proceedings before the USPTO or other jurisdictional body relating to our intellectual property rights or the intellectual property rights of others. Adverse determinations in a judicial or administrative proceeding or failure to obtain necessary licenses could prevent us from manufacturing our products or using product names, which would have a significant adverse impact on our business, financial condition and results of operations.

Additionally, we may file lawsuits or initiate other proceedings to protect or enforce our patents or other intellectual property rights, which could be expensive, time consuming and unsuccessful. Competitors may infringe our issued patents or other intellectual property, which we may not always be able to detect. To counter infringement or unauthorized use, we may be required to file infringement claims, which can be expensive and time-consuming. Any claims we assert against perceived infringers could provoke these parties to assert counterclaims against us alleging that we infringe their intellectual property or alleging that our intellectual property is invalid or unenforceable. Grounds for a validity challenge could be an alleged failure to meet any of several statutory requirements, including lack of novelty, obviousness or non-enablement. Grounds for an unenforceability assertion could be an allegation that someone connected with prosecution of the patent withheld relevant information from the USPTO, or made a misleading statement, during prosecution. Third parties may raise challenges to the validity of certain of our owned or in-licensed patent claims before administrative bodies in the United States or abroad, even outside the context of litigation. Such mechanisms include re-examination, post-grant review, *inter partes* review, interference proceedings, derivation proceedings and equivalent proceedings in foreign jurisdictions (e.g., opposition proceedings). In any such

lawsuit or other proceedings, a court or other administrative body may decide that a patent of ours is invalid or unenforceable, in whole or in part, construe the patent's claims narrowly or refuse to stop the other party from using the technology at issue on the grounds that our patents do not cover the technology in question.

The outcome following legal assertions of invalidity and unenforceability is unpredictable. If a third party were to prevail on a legal assertion of invalidity or unenforceability, we would lose at least part, and perhaps all, of the patent protection on our products or products that we may develop. If our patents are found to be valid and infringed, a court may refuse to grant injunctive relief against the infringer and instead grant us monetary damages and/or ongoing royalties. Such monetary compensation may be insufficient to adequately offset the damage to our business caused by the infringer's competition in the market. An adverse result in any litigation or other proceeding could put one or more of our patents at risk of being invalidated or interpreted narrowly. Any of these events could materially and adversely affect our business, financial condition and results of operations.

Even if resolved in our favor, litigation or other proceedings relating to intellectual property claims may cause us to incur significant expenses and could distract our personnel from their normal responsibilities. In addition, there could be public announcements of the results of hearings, motions or other interim proceedings or developments, and if securities analysts or investors perceive these results to be negative, it could have a substantial adverse effect on the price of our common stock. Such litigation or proceedings could substantially increase our operating losses and reduce the resources available for development activities or any future sales, marketing or distribution activities. We may not have sufficient financial or other resources to conduct such litigation or proceedings adequately. Some of our competitors may be able to sustain the costs of such litigation or proceedings more effectively than we can because of their greater financial resources and more mature and developed intellectual property portfolios. Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential or sensitive information could be compromised by disclosure in the event of litigation. Uncertainties resulting from the initiation and continuation of patent and other intellectual property litigation or other proceedings could have a material adverse effect on our business, financial condition and results of operations.

Because of the expense and uncertainty of litigation, we may not be in a position to enforce our intellectual property rights against third parties.

Because of the expense and uncertainty of litigation, we may conclude that even if a third party is infringing, misappropriating or otherwise violating our owned or in-licensed patents, any patents that may be issued as a result of our future patent applications, or other intellectual property rights, the risk-adjusted cost of bringing and enforcing such a claim or action may be too high or not in the best interest of our company or our shareholders. In such cases, we may decide that the more prudent course of action is to simply monitor the situation or initiate or seek some other non-litigious action or solution.

Our rights to develop and commercialize our products are subject, in part, to the terms and conditions of licenses granted to us by others.

We rely, in part, upon licenses to certain patent rights, proprietary technology and other intellectual property from third parties that are important or necessary to the development of our products and technology. Further development and commercialization of our current products, and development of any future products, may require us to enter into additional license or collaboration agreements. These and other licenses may not provide exclusive rights to use such intellectual property and technology in all relevant fields of use and in all territories in which we may wish to develop or commercialize our technology and products in the future. As a result, we may not be able to prevent competitors from developing and commercializing competitive products in territories included in all of our licenses.

In addition, we may not have the right to control the preparation, filing, prosecution, maintenance, enforcement and defense of patents and patent applications covering the technology that we license from third parties. Therefore, we cannot be certain that these patents and patent applications will be prepared, filed, prosecuted, maintained, enforced and defended in a manner consistent with the best interests of our business. Additionally, patents licensed to us could be put at risk of being invalidated or interpreted narrowly in litigation filed by or against our licensors or another licensee or in administrative proceedings brought by or against our licensors or another licensee in response to such litigation or for other reasons. If our licensors fail to prosecute, maintain, enforce and defend such patents, or lose rights to those patents or patent applications, the rights we have licensed may be reduced or eliminated, and our right to develop and commercialize any of our products that are subject of such licensed rights could be adversely affected.

Our licensors may have relied on third-party consultants or collaborators or on funds from third parties such that our licensors are not the sole and exclusive owners of the patents we in-license. This could materially and adversely affect our business, financial condition and results of operations.

The agreements under which we currently license intellectual property or technology from third parties are complex, and certain provisions in such agreements may be susceptible to multiple interpretations. The resolution of any contract interpretation disagreement that may arise could narrow what we believe to be the scope of our rights to the relevant intellectual property or technology or increase what we believe to be our financial or other obligations under the relevant agreement. In spite of our best efforts, our licensors might also conclude that we have materially breached our license agreements and terminate the license agreements, thereby removing our ability to develop and commercialize products and technology covered by these license agreements. If these in-licenses are terminated, or if the underlying patents fail to provide the intended exclusivity, competitors would have the freedom to seek regulatory approval of, and to market, products identical to ours. In addition, we may seek to obtain additional licenses from our licensors and, in connection with obtaining such licenses, we may agree to amend our existing licenses in a manner that may be more favorable to the licensors, including by agreeing to terms that could enable third parties (potentially including our competitors) to receive licenses to a portion of the intellectual property that is subject to our existing licenses. Moreover, if disputes over intellectual property that we license prevent or impair our ability to maintain other licensing arrangements on commercially acceptable terms, we may be unable to successfully develop and commercialize the affected products. Any of these events could materially and adversely affect our business, financial condition and results of operations.

In the future, we may enter agreements involving licenses or collaborations that provide for access or sharing of intellectual property. If we fail to comply with our obligations under any license, collaboration or other agreements, we may be required to pay damages and could lose intellectual property rights that are necessary for developing and protecting our current and future products.

We currently, and in the future may continue to, license from third parties certain intellectual property relating to our current and future products. In the event we do so, we may have certain obligations to such licensors. If we breach any material obligations, or use the intellectual property licensed to us in an unauthorized manner, we may be required to pay damages and the licensor may have the right to terminate the license, which could result in us being unable to develop, manufacture, and sell products that are covered by the licensed technology or enable a competitor to gain access to the licensed technology.

Disputes may arise between us and our future licensors regarding intellectual property subject to a license agreement, including:

- the scope of rights granted under the license agreement and other interpretation-related issues;

- whether and the extent to which our technology and processes infringe on intellectual property of the licensor that is not subject to the licensing agreement;
- our right to sublicense patents and other rights to third parties;
- our diligence obligations with respect to the use of the licensed technology in relation to our development and commercialization of our products, and what activities satisfy those diligence obligations;
- our right to transfer or assign the license; and
- the ownership of inventions and know-how resulting from the joint creation or use of intellectual property by any of our future licensors and us and our partners.

If disputes over intellectual property that we license in the future prevent or impair our ability to maintain our licensing arrangements on acceptable terms, we may not be able to successfully develop and commercialize the affected products, which would have a material adverse effect on our business.

In addition, certain of our future agreements with third parties may limit or delay our ability to consummate certain transactions, may impact the value of those transactions, or may limit our ability to pursue certain activities. For example, we may in the future enter into license agreements that are not assignable or transferable, or that require the licensor's express consent in order for an assignment or transfer to take place.

Further, we or our future licensors, if any, may fail to identify patentable aspects of inventions made in the course of development and commercialization activities before it is too late to obtain patent protection on them. Therefore, we may miss potential opportunities to strengthen our patent position. It is possible that defects of form in the preparation or filing of our patents or patent applications may exist, or may arise in the future, for example with respect to proper priority claims, inventorship, claim scope, or requests for patent term adjustments. If we or our future licensors fail to establish, maintain or protect such patents and other intellectual property rights, such rights may be reduced or eliminated. If our future licensors are not fully cooperative or disagree with us as to the prosecution, maintenance or enforcement of any patent rights, such patent rights could be compromised. If there are material defects in the form, preparation, prosecution, or enforcement of our patents or patent applications, such patents may be invalid and/or unenforceable, and such applications may never result in valid, enforceable patents. Any of these outcomes could impair our ability to prevent competition from third parties, which may have an adverse impact on our business.

In addition, even where we have the right to control patent prosecution of patents and patent applications under future license from third parties, we may still be adversely affected or prejudiced by actions or inactions of our predecessors or licensors and their counsel that took place prior to us assuming control over patent prosecution.

Our technology acquired or licensed in the future from various third parties may be subject to retained rights. Our predecessors or licensors may retain certain rights under their agreements with us, including the right to use the underlying technology for noncommercial academic and research use, to publish general scientific findings from research related to the technology, and to make customary scientific and scholarly disclosures of information relating to the technology. It is difficult to monitor whether our predecessors or future licensors limit their use of the technology to these uses, and we could incur substantial expenses to enforce our rights to our licensed technology in the event of misuse.

If we are limited in our ability to utilize acquired or future licensed technologies, or if we lose our rights to critical future in-licensed technology, we may be unable to successfully develop, out-license, market and sell our products, which could prevent or delay new product introductions. Our business strategy depends on the successful development of acquired technologies, and possibly in the future licensed technology, into

commercial products. Therefore, any limitations on our ability to utilize these technologies may impair our ability to develop, out-license or market and sell our products.

We may not be successful in obtaining necessary rights to any products we may develop through acquisitions and in-licenses.

We may need to obtain additional licenses from our existing licensors or otherwise acquire or in-license any intellectual property rights from third parties that we identify as necessary for our products. It is possible that we may be unable to obtain any additional licenses or acquire such intellectual property rights at a reasonable cost or on reasonable terms, if at all. The licensing or acquisition of third-party intellectual property rights is a competitive area, and several more established companies may pursue strategies to license or acquire third-party intellectual property rights that we may consider attractive or necessary. These established companies may have a competitive advantage over us due to their size, capital resources and greater clinical development and commercialization capabilities. In addition, companies that perceive us to be a competitor may be unwilling to assign or license rights to us. We also may be unable to license or acquire third-party intellectual property rights on terms that would allow us to make an appropriate return on our investment or at all. In that event, we may be required to expend significant time and resources to redesign our technology, products, or the methods for manufacturing them or to develop or license replacement technology, all of which may not be feasible on a technical or commercial basis. If we are unable to do so, we may be unable to develop or commercialize the affected products, which could materially and adversely affect our business, financial condition and results of operations.

Any collaboration or partnership arrangements that we may enter into in the future may not be successful, which could adversely affect our ability to develop and commercialize our products.

Any future collaborations that we enter into may not be successful. The success of our collaboration arrangements will depend heavily on the efforts and activities of our collaborators. Collaborations are subject to numerous risks, which may include that:

- collaborators have significant discretion in determining the efforts and resources that they will apply to collaborations;
- collaborators may not pursue development and commercialization of our products or may elect not to continue or renew development or commercialization programs based on trial or test results, changes in their strategic focus due to the acquisition of competitive products, availability of funding or other external factors, such as a business combination that diverts resources or creates competing priorities;
- collaborators could independently develop, or develop with third parties, products that compete directly or indirectly with our current and future products;
- a collaborator with marketing, manufacturing and distribution rights to one or more products may not commit sufficient resources to or otherwise not perform satisfactorily in carrying out these activities;
- we could grant exclusive rights to our collaborators that would prevent us from collaborating with others;
- collaborators may not properly maintain or defend our intellectual property rights or may use our intellectual property or proprietary information in a way that gives rise to actual or threatened litigation that could jeopardize or invalidate our intellectual property or proprietary information or expose us to potential liability;
- disputes may arise between us and a collaborator that causes the delay or termination of the research, development or commercialization of our current or future products or that results in costly litigation or arbitration that diverts management attention and resources;

- collaborations may be terminated, and, if terminated, may result in a need for additional capital to pursue further development or commercialization of the applicable current or future products;
- collaborators may own or co-own intellectual property covering our products that results from our collaborating with them, and in such cases, we would not have the exclusive right to develop or commercialize such intellectual property; and
- a collaborator's sales and marketing activities or other operations may not be in compliance with applicable laws resulting in civil or criminal proceedings.

We may be subject to claims challenging the inventorship of our patents and other intellectual property.

We or our licensors may be subject to claims that former consultants, contractors or other third parties have an interest in our owned or in-licensed patents, trade secrets or other intellectual property as an inventor or co-inventor. While it is our policy to require our employees, consultants and contractors who may be involved in the conception or development of intellectual property to execute agreements assigning such intellectual property to us, we may be unsuccessful in executing such an agreement with each party who, in fact, conceives or develops intellectual property that we regard as our own. The assignment of intellectual property rights may not be self-executing, or the assignment agreements may be breached, and we may be forced to bring claims against third parties, or defend claims that they may bring against us, to determine the ownership of what we regard as our intellectual property. If we or our licensors fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights, such as exclusive ownership of, or right to use, intellectual property that is important to our products. Furthermore, individuals executing invention assignment agreements with us may have preexisting or competing obligations to a third party, such as an academic institution, and thus an agreement with us may be ineffective in perfecting ownership of inventions developed by that individual. Any such events could have a material adverse effect on our business, financial condition and results of operations.

If we are unable to protect the confidentiality of our trade secrets and other proprietary information, our business and competitive position may be harmed.

In addition to patent protection, we also rely on other proprietary rights, including protection of trade secrets, and other proprietary information that is not patentable or that we elect not to patent. However, trade secrets can be difficult to protect and some courts inside and outside the United States are less willing or unwilling to protect trade secrets. To maintain the confidentiality of our trade secrets and proprietary information, we rely heavily on confidentiality provisions that we have in contracts with our employees, consultants, collaborators and others upon the commencement of their relationship with us. We cannot guarantee that we have entered into such agreements with each party that may have or have had access to our trade secrets or proprietary technology and processes. We may not be able to prevent the unauthorized disclosure or use of our technical knowledge or other trade secrets by such third parties, despite the existence generally of these confidentiality restrictions. These contracts may not provide meaningful protection for our trade secrets, know-how, or other proprietary information in the event of any unauthorized use, misappropriation, or disclosure of such trade secrets, know-how, or other proprietary information. There can be no assurance that such third parties will not breach their agreements with us, that we will have adequate remedies for any breach, or that our trade secrets will not otherwise become known or independently developed by competitors. Despite the protections we do place on our intellectual property or other proprietary rights, monitoring unauthorized use and disclosure of our intellectual property is difficult, and we do not know whether the steps we have taken to protect our intellectual property or other proprietary rights will be adequate. In addition, the laws of many foreign countries will not protect our intellectual property or other proprietary rights to the same extent as the laws of the United States. Consequently, we may be unable to prevent our proprietary technology from being exploited abroad, which could affect our ability to expand to international markets or require costly efforts to protect our technology.

To the extent our intellectual property or other proprietary information protection is incomplete, we are exposed to a greater risk of direct competition. A third party could, without authorization, copy or otherwise obtain and use our products or technology, or develop similar technology. Our competitors could purchase our products and attempt to replicate some or all of the competitive advantages we derive from our development efforts or design around our protected technology. Our failure to secure, protect and enforce our intellectual property rights could substantially harm the value of our products, brand and business. The theft or unauthorized use or publication of our trade secrets and other confidential business information could reduce the differentiation of our products and harm our business, the value of our investment in development or business acquisitions could be reduced and third parties might make claims against us related to losses of their confidential or proprietary information. Any of the foregoing could materially and adversely affect our business, financial condition and results of operations.

Further, it is possible that others will independently develop the same or similar technology or otherwise obtain access to our unpatented technology, and in such cases we could not assert any trade secret rights against such parties or those to whom they communicate such trade secrets. Costly and time-consuming litigation could be necessary to enforce and determine the scope of our trade secret rights and related confidentiality and nondisclosure provisions. If we fail to obtain or maintain trade secret protection, or if our competitors obtain our trade secrets or independently develop technology similar to ours or competing technologies, our competitive market position could be materially and adversely affected. In addition, some courts are less willing or unwilling to protect trade secrets and agreement terms that address non-competition are difficult to enforce in many jurisdictions and might not be enforceable in certain cases.

We also seek to preserve the integrity and confidentiality of our data and other confidential information by maintaining physical security of our premises and physical and electronic security of our information technology systems. While we have confidence in these individuals, organizations and systems, agreements or security measures may be breached and detecting the disclosure or misappropriation of confidential information and enforcing a claim that a party illegally disclosed or misappropriated confidential information is difficult, expensive and time-consuming, and the outcome is unpredictable. Further, we may not be able to obtain adequate remedies for any breach.

Changes in U.S. patent law or the patent law of other countries or jurisdictions could diminish the value of patents in general, thereby impairing our ability to protect our products.

Changes in either the patent laws or interpretation of the patent laws in the United States could increase the uncertainties and costs surrounding the prosecution of patent applications and the enforcement or defense of issued patents. The United States has enacted and implemented wide-ranging patent reform legislation. Assuming that other requirements for patentability are met, prior to March 2013, in the United States, the first to invent the claimed invention was entitled to the patent, while outside the United States, the first to file a patent application was entitled to the patent. After March 2013, under the Leahy-Smith America Invents Act, or the America Invents Act, enacted in September 2011, the United States transitioned to a first inventor to file system in which, assuming that other requirements for patentability are met, the first inventor to file a patent application will be entitled to the patent on an invention regardless of whether a third party was the first to invent the claimed invention. The America Invents Act also includes a number of significant changes that affect the way patent applications are prosecuted and also may affect patent litigation. These include allowing third-party submission of prior art to the USPTO during patent prosecution and additional procedures to challenge the validity of a patent by USPTO administered post-grant proceedings, including post-grant review, *inter partes* review and derivation proceedings. The America Invents Act and its implementation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents, all of which could have a material adverse effect on our business, financial condition, results of operations and prospects.

In addition, the U.S. Supreme Court has ruled on several patent cases in recent years, either narrowing the scope of patent protection available in certain circumstances or weakening the rights of patent owners in certain situations. In addition to increasing uncertainty with regard to our ability to obtain patents in the future, this combination of events has created uncertainty with respect to the value of patents, once obtained. We cannot predict how decisions or actions by the courts, the U.S. Congress or the USPTO may impact the value of our patents. Depending on actions by Congress, the federal courts, and the USPTO, the laws and regulations governing patents could change in unpredictable ways that would weaken our ability to obtain new patents or to enforce patents that we have licensed or that we might obtain in the future. Similarly, changes in patent law and regulations in other countries or jurisdictions or changes in the governmental bodies that enforce them or changes in how the relevant governmental authority enforces patent laws or regulations may weaken our ability to obtain new patents or to enforce patents that we have licensed or that we may obtain in the future. Any of the foregoing could have a material adverse effect on our business, financial condition, results of operations and prospects.

We may not be able to protect our intellectual property rights throughout the world, which could impair our business.

Filing, prosecuting, and defending patents covering our RxSight system, and any of our future products throughout the world would be prohibitively expensive, and our intellectual property rights in some countries outside the United States are less extensive than those in the United States. In some cases, we or our licensors may not be able to obtain patent protection for certain technology outside the United States. In addition, the laws of some foreign countries do not protect intellectual property rights to the same extent as federal and state laws in the United States. Consequently, we may not be able to prevent third parties from practicing our or our licensors' inventions in all countries outside the United States, even in jurisdictions where we or our licensors do pursue patent protection, or from selling or importing products made using our or our licensors' inventions in and into the United States or other jurisdictions. Competitors may use our technologies in jurisdictions where we or our licensors have not obtained patent protection to develop their own products and, further, may export otherwise infringing products to territories where we may have or obtain patent protection, but where patent enforcement is not as strong as that in the United States. These unauthorized products may compete with our products in such jurisdictions and take away our market share where we do not have any issued or in-licensed patents and any future patent claims or other intellectual property rights may not be effective or sufficient to prevent them from so competing.

Many companies have encountered significant problems in enforcing and defending intellectual property rights in foreign jurisdictions. The legal systems of certain countries, particularly certain developing countries, do not favor the enforcement of patents, trade secrets and other intellectual property protection, which could make it difficult for us to stop the infringement of our patents, if pursued and obtained, or marketing of competing products in violation of our proprietary rights generally. Proceedings to enforce our or our licensors' patent rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business, could put our patents at risk of being invalidated or interpreted narrowly and our patent applications at risk of not issuing and could provoke third parties to assert claims against us. We or our licensors may not prevail in any lawsuits that we or our licensors initiate, and the damages or other remedies awarded, if any, may not be commercially meaningful. Accordingly, our efforts to enforce our intellectual property rights around the world may be inadequate to obtain a significant commercial advantage from the intellectual property that we develop or license.

Many countries have compulsory licensing laws under which a patent owner may be compelled to grant licenses to third parties. In addition, many countries limit the enforceability of patents against government agencies or government contractors. In these countries, the patent owner may have limited remedies, which could materially diminish the value of such patent. If we or any of our licensors is forced to grant a license to third

parties with respect to any patents relevant to our business, our business, financial condition, results of operations and prospects could be materially and adversely affected.

Intellectual property rights do not necessarily address all potential threats to our competitive advantage.

The degree of future protection afforded by our intellectual property rights is uncertain because intellectual property rights have limitations, and may not adequately protect our business, or permit us to maintain our competitive advantage. The following examples are illustrative:

- others may be able to make a product that is similar to our current products and future products we intend to commercialize and that is not covered by the patents that we own or exclusively in-license and have the right to enforce;
- we and any of our current or future licensors or collaborators might not have been the first to make the inventions covered by the issued patents or pending patent applications that we own, license or may own or license in the future;
- we or any of our current or future licensors or collaborators might not have been the first to file patent applications covering certain of our inventions;
- others may independently develop similar or alternative technologies or duplicate any of our technologies without infringing, misappropriating or otherwise violating our intellectual property rights;
- it is possible that our current or future owned or in-licensed patent applications will not lead to issued patents;
- issued patents that we own or in-license may not provide us with any competitive advantages, or may be held invalid or unenforceable as a result of legal challenges, including as a result of legal challenges by our competitors;
- our competitors might conduct research and development activities in the United States and other countries that provide a safe harbor from patent infringement claims for certain research and development activities, as well as in countries where we do not have patent rights, and then use the information learned from such activities to develop competitive products for sale in our major commercial markets;
- we may not develop additional proprietary technologies that are patentable; and
- we may choose not to file a patent for certain trade secrets or know-how, and a third party may subsequently file a patent covering such intellectual property.

Our future use of "open source" software could subject our proprietary software to general release, adversely affect our ability to sell our products and subject us to possible litigation.

We intend to incorporate open source software in future products or technologies licensed, developed and/or distributed by us. Open source software is generally licensed by its authors or other third parties under open source licenses. Some open source licenses contain requirements that we disclose source code for modifications we make to the open source software and that we license such modifications to third parties at no cost. In some circumstances, distribution of our software in connection with open source software could require that we disclose and license some or all of our proprietary source code in that software, as well as distribute our products that use particular open source software at no cost to the user. We intend to monitor our use of open source software in an effort to avoid uses in a manner that would require us to disclose or grant licenses under our proprietary source code; however, there can be no assurance that such efforts will be successful. Open source license terms are often ambiguous and such use could inadvertently occur. There is little legal precedent governing the interpretation of

many of the terms of these licenses, and the potential impact of these terms on our business may result in unanticipated obligations regarding our products and technologies. Companies that incorporate open source software into their products have, in the past, faced claims seeking enforcement of open source license provisions and claims asserting ownership of open source software incorporated into their product. If an author or other third party that distributes such open source software were to allege that we had not complied with the conditions of an open source license, we could incur significant legal costs defending ourselves against such allegations. In the event such claims were successful, we could be subject to significant damages or be enjoined from the distribution of our products. In addition, if we combine our proprietary software with open source software in certain ways, under some open source licenses, we could be required to release the source code of our proprietary software, which could substantially help our competitors develop products that are similar to or better than ours and otherwise adversely affect our business. These risks could be difficult to eliminate or manage, and, if not addressed, could harm our business, financial condition and results of operations.

If our trademarks, service marks and tradenames are not adequately protected, then we may not be able to build name recognition in our markets and our business may be adversely affected.

We rely on trademarks, service marks, tradenames and brand names to distinguish our products from the products of our competitors and have registered or applied to register these trademarks. We cannot assure you that our trademark and service mark applications will be approved. During trademark and service mark registration proceedings, we may receive rejections. Although we are given an opportunity to respond to those rejections, we may be unable to overcome such rejections. In addition, in proceedings before the USPTO and comparable agencies in many foreign jurisdictions, third parties are given an opportunity to oppose pending trademark and service mark applications and to seek to cancel registered trademarks and service marks. Opposition or cancellation proceedings may be filed against our trademarks and service marks, and our trademarks and service marks may not survive such proceedings. In the event that our trademarks and service marks are successfully challenged, we could be forced to rebrand our products, which could result in loss of brand recognition and could require us to devote resources towards advertising and marketing new brands. At times, competitors may adopt trade names, trademarks or service marks similar to ours, thereby impeding our ability to build brand identity and possibly leading to market confusion. As a means to enforce our trademark and service mark rights and prevent infringement and other violations, we may be required to file claims against third parties or initiate opposition proceedings. This can be expensive and time-consuming. In addition, there could be potential trademark or service mark infringement claims brought by owners of other registered trademarks, service marks, or trademarks or service marks that incorporate variations of our registered or unregistered trademarks or service marks. Certain of our current or future trademarks or service marks may become so well known by the public that their use becomes generic and they lose trademark or service mark protection. Over the long term, if we are unable to establish name recognition based on our trademarks, service marks and trade names, then we may not be able to compete effectively and our business, financial condition and results of operations may be adversely affected.

Risks related to government regulation

If we fail to obtain and maintain necessary regulatory clearances or approvals for our products, or if clearances or approvals for future products and indications are delayed or not issued, our commercial operations would be harmed.

Our products are subject to extensive regulation by the FDA in the United States and by regulatory agencies in other countries where we may choose to do business. Government regulations specific to medical devices are wide ranging and govern, among other things:

- product design, development and manufacture;
- laboratory, preclinical and clinical testing, labeling, packaging, storage and distribution;
- premarketing clearance or approval;
- record keeping;
- product safety and effective;
- product changes;
- product marketing, promotion and advertising, sales and distribution; and
- post marketing surveillance, including reporting of deaths or serious injuries and recalls and correction and removals.

Before a new medical device, or a new intended use for an existing product, can be marketed in the United States, a company must first submit and receive either 510(k) clearance pursuant to Section 510(k) of the Food, Drug and Cosmetic Act, or the FDCA, or approval of a premarket approval, or PMA, application from the FDA, unless an exemption applies.

In many cases, the process of obtaining PMA approval is much more rigorous, costly, lengthy and uncertain than the 510(k) clearance process. In the 510(k) clearance process, the FDA must determine that a proposed device is “substantially equivalent” to a device legally on the market, known as a “predicate” device, in order to clear the proposed device for marketing. To be “substantially equivalent,” the proposed device must have the same intended use as the predicate device, and either have the same technological characteristics as the predicate device or have different technological characteristics and not raise different questions of safety or effectiveness than the predicate device. Clinical data is sometimes required to support substantial equivalence. In the PMA approval process, the FDA must determine that a proposed device is safe and effective for its intended use based on extensive data, including technical, pre-clinical, clinical trial, manufacturing and labeling data. The PMA process is typically required for devices for which the 510(k) process cannot be used and that are deemed to pose the greatest risk. Modifications to products that are approved through a PMA application generally need prior FDA approval of a PMA supplement. Similarly, some modifications made to products cleared through a 510(k) may require a new 510(k), or such modification may put the device into class III and require PMA approval. The FDA’s 510(k) clearance process usually takes from three to 12 months but may last longer. The process of obtaining a PMA generally takes from one to three years, or even longer, from the time the PMA is submitted to the FDA until an approval is obtained. Any delay or failure to obtain necessary regulatory approvals or clearances would have a material adverse effect on our business, financial condition and results of operations.

The FDA can delay, limit or deny clearance or approval of a device for many reasons, including:

- our inability to demonstrate to the satisfaction of the FDA or the applicable regulatory entity or notified body that our products are safe or effective for their intended uses;
- the disagreement of the FDA or the applicable foreign regulatory body with the design, conduct or implementation of our clinical trials or the analyses or interpretation of data from pre-clinical studies or clinical trials;
- serious and unexpected adverse device effects experienced by participants in our clinical trials;
- the data from our pre-clinical studies and clinical trials may be insufficient to support clearance or approval, where required;

- our inability to demonstrate that the clinical and other benefits of the device outweigh the risks;
- an advisory committee, if convened by the applicable regulatory authority, may recommend against approval of our application or may recommend that the applicable regulatory authority require, as a condition of approval, additional preclinical studies or clinical trials, limitations on approved labeling or distribution and use restrictions, or even if an advisory committee, if convened, makes a favorable recommendation, the respective regulatory authority may still not approve the product;
- the applicable regulatory authority may identify significant deficiencies in our manufacturing processes, facilities or analytical methods or those of our third-party contract manufacturers;
- the potential for approval policies or regulations of the FDA or applicable foreign regulatory bodies to change significantly in a manner rendering our clinical data or regulatory filings insufficient for clearance or approval; and
- the FDA or foreign regulatory authorities may audit our clinical trial data and conclude that the data is not sufficiently reliable to support approval or clearance.

Similarly, regulators may determine that our financial relationships with our principal investigators resulted in a perceived or actual conflict of interest that may have affected the interpretation of a study, the integrity of the data generated at the applicable clinical trial site or the utility of the clinical trial itself. Even if we are granted regulatory clearances or approvals, they may include significant limitations on the indicated uses for the product, which may limit the market for the product. Moreover, the FDA and European Union regulatory authorities strictly regulate the labeling, promotion and advertising of medical devices, including comparative and superiority claims vis a vis competitors' products, that may be made about products.

As a condition of approving a PMA application, the FDA may also require some form of post-approval study or post-market surveillance, whereby the applicant conducts a follow-up study or follows certain patient groups for a number of years and makes periodic reports to the FDA on the clinical status of those patients when necessary to protect the public health or to provide additional safety and effectiveness data for the device. Failure to conduct the post-approval study in compliance with applicable regulations or to timely complete required post-approval studies or comply with other post-approval requirements could result in withdrawal of approval of the PMA, which would harm our business.

In addition, we are required to timely file various reports with the FDA, including Medical Device Reporting, or MDR, that requires that we report to the regulatory authorities if our products 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. If these reports are not filed in a timely manner, regulators may impose sanctions and we may be subject to product liability or regulatory enforcement actions, all of which could harm our business.

If we initiate a correction or removal action for our products to reduce a significant risk to health posed by our products, we would be required to submit a publicly available correction and removal report to the FDA and, in many cases, similar reports to other regulatory agencies. This report could be classified by the FDA as a device recall which could lead to increased scrutiny by the FDA, other international regulatory agencies and our customers regarding the quality and safety of our products. Furthermore, the submission of these reports could be used by competitors against us and cause doctors and other providers to delay or cancel procedures, which could harm our reputation.

The FDA and the Federal Trade Commission, or FTC, also regulate the advertising, promotion and labeling of our products to ensure that the claims we make are consistent with our regulatory clearances and approvals, that

there is adequate and reasonable scientific data to substantiate the claims and that our promotional labeling and advertising is neither false nor misleading in any respect. If the FDA or FTC determines that any of our advertising or promotional claims are misleading, not substantiated or not permissible, we may be subject to enforcement actions, including adverse publicity and warning letters, and we may be required to revise our promotional claims and make other corrections or restitutions.

The FDA and state authorities have broad enforcement powers. Our failure to comply with applicable regulatory requirements could result in enforcement action by the FDA or state agencies, which may include any of the following sanctions:

- adverse publicity, warning letters, fines, injunctions, consent decrees and civil penalties;
- repair, replacement, refunds, recalls, termination of distribution, administrative detention or seizure of our products;
- operating restrictions, partial suspension or total shutdown of production;
- denial of our requests for 510(k) clearance or PMA of new products, new intended uses or modifications to existing products;
- withdrawal of 510(k) clearance or PMAs that have already been granted; and
- criminal prosecution.

If any of these events were to occur, our business and financial condition could be harmed. In addition, the FDA's and other regulatory authorities' policies may change and additional government regulations may be enacted that could prevent, limit or delay regulatory approval of our products. If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we are not able to maintain regulatory compliance, we may lose any marketing approval that we may have obtained and we may not achieve or sustain profitability, which would adversely affect our business, financial condition and results of operations.

Our products and operations are subject to extensive government regulation and oversight in the United States.

Medical devices regulated by the FDA are subject to "general controls" which include: registration with the FDA; listing commercially distributed products with the FDA; complying with all applicable requirements under the QSR; filing reports with the FDA of and keeping records relative to certain types of adverse events associated with devices under the medical device reporting regulation; assuring that device labeling complies with device labeling requirements; reporting certain device field removals and corrections to the FDA; and obtaining pre-market notification 510(k) clearance for devices prior to marketing. Some devices known as "510(k)-exempt" devices can be marketed without prior marketing-clearance or approval from the FDA. In addition to the "general controls," some Class II medical devices are also subject to "special controls," including adherence to a particular guidance document and compliance with the performance standard. Instead of obtaining 510(k) clearance, most Class III devices are subject to PMA.

Although our products have received regulatory approval or clearance from FDA in the United States for a particular patient population, they will be subject to ongoing regulatory requirements for manufacturing, labeling, packaging, storage, advertising, promotion, sampling, record-keeping, conduct of post-marketing studies and submission of safety, effectiveness and other post-market information, including both federal and state requirements in the United States and requirements of comparable non-U.S. regulatory authorities in any international markets we choose to enter.

Any regulatory clearances or approvals that we have received for our products will be subject to limitations on the cleared or approved indicated uses for which the product may be marketed and promoted, will be subject to the conditions of approval, or will contain requirements for potentially costly post-marketing testing. We are required to report certain adverse events and production problems, if any, to the FDA and comparable foreign regulatory authorities. Any new legislation addressing product safety issues could result in increased costs to assure compliance. The FDA and other agencies, including the DOJ, closely regulate and monitor the post-clearance or approval marketing and promotion of products to ensure that they are marketed and distributed only for the cleared or approved indications and in accordance with the provisions of the cleared or approved labeling. We have to comply with requirements concerning advertising and promotion for our products.

Promotional communications with respect to devices are subject to a variety of legal and regulatory restrictions and must be consistent with the information in the products' cleared or approved labeling. As such, we may not promote our products for indications or uses for which they do not have clearance or approval. We received a PMA for the LAL and LDD, which is indicated for the reduction of residual astigmatism to improve uncorrected visual acuity after removal of the cataractous natural lens by phacoemulsification and implantation of the intraocular lens in the capsular bag, in adult patients with pre-existing corneal astigmatism of ^{3} 0.75 diopters and without pre-existing macular disease. We also received a 510(k) clearance for our contact lens, which is indicated for visualization and treatment in the anterior segment of the eye. We train our marketing and sales force against promoting our products for uses outside of the cleared or approved indications for use, known as "off-label uses." However, doctors and other providers may use our products for off-label purposes and are allowed to do so when in the doctor's or other provider's independent professional medical judgment he or she deems it appropriate. If the FDA determines that our promotional materials or training constitute promotion of an off-label or other improper use, or that our internal policies and procedures are inadequate to prevent such off-label uses, it could subject us to regulatory or enforcement actions as discussed below.

In addition, we cannot make comparative claims regarding the use of our products against any alternative treatments without conducting head-to-head comparative clinical studies, which would be expensive and time-consuming. If the FDA determines that our promotional, reimbursement or training materials for sales representatives or doctors and other providers constitute promotion of an off-label use, the FDA could request that we modify our training, promotional or reimbursement materials and/or subject us to regulatory or enforcement actions, including the issuance of an untitled letter, a warning letter, injunction, seizure, disgorgement of profits, significant penalties, including civil fines and criminal penalties. Other federal, state or foreign governmental authorities also might take action if they consider our promotion, reimbursement or training materials to constitute promotion of an off-label use, which could result in significant fines or penalties under other statutory authorities, such as laws prohibiting false claims for reimbursement. Although we train our sales force not to promote our products for off-label uses, and our instructions for use in all markets specify that our products are not intended for use outside of those indications cleared or approved for use, the FDA or another regulatory agency could conclude that we have engaged in off-label promotion. For example, the government may take the position that off-label promotion resulted in inappropriate reimbursement for an off-label use in violation of the federal civil False Claims Act for which it might impose significant civil fines and even pursue criminal action. In those possible events, our reputation could be damaged, and adoption of the products would be impaired.

If a regulatory agency discovers previously unknown problems with a product, such as adverse events of unanticipated severity or frequency, or problems with our facility where the product is manufactured or disagrees with the promotion, marketing or labeling of a product, such regulatory agency may impose restrictions on that product or us, including requiring withdrawal of the product from the market.

If we fail to comply with applicable regulatory requirements, a regulatory agency or enforcement authority may, among other things:

- subject our facility to an adverse inspectional finding or Form 483, or other compliance or enforcement notice, communication or correspondence;
- issue warning or untitled letters that would result in adverse publicity or may require corrective advertising;
- impose civil or criminal penalties;
- suspend or withdraw regulatory clearances or approvals;
- refuse to clear or approve pending applications or supplements to approved applications submitted by us;
- impose restrictions on our operations, including closing our sub-assembly suppliers' facilities;
- seize or detain products; or
- require a product recall.

In addition, violations of the FDCA relating to the promotion of approved products may lead to investigations alleging violations of federal and state healthcare fraud and abuse and other laws, as well as state consumer protection laws.

Any government investigation of alleged violations of law could require us to expend significant time and resources in response and could generate negative publicity. Any failure to comply with ongoing regulatory requirements may significantly and adversely affect our ability to commercialize and generate revenue from our products. If regulatory sanctions are applied or if regulatory clearance or approval is withdrawn, it would have a material adverse effect on our business, financial condition and results of operations.

Material modifications to our products may require new 510(k) clearances or pre-market approvals or may require us to recall or cease marketing our products until clearances or approvals are obtained.

Modifications that could significantly affect the safety and effectiveness of our approved or cleared products, such as changes to the intended use or technological characteristics of our products, will require new 510(k) clearances or PMAs or require us to recall or cease marketing the modified devices until these clearances or approvals are obtained. Based on FDA published guidelines, the FDA requires device manufacturers to initially make and document a determination of whether or not a modification requires a new approval, supplemental approval or clearance; however, the FDA can review a manufacturer's decision. Any modification to an FDA-cleared device that could significantly affect its safety or efficacy or that would constitute a major change in its intended use would require a new 510(k) clearance or possibly a PMA. We may not be able to obtain the required 510(k) clearances or PMAs, or PMA supplements, or similar marketing authorization in applicable foreign jurisdictions, for new products or for modifications to, or additional indications for, our products in a timely fashion, or at all. Delays in obtaining required future clearances or approvals would adversely affect our ability to introduce new or enhanced products in a timely manner, which in turn would harm our future growth. We have made modifications to our products in the past and expect to make additional modifications in the future that we believe do not or will not require additional clearances or approvals. If the FDA or a comparable foreign regulatory authority disagrees and requires new clearances or approvals for these modifications, we may be required to recall and to stop selling or marketing such products as modified, which could harm our operating results and require us to redesign such products. In these circumstances, we may be subject to significant enforcement actions.

Obtaining and maintaining regulatory approval of our current and future products in one jurisdiction does not mean that we will be successful in obtaining regulatory approval of our current and future products in other jurisdictions. The FDA and other comparable foreign regulatory authorities may not accept data from trials conducted in locations outside of their jurisdiction.

Obtaining and maintaining regulatory approvals or clearances of our current and future products in one jurisdiction does not guarantee that we will be able to obtain or maintain regulatory approval in any other jurisdiction. For example, even if the FDA grants marketing approval or clearance of a current or future product, comparable regulatory authorities in foreign jurisdictions must also approve or clear the manufacturing, marketing and promotion and reimbursement of a current or future product in those countries. However, a failure or delay in obtaining regulatory approval in one jurisdiction may have a negative effect on the regulatory approval process in others. Approval procedures vary among jurisdictions and can involve requirements and administrative review periods different from those in the United States, including additional preclinical studies or clinical trials as clinical trials conducted in one jurisdiction may not be accepted by regulatory authorities in other jurisdictions. In many jurisdictions outside the United States, a product must be approved for reimbursement before it can be approved for sale in that jurisdiction. In some cases, the price that we intend to charge for our products is also subject to approval.

The RxSight system has a CE Mark for improving uncorrected visual acuity by adjusting the LAL power to correct residual postoperative refractive error, including for -2.0 to + 2.0 diopters of sphere and -3.0 to -0.50 diopters of cylinder and by changing lens curvature to introduce controlled amounts of spherical aberration (+/- 1 micron) and center near add (up to 2.0 diopters) which is also registered with the MHRA in the United Kingdom and in Mexico. Obtaining additional foreign regulatory approvals and establishing and maintaining compliance with foreign regulatory requirements in jurisdictions where we conduct business currently or in the future, such as requirements under the EU MDR, could result in significant delays, difficulties and costs for us and could delay or prevent the introduction of our products in certain countries. If we or any future collaborator fail to comply with the regulatory requirements in international markets or fail to receive applicable marketing approvals or clearances, our target market will be reduced and our ability to realize the full market potential of our current and future products will be harmed.

In addition, we have conducted clinical trials in Mexico and may choose to conduct further international clinical trials. The acceptance of study data by the FDA or other comparable foreign regulatory authority from clinical trials conducted outside of their respective jurisdictions may be subject to certain conditions. In cases where data from foreign clinical trials are intended to serve as the basis for marketing approval in the United States, the FDA will generally not approve the application on the basis of foreign data alone unless (1) the data are applicable to the U.S. population and U.S. medical practice; (2) the trials are performed by clinical investigators of recognized competence and pursuant to current good clinical practices regulations; and (3) audits by regulatory authorities of the clinical data do not identify significant data integrity issues. Additionally, the FDA's clinical trial requirements, including the adequacy of the patient population studied and statistical powering, must be met. In addition, such foreign trials are subject to the applicable local laws of the foreign jurisdictions where the trials are conducted. There can be no assurance that the FDA or any applicable foreign regulatory authority will accept data from trials conducted outside of its applicable jurisdiction. If the FDA or any applicable foreign regulatory authority does not accept such data, it would result in the need for additional trials, which would be costly and time-consuming and delay aspects of our business plan, and which may result in our products not receiving approval or clearance for commercialization in the applicable jurisdiction.

Our products may be subject to recalls after receiving FDA or foreign approval or clearance, which could divert managerial and financial resources, harm our reputation and adversely affect our business.

The FDA and similar foreign governmental authorities have the authority to require the recall of our products because of any failure to comply with applicable laws and regulations, or defects in design or manufacture. A

government mandated or voluntary product recall by us could occur because of, for example, component failures, device malfunctions or other adverse events, such as serious injuries or deaths, or quality-related issues, such as manufacturing errors or design or labeling defects. Any future recalls of our products could divert managerial and financial resources, harm our reputation and adversely affect our business.

If we initiate a correction or removal for one of our devices to reduce a risk to health posed by the device, we would be required to submit a publicly available Correction and Removal report to the FDA and, in many cases, similar reports to other regulatory agencies. This report could be classified by the FDA as a device recall which could lead to increased scrutiny by the FDA, other international regulatory agencies and our customers regarding the quality and safety of our devices. Furthermore, the submission of these reports has been and could be used by competitors against us in competitive situations and cause customers to delay purchase decisions or cancel orders and would harm our reputation.

In addition, we are subject to medical device reporting regulations that require us to report to the FDA or similar foreign governmental authorities if one of our products may have caused or contributed to a death or serious injury or if we become aware that it has malfunctioned in a way that would likely cause or contribute to a death or serious injury if the malfunction recurred. Failures to properly identify reportable events or to file timely reports, as well as failure to address each of the observations to the FDA's satisfaction, can subject us to sanctions and penalties, including warning letters and recalls.

Doctors and other providers may make similar reports to regulatory authorities. Any such reports may trigger an investigation by the FDA or similar foreign regulatory bodies, which could divert managerial and financial resources, harm our reputation and have a material adverse effect on our business, financial condition and results of operations.

If we, or our suppliers, fail to comply with the FDA's QSR or applicable foreign regulations, our manufacturing or distribution operations could be delayed or shut down and our revenue could suffer.

Our manufacturing and design processes and those of our third-party component suppliers are required to comply with the FDA's Quality System Regulation, or QSR, which covers procedures and documentation of the design, testing, production, control, quality assurance, labeling, packaging, storage and shipping of our products in the United States. We are also subject to similar state requirements and licenses, and to ongoing ISO 13485 compliance in our operations, including design, manufacturing, and service, to maintain our CE Mark in Europe. In addition, we must engage in extensive recordkeeping and reporting and must make available our facilities and records for periodic unannounced inspections by governmental agencies, including the FDA, state authorities, EU Notified Bodies, and comparable agencies in other countries. If we fail a regulatory inspection, our operations could be disrupted and our manufacturing interrupted. Failure to take timely and adequate corrective action in response to an adverse regulatory inspection could result in, among other things, a shutdown of our manufacturing or product distribution operations, significant fines, suspension of marketing clearances and approvals, seizures or recalls of our device, operating restrictions and criminal prosecutions, any of which would cause our business to suffer. Furthermore, our key component suppliers may not currently be or may not continue to be in compliance with applicable regulatory requirements, which may result in manufacturing delays for our products and cause our revenue to decline.

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 Public Health, or CDPH, and our Notified Body to determine our compliance with the QSR and other regulations at both our design and manufacturing facilities, and these inspections may include the manufacturing facilities of our suppliers.

We can provide no assurance that we will continue to remain in material compliance with the QSR. If the FDA, CDPH, or any applicable notified body in the European Union or United Kingdom inspects any of our facilities

and discover compliance problems, we may have to cease manufacturing and product distribution until we can take the appropriate remedial steps to correct the audit findings. Taking corrective action may be expensive, time consuming and a distraction for management and if we experience a delay at our manufacturing facility, we may be unable to produce our products, which would harm our business.

Healthcare reform initiatives and other administrative and legislative proposals may adversely affect our business, financial condition, results of operations and cash flows in our key markets.

There have been and continue to be proposals by the federal government, state governments, regulators and third-party payors to control or manage the increased costs of healthcare and, more generally, to reform the U.S. healthcare system. Certain of these proposals could limit the prices we are able to charge for our products or the coverage and reimbursement available for our products and could limit the acceptance and availability of our products. The adoption of proposals to control costs could have a material adverse effect on our business, financial condition and results of operations.

For example, in the United States, in March 2010, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, together, the Affordable Care Act, or ACA, was enacted. The ACA is a sweeping measure intended to expand healthcare coverage within the United States, primarily through the imposition of health insurance mandates on employers and individuals, the provision of subsidies to eligible individuals enrolled in plans offered on the health insurance exchanges and the expansion of the Medicaid program. The ACA has impacted existing government healthcare programs and has resulted in the development of new programs.

Certain provisions of the ACA have been subject to judicial and Congressional challenges. For example, various portions of the ACA have been the subject of legal and constitutional challenges, including legal proceedings in the Fifth Circuit Court of Appeals. The Supreme Court of the United States held oral arguments on the Fifth Circuit Court case in November 2020. In June 2021, the United States Supreme Court held that Texas and other challengers had no legal standing to challenge the ACA, upholding the ACA. It is unclear how this Supreme Court decision, future litigation, and healthcare measures promulgated by the Biden administration will impact the implementation of the ACA, our business, financial condition and results of operations. Complying with any new legislation or reversing changes implemented under the ACA could be time-intensive and expensive, resulting in a material adverse effect on our business.

In addition, other legislative changes have been proposed and adopted since the ACA was enacted. On August 2, 2011, the Budget Control Act of 2011 was signed into law, which, among other things, includes reductions to Medicare payments to providers of, on average, 2% per fiscal year, which went into effect on April 1, 2013, which, due to subsequent legislative amendments, will stay in effect through 2030 unless additional congressional action is taken. These Medicare sequester reductions have been suspended from May 1, 2020 through the end of 2021 due to the COVID-19 pandemic. In January 2013, President Obama signed into law the American Taxpayer Relief Act of 2012, which, among other things, reduced Medicare payments to several providers, and increased the statute of limitations period for the government to recover overpayments to providers from three to five years. These new laws may result in additional reductions in Medicare and other healthcare funding, which could have a material adverse effect on customers for our products, if approved, and accordingly, our financial operations. We cannot assure you that the ACA, as currently enacted or as amended in the future, will not harm our business and financial results, and we cannot predict how future federal or state legislative or administrative changes relating to healthcare reform will affect our business.

There likely will continue to be legislative and regulatory proposals at the federal and state levels directed at containing or lowering the cost of healthcare. We cannot predict the initiatives that may be adopted in the

future or their full impact. The continuing efforts of the government, insurance companies, managed care organizations and other payors of healthcare services to contain or reduce costs of healthcare may harm:

- our ability to set a price that we believe is fair for our products;
- our ability to generate revenue and achieve or maintain profitability; and
- the availability of capital.

Further, recently there has been heightened governmental scrutiny over the manner in which manufacturers set prices for their marketed products, which has resulted in several U.S. Congressional inquiries and proposed and enacted federal legislation designed to bring transparency to product pricing and reduce the cost of products and services under government healthcare programs. While some of these measures may require additional authorization to become effective, Congress and the federal administration have each indicated that it will continue to seek new legislative and/or administrative measures to control healthcare costs. Additionally, individual states in the United States have also increasingly passed legislation and implemented regulations designed to control product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access and marketing cost disclosure and transparency measures. Moreover, regional healthcare authorities and individual hospitals are increasingly using bidding procedures to determine what products to purchase and which suppliers will be included in their healthcare programs. Adoption of price controls and other cost-containment measures, and adoption of more restrictive policies in jurisdictions with existing controls and measures may prevent or limit our ability to generate revenue and attain profitability. Various new healthcare reform proposals are emerging at the federal and state level. Any new federal and state healthcare initiatives that may be adopted could limit the amounts that federal and state governments will pay for healthcare products and services and could have a material adverse effect on our business, financial condition and results of operations.

If we fail to comply with U.S. federal and state fraud and abuse and other healthcare laws and regulations, we could face substantial penalties and our business operations and financial condition could be adversely affected.

Healthcare providers and third-party payors play a primary role in the distribution, recommendation, ordering and purchasing of any medical device for which we have or obtain marketing clearance or approval. Through our arrangements with principal investigators, healthcare professionals, third-party payors and customers, we are exposed to broadly applicable anti-fraud and abuse, anti-kickback, false claims and other healthcare laws and regulations that may constrain our business, our arrangements and relationships with customers, and how we market, sell and distribute our marketed medical devices. We have a compliance program, a Code of Conduct and associated policies and procedures, but it is not always possible to identify and deter misconduct by our employees and other third parties, and the precautions we take to detect and prevent noncompliance may not be effective in protecting us from governmental investigations for failure to comply with applicable fraud and abuse or other healthcare laws and regulations.

In the United States, we are subject to various state and federal anti-fraud and abuse laws, including, without limitation, the federal healthcare Anti-Kickback Statute and federal civil False Claims Act. There are similar laws in other countries. Our current and future arrangements with healthcare providers, third-party payors, customers, and others may expose us to broadly applicable fraud and abuse and other healthcare laws and regulations, which may constrain the business or financial arrangements and relationships through which we research, as well as, sell, market, and distribute any products for which we obtain marketing approval. Healthcare fraud and abuse laws and related regulations are complex, and even minor irregularities can potentially give rise to claims that a statute or prohibition has been violated. The laws that may affect our ability to operate include:

- the federal Anti-Kickback Statute, which makes it illegal for any person, including a prescription drug or medical device manufacturer (or a party acting on its behalf), to knowingly and willfully solicit, receive, offer or pay any remuneration that is intended to induce or reward referrals, including the purchase, recommendation, or order of, items or services for which payment may be made, in whole or in part, under a federal healthcare program, such as Medicare or Medicaid. Moreover, the Patient Protection and Affordable Care Act of 2010, as amended by the health Care and Education Reconciliation Act of 2010 (collectively, the ACA), provides that the government may assert that a claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the civil False Claims Act;
- the Federal False Claims Act, including its civil provisions that can be enforced by private citizens through civil whistleblower or qui tam actions, and civil monetary penalties prohibiting individuals or entities from, among other things, knowingly presenting, or causing to be presented, to the federal government, claims for payment that are false or fraudulent or making a false statement to avoid, decrease or conceal an obligation to pay money to the federal government, and/or impose exclusions from federal health care programs and/or penalties for parties who engage in such prohibited conduct;
- the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), which prohibits, among other things, executing or attempting to execute a scheme to defraud any healthcare benefit program or making false statements relating to healthcare matters;
- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, and their implementing regulations also impose obligations on covered entities such as health insurance plans, healthcare clearinghouses, and certain health care providers and their respective business associates and their covered subcontractors, including mandatory contractual terms, with respect to safeguarding the privacy, security and transmission of individually identifiable health information;
- the federal Physician Payments Sunshine Act, also referred to as the CMS Open Payments, which requires applicable manufacturers of covered drugs, devices, biologics and medical supplies for which payment is available under Medicare, Medicaid or the Children's Health Insurance Program, with specific exceptions, to annually report to CMS information regarding certain payments and other transfers of value to covered recipients, including physicians, as defined by such law, and teaching hospitals as well as information regarding ownership and investment interests held by physicians and their immediate family members; additionally, effective January 1, 2022, for data reported to CMS in 2022, these reporting obligations with respect to payments and transfers of value made to covered recipients in the previous year, or data collected in 2021, will extend to include certain non-physician providers, such as physician assistants, nurse practitioners, and other mid-level practitioners; and
- analogous state and foreign laws and regulations, such as state anti-kickback and false claims laws which may apply to sales or marketing arrangements and claims involving healthcare items or services reimbursed by non-governmental third-party payors, including private insurers, state laws that require biotechnology companies to comply with the biotechnology industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government; state and local laws that require medical device manufacturers to report information related to payments and other transfers of value to doctors and other providers or marketing expenditures and require the registration of their sales representatives; state laws that require medical device companies to report information on the pricing of certain medical device products; and state and foreign laws that govern the privacy and security of health information in some circumstances, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts.

State and federal regulatory and enforcement agencies continue to actively investigate violations of healthcare laws and regulations, and the U.S. Congress continues to strengthen the arsenal of enforcement tools. Most recently, the Bipartisan Budget Act of 2018, or BBA, increased the criminal and civil penalties that can be imposed for violating certain federal health care laws, including the Anti-Kickback Statute. Enforcement agencies also continue to pursue novel theories of liability under these laws. In particular, government agencies recently have increased regulatory scrutiny and enforcement activity with respect to manufacturer reimbursement support activities and patient support programs, including bringing criminal charges or civil enforcement actions under the Anti-Kickback Statute, federal civil False Claims Act and HIPAA's healthcare fraud and privacy provisions.

Because of the breadth of these laws and the narrowness of available statutory and regulatory exemptions or safe harbors, it is possible that some of our activities, such as stock-option compensation paid to doctors that have entered into consulting agreements with us, could be subject to challenge under one or more of such laws. Any action brought against us for violations of these laws or regulations, even successfully defended, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. We may be subject to private "qui tam" actions brought by individual whistleblowers on behalf of the federal or state governments.

The growth of our business and sales organization and our expansion outside of the United States may increase the potential of violating these laws or our internal policies and procedures. The risk of our being found in violation of these or other laws and regulations is further increased by the fact that many have not been fully interpreted by the regulatory authorities or the courts, and their provisions are open to a variety of interpretations. Any action brought against us for violation of these or other laws or regulations, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. If our operations are found to be in violation of any of the federal, state and foreign laws described above or any other current or future fraud and abuse or other healthcare laws and regulations that apply to us, we may be subject to penalties, including significant criminal, civil, and administrative penalties, damages, fines, imprisonment of individuals, exclusion from participation in government programs, such as Medicare and Medicaid, and we could be required to curtail or cease our operations. Any of the foregoing consequences could seriously harm our business and our financial results.

Achieving and sustaining compliance with applicable federal and state anti-fraud and abuse laws may prove costly. If we or our employees are found to have violated any of the above laws we may be subjected to substantial criminal, civil and administrative penalties, including imprisonment, exclusion from participation in federal healthcare programs, such as Medicare and Medicaid, and significant fines, monetary penalties, forfeiture, disgorgement and damages, contractual damages, reputational harm, administrative burdens, diminished profits and future earnings and the curtailment or restructuring of our operations, any of which could adversely affect our ability to operate our business and our financial results. Any action or investigation against us for the violation of these healthcare fraud and abuse laws, even if successfully defended, could result in significant legal expenses and could divert our management's attention from the operation of our business. Companies settling federal civil False Claims Act, Anti-Kickback Statute or civil monetary penalties law cases also may be required to enter into a Corporate Integrity Agreement with the OIG in order to avoid exclusion from participation (i.e., loss of coverage for their products) in federal healthcare programs such as Medicare and Medicaid. Corporate Integrity Agreements typically impose substantial costs on companies to ensure compliance. Defending against any such actions can be costly, time-consuming and may require significant personnel resources, and may have a material adverse effect on our business, financial condition and results of operations.

Changes in the CMS fee schedules may harm our revenue and operating results.

Government payers, such as Centers for Medicare and Medicaid Services (CMS) as well as insurers, have increased their efforts to control the cost, utilization and delivery of healthcare services. From time to time, the

U.S. Congress has considered and implemented changes in the CMS fee schedules in conjunction with budgetary legislation. Reductions of reimbursement by Medicare or Medicaid for procedures that use our products or changes in policy regarding coverage of these procedures, such as adding requirements for payment, or prior authorizations, may be implemented from time to time. Reductions in the reimbursement rates and changes in payment policies of other third-party payers may occur as well. Similar changes in the past have resulted in reduced payments for procedures that use medical device products as well as added costs and have added more complex regulatory and administrative requirements. Further changes in federal, state, local and third-party payer regulations or policies may have a material adverse impact on the demand for our products and on our business. Actions by agencies regulating insurance or changes in other laws, regulations, or policies may also have a material adverse effect on our business, financial condition and results of operations.

Legislative or regulatory reforms may make it more difficult and costly for us to obtain regulatory clearance or approval of our planned or future products and to manufacture, market and distribute our products after clearance or approval is obtained.

From time to time, legislation is drafted and introduced in Congress that could significantly change the statutory provisions governing the regulatory approval, manufacture and marketing of regulated products or the reimbursement thereof. In addition, FDA regulations and guidance are often revised or reinterpreted by the FDA in ways that may significantly affect our business and our products. Any new regulations or revisions or reinterpretations of existing regulations may impose additional costs or lengthen review times of planned or future products. It is impossible to predict whether legislative changes will be enacted, or FDA regulations, guidance or interpretations changed, and what the impact of such changes, if any, may be.

Any change in the laws or regulations that govern the clearance and approval processes relating to our current, planned and future products could make it more difficult and costly to obtain clearance or approval for new products or to produce, market and distribute existing products. Significant delays in receiving clearance or approval or the failure to receive clearance or approval for our new products would have an adverse effect on our ability to expand our business.

Compliance with the EU Medical Device Regulation, applicable regulations in the United Kingdom, and other applicable foreign regulations, as well as any changes to existing regulations, may be costly and disruptive to our business, and expose us to increased liability.

In 2017, the European Union published the new EU Medical Device Regulation (MDR) (2017/745), the application of which was postponed until May 26, 2021 for class I devices (lowest risk) and May 26, 2024 for all other class devices (higher risk devices). The new regulations replace predecessor directives and emphasize a global convergence of regulations. With the transition from the Medical Devices Directive, or MDD, to the MDR, notified bodies are required to seek designation to operate as conformity assessment authorities under the new law. While we are currently in compliance with the MDR and in process of transferring certification from MDD to MDR, compliance with any new or changing regulations in the EU or other jurisdictions where we currently commercialize our products or intend to commercialize in the future is a time consuming process that may require comprehensive quality system audits and new conformity assessment certifications for our products. Major changes include:

- reclassification of some products;
- greater emphasis on clinical data;
- data transparency, including publication of clinical trial data and safety summaries;
- defined content and structure for technical files to support registration;
- unique device identification system;
- greater burden on post-market surveillance and clinical follow-up;

- reduction of adverse event reporting time from 30 to 15 days after the event; and
- more power to notified bodies.

Implementation of the Medical Device Regulations introduces substantial changes to the obligations with which medical device manufacturers must comply in the EU. High risk medical devices will be subject to additional scrutiny during the conformity assessment procedure. For any products that we may develop in the future, complying with these new regulations may result in Europe being less attractive as a "first market" destination. Marketing authorization timelines will become more protracted and the costs of operating in Europe will increase. A significantly more costly path to regulatory compliance is anticipated.

Our clinical trials may fail to demonstrate competent and reliable evidence of the safety and effectiveness of our products, which would prevent or delay commercialization of our products in development.

We may be required to conduct clinical studies that demonstrate competent and reliable evidence that our products are safe and effective before we can commercialize our products. Clinical testing is expensive and can take many years to complete, and its outcome is inherently uncertain. We cannot be certain that our planned clinical trials or any other future clinical trials will be successful. In addition, even if such clinical trials are successfully completed, we cannot guarantee that the FDA or foreign regulatory authorities will interpret the results as we do, and more trials could be required before we submit our products for approval. To the extent that the results of the trials are not satisfactory to the FDA or foreign regulatory authorities for support of a marketing application, we may be required to expend significant resources, which may not be available to us, to conduct additional trials in support of potential approval of our products. Even if regulatory approval is secured for any of our products, the terms of such approval may limit the scope and use of our products, which may also limit their commercial potential.

Defects or failures associated with our products could lead to recalls, safety alerts or litigation, as well as significant costs and negative publicity.

Our business is subject to significant risks associated with manufacture, distribution and use of medical devices that are placed inside the human body, including the risk that patients may be severely injured by or even die from the misuse or malfunction of our products caused by design flaws or manufacturing defects. In addition, component failures, design defects, off-label uses, or inadequate disclosure of product-related information could also result in an unsafe condition or the injury or death of a patient. These problems could lead to a recall or market withdrawal of, or issuance of a safety alert relating to, our products and result in significant costs, negative publicity and adverse competitive pressure. The circumstances giving rise to recalls are unpredictable, and any recalls of existing or future products could have a material adverse effect on our business, financial condition and results of operations.

We provide a limited warranty that our products are free of material defects and conform to specifications and offer to repair the LDD in the event of a defect and replace or refund the purchase price of a defective LAL. As a result, we bear the risk of potential warranty claims on our products. In the event that we attempt to recover some or all of the expenses associated with a warranty claim against us from our suppliers or vendors, we may not be successful in claiming such recovery, or any recovery from such vendor or supplier may be inadequate or unavailable.

The medical device industry has historically been subject to extensive litigation over product liability claims. We may be subject to product liability claims if our products cause, or merely appear to have caused, an injury or death, even if due to doctor error. In addition, an injury or death that is caused by the activities of our suppliers, such as those that provide us with components and raw materials, or by an aspect of a treatment used in combination with our products, such as a complementary drug or anesthesia, may be the basis for a claim against us by patients, doctors and other providers or others purchasing or using our products, even if our products were not the actual cause of such injury or death. We may choose to settle any claims to avoid a

determination of fault, even if we believe fault was not due to failure of our products. An adverse outcome involving one of our products could result in reduced market acceptance and demand for such products or any or all of our other products and could harm our brand and reputation and our ability to market our products in the future. In some circumstances, adverse events arising from or associated with the design, manufacture or marketing of our products could result in the suspension or delay of regulatory reviews of our premarket notifications or applications for marketing. Any of the foregoing problems could disrupt our business and have a material adverse effect on our business, financial condition and results of operations.

Although we carry product liability insurance in the United States and in other countries in which we conduct business, including for clinical trials and product marketing, we can give no assurance that such coverage will be available or adequate to satisfy any claims. Product liability insurance is expensive, subject to significant deductibles and exclusions, and may not be available on acceptable terms, if at all. If we are unable to obtain or maintain insurance at an acceptable cost or on acceptable terms with adequate coverage or otherwise protect against potential product liability claims, we could be exposed to significant liabilities. A product liability claim recall or other claim with respect to uninsured liabilities or for amounts in excess of insured liabilities could have a material adverse effect on our business, financial condition and results of operations. Defending a suit, regardless of its merit or eventual outcome, could be costly, could divert management's attention from our business and might result in adverse publicity, which could result in reduced acceptance of our products in the market, product recalls or market withdrawals.

We are required to file adverse event reports under Medical Device Reporting, or MDR, regulations with the FDA that are publicly available on the FDA's website. We are required to file MDRs if our products may have caused or contributed to a serious injury or death or malfunctioned in a way that could likely cause or contribute to a serious injury or death if it were to recur. Any such MDR that reports a significant adverse event could result in negative publicity, which could harm our reputation and future sales. If we fail to report events required to be reported to the FDA within the required timeframes, or at all, the FDA could take enforcement action and impose sanctions against us. Any such adverse event involving our products also could result in future voluntary corrective actions, such as recalls or customer notifications, or agency action, such as inspection or enforcement action. Any corrective action, whether voluntary or involuntary, as well as defending ourselves in a lawsuit, would require our time and capital, distract management from operating our business and may harm our reputation and have a material adverse effect on our business, financial condition and results of operations.

Our employees, independent contractors, consultants, commercial partners, distributors and vendors may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements.

We are exposed to the risk that our employees, independent contractors, consultants, commercial partners, distributors and vendors may engage in fraudulent or illegal activity. Misconduct by these parties could include intentional, reckless and/or negligent conduct or disclosure of unauthorized activities to us that violates: (i) the laws of the FDA and other similar foreign regulatory bodies, including those laws requiring the reporting of true, complete and accurate information to such regulators; (ii) manufacturing standards; (iii) healthcare fraud and abuse laws in the United States and similar foreign fraudulent misconduct laws; or (iv) laws that require the true, complete and accurate reporting of financial information or data. These laws may impact, among other things, future sales, marketing and education programs. In particular, the promotion, sales and marketing of healthcare items and services, as well as certain business arrangements in the healthcare industry, are subject to extensive laws designed to prevent fraud, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, structuring and commissions, certain customer incentive programs and other business arrangements generally. Activities subject to these laws also involve the improper use of information obtained in the course of patient recruitment for clinical trials.

We have adopted a code of business conduct and ethics, but it is not always possible to identify and deter misconduct by our employees and other third parties, and the precautions we take to detect and prevent these activities may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. If any such actions are instituted against us and we are not successful in defending ourselves or asserting our rights, those actions could result in the imposition of significant fines or other sanctions, including the imposition of civil, criminal and administrative penalties, damages, monetary fines, disgorgement, individual imprisonment, additional integrity reporting and oversight obligations, possible exclusion from participation in Medicare, Medicaid and other federal healthcare programs, contractual damages, reputational harm, diminished profits and future earnings and curtailment of operations, any of which could adversely affect our ability to operate our business and our results of operations. Whether or not we are successful in defending against any such actions or investigations, we could incur substantial costs, including legal fees, and divert the attention of management in defending ourselves against any of these claims or investigations, which could have a material adverse effect on our business, financial condition and results of operations.

Environmental health and safety laws may result in liabilities, expenses and restrictions on our operations. Failure to comply with environmental laws and regulations could subject us to significant liability.

Our research and development and manufacturing operations involve the use of hazardous substances and are subject to a variety of federal, state, local and foreign environmental laws and regulations relating to the storage, use, discharge, disposal, remediation of, and human exposure to, hazardous substances and the sale, labeling, collection, recycling, treatment and disposal of products containing hazardous substances. Liability under environmental laws and regulations can be joint and several and without regard to fault or negligence. Compliance with environmental laws and regulations may be expensive and noncompliance could result in substantial liabilities, fines and penalties, personal injury and third-party property damage claims and substantial investigation and remediation costs. Environmental laws and regulations could become more stringent over time, imposing greater compliance costs and increasing risks and penalties associated with violations. We cannot assure you that violations of these laws and regulations will not occur in the future or have not occurred in the past as a result of human error, accidents, equipment failure or other causes. The expense associated with environmental regulation and remediation could harm our financial condition and operating results.

Federal, state, local and foreign laws regarding environmental protection, hazardous substances and human health and safety may adversely affect our business. Our research and development and manufacturing operations involve the use of hazardous substances and are subject to a variety of federal, state, local and foreign environmental laws and regulations relating to the storage, use, discharge, disposal and remediation of, as well as human exposure to, hazardous substances and the sale, labeling, collection, recycling, treatment and disposal of products containing hazardous substances. These operations are permitted by regulatory authorities, and the resultant waste materials are disposed of in material compliance with environmental laws and regulations. Using hazardous substances in our operations exposes us to the risk of accidental injury, contamination or other liability from the use, storage, importation, handling or disposal of hazardous materials. If our or our suppliers' operations result in the contamination of the environment or expose individuals to hazardous substances, we could be liable for damages and fines, and any liability could significantly exceed our insurance coverage and have a material adverse effect on our on our business, financial condition and results of operations. Liability under environmental laws and regulations can be joint and several and without regard to fault or negligence. Compliance with environmental laws and regulations may be expensive, and non-compliance could result in substantial liabilities, fines and penalties, personal injury and third-party property damage claims and substantial investigation and remediation costs. Environmental laws and

regulations could become more stringent over time, imposing greater compliance costs and increasing risks and penalties associated with violations. We cannot assure you that violations of these laws and regulations will not occur in the future or have not occurred in the past as a result of human error, accidents, equipment failure or other causes. The expense associated with environmental regulation and remediation could harm our business, financial condition and results of operation.

We face risks related to our collection and use of data, which could result in investigations, inquiries, litigation, fines, legislative and regulatory action and negative press about our privacy and data protection practices.

Our business processes personal data, including some data related to health. When conducting clinical trials, we face risks associated with collecting trial participants' data, especially health data, in a manner consistent with applicable laws and regulations, such as the Common Rule, GCP guidelines, or FDA human subject protection regulations. We also face risks inherent in handling large volumes of data and in protecting the security of such data. We could be subject to attacks on our systems by outside parties or fraudulent or inappropriate behavior by our service providers or employees. Third parties may also gain access to users' accounts using stolen or inferred credentials, computer malware, viruses, spamming, phishing attacks or other means, and may use such access to obtain users' personal data or prevent use of their accounts. Data breaches could result in a violation of applicable U.S. and international privacy, data protection and other laws, and subject us to individual or consumer class action litigation and governmental investigations and proceedings by federal, state and local regulatory entities in the United States and by international regulatory entities, resulting in exposure to material civil and/or criminal liability. Further, our general liability insurance and corporate risk program may not cover all potential claims to which we are exposed and may not be adequate to indemnify us for all liability that may be imposed.

This risk is enhanced in certain jurisdictions and, as we expand our operations domestically and internationally, we may be subject to additional laws in other jurisdictions. Any failure, or perceived failure, by us to comply with privacy and data protection laws, rules and regulations could result in proceedings or actions against us by governmental entities or others. These proceedings or actions may subject us to significant penalties and negative publicity, require us to change our business practices, increase our costs and severely disrupt our business. In the United States, various federal and state regulators, including governmental agencies like the Consumer Financial Protection Bureau and the Federal Trade Commission, have adopted, or are considering adopting, laws and regulations concerning personal information and data security and have prioritized privacy and information security violations for enforcement actions. Additionally, in the United States, California adopted the California Consumer Privacy Act (the "CCPA") in January 2020 which requires certain companies that process information on California consumers to, among other things, provide new disclosures to California consumers and afford such consumers new abilities to exercise certain rights with respect to their personal information and opt out of certain sales of personal information, in addition to severely limiting our ability to use their information. The CCPA provides for civil penalties for violations, as well as a private right of action for certain data breaches that result in the loss of personal information. It remains unclear how various provisions of the CCPA will be interpreted and enforced. Furthermore, in November 2020, California voters passed the California Privacy Rights Act of 2020 ("CPRA"). Effective beginning January 1, 2023, the CPRA imposes additional obligations on companies covered by the legislation and will significantly modify the CCPA, including by expanding California residents' rights with respect to certain sensitive personal information. Other states have passed, or plan to pass, data privacy laws that are similar to the CCPA and CPRA, further complicating the legal landscape. In addition, laws in all 50 states require businesses to provide notice to consumers whose personal information has been accessed or acquired as a result of a data breach (and, in some cases, to regulators). The effects of the CCPA, CPRA and other such privacy laws are potentially significant, and may require us to modify our data processing practices and policies and to incur substantial costs and expenses in an effort to comply.

In addition, we are subject to international laws, regulations and standards in many jurisdictions, which apply broadly to the collection, use, retention, security, disclosure, transfer and other processing of personal information. For example, the General Data Protection Regulation ("GDPR"), which was adopted by the European Union ("EU") and became effective in May 2018, applies extraterritorially and imposes several stringent requirements for controllers and processors of personal data, including, for example, higher standards for obtaining consent from individuals to process their personal data, more robust disclosures to individuals and a strengthened individual data rights regime, shortened timelines for data breach notifications, limitations on retention of information, increased requirements pertaining to special categories of personal data and pseudonymized (i.e., key-coded) data and additional obligations when we contract third-party processors in connection with the processing of the personal data.

The GDPR provides that EU member states may make their own laws and regulations limiting the (i) processing of personal data, including special categories of data (e.g., racial or ethnic origin, political opinions, religious or philosophical beliefs) and (ii) profiling and automated individual decision-making of individuals, which could limit our ability to use and share personal data or other data and could cause our costs to increase, harming our business and financial condition. Non-compliance with GDPR is subject to significant penalties, including fines of up to €20 million or 4% of total worldwide revenue, whichever is greater. The interpretations of the GDPR by local data protection authorities in EU member states, along with the complexity of the new data protection regime itself, will leave the interpretation and enforcement of the law unclear in the near term, with potential inconsistencies across the EU member states. The implementation and enforcement of the GDPR may subject us to enforcement risk and requirements to change certain of our data collection, processing and other policies and practices. We could incur significant costs investigating and defending such claims and, if we are found liable, significant damages. If any of these events were to occur, our business and financial results could be adversely affected. Other jurisdictions outside the EU are similarly introducing or enhancing laws and regulations relating to privacy and data security, which enhances risks relating to compliance with such laws. Further, the United Kingdom's decision to leave the European Union has created uncertainty with regard to data protection regulation in the United Kingdom. As of January 1, 2021, we are also subject to the UK General Data Protection Regulation and UK Data Protection Act of 2018, which retains the GDPR in the United Kingdom's national law. These recent developments will require us to review and amend the legal mechanisms by which we make and/or receive personal data transfers.

Additionally, we are subject to laws and regulations regarding cross-border transfers of personal data, including laws relating to transfer of personal data outside of the European Economic Area ("EEA"). We rely on transfer mechanisms permitted under these laws, including EU Standard Contract Clauses. Such mechanisms have received heightened regulatory and judicial scrutiny in recent years. If we cannot rely on existing mechanisms for transferring personal data from the EEA, the United Kingdom or other jurisdictions, we could be prevented from transferring personal data of users or employees in those regions. This could adversely affect the manner in which we provide our services and thus materially affect our operations and financial results.

Because the interpretation and application of laws, regulations, standards and other obligations relating to data privacy and security are still uncertain, it is possible that these laws, regulations, standards and other obligations may be interpreted and applied in a manner that is inconsistent with our data processing practices and policies. If our practices are not consistent, or are viewed as not consistent, with changes in laws, regulations and standards or new interpretations or applications of existing laws, regulations and standards, we may also become subject to fines, audits, inquiries, whistleblower complaints, adverse media coverage, investigations, lawsuits, loss of export privileges, severe criminal or civil sanction or other penalties. Although we endeavor to comply with our public statements and documentation, we may at times fail to do so or be alleged to have failed to do so. The publication of our privacy policies and other statements that provide

promises and assurances about data privacy and security can subject us to potential government or legal action if they are found to be deceptive, unfair or misrepresentative of our actual practices. Any concerns about our data privacy and security practices, even if unfounded, could damage the reputation of our businesses and discourage potential users from our products and services. Any of the foregoing could have an adverse effect on our business, financial condition, results of operations and prospects.

Inadequate funding for the FDA and other government agencies could hinder their ability to hire and retain key leadership and other personnel, prevent new products and services from being developed or commercialized in a timely manner or otherwise prevent those agencies from performing normal business functions on which the operation of our business may rely, which could negatively impact our business.

The ability of the FDA to review and approve new products can be affected by a variety of factors, including government budget and funding levels, ability to hire and retain key personnel and accept the payment of user fees, and statutory, regulatory, and policy changes. Average review times at the agency have fluctuated in recent years as a result.

Disruptions at the FDA and other agencies may also slow the time necessary for new medical devices to be reviewed and/or approved by necessary government agencies, which would adversely affect our business. For example, in recent years, including in 2018 and 2019, the U.S. government shut down several times and certain regulatory agencies such as the FDA had to furlough critical employees and stop critical activities. If a prolonged government shutdown occurs, it could significantly impact the ability of the FDA to timely review and process our regulatory submissions, which could have a material adverse effect on our business. Further, upon completion of this offering and in our operations as a public company, future government shutdowns could impact our ability to access the public markets and obtain necessary capital in order to properly capitalize and continue our operations.

Our global operations can expose us to numerous and sometimes conflicting legal and regulatory requirements, including to anti-bribery and anti-corruption laws, such as the FCPA and the U.K. Bribery Act, and violation of these requirements could result in substantial penalties and prosecution and harm our business.

We have commercialized the RxSight system outside of the United States, each component of which has received a CE mark and is registered with the MHRA in the United Kingdom. We are subject to numerous, and sometimes conflicting, legal regimes in the countries in which we operate, including on matters as diverse as health and safety standards, marketing and promotional activities, anticorruption, import/export controls, content requirements, trade restrictions, tariffs, taxation, sanctions, immigration, internal and disclosure control obligations, securities regulation, anti-competition, data privacy and labor relations. This includes in emerging markets where legal systems may be less familiar to us. We strive to abide by and maintain compliance with these laws and regulations. Compliance with diverse legal requirements is costly, time-consuming and requires significant resources. Violations of one or more of these regulations in the conduct of our business could result in significant fines, criminal sanctions against us or our officers, prohibitions on doing business and damage to our reputation. Violations of these regulations in connection with the performance of our obligations to our customers also could result in liability for significant monetary damages, fines and/or criminal prosecution, unfavorable publicity and other reputational damage, restrictions on our ability to process information and allegations by our customers or distributors that we have not performed our contractual obligations. Due to the varying degrees of development of the legal systems of the countries in which we operate, local laws might be insufficient to protect our rights.

Our operations outside of the United States are subject to various heavily enforced anti-bribery and anti-corruption laws, such as the FCPA, U.K. Bribery Act and similar laws around the world. These laws generally

prohibit U.S. companies and their employees and intermediaries from offering, promising, authorizing or making improper payments to foreign government officials for the purpose of obtaining or retaining business or gaining any advantage. We face significant risks if we, which includes our third-party business partners and intermediaries, fail to comply with the FCPA or other anti-corruption and anti-bribery laws. Responding to any enforcement action or related investigation may result in a materially significant diversion of management's attention and resources and significant defense costs and other professional fees. Any violation of the FCPA or other applicable anti-bribery, anti-corruption or anti-money laundering laws could result in whistleblower complaints, adverse media coverage, investigations, loss of export privileges, severe criminal or civil sanctions and, in the case of the FCPA, suspension or debarment from U.S. government contracts, which could have a material and adverse effect on our business, financial condition and results of operations.

Our international operations could be affected by changes in laws, trade regulations, labor and employment regulations, and procedures and actions affecting approval, products and solutions, pricing, reimbursement and marketing of our products and solutions, as well as by inter-governmental disputes. Any of these changes could adversely affect our business. The imposition of new laws or regulations, including potential trade barriers, may increase our operating costs, impose restrictions on our operations or require us to spend additional funds to gain compliance with the new rules, if possible, which could have an adverse impact on our financial condition and results of operations.

Risks related to reliance on third parties

From time to time, we engage outside parties to perform services related to certain of our clinical studies and trials. If these third parties do not successfully carry out their contractual duties or meet expected deadlines, we may not be able to obtain regulatory approval for or commercialize our products.

From time to time, we engage consultants to help design, monitor and analyze the results of certain of our clinical studies and trials. The consultants we engage interact with clinical investigators to enroll patients in our clinical trials. We depend on these consultants and clinical investigators to conduct clinical studies and trials and monitor and analyze data from these studies and trials under the investigational plan and protocol for the study or trial and in compliance with applicable regulations and standards, such as GCP guidelines, the Common Rule, and FDA human subject protection regulations. We may face delays in our regulatory approval process if these parties do not perform their obligations in a timely, compliant or competent manner. If these third parties do not successfully carry out their duties or meet expected deadlines, or if the quality, completeness or accuracy of the data they obtain is compromised due to the failure to adhere to our clinical trial protocols or for other reasons, our clinical studies or trials may be extended, delayed or terminated or may otherwise prove to be unsuccessful, and we may have to conduct additional studies, which would significantly increase our costs, in order to obtain the regulatory clearances or approvals that we need to commercialize our products.

We and our component suppliers may not meet regulatory quality standards applicable to our manufacturing processes, which could have an adverse effect on our business, financial condition and results of operations.

As a medical device manufacturer, we must register with the FDA and non-U.S. regulatory agencies in jurisdictions where we commercialize our products, and we are subject to periodic inspection by the FDA and foreign regulatory agencies, for compliance with certain good manufacturing practices, including design controls, product validation and verification, in process testing, quality control and documentation procedures. Compliance with applicable regulatory requirements is subject to continual review and is rigorously monitored through periodic inspections by the FDA and foreign regulatory agencies. Our manufacturer, component, and sub-component suppliers are also required to meet certain standards applicable to their manufacturing processes.

We cannot assure you that we or our component suppliers comply or can continue to comply with all regulatory requirements. The failure by us or one of our component suppliers to achieve or maintain compliance with these requirements or quality standards may disrupt our ability to supply products sufficient to meet demand until compliance is achieved or, with a component supplier, until a new supplier has been identified and evaluated. Our or any of our component supplier's failure to comply with applicable regulations could cause sanctions to be imposed on us, including warning letters, fines, injunctions, civil penalties, failure of regulatory authorities to grant marketing approval of our products, delays, suspension or withdrawal of approvals or clearances, license revocation, seizures or recalls of products, operating restrictions and criminal prosecutions, which could harm our business. We cannot assure you that if we need to engage new suppliers to satisfy our business requirements, we can locate new suppliers in compliance with regulatory requirements at a reasonable cost and in an acceptable timeframe. Our failure to do so could have a material adverse effect on our business, financial condition and results of operations.

For products that we currently distribute or market in the EU and the United Kingdom, as well as future products for which we obtain the applicable marketing authorization, we must maintain certain International Organization for Standardization ("ISO") certifications to sell our products and must undergo periodic inspections by notified bodies, such as BSI, to obtain and maintain these certifications. If we fail these inspections or fail to meet these regulatory standards, it could have a material adverse effect on our business, financial condition and results of operations.

We depend upon third parties, including single and sole source suppliers, to manufacture certain components and subcomponents of the RxSight system making us vulnerable to supply disruptions and price fluctuations.

We rely on third parties, including single and sole source suppliers, to manufacture certain components and subcomponents of our products. We do not have long-term supply agreements with, or guaranteed commitments from our suppliers, including single and sole source suppliers. We utilize blanket orders covering the medium term of 18 – 24 months for the majority of our supplier base. We depend on our suppliers to provide us and our customers with materials in a timely manner that meet our and their quality, quantity and cost requirements. These suppliers may encounter problems during manufacturing for a variety of reasons, any of which could delay or impede their ability to meet our demand. The expansion of global lead times, particularly in Europe and Asia, related to the COVID-19 pandemic, has resulted in the lack of availability of raw materials including electronic parts, metals, packaging, adhesives, resins and subcontract painted components. Certain suppliers have passed on higher prices, surcharges and expedited shipping fees to defray the higher commodity prices they are paying due to short supply. While we have taken measures to mitigate business continuity risk, including increasing standard lead times, payment of expedite fees, issuance of non-cancelable purchase orders, advance delivery of critical components ahead of normal delivery dates and second sourcing, our suppliers may cease producing the components we purchase from them or otherwise decide to cease doing business with us. Any supply interruption from our suppliers or failure to obtain additional suppliers for any of the components or subcomponents used in our products would limit our ability to manufacture our products and could have a material adverse effect on our business, financial condition and results of operations.

The failure of third parties to meet their contractual, regulatory, and other obligations could adversely affect our business.

We rely on suppliers, vendors, outsourcing partners, consultants, and other third parties to research, develop, manufacture and commercialize our products. Using these third parties poses a number of risks, such as: (i) they may not perform to our standards or legal requirements; (ii) they may not produce reliable results; (iii) they may not perform in a timely manner; (iv) they may not maintain confidentiality of our proprietary information; (v) disputes may arise with respect to ownership of rights to technology developed with our partners; and (vi) disagreements could cause delays in, or termination of, the research, development or

commercialization of our products or result in litigation or arbitration. Moreover, some third parties are located in markets subject to political and social risk, corruption, infrastructure problems and natural disasters, in addition to country-specific privacy and data security risk given current legal and regulatory environments. Failure of third parties to meet their contractual, regulatory and other obligations may have a material adverse effect on our business, financial condition and results of operations.

Risks related to our common stock and to this offering

The price of our stock may be volatile, and you could lose all or part of your investment.

The trading price of our common stock following this offering is likely to be highly volatile and subject to wide fluctuations in response to various factors, some of which we cannot control. The stock market in general has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of these companies. Broad market and industry factors may negatively affect the market price of our common stock, regardless of our actual operating performance. In addition to the factors discussed in this "Risk Factors" section and elsewhere in this prospectus, these factors include:

- the timing and results of preclinical studies and clinical trials of our current and future products or those of our competitors;
- the success of competitive products or announcements by potential competitors of their product development efforts;
- regulatory actions with respect to our products or our competitors' products;
- actual or anticipated changes in our growth rate relative to our competitors;
- regulatory or legal developments in the United States and other countries;
- developments or disputes concerning patent applications, issued patents or other intellectual property or proprietary rights;
- the recruitment or departure of key personnel;
- announcements by us or our competitors of significant acquisitions, strategic collaborations, joint ventures, collaborations or capital commitments;
- actual or anticipated changes in estimates as to financial results, development timelines or recommendations by securities analysts;
- fluctuations in the valuation of companies perceived by investors to be comparable to us;
- market conditions in the medical device sector;
- changes in the structure of healthcare payment systems;
- share price and volume fluctuations attributable to inconsistent trading volume levels of our shares;
- announcement or expectation of additional financing efforts;
- sales of our common stock by us, our insiders or our other stockholders;
- expiration of market stand-off or lock-up agreements;
- general economic, industry and market conditions; and
- the impact of the COVID-19 pandemic.

The realization of any of the above risks or any of a broad range of other risks, including those described in this “Risk Factors” section, could have a dramatic and adverse impact on the market price of our common stock.

In addition, companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. We may be the target of this type of litigation in the future. Securities litigation against us could result in substantial costs and divert our management’s attention from other business concerns, which could seriously harm our business.

If you purchase shares of common stock in this offering, you will suffer immediate dilution of your investment.

The initial public offering price of our common stock is substantially higher than the net tangible book value per share of our common stock. Therefore, if you purchase shares of our common stock in this offering, you will pay a price per share that substantially exceeds our net tangible book value per share after this offering. To the extent shares subsequently are issued under outstanding options or warrants, you will incur further dilution. Based on the initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, you will experience immediate dilution of $ per share, representing the difference between our pro forma as adjusted net tangible book value per share, which gives effect to this offering, and the initial public offering price. In addition, purchasers of common stock in this offering will have contributed approximately % of the aggregate price paid by all purchasers of our stock but will own only approximately % of our common stock outstanding after this offering.

If securities or industry analysts do not publish research or reports, or if they publish adverse or misleading research or reports, regarding us, our business or our market, our stock price and trading volume could decline.

The trading market for our common stock will be influenced by the research and reports that securities or industry analysts publish about us, our business or our market. We do not currently have and may never obtain research coverage by securities or industry analysts. If no or few securities or industry analysts commence coverage of us, the stock price would be negatively impacted. In the event we obtain securities or industry analyst coverage, if any of the analysts who cover us issue adverse or misleading research or reports regarding us, our business model, our intellectual property or our market, or if our operating results fail to meet the expectations of analysts, our stock price would likely decline. If one or more of these analysts cease coverage of us or fail to publish reports on us regularly, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline.

We do not know whether an active, liquid and orderly trading market will develop for our common stock or what the market price of our common stock will be and as a result it may be difficult for you to sell your shares of our common stock.

Prior to this offering, no market for shares of our common stock exists and an active trading market for our shares may never develop or be sustained following this offering. We will determine the initial public offering price for our common stock through negotiations with the underwriters, and the negotiated price may not be indicative of the market price of our common stock after this offering. The market value of our common stock may decrease from the initial public offering price. As a result of these and other factors, you may be unable to resell your shares of our common stock at or above the initial public offering price. The lack of an active trading market may impair your ability to sell your shares at the time you wish to sell them or at a price that you consider reasonable. The lack of an active trading market may also reduce the fair market value of your shares. Furthermore, an inactive trading market may also impair our ability to raise capital by selling shares of our common stock and may impair our ability to enter into strategic collaborations or acquire companies, technologies or other assets by using our shares of common stock as consideration.

Sales of a substantial number of shares of our common stock in the public market could cause our stock price to fall.

Sales of a substantial number of shares of our common stock in the public market could occur at any time after this offering. These sales, or the perception in the market that the holders of a large number of shares intend to sell shares, could reduce the market price of our common stock. After this offering, we will have outstanding shares of common stock based on the number of shares outstanding as of March 31, 2021, assuming no exercise of the underwriters' option to purchase additional shares, no exercise of outstanding options and the automatic conversion of all outstanding shares of our convertible preferred stock into 153,415,871 shares of common stock immediately prior to the closing of this offering. This includes the shares that we sell in this offering, which may be resold in the public market immediately without restriction, unless purchased by our affiliates.

We and our executive officers, directors and the holders of an aggregate of substantially all shares of our common stock have entered into market stand-off agreements with us and lock-up agreements with the underwriters under which they have agreed, subject to specific exceptions described in the section titled "Underwriting," not to sell, directly or indirectly, any shares of common stock without the permission of J.P. Morgan Securities LLC and BofA Securities, Inc. for a period of 180 days following the date of this prospectus. We refer to such period as the lock-up period. When the lock-up period expires, we and our securityholders subject to a lock-up agreement or market stand-off agreement will be able to sell our shares in the public market. In addition, J.P. Morgan Securities LLC and BofA Securities, Inc. may, in their sole discretion, release all or some portion of the shares subject to lock-up agreements at any time and for any reason. See the description of the market stand-off agreement with us and the lock-up agreement with the underwriters in the section titled "Shares Eligible for Future Sale" for more information. Sales of a substantial number of such shares upon expiration of the lock-up and market stand-off agreements, the perception that such sales may occur, or early release of these agreements, could cause our market price to fall or make it more difficult for you to sell your common stock at a time and price that you deem appropriate.

Moreover, after this offering, holders of an aggregate of shares of our common stock will have rights, subject to certain conditions, to require us to file registration statements covering their shares or to include their shares in registration statements that we may file for ourselves or other stockholders. We also intend to register all shares of common stock that we may issue under our equity incentive plans. Once we register these shares, they can be freely sold in the public market upon issuance, subject to volume limitations applicable to affiliates and the lock-up agreements described in the "Underwriting" section of this prospectus.

Our principal stockholders and management own a significant percentage of our stock and will be able to exert significant control over matters subject to stockholder approval.

Prior to this offering, our executive officers, directors, holders of 5% or more of our capital stock and their respective affiliates beneficially owned approximately 59% of our voting stock and, upon the closing of this offering, that same group will beneficially own approximately % of our outstanding voting stock (based on the number of shares of common stock outstanding as of March 31, 2021 assuming no exercise of the underwriters' option to purchase additional shares, no exercise of outstanding options and no purchases of shares in this offering by any of this group), in each case assuming the conversion of all outstanding shares of our convertible preferred stock into shares of our common stock immediately prior to the closing of this offering. After this offering, this group of stockholders will have the ability to control us through this ownership position even if they do not purchase any additional shares in this offering. These stockholders may be able to determine all matters requiring stockholder approval. For example, these stockholders may be able to control elections of directors, amendments of our organizational documents or approval of any merger, sale of assets or other major corporate transaction. This may prevent or discourage unsolicited acquisition proposals or offers for our common stock that you may feel are in your best interest as one of our stockholders. The interests of this group of stockholders may not always coincide with your interests or the interests of other

stockholders and they may act in a manner that advances their best interests and not necessarily those of other stockholders, including seeking a premium value for their common stock, and might affect the prevailing market price for our common stock.

Certain of our existing stockholders, including entities that are affiliated with certain of our directors and beneficially own more than 5% of our outstanding common stock, may purchase shares of our common stock in this offering at the initial public offering price. The previously discussed ownership percentage upon completion of this offering does not reflect the potential purchase of any shares in this offering by such stockholders.

We are an "emerging growth company" and a "smaller reporting company," and we cannot be certain if the reduced reporting requirements applicable to emerging growth companies will make our common stock less attractive to investors.

We are an "emerging growth company," as defined in the Jumpstart Our Business Startups Act of 2012 (JOBS Act). For as long as we continue to be an emerging growth company, we intend to take advantage of exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies, including:

- being permitted to provide only two years of audited financial statements, in addition to any required unaudited interim financial statements, with correspondingly reduced "Management's Discussion and Analysis of Financial Condition and Results of Operations" disclosure in this prospectus;
- not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act;
- not being required to comply with any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation or a supplement to the auditor's report providing additional information about the audit and the financial statements;
- reduced disclosure obligations regarding executive compensation in this prospectus and our periodic reports and proxy statements; and
- exemptions from the requirements of holding nonbinding advisory stockholder votes on executive compensation and stockholder approval of any golden parachute payments not previously approved.

We cannot predict if investors will find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.

We will remain an emerging growth company until the earliest to occur of: (1) the last day of the fiscal year in which we have more than $1.07 billion in annual revenue; (2) the date we qualify as a "large accelerated filer," with at least $700 million of equity securities held by non-affiliates; (3) the date on which we have issued more than $1.0 billion in non-convertible debt securities during the prior three-year period; and (4) the last day of the fiscal year ending after the fifth anniversary of our initial public offering.

Under the JOBS Act, emerging growth companies can also delay adopting new or revised accounting standards until such time as those standards apply to private companies. We have irrevocably elected not to avail ourselves of this exemption from new or revised accounting standards and, therefore, will be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies. As a result, changes in rules of U.S. generally accepted accounting principles or their interpretation, the adoption of new guidance or the application of existing guidance to changes in our business could significantly affect our financial position and results of operations.

We are also a “smaller reporting company” as defined in the Exchange Act. We may continue to be a smaller reporting company even after we are no longer an emerging growth company. We may take advantage of certain of the scaled disclosures available to smaller reporting companies and will be able to take advantage of these scaled disclosures for so long as our voting and non-voting common stock held by non-affiliates is less than $250.0 million measured on the last business day of our second fiscal quarter, or our annual revenue is less than $100.0 million during the most recently completed fiscal year and our voting and non-voting common stock held by non-affiliates is less than $700.0 million measured on the last business day of our second fiscal quarter.

We will incur increased costs as a result of operating as a public company, and our management will be required to devote substantial time to new compliance initiatives and corporate governance practices. Additionally, if we fail to maintain proper and effective internal controls, our ability to produce accurate financial statements on a timely basis could be impaired.

As a public company, we will incur significant legal, accounting and other expenses that we did not incur as a private company, and these expenses may increase even more after we are no longer an “emerging growth company.” We will be subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Protection Act, as well as rules adopted, and to be adopted, by the SEC and Nasdaq. Our management and other personnel will need to devote a substantial amount of time to these compliance initiatives. Moreover, we expect these rules and regulations to substantially increase our legal and financial compliance costs and to make some activities more time-consuming and costly, which will increase our operating expenses. For example, we expect these 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 incur substantial costs to maintain sufficient coverage. We cannot accurately predict or estimate the amount or timing of additional costs we may incur to respond to these requirements. The impact of these requirements could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors, our board committees or as executive officers.

In addition, as a public company we will be required to incur additional costs and obligations in order to comply with SEC rules that implement Section 404 of the Sarbanes-Oxley Act. Under these rules, beginning with our second annual report on Form 10-K after we become a public company, we will be required to make a formal assessment of the effectiveness of our internal control over financial reporting, and once we cease to be an emerging growth company, we will be required to include an attestation report on internal control over financial reporting issued by our independent registered public accounting firm. To achieve compliance with Section 404 within the prescribed period, we will be engaging in a process to document and evaluate our internal control over financial reporting, which is both costly and challenging. In this regard, we will need to continue to dedicate internal resources, potentially engage outside consultants and adopt a detailed work plan to assess and document the adequacy of our internal control over financial reporting, continue steps to improve control processes as appropriate, validate through testing that controls are designed and operating effectively, and implement a continuous reporting and improvement process for internal control over financial reporting.

The rules governing the standards that must be met for management to assess our internal control over financial reporting are complex and require significant documentation, testing and possible remediation to meet the detailed standards under the rules. During the course of its testing, our management may identify material weaknesses or deficiencies which may not be remedied in time to meet the deadline imposed by the Sarbanes-Oxley Act. Our internal control over financial reporting will not prevent or detect all errors and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system’s objectives will be met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud will be detected.

If we are not able to comply with the requirements of Section 404 of the Sarbanes-Oxley Act in a timely manner, or if we are unable to maintain proper and effective internal controls, we may not be able to produce timely and accurate financial statements. If that were to happen, the market price of our stock could decline and we could be subject to sanctions or investigations by the stock exchange on which our common stock is listed, the SEC or other regulatory authorities.

We will have broad discretion in the use of the net proceeds from this offering and may not use them effectively.

Our management will have broad discretion in the application of the net proceeds from this offering, and you will be relying on the judgment of our management regarding the application of these proceeds. You will not have the opportunity, as part of your investment decision, to assess whether we are using the proceeds appropriately. Our management might not apply the net proceeds in ways that ultimately increase the value of your investment. If we do not invest or apply the net proceeds from this offering in ways that enhance stockholder value, we may fail to achieve expected financial results, which could cause our stock price to decline.

We do not intend to pay dividends on our common stock so any returns will be limited to the value of our stock.

We have never declared or paid any cash dividends on our common stock. We currently anticipate that we will retain future earnings for the development, operation and expansion of our business and do not anticipate declaring or paying any cash dividends for the foreseeable future. Any return to stockholders will therefore be limited to any appreciation in the value of their stock.

Provisions in our restated certificate of incorporation and restated bylaws and Delaware law might discourage, delay or prevent a change in control of our company or changes in our management and, therefore, depress the market price of our common stock.

Our restated certificate of incorporation and restated bylaws, as we expect they will be in effect upon closing of the offering, will contain provisions that could depress the market price of our common stock by acting to discourage, delay or prevent a change in control of our company or changes in our management that the stockholders of our company may deem advantageous. These provisions, among other things:

- establish a classified board of directors so that not all members of our board are elected at one time;
- permit only the board of directors to establish the number of directors and fill vacancies on the board;
- provide that directors may only be removed “for cause” and only with the approval of two-thirds of our stockholders;
- authorize the issuance of “blank check” preferred stock that our board could use to implement a stockholder rights plan (also known as a poison pill);
- eliminate the ability of our stockholders to call special meetings of stockholders;
- prohibit stockholder action by written consent, which requires all stockholder actions to be taken at a meeting of our stockholders;
- prohibit cumulative voting;
- authorize our board of directors to amend the bylaws;
- establish advance notice requirements for nominations for election to our board or for proposing matters that can be acted upon by stockholders at annual stockholder meetings; and

- require a super-majority vote of stockholders to amend some provisions described above.

In addition, Section 203 of the General Corporation Law of the State of Delaware (DGCL) prohibits a publicly-held Delaware corporation from engaging in a business combination with an interested stockholder, generally a person which together with its affiliates owns, or within the last three years has owned, 15% of our voting stock, for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner.

Any provision of our amended and restated certificate of incorporation, amended and restated bylaws or Delaware law that has the effect of delaying or preventing a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our capital stock and could also affect the price that some investors are willing to pay for our common stock.

Our amended and restated bylaws that will become effective upon the closing of this offering provide that, unless the company consents in writing to an alternative forum, the Court of Chancery of the State of Delaware will be the exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees.

Our amended and restated bylaws that will become effective upon the closing of this offering provide that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware is the exclusive forum for:

- any derivative action or proceeding brought on our behalf;
- any action asserting a claim of breach of fiduciary duty;
- any action asserting a claim against us arising under the DGCL, our amended and restated certificate of incorporation or our amended and restated bylaws; and
- any action asserting a claim against us that is governed by the internal-affairs doctrine.

This Delaware forum provision does not apply to actions arising under the Securities Exchange Act of 1934 because the federal courts have exclusive jurisdiction over such claims. This Delaware forum provision may limit a stockholder's ability to bring a claim in a judicial forum that the stockholder finds favorable for disputes with us or our directors, officers or other employees, which may discourage lawsuits against us and our directors, officers and other employees. Any person or entity purchasing or otherwise acquiring any interest in any of our securities shall be deemed to have notice of and consented to this provision. If a court were to find this Delaware forum provision to be inapplicable or unenforceable in an action, we may incur additional costs associated with litigating such disputes in multiple and/or other jurisdictions, which could seriously harm our business.

Our amended and restated bylaws that will become effective upon the closing of this offering provide that, unless we consent in writing to the selection of an alternative forum, the federal district courts of the United States of America will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act of 1933 against any person in connection with any offering of the Company's securities, including but not limited to any auditor, underwriter, selling shareholder, expert, control person, or other defendant. This federal forum provision may limit a stockholder's ability to bring a Securities Act claim in a judicial forum that the stockholder finds favorable, which may discourage lawsuits against us and our directors, officers and other employees. Any person purchasing or otherwise acquiring any interest in any of our securities shall be deemed to have notice of and consented to this provision. While the Delaware Supreme Court has held such provisions to be facially valid as a matter of Delaware law and several state trial courts have enforced such provisions and required that suits asserting Securities Act claims be filed in federal court, there is no guarantee that courts of appeal will affirm the enforceability of such provisions. If a court were to find this federal forum provision to be inapplicable or unenforceable in an action, we may incur additional costs associated with litigating Securities Act claims in state court, or both state and federal court, which could seriously harm our business.

Taxing authorities may successfully assert that we should have collected or in the future should collect sales and use, value added or similar taxes, and we could be subject to liability with respect to past or future sales, which could adversely affect our results of operations.

We rely on third party software for state and local tax rates, updated whenever tax rates change. We also rely on state exemptions, when applicable, for medical devices and services, which are determined by management's review of each state's sales tax laws and regulations concerning prescribed medical treatments. However, as laws and regulations change from time to time, these exemptions may or may not continue to apply to our products in the various taxing jurisdictions. Certain jurisdictions in which we do not collect such taxes on sales of our products may later assert that such taxes are applicable, which could result in tax assessments, penalties and interest, and we may be required to collect such taxes in the future. Such tax assessments, penalties and interest or future requirements may adversely affect the results of our operations.

Our board of directors will be authorized to issue and designate shares of our preferred stock in additional series without stockholder approval.

Our amended and restated certificate of incorporation will authorize our board of directors, without the approval of our stockholders, to issue shares of our preferred stock, subject to limitations prescribed by applicable law, rules and regulations and the provisions of our amended and restated certificate of incorporation, as shares of preferred stock in series, to establish from time to time the number of shares to be included in each such series and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions thereof. The powers, preferences and rights of these additional series of preferred stock may be senior to or on parity with our common stock, which may reduce its value.

Changes in tax laws or regulations that are applied adversely to us or our customers may have a material adverse effect on our business, cash flow, financial condition or results of operations.

The Tax Act enacted many significant changes to the U.S. tax laws, the consequences of which have not yet been fully determined. Changes in corporate tax rates, the realization of net deferred tax assets relating to our U.S. operations, the taxation of foreign earnings and the deductibility of expenses contained in the Tax Act or other tax reform legislation could have a material impact on the value of our deferred tax assets, could result in significant one-time charges in the current or future taxable years and could increase our future U.S. tax expense. The foregoing items, as well as any future changes in tax laws, could have a material adverse effect on our business, cash flow, financial condition or results of operations. In addition, it is uncertain if and to what extent various states will conform to the newly enacted federal tax legislation.

Risks related to COVID-19

Our business, financial condition, results of operations and growth have been harmed by the effects of the COVID-19 pandemic and may continue to be harmed.

We are subject to risks related to public health crises such as the global pandemic associated with COVID-19. In December 2019, a novel strain of coronavirus, SARS-CoV-2, was reported to have surfaced in Wuhan, China. Since then, SARS-CoV-2, and the resulting disease COVID-19, has spread to most countries, and all 50 states within the United States. The COVID-19 outbreak has negatively impacted and may continue to negatively impact our operations and revenues and overall financial condition by decreasing the number of our RxSight systems sold. The number of our RxSight systems sold, similar to other ophthalmic procedures, has decreased as health care organizations globally have prioritized the treatment of patients with COVID-19. For example, in the United States, governmental authorities have recommended, and in certain cases required, that elective,

specialty and other procedures and appointments, including those related to cataract treatments, be suspended or canceled to avoid non-essential patient exposure to medical environments and potential infection with COVID-19 and to focus limited resources and personnel capacity toward the treatment of COVID-19. These measures and challenges may continue for the duration of the pandemic, which is uncertain, and will reduce our revenue and continue to interrupt the commercialization of our products while the pandemic continues. Further, once the pandemic subsides, we anticipate there will be a substantial backlog of patients seeking appointments with doctors and other providers and surgeries to be performed at ophthalmic practices and ambulatory surgery centers relating to a variety of medical conditions, and as a result, patients seeking to receive, or who have received, our LAL will have to navigate limited provider capacity. We believe this limited provider capacity could have an adverse effect on our sales following the end of the pandemic.

Numerous state and local jurisdictions have imposed, and others in the future may impose, “shelter-in-place” orders, quarantines, executive orders and similar government orders and restrictions for their residents to control the spread of COVID-19. Starting in mid-March 2020, the governor of California, where our headquarters is located, issued “shelter-in-place” or “stay at home” orders restricting non-essential activities, travel and business operations for an indefinite period of time, subject to certain exceptions for necessary activities. Such orders or restrictions have resulted in the temporary closing of our headquarters, slowdowns and delays, travel restrictions and cancellation of events, among other effects, thereby negatively impacting our operations. Other disruptions or potential disruptions include restrictions on our personnel and personnel of partners to travel and access customers for training and case support; delays in approvals by regulatory bodies; delays in product development efforts; and additional government requirements or other incremental mitigation efforts that may further impact our capacity to manufacture, sell and support the use of our RxSight system. In addition, even after the “shelter-in-place” orders, quarantines, executive orders and similar government orders and restrictions for their residents to control the spread of COVID-19 are lifted, we may continue to experience disruptions to our business, including as a result of patients and customers continuing to be cautious in restarting elective procedures in light of the continued risk posed by the virus.

As we continue to actively advance our clinical programs and discovery and research programs, we are in close contact with the third parties we engage with and are assessing the impact of the COVID-19 pandemic on each of our programs, expected timelines and costs on an ongoing basis. In light of ongoing developments relating to the COVID-19 pandemic, the focus of healthcare providers on fighting the virus, and consistent with the FDA's industry guidance for conducting clinical trials issued in March 2020, updated subsequently, we and our contract research organizations have made certain adjustments to the operation of our clinical trials in an effort to ensure the monitoring and safety of patients and minimize risk to trial integrity during the pandemic and generally. Other COVID-related guidance recently released by FDA includes statistical considerations for clinical trials during the COVID-19 public health emergency and post-marketing adverse event reporting for medical products during a pandemic. We may need to make further adjustments in the future, including implementation of new policies and procedures.

While the potential economic impact brought by and the duration of COVID-19 may be difficult to assess or predict, the widespread pandemic has resulted in, and may continue to result in, significant disruption of global financial markets, reducing our ability to access capital, which could in the future negatively affect our liquidity. We expect any further shelter-in-place policies and restrictions on elective surgical procedures worldwide to have a substantial near-term impact on our revenue. During the COVID-19 pandemic, our customers, including doctors and other providers, have experienced financial hardship and some of them may not fully recover. This could lead to some of these customers temporarily or permanently shutting down, filing for bankruptcy or being acquired by larger health systems, leading to reduced procedures and/or additional pricing pressure on our products. The COVID-19 pandemic has also resulted in a significant increase in unemployment in the United States which may continue even after the pandemic. The occurrence of any such events may lead to reduced

disposable income and access to health insurance which could adversely affect the number of RxSight systems sold after the pandemic has ended.

General risk factors

Our success is highly dependent on our ability to attract and retain highly skilled executive officers and employees.

To succeed, we must recruit, retain, manage and motivate qualified executives as we build out the management team, and we face significant competition for experienced personnel. We are highly dependent on the principal members of our management and need to add executives with operational and commercialization experience as we plan for commercialization of our current and future products and build out a leadership team that can manage our operations as a public company. If we do not succeed in attracting and retaining qualified personnel, particularly at the management level, it could adversely affect our ability to execute our business plan and harm our operating results. In particular, the loss of one or more of our executive officers could be detrimental to us if we cannot recruit suitable replacements in a timely manner. The competition for qualified personnel in the medical device and ophthalmology field is intense and as a result, we may be unable to continue to attract and retain qualified personnel necessary for the future success of our business. We could in the future have difficulty attracting experienced personnel to our company and may be required to expend significant financial resources in our employee recruitment and retention efforts.

Many of the other medical device and biotechnology companies that we compete against for qualified personnel have greater financial and other resources, different risk profiles and a longer history in the industry than we do. They also may provide more diverse opportunities and better prospects for career advancement. Some of these characteristics may be more appealing to high-quality candidates than what we have to offer. If we are unable to continue to attract and retain high-quality personnel, the rate and success at which we can discover, develop and commercialize our current and future products will be limited and the potential for successfully growing our business will be harmed.

Our business and operations would suffer in the event of system failures or security breaches.

Our computer systems, as well as those of our contractors and consultants, are vulnerable to damage from computer viruses, unauthorized access, natural disasters (including hurricanes), terrorism, war and telecommunication and electrical failures. If such an event were to occur and cause interruptions in our operations, it could result in a material disruption of the commercialization of our RxSight system and our future products. For example, the loss of preclinical study or clinical trial data from completed, ongoing or planned trials could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. To the extent that any disruption or security breach were to result in a loss of or damage to our data or applications, or inappropriate disclosure of personal, confidential or proprietary information, we could incur liability and the commercialization of our RxSight system and the further development of our current and future products could be delayed.

The secure processing, maintenance and transmission of this information is critical to our operations. Despite our security measures, our information technology and infrastructure may be vulnerable to attacks by hackers or internal bad actors, or breached due to employee error, a technical vulnerability, malfeasance or other disruptions. Although, to our knowledge, we have not experienced such material security breach to date, any such breach could compromise our networks and the information stored there could be accessed, publicly disclosed, lost or stolen. Any such actual or perceived access, disclosure or other security breach or loss of information (whether affecting us or one of our third-party service providers) could result in legal claims proceedings, regulatory investigations, liability under laws that protect the privacy of personal information,

significant regulatory penalties or other fines, and such an event could disrupt our operations, damage our reputation, and cause a loss of confidence in us and our ability to commercialize our products and conduct clinical trials, which could adversely affect our reputation and delay the commercialization of our RxSight system and clinical development of our current and future products.

The techniques and sophistication used to conduct cyber-attacks and breaches of information technology systems, as well as the sources and targets of these attacks, may take many forms (including phishing, social engineering, denial or degradation of service attacks, malware or ransomware), change frequently and are often not recognized until such attacks are launched or have been in place for a period of time. In addition, our employees, contractors, or third parties with whom we do business or to whom we outsource business operations may attempt to circumvent our security measures in order to misappropriate regulated, protected, or personally identifiable information, and may purposefully or inadvertently cause a breach involving or compromise of such information. Third parties may have the technology or know-how to breach the security of the information collected, stored, or transmitted by us, and our respective security measures, as well as those of our third-party service providers, may not effectively prohibit others from obtaining improper access to this information. Advances in computer and software capabilities and encryption technology, new tools, and other developments may increase the risk of such a breach or compromise. There is no assurance that any security procedures or controls that we or our third-party providers have implemented will be sufficient to prevent data-security related incidents from occurring.

We may be required to expend significant capital and other resources to protect against, respond to, and recover from any potential, attempted or existing security breaches or failures and their consequences. As data security-related threats continue to evolve, we may be required to expend significant additional resources to continue to modify or enhance our protective measures or to investigate and remediate any information security vulnerabilities. We could be forced to expend significant financial and operational resources in responding to a security breach, including investigating and remediating any information security vulnerabilities, defending against and resolving legal and regulatory claims and complying with notification obligations, all of which could divert resources and the attention of our management and key personnel away from our business operations and adversely affect our business, financial condition and results of operations. In addition, our remediation efforts may not be successful, and we could be unable to implement, maintain and upgrade adequate safeguards

Economic conditions may adversely affect our business.

Adverse worldwide economic conditions, including those related to the COVID-19 pandemic, may negatively impact our business. A significant change in the liquidity or financial condition of our customers could cause unfavorable trends in their purchases and also in our receivable collections, and additional allowances may be required, which could adversely affect our business, financial condition and results of operations. Adverse worldwide economic conditions may also adversely impact our suppliers' ability to provide us with materials and components, which could have a material adverse effect on our business, financial condition and results of operations.

Litigation and other legal proceedings may adversely affect our business.

From time to time we may become involved in legal proceedings relating to patent and other intellectual property matters, product liability claims, employee claims, tort or contract claims, federal regulatory investigations, securities class action and other legal proceedings or investigations, which could have an adverse impact on our reputation, business and financial condition and divert the attention of our management from the operation of our business. Litigation is inherently unpredictable and can result in excessive or unanticipated verdicts and/or injunctive relief that affect how we operate our business. We could incur

judgments or enter into settlements of claims for monetary damages or for agreements to change the way we operate our business, or both. There may be an increase in the scope of these matters or there may be additional lawsuits, claims, proceedings or investigations in the future, which could have a material adverse effect on our business, financial condition and results of operations. Adverse publicity about regulatory or legal action against us could damage our reputation and brand image, undermine our customers' confidence and reduce long-term demand for our products, even if the regulatory or legal action is unfounded or not material to our operations.

Business disruptions could seriously harm our future revenue and financial condition and increase our costs and expenses.

Our operations could be subject to earthquakes, power shortages, telecommunications failures, water shortages, floods, hurricanes, typhoons, fires, severe weather conditions, medical epidemics and other natural or man-made disasters or business interruptions, for which we are predominantly self-insured. We rely on third-party manufacturers to produce our products. Our ability to obtain clinical supplies of our products could be disrupted if the operations of these suppliers were affected by a man-made or natural disaster or other business interruption. In addition, our corporate headquarters is located in Aliso Viejo, California, near major earthquake faults and fire zones, and the ultimate impact on us for being located near major earthquake faults and fire zones and being consolidated in a certain geographical area is unknown. The occurrence of any of these business disruptions could seriously harm our operations and financial condition and increase our costs and expenses.

Our results of operations could be materially harmed if we are unable to accurately forecast customer demand for our products and manage our inventory.

We seek to maintain sufficient levels of inventory in order to protect ourselves from supply interruptions, but keep limited components, sub-assemblies, materials and finished products on hand. To ensure adequate inventory supply and manage our operations with our third-party manufacturers and suppliers, we forecast anticipated materials requirements and demand for our products in order to predict inventory needs and then place orders with our suppliers based on these predictions. Our ability to accurately forecast demand for our products could be negatively affected by many factors, including our limited historical commercial experience, rapid growth, failure to accurately manage our expansion strategy, product introductions by competitors, an increase or decrease in customer demand for our products, our failure to accurately forecast customer acceptance of new products, unanticipated changes in general market conditions or regulatory matters and weakening of economic conditions or consumer confidence in future economic conditions.

Inventory levels in excess of customer demand, including as a result of our introduction of product enhancements, may result in a portion of our inventory becoming obsolete or expiring, as well as inventory write-downs or write-offs, which could have a material adverse effect on our business, financial condition and results of operations. Conversely, if we underestimate customer demand for our products or our own requirements for components, subassemblies and materials, our third-party manufacturers and suppliers may not be able to deliver components, sub-assemblies and materials to meet our requirements, which could result in inadequate inventory levels or interruptions, delays or cancellations of deliveries to our customers, any of which would damage our reputation, customer relationships and business. In addition, several components, sub-assemblies and materials incorporated into our products require lengthy order lead times, and additional supplies or materials may not be available when required on terms that are acceptable to us, or at all, and our third-party manufacturers and suppliers may not be able to allocate sufficient capacity in order to meet our increased requirements, any of which could have an adverse effect on our ability to meet customer demand for our products and our business, financial condition and results of operations.

Special note regarding forward-looking statements

This prospectus contains forward-looking statements. All statements other than statements of historical facts contained in this prospectus, including statements regarding our future results of operations and financial position, business strategy, current and future products, planned preclinical studies and clinical trials, results of clinical trials, research and development costs, regulatory approvals, timing and likelihood of success, as well as plans and objectives of management for future operations, are forward-looking statements. These statements involve known and unknown risks, uncertainties and other important factors that are in some cases beyond our control and may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements.

In some cases, you can identify forward-looking statements by terms such as “may,” “will,” “should,” “would,” “expect,” “plan,” “anticipate,” “could,” “intend,” “target,” “project,” “contemplate,” “believe,” “estimate,” “predict,” “potential” or “continue” or the negative of these terms or other similar expressions. Forward-looking statements contained in this prospectus include, but are not limited to, statements about:

- our plans to conduct further clinical trials;
- our plans and expected timeline related to our products, or developing new products, to address additional indications or otherwise;
- the expected use of our products by doctors and other providers;
- our ability to obtain, maintain and expand regulatory clearances for our products and any new products we create;
- the expected growth of our business and our organization;
- our expected uses of our existing resources and the net proceeds from this offering;
- our expectations regarding government and third-party payer coverage and reimbursement;
- our ability to retain and recruit key personnel, including the continued development of a sales and marketing infrastructure;
- our ability to obtain an adequate supply of materials and components for our products from our third-party suppliers, including single- and sole-source suppliers;
- our ability to manufacture sufficient quantities of our products with sufficient quality;
- our ability to obtain, maintain and enforce intellectual property protection for our products and protect our intellectual property rights;
- our ability to expand our business into new geographic markets;
- our compliance with extensive Nasdaq requirements and government laws, rules and regulations both in the United States and internationally;
- our estimates of our expenses, ongoing losses, future revenue, capital requirements and our need for, or ability to obtain, additional financing;
- our expectations regarding the time during which we will be an emerging growth company under the JOBS Act and a smaller reporting company under the Exchange Act;

- our ability to identify and develop new and planned products and/or acquire new products;
- developments and projections relating to our competitors or our industry, including anticipated growth rates for the conventional and premium IOL markets;
- the impact of the COVID-19 pandemic;
- the accuracy of our estimates regarding expenses, future revenue, capital requirements and needs for additional financing;
- our financial performance; and
- the sufficiency of our existing capital resources to fund our future operating expenses and capital expenditure requirements.

We have based these forward-looking statements largely on our current expectations and projections about our business, the industry in which we operate and financial trends that we believe may affect our business, financial condition, results of operations and prospects, and these forward-looking statements are not guarantees of future performance or development. These forward-looking statements speak only as of the date of this prospectus and are subject to a number of risks, uncertainties and assumptions described in the section titled “Risk Factors” and elsewhere in this prospectus. Because forward-looking statements are inherently subject to risks and uncertainties, some of which cannot be predicted or quantified, you should not rely on these forward-looking statements as predictions of future events. The events and circumstances reflected in our forward-looking statements may not be achieved or occur and actual results could differ materially from those projected in the forward-looking statements. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements contained herein until after we distribute this prospectus, whether as a result of any new information, future events or otherwise.

In addition, statements that “we believe” and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based upon information available to us as of the date of this prospectus, and while we believe such information forms a reasonable basis for such statements, such information may be limited or incomplete, and our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all potentially available relevant information. These statements are inherently uncertain, and you are cautioned not to unduly rely upon these statements.

Market, industry and other data

This prospectus contains estimates, projections and other information concerning our industry, our business and the markets for our current and future products, including data regarding the estimated size of such markets and the incidence of certain medical conditions. We obtained the industry, market and similar data set forth in this prospectus from our internal estimates and research, including surveys and studies we have sponsored and/or conducted, and from academic and industry research, publications, surveys and studies conducted by third parties, including governmental agencies. Information that is based on estimates, forecasts, projections, market research or similar methodologies is inherently subject to uncertainties and actual events or circumstances may differ materially from events and circumstances that are assumed in this information. While we believe our internal research is reliable, such research has not been verified by any third party.

Use of proceeds

We estimate that the net proceeds to us from the sale of the shares of our common stock in this offering will be approximately $ million, or approximately $ million if the underwriters exercise their option to purchase additional shares in full, based upon the assumed initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share would increase (decrease) the net proceeds to us from this offering by approximately $ million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase (decrease) of 1.0 million shares in the number of shares offered by us would increase (decrease) the net proceeds to us from this offering by approximately $ million, assuming that the assumed initial public offering price remains the same, and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us. We do not expect that a change in the initial public offering price or the number of shares by these amounts would have a material effect on our uses of the proceeds from this offering, although it may accelerate the time at which we will need to seek additional capital.

The principal purpose of this offering is to provide us with additional capital to support our operations. We currently intend to use the net proceeds from this offering as follows:

- approximately $ million to support our commercial expansion, including hiring additional commercial personnel;
- approximately $ million to fund product development, research activities and clinical development; and
- the remainder for working capital and general corporate purposes.

We believe opportunities may exist from time to time to expand our current business through license or acquisitions of, or investments in, complementary businesses, products or technologies. While we have no current agreements, commitments or understandings for any specific licenses, acquisitions or investments at this time, we may use a portion of the net proceeds for these purposes.

Although we believe that the estimated net proceeds from this offering, together with our available cash and cash equivalents, will be sufficient to fund our planned operations for at least 12 months following the date of this offering, this belief is based on assumptions that may prove to be wrong, and we could use our available capital resources sooner than we currently expect. Changing circumstances, some of which may be beyond our control, could cause us to consume capital significantly faster than we currently anticipate, and we may need to seek additional funds sooner than planned. We may also choose to raise additional financing opportunistically.

Our management will have broad discretion over the use of the net proceeds from this offering. The amounts and timing of our expenditures will depend upon numerous factors including cash flows from operations, the extent and success of our commercial expansion, the extent and results of our research and development efforts, the timing and success of our studies and clinical trials, the timing and results of regulatory submissions, reimbursement and the anticipated growth of our business.

Pending their uses, we plan to invest the net proceeds of this offering in short-term, interest-bearing, investment-grade instruments, certificates of deposit or direct or guaranteed obligations of the U.S. government.

Dividend policy

We have not declared or paid any cash dividends on our capital stock since our inception. We intend to retain future earnings, if any, to finance the operation and expansion of our business and do not anticipate paying any cash dividends in the foreseeable future. Payment of future cash dividends, if any, will be at the discretion of our board of directors after taking into account various factors, including our financial condition, operating results, current and anticipated cash needs, the requirements and contractual restrictions of then-existing debt instruments and other factors that our board of directors deems relevant. In addition, the terms of our Credit Agreement restrict our ability to pay dividends to limited circumstances.

Capitalization

The following table sets forth our cash, cash equivalents and short-term investments and capitalization as of March 31, 2021, as follows:

- on an actual basis;
- on a pro forma basis to reflect the automatic conversion of all outstanding shares of our convertible preferred stock at March 31, 2021 into an aggregate of 153,415,871 shares of common stock upon the completion of this offering and the filing and effectiveness of our amended and restated certificate of incorporation; and
- on a pro forma as adjusted basis to further reflect our receipt of estimated net proceeds from the issuance and sale of shares of common stock in this offering at the assumed initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, after deducting the underwriting discounts and commissions and estimated offering expenses payable by us.

The information set forth in the table below is illustrative only and will be adjusted based on the actual initial public offering price and other terms of this offering as determined at pricing. You should read this information in conjunction with our audited and interim condensed consolidated financial statements and the related notes included elsewhere in this prospectus, as well as the sections of this prospectus titled "Selected Financial Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations."

	As of March 31, 2021		
	Actual	Pro forma	Pro forma as adjusted(1)
	(in thousands, except share data) (unaudited)		
Cash, cash equivalents and short-term investments	$ 64,382	$ —	$ —
Term loan, net	29,472		
Convertible preferred stock, $0.001 par value per share; 171,196,994 shares authorized, 148,509,849 shares issued and outstanding, and aggregate liquidation preference of $196,528 ; no shares authorized, issued or outstanding pro forma and pro forma as adjusted	$ 353,300	$ —	$ —
Stockholders' (deficit) equity :			
Common stock, $0.001 par value per share; 253,559,829 shares authorized, 42,292,522 shares issued and outstanding, actual; shares authorized, shares issued and outstanding, pro forma; shares authorized, shares issued and outstanding, pro forma as adjusted	42		
Additional paid-in capital	136,269		
Notes receivable for common stock issued	(817)		
Series G common stock, $0.001 par value, 1 share authorized and outstanding	—		
Accumulated other comprehensive loss	—		
Accumulated deficit	(437,393)		
Total stockholders' (deficit) equity	(301,899)		
Total capitalization	$ 80,873	$ —	$ —

(1) Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, would increase (decrease) our pro forma as adjusted cash and cash equivalents, additional paid-in capital, total stockholders' (deficit) equity and total capitalization by approximately $ million, assuming that the number of shares of common stock offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us. Each increase (decrease) of 1.0 million shares in the number of shares of common stock offered by us would increase (decrease) our pro forma as adjusted cash and cash equivalents, additional paid-in capital, total stockholders' (deficit) equity and total capitalization by approximately $ million, assuming the assumed initial public offering price of $ per share, which is the midpoint of the offering price range set forth on the cover page of this prospectus, remains the same, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. The pro forma as adjusted information discussed above is illustrative only and will be adjusted based on the actual public offering price and other terms of this offering determined at pricing.

The number of shares of our common stock to be outstanding after this offering is based on the 195,708,393 shares of our common stock outstanding as of March 31, 2021 (including an aggregate of 153,415,871 shares of common stock issuable upon the automatic conversion of our outstanding convertible preferred stock as of March 31, 2021), and excludes the following:

- 2,334,082 shares of our common stock issuable upon the exercise of warrants to purchase shares of convertible preferred stock outstanding as of March 31, 2021, which will be automatically converted into warrants to purchase shares of our common stock immediately prior to the completion of this offering, with a weighted-average exercise price of $1.20 per share;
- 47,866,502 shares of common stock issuable upon exercise of options to purchase shares of our common stock outstanding as of March 31, 2021, at a weighted-average exercise price of $1.05 per share;
- 75,000 shares of common stock issuable upon exercise of options to purchase shares of our common stock that we granted after March 31, 2021, at a weighted-average exercise price of $1.93 per share per share;
- 1,296,904 shares of common stock reserved for future issuance under our 2015 Plan as of March 31, 2021;
- shares of common stock reserved for future issuance under our 2021 Plan, which will become effective on the business day immediately prior to the date of effectiveness of the registration statement of which this prospectus forms a part; and
- shares of common stock reserved for issuance under our 2021 ESPP, which will become effective on the business day immediately prior to the date of effectiveness of the registration statement of which this prospectus forms a part.

Each of our 2021 Plan and our 2021 ESPP provides for annual automatic increases in the number of shares reserved thereunder, and our 2021 Plan also provides for increases to the number of shares that may be granted thereunder based on awards under our 2015 Plan or 2006 Plan that expire, are forfeited, or otherwise repurchased by us, as more fully described in the section titled "Executive Compensation—Employee Benefit and Stock Plans."

Dilution

If you invest in our common stock in this offering, your ownership interest will be diluted immediately to the extent of the difference between the initial public offering price per share of our common stock and the pro forma as adjusted net tangible book value per share of our common stock immediately after this offering.

Our historical net tangible book value (deficit) as of March 31, 2021 was approximately $(302) million, or $(7.14) per share of our common stock. Our historical net tangible book value (deficit) is the amount of our total tangible assets less our total liabilities and convertible preferred stock, which is not included within our stockholders' (deficit) equity. Historical net tangible book value per share represents historical net tangible book value (deficit) divided by the number of shares of our common stock outstanding as of March 31, 2021.

Our pro forma net tangible book value (deficit) as of March 31, 2021 was approximately $ million, or $ per share of our common stock. Pro forma net tangible book value (deficit) represents the amount of our total tangible assets less our total liabilities, after giving effect to the automatic conversion of all of the 153,415,871 shares of our fully diluted convertible preferred stock outstanding at March 31, 2021 into an aggregate of 153,415,871 shares of common stock upon the completion of this offering. Pro forma net tangible book value per share represents pro forma net tangible book value divided by the total number of shares outstanding as of March 31, 2021, after giving effect to the conversion of all outstanding shares of our convertible preferred stock into our common stock upon the completion of this offering.

After giving further effect to our sale of shares of common stock in this offering at the assumed initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us, our pro forma as adjusted net tangible book value as of March 31, 2021 would have been approximately $ million, or $ per share. This represents an immediate increase in pro forma as adjusted net tangible book value per share of $ to our existing stockholders and an immediate dilution in pro forma as adjusted net tangible book value per share of $ to new investors purchasing common stock in this offering. Dilution per share to new investors purchasing common stock in this offering is determined by subtracting pro forma as adjusted net tangible book value per share after this offering from the assumed initial public offering price per share paid by new investors.

The following table illustrates this dilution on a per share basis:

Assumed initial public offering price per share		$
Historical net tangible book value (deficit) per share as of March 31, 2021	$	
Pro forma increase in net tangible book value (deficit) per share as of March 31, 2021	$	
Pro forma net tangible book value (deficit) per share as of March 31, 2021	$	
Increase in pro forma as adjusted net tangible book value per share attributable to new investors purchasing shares in this offering		
Pro forma as adjusted net tangible book value per share after this offering		
Dilution in pro forma as adjusted net tangible book value per share to new investors purchasing shares in this offering		$

The dilution information discussed above is illustrative only and may change based on the actual initial public offering price and other terms of this offering. Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, would increase (decrease) the pro forma as adjusted net tangible book value per

share after this offering by $ per share and the dilution to new investors purchasing common stock in this offering by $ per share, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. An increase of 1.0 million shares in the number of shares offered by us would increase the pro forma as adjusted net tangible book value per share after this offering by $ and decrease the dilution per share to new investors participating in this offering by $, assuming no change in the assumed initial public offering price and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. A decrease of 1.0 million shares in the number of shares offered by us would decrease the pro forma as adjusted net tangible book value per share after this offering by $ and increase the dilution per share to new investors participating in this offering by $, assuming no change in the assumed initial public offering price and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

If the underwriters exercise their option to purchase additional shares of common stock in this offering in full at the assumed initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover of this prospectus and assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us, the pro forma as adjusted net tangible book value per share after this offering would be $ per share, and the dilution in pro forma as adjusted net tangible book value per share to new investors purchasing common stock in this offering would be $ per share.

The following table summarizes, on a pro forma as adjusted basis described above, as of March 31, 2021, the number of shares of common stock purchased from us on an as converted to common stock basis, the total consideration paid, or to be paid and the average price per share paid, or to be paid, by existing stockholders and by new investors in this offering at the assumed initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, before deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

	Shares purchased		Total consideration		Average price per share
	Number	Percent	Amount	Percent	
Existing stockholders before this offering		%	$	%	$
Investors participating in this offering					
Total		100%	$	100%	

The table above assumes no exercise of the underwriters' option to purchase additional shares in this offering. If the underwriters' option to purchase additional shares is exercised in full, the number of shares of our common stock held by existing stockholders would be reduced to approximately % of the total number of shares of our common stock outstanding after this offering, and the number of shares of common stock held by new investors participating in the offering would be increased to approximately % of the total number of shares outstanding after this offering.

Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, would increase (decrease) the total consideration paid by new investors by approximately $ million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same. An increase (decrease) of 1.0 million shares in the number of shares offered by us would increase (decrease) the total consideration paid by new investors by approximately $ million, assuming no change in the assumed initial public offering price.

The number of shares of our common stock to be outstanding after this offering is based on the 195,708,393 shares of our common stock outstanding as of March 31, 2021 (including an aggregate of 153,415,871 shares of common stock issuable upon automatic conversion of our outstanding convertible preferred stock as of March 31, 2021), and excludes the following:

- 2,334,082 shares of our common stock issuable upon the exercise of warrants to purchase shares of convertible preferred stock outstanding as of March 31, 2021, which will be automatically converted into warrants to purchase shares of our common stock immediately prior to the completion of this offering, with a weighted-average exercise price of $1.20 per share per share;
- 47,866,502 shares of common stock issuable upon exercise of options to purchase shares of our common stock outstanding as of March 31, 2021, at a weighted-average exercise price of $1.05 per share;
- 75,000 shares of common stock issuable upon exercise of options to purchase shares of our common stock that we granted after March 31, 2021, at a weighted-average exercise price of $1.93per share;
- 1,296,904 shares of common stock reserved for future issuance under our 2015 Plan as of March 31, 2021;
- shares of common stock reserved for future issuance under our 2021 Plan, which will become effective on the business day immediately prior to the date of effectiveness of the registration statement of which this prospectus forms a part; and
- shares of common stock reserved for issuance under our 2021 ESPP, which will become effective on the business day immediately prior to the date of effectiveness of the registration statement of which this prospectus forms a part.

Each of our 2021 Plan and our 2021 ESPP provides for annual automatic increases in the number of shares reserved thereunder, and our 2021 Plan also provides for increases to the number of shares that may be granted thereunder based on awards under our 2015 Plan or 2006 Plan that expire, are forfeited, or otherwise repurchased by us, as more fully described in the section titled “Executive Compensation—Employee Benefit and Stock Plans.”

To the extent that any outstanding options are exercised or new options are issued under the equity benefit plans, or we issue additional shares of common stock or other securities convertible into or exercisable or exchangeable for shares of our capital stock in the future, there will be further dilution to investors participating in this offering.

Selected financial data

The following tables summarize our selected financial data for the periods and as of the dates indicated. We have derived our selected statements of operations and comprehensive loss data for the years ended December 31, 2019 and 2020 (except for the pro forma net loss per share and the pro forma share information), and the balance sheets as of December 31, 2019 and 2020, from our audited financial statements and related notes included elsewhere in this prospectus. We derived the statement of operations and comprehensive loss data for the three months ended March 31, 2020 and 2021 and the balance sheet data as of March 31, 2021 from the unaudited interim financial statements included elsewhere in this prospectus. The unaudited interim financial statements have been prepared in accordance with U.S. generally accepted accounting principles on the same basis as our annual audited financial statements and, in the opinion of management, reflect all adjustments, which include only normal, recurring adjustments that are necessary to present fairly the unaudited interim financial statements. Our historical results are not necessarily indicative of the results that may be expected in the future, and the results for the three months ended March 31, 2021, are not necessarily indicative of results to be expected for the full year or any other period. You should read the following selected financial and other data below in conjunction with the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our financial statements and related notes included elsewhere in this prospectus.

	Year ended December 31,		Three months ended March 31	
	2019	2020	2020	2021
	(in thousands, except share and per-share data)		(unaudited)	
Statements of Operations Data:				
Sales	$ 2,241	$ 14,678	$ 2,888	$ 3,484
Cost of sales	4,060	12,973	2,810	2,365
Gross profit (loss)	(1,819)	1,705	78	1,119
Operating Expenses				
Selling, general and administrative	15,203	15,176	3,698	5,611
Research and development	29,569	21,934	5,777	6,643
Gain (loss) on sale of equipment	(521)	7	—	—
Total operating expenses	44,251	37,117	9,475	12,254
Loss from operations	$ (46,070)	$ (35,412)	$ (9,397)	$ (11,135)
Change in fair value of warrants	169,230	63,011	(7,407)	—
Expiration of warrant	803	—	—	5,018
Interest expense	(26)	(510)	(5)	(698)
Interest and other income, net	2,307	543	312	17
Income (loss) before income taxes	126,244	27,632	(16,497)	(6,798)
Income tax expense	24	57	5	7
Net income (loss)	$ 126,220	$ 27,575	$ (16,502)	$ (6,805)
Accretion to redemption value of redeemable preferred stock and redeemable stock options	(82,121)	(24,209)	(4,246)	—
Earnings allocated to redeemable preferred stock	(17,972)		—	

	Year ended December 31,		Three months ended March 31	
	2019	2020	2020	2021
	(in thousands, except share and per-share data)		(unaudited)	
Net income (loss) attributable to common stockholders	$ 26,127	$ 3,366	$ (20,748)	$ (6,805)
Unrealized gain (loss) on short-term investments	68	(49)	77	7
Foreign currency translation gain	5	—	(1)	(4)
Comprehensive income (loss)	$ 126,293	$ 27,526	$ (16,426)	$ (6,802)
Net income (loss) per share:				
Attributable to redeemable common stock, basic	$ 0.74	$ 0.09	$ (0.56)	$ —
Attributable to redeemable common stock, diluted	$ 0.58	$ 0.01	$ (0.56)	—
Attributable to Series G common stock, basic	$ 0.01	$ (0.39)	$ (0.66)	$ (0.16)
Attributable to Series G common stock, diluted	$ 0.01	$ (0.62)	$ (0.66)	$ (0.16)
Attributable to common stock, basic and diluted	—	—	—	$ (0.16)
Weighted-average shares used in computing net income (loss) per share:				
Attributable to redeemable common stock, basic	35,431,642	38,295,453	36,883,830	—
Attributable to redeemable common stock, diluted	212,591,455	57,148,725	36,883,830	—
Attributable to Series G common stock, basic and diluted	—	1	1	1
Attributable to common stock, basic and diluted	—	—	—	41,281,494
Pro forma net loss per share, basic and diluted (unaudited)(1)	$			$
Weighted-average shares used in computing pro forma net loss per share, basic and diluted (unaudited)(1)				

(1) See Note 2 to our audited consolidated financial statements and Note 2 to our unaudited interim condensed consolidated financial statements included elsewhere in this prospectus for an explanation of the method used to calculate basic and diluted net income (loss) per share and weighted average shares of common stock outstanding and the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations—Unaudited Pro Forma Information" for an explanation of the calculations of our pro forma net income (loss) per share, basic and diluted and the number of shares used in the computation of the per share amounts.

	As of March 31, 2021		
	Actual	Pro forma(1)	Pro forma as adjusted(2)(3)
		(in thousands) (unaudited)	
Balance Sheet Data:			
Cash and cash equivalents	$ 24,385		
Short-term investments	39,997		
Working capital(4)	70,987		
Total assets	96,291		
Total liabilities	44,890		
Convertible preferred stock	353,300		
Common stock and additional paid-in capital	136,311		
Accumulated deficit	(437,393)		
Total stockholders' (deficit) equity	(301,899)		

	As of December 31,		As of March 31,
	2019	2020	2021
		(in thousands)	(unaudited)
Balance Sheet Data:			
Cash and cash equivalents	$ 7,958	$ 13,994	$ 24,385
Short-term investments	72,710	54,981	39,977
Working capital(4)	81,742	69,900	70,987
Total assets	110,432	100,677	96,291
Total liabilities	87,462	44,906	44,890
Redeemable common stock	56,422	80,780	—
Redeemable convertible preferred stock	327,581	353,300	353,300
Common stock and additional paid-in capital	—	—	136,311
Accumulated deficit	(419,855)	(430,588)	(437,393)
Total stockholders' (deficit) equity	(419,809)	(430,591)	(301,899)

(1) The pro forma balance sheet data gives effect to the conversion of all outstanding shares of our convertible preferred stock at March 31, 2021 into an aggregate of 153,415,871 shares of common stock, which will automatically occur immediately prior to the completion of this offering, and the filing and effectiveness of our amended and restated certificate of incorporation.

(2) Reflects the pro forma adjustments described in footnote (1) above and the receipt of estimated net proceeds of $ from the issuance and sale of shares of common stock in this offering at the assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting the underwriting discounts and commissions and estimated offering expenses payable by us.

(3) Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) the pro forma as adjusted amount of each of cash and cash equivalents, total assets, and total stockholders' (deficit) equity by approximately $ million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase (decrease) of 1.0 million shares in the number of shares offered by us at the assumed initial public offering price after deducting underwriting discounts and commissions and estimated offering expenses payable by us would increase (decrease) each of cash and cash equivalents, total assets, and total stockholders' (deficit) equity by approximately $ million. The pro forma information discussed above is illustrative only and will be adjusted based on the actual initial public offering price and other terms of our initial public offering determined at pricing.

(4) We define working capital as current assets less current liabilities. See our audited consolidated financial statements and related notes and unaudited interim condensed consolidated financial statements and related notes appearing at the end of this prospectus for further details regarding our current assets and current liabilities.

Management's discussion and analysis of financial condition and results of operations

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our financial statements and the related notes to those statements included elsewhere in this prospectus. In addition to historical financial information, the following discussion and analysis contains forward-looking statements that involve risks, uncertainties and assumptions. Our actual results and timing of selected events may differ materially from those anticipated in these forward-looking statements as a result of many factors, including those discussed under "Risk Factors" and elsewhere in this prospectus. See "Special Note Regarding Forward-Looking Statements."

Overview

We are a commercial-stage medical technology company dedicated to improving the vision of patients following cataract surgery. Our proprietary RxSight system, comprised of our LAL, LDD and accessories, is the first and only commercially available IOL technology that enables doctors to customize and optimize visual acuity for patients after cataract surgery. Our LAL is made of proprietary photosensitive material that changes shape in response to specific patterns of ultraviolet light generated by our LDD. With the RxSight system, the surgeon performs a standard cataract procedure to implant the LAL, determines refractive error with patient input after healing is complete, and then uses the LDD to modify the lens with the exact amount of visual correction needed to achieve the patient's desired vision outcomes. Alternative IOL technologies, in contrast, are not adjustable following the procedure and therefore require patients to make pre-operative choices about their visual preferences, which can often result in patient dissatisfaction when visual outcomes fail to meet expectations. We designed our RxSight system to maximize patient and doctor satisfaction through superior visual outcomes. In the pivotal study that formed the basis for our FDA approval, the observed rate of eyes with 20/20 or better uncorrected distance visual acuity for our LAL was 70.1%. This compares favorably to the results of pivotal studies with similar study designs and patient populations that supported FDA approval of Alcon's Acrysof Toric (38.4%), and J&J's Tecnis Toric (43.6%). We began commercializing our solution in the United States in the third quarter of 2019 and are focused on establishing the RxSight system as the standard of care for premium IOL procedures. As of March 31, 2021, we had an installed base of 105 LDDs in ophthalmology practices, and since our inception, surgeons have performed over 10,000 surgeries with our RxSight system.

Our products are also approved for sale in Europe and Mexico. We are not currently marketing our products for sale in Europe or Mexico; however, we have approval in both for improving uncorrected visual acuity by adjusting the LAL power to correct residual postoperative refractive error. We have one customer in Germany and one in Mexico, both of which participate in our clinical studies and perform commercial cases. The LAL is a premium IOL which is partially reimbursable under Medicare, and in some cases by private payors. Premium IOLs are sold at a higher price point than conventional IOLs, as they provide refractive correction of vision unlike a conventional IOL that only replaces the natural lens with a clear lens (which is the standard for Medicare reimbursement). We compete in the IOL market in the U.S. We are a California corporation, headquartered in Aliso Viejo, California, and have one wholly owned subsidiary. Our subsidiary is located in Amsterdam, Netherlands, which has one wholly owned subsidiary in Germany and a registered branch in the United Kingdom.

Our commercial strategy is focused on a "land and expand" model through which we aim to drive new customer adoption, which generally begins with the sale of an LDD, and then helps the customer incorporate the LAL into their practice to drive utilization and premium procedure growth. We believe this commercial strategy over time may provide a degree of predictability in terms of our commercial growth and a consumable revenue stream from sales of our LALs. We are currently focused on driving adoption with surgeons performing a high volume of premium cataract procedures. MarketScope estimates that there are approximately 4,000 surgeons that perform cataract surgeries in the United States as of 2020, and we estimate that approximately 1,600 surgeons performed approximately 70-80%

of the premium procedures in the United States in 2020. We believe this provides an attractive and concentrated market opportunity addressable with a focused sales force. We currently employ a sales team that, as of March 2021 includes 6 sales directors, and a group of over 40 clinical specialists, field service and customer service personnel. We intend to continue to make significant investments in our sales and marketing organization. We believe increasing the number of sales representatives, practice development personnel and clinical trainers will help facilitate further adoption of our products among existing customer accounts as well as broaden awareness of our products to new accounts. While we intend to initially focus our growing commercial efforts in the U.S., in the future, we may selectively pursue commercial expansion in Asia, Europe, Australia or other geographies with significant market opportunity for premium IOLs, leveraging our CE and FDA approvals.

Our near-term research and development activities are focused on enhancements to the RxSight system to improve the patient and doctor and other provider experience, expand the range of patients that can be treated, as well as expand its indications and drive adoption. We believe that over time, our adjustable lens solution can be used to address a broad range of cataract surgery patients, including those that would otherwise elect for a conventional cataract procedure today. Additional development and clinical studies that are designed to provide clinical evidence of the safety and effectiveness of our existing and future generations of products are also anticipated. Finally, we may in the future seek to acquire or invest in additional businesses, products or technologies that we believe could complement or expand our portfolio, enhance our technical capabilities or otherwise offer growth opportunities.

To date, our primary sources of capital have been private placements of preferred stock, a structured transaction with a strategic partner, debt financing and revenue from sales of our products. Since inception, we have raised a total of $191.3 million in net proceeds from private placements of preferred stock, $120 million from a strategic partner, approximately $29.5 million in net proceeds from a credit facility, and approximately $11.0 million from issuance of common stock primarily from stock option exercises. As of March 31, 2021, we had cash and cash equivalents of $24.4 million, short-term investments of $40.0 million, long-term debt of $29.5 million and accumulated deficit of $437.4 million. We generated sales of $14.7 million and had a net income of $27.6 million for the year ended December 31, 2020, compared to sales of $2.2 million and net income of $126.2 million for the year ended December 31, 2019. We generated sales of $3.5 million and had a net loss of $6.8 million for the three months ended March 31, 2021, compared to sales of $2.9 million and a net loss of $16.5 million for the three months ended March 31, 2020.

We intend to continue to make significant investments in our sales and marketing organization, primarily sales representatives, clinical applications specialists and technical service personnel to support new customers and upgrades and practice development personnel to facilitate adoption of use of our LALs among existing accounts. We will expand our marketing efforts with additional advertising and customer tools to expand their local advertising. We will also continue to make significant investments in research and development and clinical expenses to make enhancements in our current products. As a public company, we will incur costs that we have not previously incurred or have previously incurred at lower rates, including increased costs for employee-related expenses, director and officer insurance premiums, audit and legal fees, investor relations fees, fees to members of our board of directors and expenses for compliance with public-company reporting requirements. Because of these and other factors, we expect to continue to incur substantial net losses and negative cash flows from operations for at least the next several years.

Facility lease agreements

We currently lease three facilities housing our headquarters, manufacturing, research and development and administrative offices in Aliso Viejo, California. The facility leases are for approximately 109,822 square feet in

the aggregate. The leases terminate, respectively, on (i) September 30, 2024, with one option to extend for five years; (ii) January 31, 2026, with three options to extend for five years each; and (iii) March 31, 2023 with two options to extend for five years each.

COVID-19 pandemic

We are subject to the continuing risks related to the public health crises, primarily the global pandemic associated with COVID-19. In December 2019, a novel strain of coronavirus, SARS-CoV-2, was reported to have surfaced in Wuhan, China. Since then, SARS-CoV-2, and the resulting disease COVID-19, has spread to most countries, and all 50 states within the United States. The COVID-19 outbreak has negatively impacted and may continue to negatively impact our operations and revenues and overall financial condition, similar to other medical device manufacturers, by decreasing the number of our products sold. RxSight has a limited commercial history, as all but eight months of commercial history has occurred during the COVID-19 crisis. Total IOL procedure volume dropped 17% in the US and 25% globally from 2019 to 2020 due principally to the COVID-19 pandemic, as health care organizations globally have prioritized the treatment of patients with COVID-19. In the United States, governmental authorities had recommended, and in certain cases required, that elective, specialty and other procedures and appointments, be suspended or canceled to avoid non-essential patient exposure to medical environments and potential infection with COVID-19 and to focus limited resources and personnel capacity toward the treatment of COVID-19. These measures and challenges may continue for the duration of the pandemic, which is uncertain, and will reduce our revenue while the pandemic continues.

Numerous state and local jurisdictions imposed, and in the future may impose, “shelter-in-place” orders, quarantines, executive orders and similar government orders and restrictions for their residents to control the spread of COVID-19. Starting in mid-March 2020, the governor of California, where our headquarters is located, issued “shelter-in-place” or “stay at home” orders restricting non-essential activities, travel and business operations for an indefinite period of time, subject to certain exceptions for necessary activities. Such orders or restrictions have resulted in our headquarters closing, work stoppages, slowdowns and delays, travel restrictions and cancellation of training and other events, among other effects, thereby negatively impacting our operations. Other disruptions or potential disruptions to our business and supply chain include restrictions on our personnel and personnel of partners to travel and access customers for training and case support; delays in approvals by regulatory bodies; delays in product development efforts; and additional government requirements or other incremental mitigation efforts that may further impact our capacity to manufacture, sell and support the use of our RxSight system. In addition, even after the “shelter-in-place” orders, quarantines, executive orders and similar government orders and restrictions for their residents to control the spread of COVID-19 were significantly reduced in the second quarter of 2021, we continue to experience disruptions to our business, including patients and customers continuing to be cautious in restarting elective procedures in light of the continued risk posed by the virus.

As we continue to actively advance our clinical, discovery and research programs, we are in close contact with the third parties we engage with, who are primarily located in the United States, and are assessing the impact of the COVID-19 pandemic on each of our programs, expected timelines and costs on an ongoing basis. In light of ongoing developments relating to the COVID-19 pandemic, the focus of healthcare providers on fighting the virus, and consistent with the FDA’s industry guidance for conducting clinical trials, we and our contract research organizations have made certain adjustments to the operation of our clinical trials in an effort to ensure the monitoring and safety of patients and minimize risk to trial integrity during the pandemic and generally. Other COVID-related guidance recently released by the FDA includes statistical considerations for clinical trials conducted during the COVID-19 public health emergency and post marketing adverse event

reporting for medical products during a pandemic. We may need to make further adjustments in the future, including implementation of new policies and procedures.

While the potential economic impact brought by and the duration of COVID-19 may be difficult to assess or predict, the widespread pandemic has resulted in, and may continue to result in, significant disruption of global financial markets, reducing our ability to access capital, which could in the future negatively affect our liquidity. We expect any further shelter-in-place policies and restrictions on elective surgical procedures worldwide to have a substantial near-term impact on our revenue. During the COVID-19 pandemic, our customers, including doctors and other providers, have experienced financial hardship and some of them may not fully recover. This could lead to some of these customers temporarily or permanently shutting down, filing for bankruptcy or being acquired by larger health systems, leading to reduced procedures and/or additional pricing pressure on our products. The COVID-19 pandemic has also resulted in a significant increase in unemployment in the United States which may continue even after the pandemic. The occurrence of any such events may lead to reduced disposable income and access to health insurance which could adversely affect the number of our RxSight systems sold after the pandemic has ended.

Key business metrics

We regularly review several operating and financial metrics to evaluate our business, measure our performance, identify trends affecting our business, formulate our business plan and make strategic decisions. We believe the number of LDDs installed, LALs implanted and the number of doctors and other providers performing surgery with our products are indicators of our ability to drive adoption and generate revenue. We believe these are important metrics for our business. Due to our limited commercial history, all but eight months of which have occurred during the COVID-19 pandemic, we are not yet able to assess seasonality and other trends, and we will continue to evaluate our business in the future using these and other financial metrics as we observe trends in our business.

We believe the number of LDDs sold in each quarter and installed at the end of each period are important metrics as they represent an installed base into which we can sell our LALs.

	2019				2020				2021
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1
LDDs Sold	—	—	10*	9	15	15	20*	23	13
Installed Base at End of Period	—	—	10	19	34	49	69	92	105

* One LDD placed for rent Q3 2019 at a university & one LDD converted from clinical to commercial use in Q3 2020

We believe the number of LALs sold (reported as implanted in a patient) in each quarter is an important metric indicative of adoption and utilization of our RxSight system. While an important metric, the COVID-19 pandemic and severe weather in the first quarter 2021 impacted trends in our business. In the second quarter of 2020, the number of our LALs sold decreased as compared to the first quarter of 2020 as ambulatory surgery centers (ASCs), where most cataract surgeries are performed, were closed to elective surgeries for six or more weeks. In the third quarter 2020, LALs sold increased as compared to the second quarter of 2020, reflecting, we believe, some resurgence of surgeries when ASCs re-opened, with sales of LALs in the fourth quarter of 2020 continuing to increase sequentially, despite seasonal holidays. During the first quarter of 2021, however, the U.S. saw a resurgence in COVID-19 cases attributed to holiday travel and gatherings and severe weather in Texas and other southern states, resulting in reduced LAL sales for such period.

	2019				2020				2021
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1
LALs Sold	—	26	336	575	719	662	1,513	1,577	1,567

Components of results of operations

Sales

Our revenue consists of the sale of LALs used in cataract surgeries, the LDDs for delivering light to the LALs to adjust the lens post-surgery, as needed, and service and accessories (UV protective glasses and LAL insertion devices). Revenue is derived from sales of products primarily in the U.S. and sales to a single customer in each of Germany and Mexico. Customers are primarily comprised of ophthalmic practices (LDD sales) and ambulatory surgery centers (LAL sales). We expect revenue to increase in absolute dollars as we expand our sales organization and sales territories, add customers, expand the base of doctors and other providers that are trained to use our products, and expand awareness of our products with new and existing customers and as doctors and other providers perform more procedures using our products.

LALs are held at customer sites on consignment. The single performance obligation is satisfied, and revenue is recognized for LALs upon customer notification that the LALs have been implanted in a patient.

Our LDD contracts contain multiple performance obligations bundled into one transaction price, with all obligations generally satisfied within one year. The LDD capital asset and related components revenue is recognized upon installation and customer acceptance training is recognized upon completion of at least one doctor and the initial warranty and service agreement are recognized ratably over the service period. After the first year, service contracts can be purchased separately on a standalone basis. As of December 31, 2019, the Company deferred revenue of $10,000 related to such service agreements and $345,000 as of December 31, 2020. Revenue for such service agreements will be recognized over the term of each contract.

For the year ended December 31, 2019 and 2020, revenue from contracts with customers consisted of the following:

	2019	2020
	(in thousands)	
LDD (including training)	$ 1,187	$ 10,159
LAL	1,026	4,256
Accessories and Service Warranty	28	263
	$ 2,241	$ 14,678

For the year ended December 31, 2019, we had two customers who individually accounted for approximately 35% and 14% of revenue. For the year ended December 31, 2020, we had one customer who individually accounted for approximately 27% of revenue.

Cost of sales

Cost of sales consists of materials, labor and manufacturing overhead internally to produce the Company's products as well as the cost of shipping and handling. Overhead costs include the cost of quality assurance, material procurement, inventory control, facilities, equipment and operations supervision and management, including stock-based compensation. Cost of sales also includes depreciation expense for production equipment and certain direct costs such as shipping costs and royalty and license fee expense. Shipping costs billed to customers are included in sales. We expect cost of sales to increase in absolute dollars as our revenue grows and more of our products are sold.

We calculate gross margin as gross profit/loss divided by revenue. Our gross margin has been and will continue to be affected by a variety of factors, including average selling prices, product sales mix, production and ordering volumes, manufacturing costs, product yields, headcount and cost-reduction strategies. Our gross margin could fluctuate from quarter to quarter as we introduce new products, and as we adopt new manufacturing processes and technologies.

Our LDD, as is typical of many medical device capital equipment products, has a low gross margin, as the material cost of the LDD is significant, representing close to 50% of the total cost to manufacture. In addition, we do not mark up our LDD substantially, as LDDs, as sold, generate LAL procedures. Our LAL gross margin is higher, with low material cost but high fixed overhead costs. As our manufacturing volume of the LAL increases, we expect the gross margin may improve significantly.

Operating expenses

Selling, general and administrative expenses

Selling, general and administrative, or SG&A, expenses consist primarily of compensation for personnel, including stock-based compensation, related to administrative, selling and marketing functions, education programs for doctors and other providers, commercial operations and analytics, finance, information technology and human resource functions. Other SG&A expenses include sales commissions, travel expenses, promotional activities, marketing initiatives, market research and analysis, conferences and trade shows, training for doctors and other providers, professional services fees (including legal, audit and tax fees), insurance costs, general corporate expenses and facilities-related expenses. We expect SG&A expenses to continue to increase in absolute dollars as we expand our sales and marketing organization and infrastructure to both drive and support the anticipated growth in revenue and due to additional legal, accounting, insurance and other expenses associated with being a public company.

Research and development expenses

Research and development expenses consist of expenses incurred in performing research and development and engineering activities for new products and technology, clinical studies and regulatory submissions and compliance. The expenses include compensation and benefits (including stock-based compensation), costs incurred at clinical trial sites, regulatory and manufacturing engineering costs, including those related to various laboratory and research equipment and supplies, expense of pre-approved inventory utilized for clinical trial and research purposes, costs incurred in the development of manufacturing processes in excess of capitalizable value, fees paid to consultants and contract clinical organizations and direct FDA related costs and costs related to FDA premarket approval submission preparation. Research and development expenses are expensed as incurred. We expect R&D expenses as a percentage of revenue to vary over time depending on the level and timing of our new product development efforts, as well as our clinical development, clinical trials and registries and other related activities.

Gain/loss on sale of equipment

Gain/loss on sale of equipment in 2019 primarily represents the gain or loss on the sale of LDDs classified as fixed assets (originally placed at clinical sites) six of which were subsequently sold to those clinical sites for commercial use.

Change in fair value of warrants

Change in fair value of warrants consists of gains and losses resulting from the remeasurement of the fair value of our preferred stock warrant liabilities at each balance sheet date. We will continue to record adjustments to the estimated fair value of the preferred stock warrants until they are exercised, expire or at such time as the warrants are treated as equity for accounting.

Expiration of warrants

Expiration of warrants represents the gain from the expiration of warrants unexercised and the reversal of the corresponding warrant liability is recorded.

Interest expense

Interest expense consists primarily of interest incurred on our outstanding indebtedness and non-cash interest related to the amortization of debt discount and issuance costs associated with our indebtedness.

Interest and other income, net

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

Accretion to redemption value of redeemable preferred stock and preferred stock options

Due to the Special Redemption provision in place in our Articles of Incorporation and until the unexercised Series W Warrant expiration on March 31, 2021 all equity instruments were redeemable and evaluated as probable of redemption through early December 2020. No accretion was calculated during the three months ended March 31, 2021. For common and preferred stock, the value of the accretion was calculated as the estimated future redemption amount accreted to the estimated redemption date using the effective interest rate. For stock options the value of accretion was calculated at the estimated future redemption amount less the strike price, recognized over the same period as the corresponding service period for which stock-based compensation is recognized.

Earnings allocated to redeemable preferred stock

The Company has two classes of common stock and participating securities, which include convertible preferred stock. The Company's participating securities do not have a contractual obligation to share in the Company's losses. Basic and diluted net income (loss) per share attributable to common stockholders is presented in conformity with the two-class method required for participating securities. In periods of net income, after adjusting for accretion and dividends, net income is attributed to both common stockholders and participating security holders, as if all of the earnings for the period had been distributed. Diluted earnings per share under the two-class method is calculated using the more dilutive of the treasury stock or the two-class method.

Comprehensive income

All components of comprehensive income, including net income (loss), are reported in the consolidated financial statements in the period in which they are recognized. Comprehensive income is defined as the change in equity during a period from transactions and other events and circumstances from non-owner sources, including unrealized gains and losses on short-term investments and foreign currency translation adjustments.

Unaudited Pro Forma Information

Upon the closing of this offering, all outstanding shares of our convertible preferred stock will automatically convert into shares of our common stock assuming the sale of shares in this offering at the assumed public offering price of $ per share, which is the midpoint of the price range set forth on the cover of this prospectus. The pro forma net income (loss) per share attributable to common stockholders, basic and diluted for the year ended December 31, 2020 were computed using the weighted average shares of common stock outstanding, basic and diluted including the pro forma effect of the conversion of all outstanding shares of convertible preferred stock into shares of common stock, as if such conversion had occurred at the beginning of the period, or their issuance dates if later. Pro forma net income (loss) per share does not include the shares expected to be sold in this offering.

The following table sets forth the computation of the pro forma net loss per share attributable to common stockholders, basic and diluted for the period presented.

	Year Ended December 31, 2020 (in thousands, except share and per-share amounts) (unaudited)
Numerator:	
Net income (loss) used in calculating pro forma net loss per share attributable to common stockholders, basic and diluted	$
Denominator:	
Weighted-average common shares outstanding	
Weighted-average convertible preferred stock	
Pro forma weighted-average shares outstanding, basic and diluted	
Pro forma weighted-average net income (loss) per share, basic and diluted	$

Results of operations

Comparison of the three months ended March 31, 2020 and 2021

The following table summarizes our unaudited results of operations for the three months ended March 31, 2020 and 2021, together with the dollar increase or decrease and percentage change in those items.

	Three months ended March 31 (unaudited)		Change	
(in thousands, except share amounts, per-share data and percentages)	**2020**	**2021**	**($)**	**(%)**
Sales	$ 2,888	$ 3.484	$ 596	20.6%
Cost of sales	2,810	2,365	445	15.8
Gross profit	$ 78	$ 1,119	$ 1,041	1,334.6%
Operating expenses:				
Selling, general and administrative	3,698	5,611	1,913	51.7
Research and development	5,777	6,643	866	15.0
Total operating expenses	9,475	12,254	2,779	29.3
Loss from operations	$ (9,397)	$ (11,135)	$ (1,738)	(18.5)%
Other income (expense), net:				
Change in fair value of warrants	(7,407)	—	(7,407)	(100.0)%
Expiration of warrant	—	5,018	(5,018)	(100.0)
Interest expense	(5)	(698)	693	(138.6)
Interest and other income	312	17	295	94.5
Loss before income taxes	(16,497)	(6,798)	9,699	58.8
Income tax expense	5	7	(2)	40.0
Net loss	$ (16,502)	$ (6,805)	$ 9,697	58.8%
Accretion to redemption value of redeemable preferred stock and redeemable stock options	(4,246)	—	4,246	100.0
Net loss attributable to common stockholders	(20,748)	(6,805)	(13,943)	67.2
Other comprehensive income				
Unrealized gain on short-term investments	77	7	(70)	90.9
Foreign currency translation loss	(1)	(4)	3	(300.0)
Total other comprehensive income	76	3	(73)	(96.1)
Comprehensive loss	$ (16,426)	$ (6,802)	$ (9,624)	(58.6)%

Sales

Sales increased by $0.6 million to $3.5 million for the three months ended March 31, 2021 from $2.9 million for the three months ended March 31, 2020. The increase in total sales was due to sales of 848 more LALs and an increase in accessories and service warranties for a total of $0.9 million, due to an increase in our installed base of LDDs. This increase was offset partially by a decrease in sales of 2 fewer LDDs of $0.3 million for the three months ended March 31, 2021 as compared to the three months ended March 31, 2020. However, LAL sales in the first quarter of 2021 were slightly lower than the preceding fourth quarter of 2020 as the U.S. saw a resurgence in COVID-19 cases attributed to holiday travel and gatherings and severe weather in Texas and other southern states, resulting in reduced LAL sales in the first quarter of 2021.

Cost of sales

Cost of sales decreased by $0.4 million to $2.4 million for the three months ended March 31, 2021 from $2.8 million for the three months ended March 31, 2020 due to the decrease in the number of LDDs sold and associated service warranties partially offset by an increase in LALs sold. Gross margin increased to 32.1% in the three months ended March 31, 2021 from 2.7% for the three months ended March 31, 2020 due to improved operating leverage as well as an increase in gross margin on LDDs.

Selling, general and administrative expenses

Selling, general and administrative expenses increased by $1.9 million to $5.6 million for the three months ended March 31, 2021 from $3.7 million for the three months ended March 31, 2020, an increase of 52%. This increase was primarily attributable to an increase in selling and marketing personnel costs of $1.0 million due mainly to additional headcount as well as an increase in general and administrative expenses of $0.9 million due primarily to an increase in accounting and legal expenses of $0.4 million, personnel-related expenses of $0.3 million as well as stock-based compensation, facilities and other expenses of $0.2 million.

Research and development expenses

Research and development expenses increased by $0.9 million to $6.6 million for the three months ended March 31, 2021 from $5.8 million for the three months ended March 31, 2020, an increase of 15%. This increase was primarily attributable to an increase of $0.5 million in personnel costs due primarily to higher incentive pay, as well as increased material costs of $0.4 million and an increase in stock-based compensation expense of $0.2 million partially offset by a decrease in facilities and information technology expense of $0.2 million.

Other income (expense), net

Other income (expense), net, increased by $11.4 million to $4.3 million for the three months ended March 31, 2021 from a $7.1 million loss for the three months ended March 31, 2020 due to the change in the fair value of the liability classified warrants of $7.4 million and the expiration of an unexercised liability classified common stock warrant resulting in a revaluation gain for the three months ended March 31, 2021 of $5.0 million, partially offset by an increase in interest expense of $0.7 million and reduced interest income of $0.3 million.

Accretion to redemption value of redeemable preferred stock and redeemable stock options

Accretion to redemption value of redeemable preferred stock and redeemable stock options was $0.0 million for the three months ended March 31, 2021 and $4.2 million for the three months ended March 31, 2020 due to the determination that the redemption of these equity instruments was no longer probable in December 2020 when accretion ceased.

Other comprehensive income

Other comprehensive income decreased by $0.1 million to $0.0 million for the year ended March 31, 2021 from income of $0.1 million for the three months ended March 31, 2020 due primarily to a decrease of $0.1 million in the unrealized gain on short-term investments.

Comparison of the years ended December 31, 2019 and 2020

The following table summarizes our results of operations for the years ended December 31, 2019 and 2020, together with the dollar increase or decrease and percentage change in those items:

(in thousands, except share amounts, per-share data and percentages)	Year ended December 31 2019	2020	Change ($)	(%)
Sales	$ 2,241	$ 14,678	$ 12,437	555.0%
Cost of sales	4,060	12,973	8,913	219.5
Gross profit (loss)	$ (1,819)	$ 1,705	$ 3,524	193.7%
Operating expenses:				
Selling, general and administrative	15,203	15,176	27	0.2
Research and development	29,569	21,934	(7,635)	(25.8)
(Gain) loss on sale of equipment	(521)	7	528	101.3
Total operating expenses	44,251	37,117	(7,134)	(16.1)
Loss from operations	$ (46,070)	$ (35,412)	$ 10,658	23.1%
Other income (expense), net:				
Change in fair value of warrants	169,230	63,011	(106,219)	62.8%
Expiration of warrants	803	—	(803)	(100.0)
Interest expense	(26)	(510)	(484)	1,861.5
Interest and other income	2,307	543	(1,764)	76.5
Income before income taxes	126,244	27,632	(98,612)	78.1
Income tax expense	24	57	33	137.5
Net income	$ 126,220	$ 27,575	$ (98,645)	78.1%
Accretion to redemption value of redeemable preferred stock and redeemable stock options	(82,121)	(24,209)	57,912	70.5
Earnings allocated to redeemable preferred stock	(17,972)	—	17,972	(100.0)
Net income attributable to common stockholders	26,127	3,366	(22,761)	(87.1)
Other comprehensive income (loss)				
Unrealized gain (loss) on short-term investments	68	(49)	117	172.1
Foreign currency translation gain	5	—	5	(100.0)
Total other comprehensive income (loss)	73	(49)	(122)	(167.1)
Comprehensive income	$ 126,293	$ 27,526	$ (98,767)	(78.2)%

Sales

Sales increased by $12.4 million to $14.7 million for the year ended December 31, 2020 from $2.2 million for the year ended December 31, 2019. The increase in sales was due to sales of 60 more LDDs within an ASP increase of $42,130 per LDD and 3,534 more LALs. During 2020 the COVID-19 pandemic has made sequential quarter-to-quarter trending difficult. In mid-March 2020, ambulatory surgery centers (ASCs), where most cataract surgeries were performed, were closed to elective surgeries for six or more weeks, with the second quarter 2020 LAL sales lower than the first quarter, an increase in LAL sales in the third quarter as ASC's re-opened and a slight increase again in the fourth quarter, despite seasonal holidays.

Cost of sales

Cost of sales increased by $8.9 million to $13.0 million for the year ended December 31, 2020 from $4.1 million for the year ended December 31, 2019 due to the increase in the number of products sold and associated

service warranties. Gross margin increased to 11.6% in the year ended December 31, 2020 from an 81.2% loss due to improved operating leverage on a higher volume of units sold.

Selling, general and administrative expenses

Selling, general and administrative expenses remained at $15.2 million for the years ended December 31, 2020 and 2019. An increase in selling and marketing personnel related expenses of $2.1 million due mainly to additional headcount was offset by a decrease in general and administrative costs of $2.1 million due to lower facilities costs and lower stock-based compensation costs.

Research and development expenses

Research and development expenses decreased by $7.6 million to $21.9 million for the year ended December 31, 2020 from $29.6 million for the year ended December 31, 2019, a decrease of 26%. This decrease was primarily attributable to a decrease of $5.6 million in personnel costs due primarily to reduced personnel headcount and lower incentive pay due to the cancelation of accrued incentives that were subsequently determined would not be earned, as well as a decrease of $1.7 million in clinical costs due to the completion of two clinical studies in 2019 and decreased material costs of $1.1 million, partially offset by an increase in facilities and information technology expense of $0.5 million as well as an increase in stock-based compensation expense of $0.3 million.

Gain/loss on sale of equipment

Gain/loss on sales of equipment was $0.5 million for the year ended December 31, 2019 as compared to a loss of $0.06 million for the year ended December 31, 2020 from a gain on the sale of fully depreciated assets in 2019.

Other income (expense), net

Other income, net, decreased by $109.3 million to $63.0 million for the year ended December 31, 2020 from $172.3 million for the year ended December 31, 2019 due primarily to the revaluation of the fair value of warrant liabilities of $106.2 million, a decrease in interest income of $1.8 million and a gain on expiration of preferred stock warrants classified as liabilities of $0.8 million, partially offset by an increase in interest expense of $0.5 million on $25 million debt drawn on October 28, 2020.

Accretion to redemption value of redeemable preferred stock and redeemable stock options

Accretion to redemption value of redeemable preferred stock and redeemable stock options decreased by $64.8 million to $38.3 million for the year ended December 31, 2020 from $103.1 million for the year ended December 31, 2019 due to the reduction in the estimated per-share amount used to calculate accretion for common and preferred stock and also due to negative accretion for the year ended December 2020 caused by the same reduction in the estimated per-share amount for stock options.

Earnings allocated to redeemable preferred stock

Earnings allocated to redeemable preferred stock decreased to zero for the year ended December 31, 2020 from $18.0 million for the year ended December 31, 2019. For the year ended December 31, 2020, no undistributed earnings were available to redeemable preferred stock after adjusting net income for accretion to estimated redemption value for all categories of securities; preferred stockholders are not contractually obligated to share in undistributed losses.

Other comprehensive income (loss)

Other comprehensive income increased by $0.1 million to $0.1 million for the year ended December 31, 2020 from a loss of $.049 million for the year ended December 31, 2019 due primarily to an increase of $0.1 million in the unrealized gain on short-term investments.

Liquidity and capital resources

Sources of liquidity

We have incurred significant operating losses and negative cash flows from operations since our inception, and we anticipate that we will incur significant losses for at least the next several years. As of March 31, 2021, we had cash, cash equivalents and short-term investments of $64.4 million. For the years ended December 31, 2020 and 2019, our net losses from operations were $35.4 and $46.1 million, respectively, and our net cash used in operating activities was $35.2 million and $40.6, respectively. For the three months ended March 31, 2021 and 2020 we had a loss from operations of $11.1 million and $9.4 million, respectively. We had an accumulated deficit of $437.4 million as of March 31, 2021.

To date, our primary sources of capital have been private placements of preferred stock, a structured transaction with a strategic partner, debt financing and revenue from sales of our products.

Funding requirements

Our future liquidity and capital funding requirements will depend on numerous factors, including:

- our revenue growth;
- our research and development efforts;
- our sales and marketing activities;
- our ability to raise additional funds to finance our operations;
- the outcome, costs and timing of any clinical trial results for our current or future products;
- the emergence and effect of competing or complementary products;
- our ability to maintain, expand, enforce and defend our intellectual property portfolio, including the amount and timing of any payments we may be required to make, or that we may receive, in connection with the licensing, filing, prosecution, maintenance, defense and enforcement of any patents or other intellectual property rights;
- our ability to retain our current employees and the need and ability to hire additional management, sales, research and development, scientific and customer support personnel;
- the terms and timing of any collaborative, licensing or other arrangements that we have or may establish;
- debt service requirements;
- the extent to which we acquire or invest in businesses, products or technologies; and
- the impact of the COVID-19 pandemic.

Based on our current planned operations, we expect that our current cash, cash equivalents and short-term investments will be sufficient to fund our operations for at least 12 months after the date our most recent financial statements were issued. Our ability to continue as a going concern is dependent upon our ability to successfully secure sources of financing and ultimately achieve profitable operations. We may require additional financing to fund working capital and pay our obligations. We may seek to raise any necessary additional capital through a combination of public or private equity offerings and/or debt financings. There can be no assurance that we will be successful in acquiring additional funding at levels sufficient to fund our operations or on terms favorable to us, if at all. If adequate funds are not available on acceptable terms when

needed, we may be required to significantly reduce operating activities, which may have a material adverse effect on our business and/or results of operations and financial condition. If we do raise additional capital through public or private equity or convertible debt offerings, the ownership interest of our existing stockholders will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect our existing stockholders' rights. If we raise additional capital through debt financing, we may be subject to covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends. Additional capital may not be available on reasonable terms, or at all.

See the section of this prospectus titled "Risk Factors" for additional risks associated with our substantial capital requirements.

Summary statement of cash flows

The following table sets forth the primary sources and uses of cash, cash equivalents, and restricted cash for each of the periods presented below:

	Years ended December 31,		Three months ended March 31, (unaudited)	
	(In thousands)			
	2019	2020	2020	2021
Net cash (used in) provided by:				
Operating activities	$ (40,619)	$ (35,203)	$ (12,218)	$ (10,252)
Investing activities	(5,870)	15,591	24,225	14,503
Financing activities	1,330	25,237	75	6,144
Effect of foreign exchange rate on cash, cash equivalents and restricted cash	5	—	(1)	(4)
Net increase (decrease) in cash, cash equivalents and restricted cash	$ (45,154)	$ 5,625	$ 12,081	$ 10,391

Cash used in operating activities

Net cash used in operating activities for the three months ended March 31, 2021 was $10.3 million, consisting primarily of a net loss of $6.8 million, a non-cash gain on expiration of an unexercised warrant of $5.0 million, an increase in operating assets and liabilities of $0.7 million, offset by non-cash stock-based compensation of $1.2 million and depreciation and amortization of $1.0 million.

Net cash used in operating activities for the three months ended March 31, 2020 was $12.2 million, consisting primarily of a net loss of $16.5 million, an increase in operating assets and liabilities of $4.4 million, offset by the non-cash change in fair value of liability classified warrants of $7.4 million, depreciation of $0.9 million and stock-based compensation of $0.6 million.

Net cash used in operating activities for the year ended December 31, 2020 was $35.2 million, consisting primarily of loss from operations of $35.4 million, an increase in operating assets and liabilities of $7.8 million, offset by non-cash stock-based compensation of $4.2 million and depreciation and amortization of $3.9 million.

Net cash used in operating activities for the year ended December 31, 2019 was $40.6 million, consisting primarily loss from operations of $46.1 million, an increase in operating assets and liabilities of $4.0 million and the amortization of discount of short-term investments of $2.0 million, partially offset by non-cash stock-based compensation of $4.6 million, depreciation and amortization of $3.8 million and the provision for obsolete and excess inventory of $1.1 million.

Cash used in investing activities

Net cash provided by investing activities for the three months ended March 31, 2021 was $14.5 million, consisting of net maturities of short-term investments of $15.0 million, offset by net purchases of property and equipment of $0.5 million.

Net cash provided by investing activities for the three months ended March 31, 2020 was $24.2 million, consisting of net maturities of short-term investments of $25.1 million, offset by net purchases of property and equipment of $0.8 million.

Net cash provided by investing activities for the year ended December 31, 2020 was $15.6 million, consisting of net maturities in short-term investments of $18.1 million, offset by net purchases of property and equipment of $2.5 million.

Net cash used in investing activities for the year ended December 31, 2019 was $5.9 million, consisting of purchases of property and equipment and leasehold improvements of $4.1 million and net maturities of short-term investments of $2.4 million, offset by proceeds from sale of equipment of $0.6 million.

Cash from financing activities

Net cash from financing activities for the three months ended March 31, 2021 was $6.1 million, consisting primarily of proceeds from a draw on the Company's term loan of $5.0 million and proceeds from stock options exercised of $1.2 million.

There were no significant financing cash flow activities in the three months ended March 31, 2020.

Net cash from financing activities for the year ended December 31, 2020 was $25.2 million, consisting of a draw on the Company's term loan of $24.3 million, net, proceeds of stock options and warrants exercised of $1.1 million, offset in part by principal payments on finance lease liabilities of $0.1 million.

Net cash from financing activities for the year ended December 31, 2019 was $1.3 million, consisting of proceeds from stock options and warrants exercised of $1.5 million, offset in part by principal payments on finance lease liabilities of $0.2 million.

Contractual obligations and commitments

The following table summarizes our contractual commitments as of March 31, 2021 (in thousands):

	As of March 31, 2021 (unaudited)				
	Total	Less than 1 year	1-3 Years	3-5 Years	More than 5 Years
Operating lease commitments	$ 7,442	$ 1,862	$ 3,500	$ 2,080	$ —
Debt, principal and interest	$41,607	$ 2,805	$ 10,826	$ 27,975	$ —
Total	$49,049	$ 4,667	$ 14,326	$ 30,055	$ —

We also have a standby letter of credit, expiring September 30, 2024, issued by a financial institution as a required security for one operating lease. The aggregate amount of the letter of credit was $0.6 million and $0.4 million as of December 31, 2019 and December 31, 2020.

Term Loan

In October 2020, we entered into a loan and security agreement, or the Credit Agreement, with Bank of America, or BofA, as collateral agent, and Oxford Finance LLC, or Oxford Finance, as lender. The Credit Agreement provides for a tranche one loan advance in the amount of $25.0 million, which was fully funded on the closing date by the lender, a second tranche of $5.0 million in the first quarter of 2021, which was advanced on March 29, 2021 and a third tranche of $10.0 million in the second quarter of 2021, which was advanced on June 28, 2021. The Credit Agreement also provides for an additional two tranches in the amount of $5.0 million each in 2021, subject to remaining in compliance with the terms of the credit facility. A final tranche in an amount of $10.0 million is available in the first quarter of 2022, subject to our achievement of a revenue milestone and remaining in compliance with the terms of the credit facility. We refer to our tranche one loan advance, tranche two loan advance, tranche three loan advance, tranche four loan advance, tranche five loan advance, and tranche six loan advance collectively as our credit facility.

The credit facility is secured by substantially all of our personal property other than our intellectual property, but includes any accounts receivable, other amounts owed and any proceeds of intellectual property. We also entered into a negative pledge arrangement with the collateral agent and lenders where we agreed not to encumber any of our intellectual property. Outstanding borrowings under the credit facility bear interest at an annual rate equal to the greater of (i) the Wall Street Journal 30-day LIBOR plus 9.09% and 0.16% or (ii) 9.25%. At our election, we may also switch to an interest rate equal to 10.25% plus the greater of (i) The Wall Street Journal Prime rate or (ii) 7%. The interest rate resets monthly on the last day of the month prior to the month in which interest accrues, and an actual/360-day convention applies. If we are considered to be in default, additional interest of 5% applies. We are required to make monthly payments of interest only through December 1, 2023, or the interest-only period; provided that the interest-only period maybe extended to December 1, 2024.

The Term Loan requires 36 months of interest-only payments, followed by 23-months of amortization. If the Company is in compliance with the Performance to Plan covenant through October 31, 2023, the interest-only period is extended by 12 months, and the amortization period is reduced by 11 months. Payments are due on the first day of each month in arrears. All unpaid amounts under the Term Loan mature on October 1, 2025.

The Term Loan is prepayable at any time without penalty; however, the loan must be prepaid in full or in specific increments and amounts prepaid may not be subsequently reborrowed. The loan may also be accelerated by the lender in the event of a default.

Borrowings under the credit facility are pre-payable at any time without penalty; however, the loan must be prepaid in full or in part one time in an amount not less than $5.0 million and amounts prepaid may not be subsequently reborrowed. If the loan is not fully prepaid by December 31, 2021, the Company will become subject to an additional fee (the “Exit Fee”). The fee is 3% of the original loan amount if prepaid between January 1, 2022 and October 31, 2022 ($750k); 4% if prepaid between November 1, 2022 and October 31, 2023 ($1 million); and 5% ($1.25 million) if paid subsequently, including at maturity. The loan may be accelerated by Oxford in the event of a default. The credit facility also includes certain customary affirmative and negative covenants, including certain financial covenants if the lenders make us the additional tranche advances. We were in compliance with all covenants under the credit facility as of December 31, 2020.

Critical accounting policies, significant judgments and use of estimates

Our management’s discussion and analysis of financial condition and results of operations is based on our financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles, or GAAP. The preparation of these financial statements requires us to make estimates and

assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported expenses incurred during the reporting periods. Our estimates are based on our historical experience and on various other factors that 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 may differ from these estimates under different assumptions or conditions. While our significant accounting policies are more fully described in the notes to our financial statements included elsewhere in this prospectus, we believe that the following accounting policies are critical to the process of making significant judgments and estimates in the preparation of our financial statements and understanding and evaluating our reported financial results.

Fair value of liability classified warrants to purchase stock

We recognize the freestanding warrants to purchase shares of convertible preferred stock as liabilities at fair value as these warrant instruments are embedded in contracts that may be cash settled. The convertible preferred stock warrants were issued for no cash consideration as detachable freestanding instruments but can be converted to convertible preferred stock at the holder's option based on the exercise price of the warrant. However, the deemed liquidation provisions of the convertible preferred stock are considered contingent redemption provisions that are not solely within our control. Therefore, the convertible preferred stock is classified in temporary equity on the consolidated balance sheets, and the warrants to purchase the convertible preferred stock are classified as liabilities. We recognized a freestanding warrant to purchase a share of Series W common stock as a liability at fair value because this instrument was not indexed to our own stock as the settlement calculation incorporated variables other than those used to determine the fair value of a fixed-for-fixed forward or option on equity shares. The common stock warrant was issued for cash consideration as a freestanding instrument and could be converted to one share of common stock, Series W, at the holder's option based on the exercise price of the warrant.

The warrants were recorded at their fair value on the date of issuance and are subject to re-measurement to fair value at each balance sheet date. Upon issuance of the Series W common stock warrant, we engaged valuation specialists to assist with determining the common stock warrant at an estimated fair value using a Monte Carlo simulation ("MCS") approach. This valuation approach used a discounted cash flow ("DCF") method to calculate the starting equity value of the Company based upon future cash flow generation. The starting equity value of the Company was determined utilizing significant unobservable inputs, including (1) forecasted financial projections for the next five years developed by management, (2) a terminal value assigned using an exit multiple method, and (3) a discount rate based on the weighted average cost of capital. Then a simulated equity value of the Company as of the expected exercise date was determined using the MCS method. The MCS inputs include: (1) the assumed amount of time until the exercise of the warrant, (2) the risk-free interest rate over the period until the assumed warrant exercise, (3) the assumed volatility in the value of the equity of the company, and (4) the starting equity value of the Company as determined from the discounted cash flow method. In order to determine the overall value of the warrant, the valuation specialists also simulated the payments for sales-based, operating and regulatory milestones based upon similar inputs to determine the expected overall purchase price of the Company. The net difference between the expected purchase price and the average simulated equity value determined the "option payoff". Finally, management assigned a probability that the warrant would be exercised, based on the perspective of a market participant and the Company's consideration of negotiations with and circumstances know about the warrant holder, which was applied to the present value of the "option payoff" to arrive at the fair value recorded at each reporting period.

In addition, we engaged the valuation specialists to derive an estimated fair value of the preferred stock warrants using a probability weighted expected return model/option pricing model ("PWERM/OPM") hybrid

valuation model. This method essentially utilized a combination of market and income method approaches for each part of the calculation of enterprise value and combines them in a probabilistic manner. The valuation considered several future scenarios for the Company, each of which assumed a shareholder exit either through initial public offering ("IPO"), sale ("M&A") or dissolution. Implicit in the timing used in the application of the PWERM/OPM Hybrid Method is also the possibility of no exit. The option pricing model's significant unobservable inputs included: (1) the assumed time until a liquidity event, (2) the risk-free interest rate over the period until the assumed liquidity event, (3) the assumed volatility in the value of the equity of the company (which corresponds to the model's underlying asset volatility), (4) the enterprise value and preferred investment amount and (5) the key price points in the Company's capital structure in terms of exit levels on the assumed liquidation date. A significant increase (decrease) in any of these inputs in isolation, particularly the estimated price of the Company's preferred stock, would have resulted in a significantly higher (lower) fair value measurement.

We will continue to revalue the warrant liabilities for changes in fair value until the earlier of the exercise or expiration of the warrants, the completion of a deemed liquidation event, or the conversion of convertible preferred stock into common stock or until the holders of the convertible preferred stock can no longer trigger a deemed liquidation event. Pursuant to the terms of the preferred stock warrants, upon the conversion of the class of preferred stock underlying the warrant, the warrants automatically become exercisable for shares of our common stock based upon the conversion ratio of the underlying class of preferred stock. The exercise of the common stock warrant or consummation of a qualified initial public offering would result in the automatic conversion of all classes of our preferred stock into common stock. Upon such conversion of the underlying classes of preferred stock, the warrants would be classified as a component of equity and will no longer be subject to remeasurement.

Revenue recognition

Our revenue is generated from the sale of light adjustable intraocular lenses (LAL) used in cataract surgery along with a specifically designed machine for delivering light to the eye, the Light Delivery Device (LDD), to adjust the lens post-surgery, as needed. Revenue is recognized from sales of products in the U.S. and Europe. Customers are primarily comprised of ambulatory surgery centers, hospitals, and physician private practices.

We recognize revenue when promised goods or services are transferred to customers at a transaction price that reflects the consideration to which we expect to be entitled in exchange for those goods and services. Specifically, we apply the following five steps to recognize revenue: (i) identify the contract(s) with a customer; (ii) identify the performance obligations in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when, or as, we satisfy a performance obligation. We apply the five-step model to contracts when it is probable that it will collect the consideration to which it is entitled in exchange for the goods or services it transfers to the customer. At contract inception, we assess the goods promised within each customer contract to determine the individual deliverables in its product offerings as separate performance obligations and assesses whether each promised good or service is distinct. The transaction price is determined based on the consideration expected to be received, either on the stated value in contractual arrangements or the estimated cash to be collected in non-contracted arrangements. We recognize revenue as the amount of the transaction price that is allocated to the respective performance obligation when, or as, the performance obligation is satisfied, considering whether or not this occurs at a point in time or over time. We elected to account for shipping costs as fulfillment costs rather than a promised service and exclude from revenue any taxes collected from customers that are remitted to government authorities.

Our LDD contracts contain multiple performance obligations bundled for one transaction price, with all obligations generally satisfied within one year. For these bundled arrangements, we account for individual

products and services as separate performance obligations if they are distinct, that is, if a product or service is separately identifiable from other items in the bundled package, and if a customer can benefit from it on its own or with other resources that are readily available to the customer. Our LDD contracts include a combination of the following performance obligations: (1) LDD capital asset and related components, (2) training and (3) device service (initial year). Each of these three performance obligations are considered distinct. The LDD capital asset is distinct because the customer can benefit from it together with other resources that are readily available to the customer. Training on the use of the machine is offered as a distinct activity after installation of the LDD to enhance the customer's ability to utilize the machine by having an industry professional provide best practices and customize training to the specific needs of the customer. Each LDD comes with a twelve-month manufacturer's warranty (service-type) that includes preventative maintenance, unscheduled service (labor and parts) and software updates. After the first year, service contracts can be purchased separately on a standalone basis. We recognize revenue as performance obligations are satisfied by transferring control of the product or service to a customer. We have determined that the transaction price is the invoice price, net of adjustments, if any. The allocation to the separate performance obligations is based upon the relative standalone selling price. Standalone selling prices are based on observable prices at which we separately sell the products or services, and we estimate the standalone selling price using the market assessment approach considering market conditions and entity-specific factors including, but not limited to, features and functionality of the products and services, geographies, type of customer and market conditions. We regularly review and update standalone selling prices as necessary.

LALs are held at customer sites on consignment. The single performance obligation is satisfied, and revenue is recognized for LALs upon customer notification that the LALs have been implanted in a patient. For the three months ended March 31, 2021 and 2020, credits related to returns and rebates on list prices were not significant.

We have adopted the practical expedient permitting the direct expensing of costs incurred to obtain contracts where the amortization of such costs would occur over one year or less, and it applied to substantially all our contracts.

Determination of fair value of common stock

We are required to estimate the fair value of the common stock underlying our stock-based awards.

Since there has been no public market of our common stock to date, the fair value of the shares of common stock underlying our share-based awards was estimated on each stock-based award grant date by our board of directors. To determine the fair value of our common stock, our board of directors considered input from management, valuations of our common stock prepared by independent valuation specialists using approaches and assumptions consistent with the American Institute of Certified Public Accountants Statement on Standards for Valuation Services, and assessment of additional factors that it believed were relevant or that may have changed from the date of the most recent valuation through the date of the grant. These factors include, but are not limited to:

- our results of operations, financial position, and capital resources;
- our stage of development and progress of our research and development and commercialization activities;
- our business conditions and projections;
- the external market conditions affecting the medical device industry sector;
- the trends and developments in our industry;

- the valuation of publicly traded companies in our industry sector, as well as recently completed mergers and acquisitions of peer companies;
- the lack of marketability of our common stock as a private company;
- the prices at which we sold shares of our convertible preferred stock to outside investors in arms- length transactions;
- the rights, preferences, and privileges of our convertible preferred stock relative to those of our common stock; and
- the likelihood of achieving a liquidity event for our security holders, such as an initial public offering or a sale of our company, given prevailing market conditions.

For our valuations performed as of dates subsequent to December 31, 2019, we used a hybrid method of OPM and the Probability-weighted Expected Return Method, or PWERM. PWERM considers various potential liquidity outcomes. Our approach included the use of an initial public offering scenario and a scenario assuming continued operation as a private entity. Under the hybrid OPM and PWERM approach, the per share value calculated under OPM and PWERM are weighted based on expected exit outcomes and the quality of the information specific to each allocation methodology to arrive at a final estimated fair value per share of the common stock before a discount for lack of marketability is applied.

Following the completion of this offering, it will no longer be necessary for our board of directors to estimate the fair value of our common stock in connection with our accounting for stock-based awards we may grant, as the fair value of our common stock will be based on the closing price as reported on the date of grant on the primary stock exchange on which our common stock is traded.

Stock-based compensation

We account for stock-based payments at fair value. For stock-based awards that vest subject to the satisfaction of a service requirement, the fair value measurement date for such awards is the date of grant and the expense is recognized on a straight-line basis, over the expected vesting period. For stock-based awards that vest subject to a performance condition, we recognize compensation cost for awards if and when we conclude that it is probable that the awards with a performance condition will be achieved on an accelerated attribution method. We account for forfeitures as they occur.

We calculate the fair value measurement of stock options using the Black-Scholes option pricing model and assumptions discussed below. Each of these inputs is subjective and generally requires significant judgement.

Fair value of common stock—see the subsection titled “Common Stock Valuations” above.

Expected Term—The expected term represents the period that we expect our stock-based awards to be outstanding. We used the simplified method (based on the mid-point between the vesting date and the end of the contractual term) to determine the expected term.

Expected Volatility—Since we are privately held and do not have any trading history for our common stock, the expected volatility was estimated based on the average historical volatilities for comparable publicly traded medical device companies over a period equal to the expected term of the stock option grants. The comparable companies were chosen based on their similar size, stage in the life cycle and area of specialty. We will continue to apply this process until a sufficient amount of historical information regarding the volatility of our stock price becomes available.

Risk-Free Interest Rate—The risk-free interest rate is based on the U.S. Treasury zero coupon issues in effect at the time of grant for periods corresponding with the expected term of option.

Dividend Yield—We have never paid dividends on common stock and have no plans to pay dividends on our common stock. Therefore, we used an expected dividend yield of zero.

See Note 12 to our audited consolidated financial statements and Note 9 to our unaudited interim condensed consolidated financial statements included elsewhere in this prospectus for more information concerning certain of the specific assumptions we used in applying the Black-Scholes option pricing model to determine the estimated fair value of our stock options. Certain of such assumptions involve inherent uncertainties and the application of significant judgment. As a result, if factors or expected outcomes change and we use significantly different assumptions or estimates, our stock-based compensation could be materially different.

Based upon the assumed initial public offering price of $ per share, which is the midpoint of the estimated price range set forth on the cover of this prospectus, the aggregate intrinsic value of options outstanding as of March 31, 2021 was $ million, of which $ million related to vested options and $ million related to unvested options.

Off-balance sheet arrangements

We do not have any off-balance sheet arrangements, as defined by applicable regulations of the SEC, that are reasonably likely to have a current or future material effect on our financial condition, results of operations, liquidity, capital expenditures or capital resources.

Indemnification agreements

We enter into standard indemnification arrangements in the ordinary course of business. Pursuant to these arrangements, we indemnify, hold harmless and agree to reimburse the indemnified parties for losses suffered or incurred by the indemnified party, in connection with any trade secret, copyright, patent or other intellectual property infringement, misappropriation or other violation claim by any third party with respect to its technology. The term of these indemnification agreements is generally perpetual any time after the execution of the agreement. The maximum potential amount of future payments we could be required to make under these arrangements is not determinable. We have never incurred costs to defend lawsuits or settle claims related to these indemnification agreements. As a result, we believe the fair value of these agreements is minimal.

Recent accounting pronouncements

See the section titled “Summary of Significant Accounting Policies—Recent Accounting Pronouncements” in Note 2 to our financial statements included elsewhere in this prospectus for additional information.

Emerging growth company and smaller reporting company status

We are an “emerging growth company,” as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act. As such, we are eligible for exemptions from various reporting requirements applicable to other public companies that are not emerging growth companies, including, but not limited to, presenting only two years of audited financial statements in addition to any required unaudited interim financial statements with correspondingly reduced “Management’s Discussion and Analysis of Financial Condition and Results of Operations” disclosure in this prospectus, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive

compensation, and an exemption from the requirements to obtain a non-binding advisory vote on executive compensation or golden parachute arrangements. We have elected to take advantage of certain of the reduced disclosure obligations in this prospectus and may elect to take advantage of other reduced reporting requirements in our future filings with the SEC. As a result, the information that we provide to our stockholders may be different than you might receive from other public reporting companies in which you hold equity interests.

The JOBS Act permits an "emerging growth company" such as us to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies. However, we have chosen to irrevocably "opt out" of such extended transition period, and as a result, we will comply with new or revised accounting standards on the relevant dates on which adoption of such standards is required for non-emerging growth companies.

We will remain an emerging growth company until the earliest of: (i) the last day of the fiscal year following the fifth anniversary of the consummation of this offering; (ii) the last day of the fiscal year in which we have total annual gross revenue of at least $1.07 billion; (iii) the last day of the fiscal year in which we are deemed to be a "large accelerated filer" as defined in Rule 12b-2 under the Exchange Act, which would occur if the market value of our common stock held by non-affiliates exceeded $700.0 million as of the last business day of the second fiscal quarter of such year; or (iv) the date on which we have issued more than $1.0 billion in non-convertible debt securities during the prior three-year period.

We are also a "smaller reporting company" as defined in the Exchange Act. We may continue to be a smaller reporting company even after we are no longer an emerging growth company. We may take advantage of certain of the scaled disclosures available to smaller reporting companies and will be able to take advantage of these scaled disclosures for so long as our voting and non-voting common stock held by non-affiliates is less than $250.0 million measured on the last business day of our second fiscal quarter, or our annual revenue is less than $100.0 million during the most recently completed fiscal year and our voting and non-voting common stock held by non-affiliates is less than $700.0 million measured on the last business day of our second fiscal quarter.

Quantitative and qualitative disclosures about market risk

We are exposed to market risks in the ordinary course of our business. Market risk represents the risk of loss that may impact our financial position due to adverse changes in financial market prices and rates. Our market risk exposure is primarily the result of fluctuations in interest rates and foreign currency exchange rates.

Interest rate risk

Our cash, cash equivalents and marketable securities as of March 31, 2021 consisted of $40.0 million, invested in government securities as well as $24.4 million invested in bank deposits and money market funds. Our historical interest income has not fluctuated significantly. We do not believe that a hypothetical 10% change in interest rates would have a material impact on our consolidated financial statements included elsewhere in this prospectus. We do not enter into investments for trading or speculative purposes and have not used any derivative financial instruments to manage our interest rate risk exposure. As of March 31, 2021, we had $29.5 million in variable rate debt outstanding. Our Credit Agreement bears interest at an annual rate equal to the greater of (i) the Wall Street Journal prime rate plus 9.09% or (ii) 9.25%. A hypothetical change in interest rates of 10% would have resulted in a change of $0.1 million in interest expense in for the three months ended March 31, 2021.

Foreign currency exchange risk

Our reporting currency is the U.S. dollar and our sales outside the United States are primarily denominated in Euros and GBP. For the years ended December 31, 2020 and 2019, approximately 0.3% and 0.5%, respectively, of our sales were denominated in currencies other than U.S. dollars. Our expenses are generally denominated in the currencies in which our operations are located, which are primarily in the United States and Europe. If our operations in countries outside of the United States grows, our results of operations and cash flows will be subject to fluctuations due to changes in foreign currency exchange rates, which could harm our business in the future. For example, if the value of the U.S. dollar increases relative to foreign currencies, in the absence of a corresponding change in local currency prices, our revenue could be adversely affected as we convert revenue from local currencies to U.S. dollars. In addition, because we conduct business in currencies other than U.S. dollars, but report our results of operations in U.S. dollars, we also face remeasurement exposure to fluctuations in currency exchange rates, which could hinder our ability to predict our future results and earnings and could impact our results of operations. We do not currently maintain a program to hedge exposures to non-U.S. dollar currencies. We do not believe that a hypothetical 10% change in the relative value of the U.S. dollar to other currencies would have a material impact on our consolidated financial statements included elsewhere in this prospectus.

Business

Overview

We are a commercial-stage medical technology company dedicated to improving the vision of patients following cataract surgery. Our proprietary RxSight Light Adjustable Lens system ("RxSight system"), comprised of our RxSight Light Adjustable Lens ("LAL"), RxSight Light Delivery Device ("LDD") and accessories, is the first and only commercially available intraocular lens ("IOL") technology that enables doctors to customize and optimize visual acuity for patients after cataract surgery. Our LAL is made of proprietary photosensitive material that changes shape in response to specific patterns of ultraviolet ("UV") light generated by our LDD. With the RxSight system, the surgeon performs a standard cataract procedure to implant the LAL, determines refractive error with patient input after healing is complete, and then uses the LDD to modify the lens with the exact amount of visual correction needed to achieve the patient's desired vision outcomes. Alternative IOL technologies, in contrast, are not adjustable following the procedure and therefore require patients to make pre-operative choices about their visual preferences, which can often result in patient dissatisfaction when visual outcomes fail to meet expectations. We designed our RxSight system to maximize patient and doctor satisfaction through superior visual outcomes. In the pivotal study that formed the basis for our FDA approval, the observed rate of eyes with 20/20 or better uncorrected distance visual acuity for our LAL was 70.1%. This compares favorably to the results of pivotal studies with similar study designs and patient populations that supported FDA approval of Alcon's Acrysof Toric (38.4%), and J&J's Tecnis Toric (43.6%). We began commercializing our solution in the United States in the third quarter of 2019 and are focused on establishing the RxSight system as the standard of care for premium IOL procedures. As of March 31, 2020, we had an installed base of 105 LDDs in ophthalmology practices, and we estimate 125 surgeons are regularly implanting our IOL. Since our inception, surgeons have performed over 10,000 surgeries with our RxSight system.

Cataract surgery is the most common surgical procedure in the world, with approximately 22 million cataract surgeries performed worldwide in 2020, including 3.7 million in the United States. A cataract is a loss of transparency in the normally clear lens of the eye that can cause blurry or hazy vision, significantly interfering with daily activities and affecting quality of life. Cataracts increase in prevalence with age and develop in approximately 50% of individuals by age 60 affecting both eyes 80-90% of the time and requiring surgery to restore vision in most cases. During cataract surgery, the patient's natural lens is replaced with a clear artificial lens called an intraocular lens ("IOL"). There are two broad categories of IOLs used, conventional and premium. Based on the category of IOL used, cataracts surgeries can be differentiated as either conventional or premium procedures. In conventional cataract surgery, patients receive conventional monofocal IOLs that are designed to provide vision at one distance, and do not correct for corneal astigmatism and presbyopia. Nearly all conventional IOL patients therefore will need spectacles to attain their best vision after surgery. With premium cataract surgery, patients receive premium IOLs designed to correct for corneal astigmatism and/or presbyopia and therefore to provide for reduced spectacle dependence. Because 60% of cataract patients rate being spectacle free after cataract surgery as extremely important, we believe the premium IOL market is underpenetrated as only 11% and 14% of the total procedures worldwide and in the United States in 2020, respectively, were premium procedures. However, according to MarketScope, the premium IOL market represented 37% of the total IOL market for 2020, due to higher lens pricing, and is projected to grow significantly faster. According to MarketScope, the premium IOL market was an approximately $1.4 billion market worldwide in 2020, and while worldwide cataract procedure volumes were down approximately 25% due to the COVID-19 pandemic, the total revenue from premium IOLs to manufacturers was unchanged from 2019. This market is expected to grow at a compound annual growth rate ("CAGR") of 14% from 2020 to 2026, relative to an approximately $2.3 billion market in 2020 and a 10.5% CAGR for the conventional IOL market. Premium cataract procedures are between 10 and 15 times more profitable for the doctors and ophthalmology practices than conventional cataract procedures. The premium IOL market is also less impacted by changes in

reimbursement because patients are required to pay out-of-pocket to cover the full or incremental costs of premium cataract procedures (depending on the country), while healthcare payors typically cover the full cost of conventional cataract procedures.

We believe that the premium cataract surgery market remains underpenetrated due to both doctors' and other providers' reluctance to recommend premium IOL offerings to the full universe of eligible patients and patients' confusion in assessing the tradeoffs associated with the wide range of commercially available premium IOL offerings. We believe current premium IOL offerings often cannot deliver on patient expectations with respect to the patient's ability to see at near, intermediate and far distances without reliance on spectacles. Once a patient has selected a premium IOL, the surgeon must rely on a series of pre-operative diagnostic tests and predictive formulae to choose a lens that delivers the accuracy and outcomes desired by the patient. According to published clinical data from the pivotal studies of alternative premium IOL technologies, the percentage of patients that achieved 20/20 vision with both eyes at all distances was only 40%. As a result, doctors and other providers often lack confidence with current premium IOL offerings given their inability to meet patients' expectations consistently.

We designed our RxSight system to address the shortcomings of existing premium IOL technologies and provide a solution that doctors and other providers can trust to improve visual outcomes. In contrast to alternative premium IOL solutions, for which patients are required (before surgery) to specify their visual priorities and willingness to accept optical trade-offs associated with those choices, our RxSight system offers peace of mind that patients can iterate their final vision characteristics with customized post-surgical adjustments. The surgeon first performs a standard cataract implant procedure, replacing the patient's natural lens with the LAL. Approximately three weeks post cataract surgery, after healing has occurred, the patient undergoes a standard post-operative refraction to determine the refractive error and the prescription required to give the patient the best vision. This prescription is much like that used for spectacle lenses, but instead is used as an input to the LDD. To adjust the LAL, the patient is positioned at the LDD for a treatment that lasts between approximately 30 seconds and 2.5 minutes, depending on the required prescription. The patient returns after approximately three to five days, at which time they can undergo another refraction and adjustment, if needed, to "dial in" their best vision. Once the patient and the doctor are satisfied, then the adjustment is locked in for life with another light treatment. While up to three post-surgical adjustment visits are offered by the doctor or other provider, in our pivotal clinical study, patients had an average of 1.6 adjustments. While many patients choose to have both eyes corrected for distance, approximately 80% elect for what is called a blended vision approach that takes advantage of the LAL's depth of focus to deliver a customized blended vision solution. By titrating the correction for near, intermediate or far in each eye, this approach provides the highest rates of excellent vision with both eyes at all distances.

We believe the RxSight Light Adjustable Lens system offers significant advantages over other commercially available conventional and premium IOLs that will drive its broad adoption. The primary benefits of our solution include:

- first and only IOL that can be customized after surgery and healing of the eye;
- provides doctors and other providers and patients with confidence in better visual outcomes and a low risk of side effects;
- provides a precise treatment range and excellent vision rates with both eyes at all distances;
- uses a familiar industry standard IOL implantation procedure and an IOL adjustment procedure that is easy-to-learn;
- allows patients to preview their vision selection prior to LAL adjustment; and
- provides a premium IOL alternative that can help doctors and other providers grow their practice revenues and profits.

Our RxSight system has FDA approval for the reduction of residual astigmatism to improve uncorrected visual acuity after removal of the cataractous natural lens by phacoemulsification and implantation of the intraocular lens in the capsular bag, in adult patients with pre-existing corneal astigmatism of > 0.75 diopters and without pre-existing macular disease. Our system has also received the CE mark and marketing approval in Mexico for improving uncorrected visual acuity by adjusting the LAL power to correct residual postoperative refractive error, including for -2.0 to + 2.0 diopters of sphere and -3.0 to -0.50 diopters of cylinder and by changing lens curvature to introduce controlled amounts of spherical aberration (+/- 1 micron) and center near add (up to 2.0 diopters). We are currently focusing our commercial efforts in the United States. Our commercial strategy is focused on a "land and expand" model through which we aim to drive new customer adoption, which generally begins with the sale of an LDD, and then help the customer incorporate the LAL into their practice to drive utilization and premium procedure growth. We believe this commercial strategy over time may provide a degree of predictability in terms of our commercial growth and a consumable revenue stream from sales of our LALs. We are currently focused on driving adoption with surgeons performing a high volume of premium cataract procedures. MarketScope estimates that there are approximately 4,000 surgeons that perform cataract surgeries in the United States as of 2020, and we estimate that approximately 1,600 surgeons performed approximately 70-80% of the premium procedures in the United States in 2020. We believe this provides an attractive and concentrated market opportunity addressable with a focused sales force. We currently employ a sales team that, as of April 2020 includes 6 sales directors, and a group of over 40 clinical specialists, field service and customer service personnel. While we intend to initially focus our growing commercial efforts in the United States, in the future, we may selectively pursue commercial expansion in Japan, Europe, Australia or other geographies with significant market opportunity for premium IOLs.

Our near-term research and development activities are focused on enhancements to the RxSight system to improve the patient and doctor and other provider experience, expand the range of patients that can be treated as well as expand its indications. We believe that over time, our adjustable lens solution can be used to address a broad range of cataract surgery patients, including those that would otherwise elect for a conventional cataract procedure today. Our vision is that a vast majority of the patients and surgeons that undergo or perform a cataract surgery procedure, will elect to use our RxSight technology that provides a customizable solution delivering better visual outcomes.

Our success factors

We are focused on establishing our RxSight system as the standard of care for premium cataract surgery and providing a solution that doctors and other providers and patients can trust to deliver optimal visual outcomes without unwanted visual side effects. We believe our key success factors include:

- ***First and only commercially available IOL technology that allows customization and optimization of patient vision after surgery.*** We have developed our RxSight system over the last 20 years and have incorporated expertise and proprietary technologies across multiple disciplines, including optics, material science, chemistry, software and hardware engineering. Our LAL uses a proprietary silicone formulation that enables changing the mechanical and optical properties of the lens following implantation. Unlike other currently available IOLs, the vast majority of which are made from acrylic, the LAL contains both long and short silicone polymers, along with other photo-active compounds that enable permanent polymerization of the silicone post-operatively using UV light. Our LDD uses proprietary software and algorithms to deliver a short UV exposure treatment that polymerizes specific portions of the lens that allows doctors and other providers to adjust spherical and cylindrical refraction in 0.25 diopter increments, similar to the adjustment increments used to refract patients for glasses or contact lenses, as well as in other refractive procedures like LASIK. We believe our commitment to innovation, extensive technical capabilities, and world-class engineering teams will enable us to deliver future product enhancements and expansion of indications for our platform. Certain aspects of our RxSight system are protected by our portfolio of patents. As of March 31, 2021, we owned or exclusively in-licensed approximately 31 issued U.S. patents, 26 issued

patents outside the United States, 11 pending non-provisional U.S. patent applications, 13 pending foreign patent applications and three pending Patent Cooperation Treaty applications.

- ***Superior visual outcomes and premium IOL experience for patients.*** In the pivotal study that formed the basis for our FDA approval, the observed rate of eyes with 20/20 or better uncorrected distance visual acuity for our LAL was 70.1%. This compares favorably to the results of pivotal studies with similar study designs and patient populations that supported FDA approval of Alcon's Acrysof Toric (38.4%), and J&J's Tecnis Toric (43.6%). Additionally, LAL patients reported a low rate of glare or halo, visual side effects that are frequently reported with presbyopia correcting IOLs. We believe our system also delivers a premium experience for patients by shifting patient decisions from before surgery (after which they are difficult to change) to after surgery, when patients work with their doctors to dial-in their optimal visual acuity, thereby lowering the likelihood for remedial or secondary corrective procedures. We believe these qualities will lead to broad commercial adoption of the RxSight system.
- ***Attractive value proposition for doctors.*** We believe the RxSight system provides a myriad of benefits for doctors that will help facilitate adoption and incorporation into their clinical practice. The clinical benefit of "dialing-in" to achieve superior visual outcomes after the procedure will give doctors and other providers more confidence to recommend a premium IOL solution that can meet patients' expectations. This can provide economic benefits by empowering doctors and other providers to grow their practice by increasing the number of premium IOL surgeries, which generally have higher revenue and profit margin than conventional procedures. Over the longer term, we also believe that using our technology can help drive patient referrals to the practice. We designed and are offering our LDD at a price to create an attractive return on investment for our customers over a reasonable period of time. For example, an online, third-party survey by Haffey & Company of 15 practices that use the RxSight system revealed that LAL procedures were sourced from all other categories of other IOLs and were well balanced across monofocal, astigmatism-correcting and presbyopia-correcting IOLs. Based on an average of 16 LAL cases per month at these practices, a payback period of five months for the purchase price of the LDD was seen. Using lower national average selling prices for astigmatism-correcting and presbyopia-correcting IOLs and a monthly procedural volume of only six cases resulted in a payback period of 17 months for such practices. Following the payback period, practices continue to reap the financial benefits of converting patients to the higher revenue RxSight procedure. Our RxSight system also offers several practice and workflow benefits. Because the RxSight is a versatile lens that can be used to address a wide variety of different patients and their needs, we believe doctors and other providers can use the LAL as their primary and first choice of premium IOL, rather than having to choose between, and hold in inventory, different IOLs to address different patient needs. The RxSight implantation procedure is a familiar industry standard IOL implantation procedure and the light adjustment procedure is easy to learn, which we believe will help lower barriers to adoption.
- ***Large and growing IOL market underpenetrated within broader IOL industry.*** Cataract surgery is the most common surgical procedure in the United and worldwide, with over 22 million procedures performed globally and 3.7 million procedures performed in the United States in 2020. While 60% of cataract patients rate being spectacle free after cataract surgery as extremely important, only 11% and 14% of the total procedures worldwide and in the United States, respectively were premium procedures in 2020. According to MarketScope's 2021 IOL Report, the market for premium IOLs was approximately $800 million in the United States and $1.4 billion worldwide in 2020, and is expected to grow at a CAGR of 14% and 14%, respectively through 2026. We believe our RxSight system addresses key limitations that have slowed adoption of premium cataract procedures and premium IOL market growth. We believe there is an opportunity to not only gain share in the premium IOL segment of the market but also increase penetration of premium IOLs in the broader IOL market, by converting doctors and other providers as well as patients with astigmatism currently electing for conventional cataract surgery.

- ***Primarily out-of-pocket, cash-pay procedure, which we believe makes the premium IOL market less sensitive to reimbursement.*** The premium IOL market benefits from well-established and attractive payment dynamics with, we believe, limited reimbursement risk. In the U.S., healthcare payors typically reimburse the surgeon and facility fee, which represent a fraction of the total procedure cost, while patients pay the surgeon an additional fee, which accounts for a significantly larger component of the total cost. Patients have traditionally demonstrated a willingness to pay the incremental out-of-pocket fee to achieve differentiated visual outcomes associated with premium IOLs and premium-cash pay ophthalmic procedures, such as LASIK, are well established. Given the unique benefits and advantages of the RxSight system, we believe customers will find our value proposition to be compelling and affordable in the context of other premium IOL offerings available today.
- ***Concentrated potential customer base, addressable with a focused commercial organization.*** We are initially focusing our commercial efforts in the United States and on driving adoption with doctors and other providers performing a high volume of premium cataract procedures. There were approximately 4,000 surgeons performing cataract surgeries today in the United States, and we estimate that approximately 1,600 surgeons performed approximately 70-80% of premium IOL procedures in the United States in 2020. We believe this concentrated nature of the premium IOL customer base is easily addressable with a focused sales force and lends itself well to our "land and expand" business model, which is focused on winning customers and driving increased utilization of our LALs. Our direct sales team currently includes 6 sales directors supported by a group of over 40 sales specialists, field service and customer service personnel and covers the entire United States.
- ***Proven management team with a track record of establishing adoption of multiple innovative technology platforms in ophthalmology.*** Our leadership team has extensive experience in scaling novel ophthalmology businesses, guiding them through the development, approval, launch and commercialization of transformative medical devices. The team is well complemented by leaders with extensive experience in the full product lifecycle including designing and developing new technologies, collaborating closely with regulatory agencies, identifying the appropriate path to market and subsequently attracting and effectively managing sales and marketing talent. Members of our team have previously worked with leading ophthalmology medical technology companies including Chiron, IntraLase, eyeonics, and LenSx Lasers.

Our growth strategies

Our vision is that a vast majority of the patients and doctors and other providers that undergo or perform a cataract surgery procedure, will elect to use our RxSight technology that provides a customizable solution delivering better visual outcomes. Our growth strategies to achieve this vision include:

- **Strategically expanding our salesforce and marketing activities.** We launched of the RxSight system in the third quarter of 2019 and, as of March 31, 2021 we have grown our commercial team to include 6 sales directors, supported by a group of over 40 clinical specialists, field service and customer service personnel. Our sales directors are focused on selling the LDD and establishing doctor and other provider relationships, and our clinical specialists, field service and customer service personnel are responsible for installing and training on the use of the LDD, fostering patient and doctor and other provider education, and assisting with patient flow processes for our RxSight system. While we believe a large proportion of our target market is concentrated within a group of high volume cataract surgeons and addressable with a focused commercial effort, we plan to continue to add highly qualified personnel to our commercial organization, with a strategic mix of sales directors and clinical specialists, to drive further awareness and penetration within our target doctor and other provider base performing premium cataract surgeries. As our customer base continues to grow, we also expect to accelerate marketing initiatives and professional education, including training on best practices and techniques.

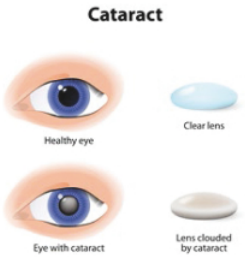
- **Establishing new customers and growing our installed base of LDDs.** We believe our novel technology provides a differentiated value proposition to doctors and other providers as well as patients and provides us the opportunity to both gain market share in the premium IOL market as well as increase the penetration of premium IOL surgery in the broader cataract surgery market. Our initial focus is to grow our market share by winning customers within the 1,600 cataract surgeons that perform a high volume of premium IOL procedures in the United States. To do so, we aim to convert these doctors and other providers to the RxSight system by highlighting the clinical, economic and workflow benefits of our solution over other premium IOL technologies. We also intend to address the broader universe of the remaining 2,400 doctors and other providers that may perform only a small portion of premium procedures or only perform conventional cataract surgery. We will address this customer universe by promoting broader awareness at industry conferences and tradeshows and highlighting the practice building and economic benefits of our solution, its ease of use, as well as the improved visual outcomes. We are investing in professional education, additional clinical studies and registries that expand our evidence base, facilitating peer-to-peer dialogue and forums and communicating the benefits of our technology through marketing initiatives, publications and podium presentations. We believe that as more patients and doctors and other providers gain confidence in our technology, this will drive broader adoption, awareness and confidence amongst the industry to adopt, use and recommend our technology.
- **Increasing the utilization of our LALs by empowering doctors and other providers to grow their practices.** Following winning a customer account, we aim to drive increased utilization of our LALs by helping our customers build their practices. We believe this will ultimately result in a growing consumable revenue stream from sales of our LALs. Our team of clinical specialists, field service and customer service personnel are focused on helping our customers be successful with our solution. In addition to personnel support, we provide doctors and other providers with marketing materials, such as patient brochures, literature and digital content for website and social media promotions. We also provide ongoing training to doctors and other providers on new technology features and developments and education on the benefits of our solution for patients.
- **Investing in system enhancements to meet the evolving needs of doctors and other providers as well as patients.** We will continue to enhance our RxSight system to improve the patient and doctor and other provider experience, which we expect will help drive adoption. Since our commercial launch, we have implemented a number of impactful product enhancements across our hardware and software platforms, including increasing the range of available LAL powers, modifying the LAL to improve image quality, reducing the margin of residual refractive error, developing new UV spectacles with improved aesthetics and usability and adding a photosensitive anterior layer to help protect the lens from unwanted UV exposure. Our near-term product enhancement efforts are focused on improving ease of use, functionality, cost and efficiency. For example, we are at an advanced stage of development with a working prototype of a lower cost version of the LDD, which we believe will help increase its affordability to lower volume premium IOL practices and facilitate broader adoption across the ophthalmic surgery community. It is anticipated that this lower cost LDD would require a 180 day PMA Supplement for approval in the United States and will require CE Mark certification through a notified body for registration in the European Union.
- **Expanding the RxSight system's indications to address additional patients and procedures.** We believe our RxSight system is a platform technology that can be used to address a substantial portion of the IOL market. Since our initial FDA approval in November 2017, we have received fifteen supplemental approvals that enable the RxSight system to meet evolving customer needs. These approvals include increasing the range of LAL powers, treatment of lower amounts of residual astigmatism, allowing an optional third refractive adjustment, additional UV protection from ambient UV sources and improved surgical tools.

- **Growing our commercial operations in international markets.** While our current commercial focus is on the large opportunity within the United States, we believe the RxSight system offers compelling benefits for the large population of cataract patients in international markets. According to MarketScope, 75% of the premium IOL procedures in 2020 were outside the United States. Our system has CE Mark approval and approval in Mexico for improving uncorrected visual acuity by adjusting the LAL power to correct residual postoperative refractive error. We may selectively pursue commercial expansion in these or other geographies that accept these approvals in the future, with a priority on markets where we see significant potential opportunity. New approvals may also be sought in large cataract markets with more complex regulatory processes in Asia.
- **Scaling our business to achieve cost and production efficiencies.** We expect to realize operating leverage through increased scale efficiencies as our commercial operations grow. We have executed a number of design and manufacturing process improvements to streamline both LAL and LDD production, while also improving quality and reducing cost. We are also concurrently executing on our strategy to optimize our diverse supply chain and to develop second sources from less expensive suppliers. We anticipate that the combination of these strategies will drive margin improvement.

Our market and industry

Overview of cataracts

Cataracts are an irreversible and progressive ophthalmic condition in which the eye's natural lens loses its original transparency and increasingly obstructs or otherwise interferes with the passage of light to the retina, leading to loss of vision and (in advanced cases) to blindness. While there are multiple causes of cataracts, most are age-related. Cataracts affect approximately 50% of all adults by the age of 60 with prevalence continuing to increase with age. As cataracts progress, they also can increase the eye's sensitivity to light, particularly at night. Cataract formations occur at different rates but affect both eyes in most cases. According to the National Eye Institute, cataracts are the leading cause of blindness worldwide, despite the availability of effective surgical treatment.



Cataract patients are also often burdened by other common visual disorders, such as refractive error and presbyopia. Refractive errors, caused by mismatches in the focusing power of the anterior structure of the eye (cornea and lens) that prevents proper focus of light onto the retina, includes myopia (near-sightedness, or the inability to see clearly at distance), hyperopia (farsightedness or the inability to see clearly at close up) and astigmatism (distorted vision at all distances). Astigmatism generally is caused by an imperfection in curvature of the cornea. Presbyopia typically occurs in middle age and is caused by the loss of accommodation (flexibility) of the lens of the eye, resulting in the gradual loss of the eyes' ability to focus on nearby objects.

Amongst the common visual disorders, cataracts are unique in that they cannot be treated non-invasively with eyeglasses or contact lenses. Most patients are typically diagnosed with cataracts during a routine annual visit to their optometrist (“OD”). Once a patient has been diagnosed with cataracts, eyeglasses may help improve vision temporarily; however, surgery is usually recommended to replace the affected natural lens and the OD may refer the patient to a cataract surgeon (ophthalmologist).

Overview of cataract surgery

Cataract surgery is the most common surgical procedure in the world. In 2020, 22 million cataract surgeries were performed globally, of which 3.7 million were performed in the United States. The number of cataract surgeries performed globally and in the United States is expected to continue to expand as the population over 60 years old is expected to double by 2050, increasing from 962 million (13% of the total population) in 2017 to two billion (21% of the total population) by 2050.

Cataract surgery involves replacement of the patient’s natural cloudy lens with a clear artificial IOL. Cataract surgery is often bifurcated into two procedure categories, conventional and premium, delineated by the type of lens used during surgery. In conventional cataract surgery, the patient receives a monofocal IOL implant, which is designed to provide vision at one pre-defined distance without correction for other visual problems that often affect cataract surgery patients such as corneal astigmatism and presbyopia. Nearly all patients undergoing conventional cataract surgery will need to rely on glasses to achieve the best distance, intermediate and near vision. Premium cataract surgery involves the use of premium IOLs which are designed also to correct for corneal astigmatism and/or presbyopia. The most commonly used premium IOLs in the market today include multifocal, EDOF and toric lenses. These product offerings reduce the need for spectacles relative to conventional IOLs, but still impose trade-offs with respect to their ability to provide spectacle-free near, intermediate and distance vision.

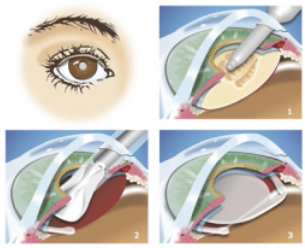
When preparing patients for cataract surgery, surgeons must have a comprehensive understanding of available IOL options and how to best match a patient to the technology that fits their priorities. Patient decisions are based on a number of factors and tend to be heavily influenced by surgeon recommendations as well as the individual patient’s motivation for spectacle independence as well as willingness to tolerate side effects. During an initial consultation, cataract surgeons often ask patients to fill out a survey regarding their vision experiences and expectations to determine if the patient is a good candidate for a premium IOLs. If the patient is deemed to be a candidate, the surgeon then helps select the appropriate IOL based upon the patient’s lifestyle and therefore the type of vision they most value (i.e., near, intermediate or distance). Significant time is often required to educate patients on the various trade-offs with respect to the visual outcomes associated with each type of premium IOL. Following the patient consultation, surgery is usually scheduled within several weeks or months.

Prior to surgery, the surgeon will have the patient’s eyes measured using one or more diagnostic devices that help the surgeon predict the lens focusing power best suited to achieve the optimal postoperative outcome. Focusing power, expressed in diopters (D), refers to how a lens focuses light to a point (spherical power) or a line (cylindrical or astigmatic power). Accurately predicting lens power is critical to reducing postoperative residual refractive error and delivering the best possible visual outcome.

Once surgery begins, the clouded lens is usually removed through a process known as phacoemulsification. During phacoemulsification, an ophthalmic surgeon makes a small surgical incision in the cornea and inserts an ultrasonic probe that breaks up, or emulsifies, the clouded lens while a hollow needle removes the pieces of the lens. After the cataract is removed, the surgeon inserts the replacement IOL through the same surgical incision. In the United States, cataract surgery is commonly performed in the outpatient setting, such as an Ambulatory Surgery Center (“ASC”), by an ophthalmologist specializing in cataract surgery and often requires only 5 to 15 minutes to complete

the procedure. Typically, the patient returns a day after surgery to have their eye evaluated and ensure healing is underway. After approximately one month, patients that received a conventional lens usually return to their optometrist to be fitted for glasses. Patients that selected premium IOLs but are unsatisfied with their visual results may be fitted for glasses or elect for a secondary, remedial procedure.

Illustrated below is an eye before cataract surgery. In Image #1 the surgeon has made a small surgical incision in the cornea and has inserted an ultrasonic probe to break up the clouded lens while the hollow needle (at the tip) removes the pieces of the lens. Image #2 illustrates the eye after the cataract is removed and the surgeon inserts the replacement IOL through the same surgical incision. Image #3 illustrates the new lens before the surgical incision is closed.



In the United States, a healthcare payor (primarily CMS) typically reimburses approximately $1,350 for a conventional cataract surgery. This reimbursement is comprised of an approximately $500 surgeon fee plus an approximately $1,000 facility fee, which includes a conventional IOL. Accounting for reductions in CMS reimbursement and for inflation, reimbursement has decreased two thirds since 1991. The surgeon fee covers all pre-operative cataract testing, the cataract operation and follow-up care for three months. In premium cataract surgery the healthcare payor (primarily CMS) also reimburses the same surgeon and facility fees, but the patient pays the surgeon an additional fee of between $1,489 for a toric IOL and an average of up to $2,398 for other premium lenses, which includes the cost of the premium IOL.

Our market opportunity

In 2020, conventional cataract surgery represented 89% of procedures worldwide and 86% of procedures in the United States; however, the premium IOL market is approximately 37% of the total IOL market today, due to higher lens pricing, and is expected to grow significantly faster. According to MarketScope, the conventional IOL market was approximately $2.3 billion worldwide in 2020 and is expected to grow at a CAGR of 10.5% between 2020 and 2026. Premium IOL revenue was approximately $1.4 billion worldwide in 2020 and is expected to grow at a CAGR of 14% over the same period. The premium cataract surgery market is expected to grow at a meaningfully higher rate than the conventional cataract surgery market due to a number of factors including the growing number of patients who prefer to be spectacle-free post-surgery, technological innovations in premium IOLs, increased access to healthcare and rising disposable income. Premium cataract procedures are also between 10 and 15 times more profitable for doctors and ophthalmology practices than conventional cataract procedures and less impacted by changes in reimbursement because patients are required to pay out-of-pocket to cover the full or incremental costs of premium cataract procedures (depending on the country), while healthcare payors typically cover the full cost of conventional cataract procedures.

We believe there is an opportunity to not only gain share in the premium IOL segment of the market but also increase penetration of premium IOLs in the broader IOL market, by converting doctors and other providers and patients currently electing for conventional cataract surgery. While 60% of cataract patients rate being spectacle free after cataract surgery as extremely important, premium IOLs represented only 11% and 15% of the procedures worldwide and in the United States, respectively, in 2020. We believe that the premium cataract surgery market remains underpenetrated due to both doctors' and other providers' reluctance to recommend premium IOL offerings to the full universe of eligible patients and patients' confusion in assessing the tradeoffs associated with the wide range of commercially available premium IOL offerings. Furthermore, we believe current premium IOL offerings often cannot deliver on patient expectations with respect to the patient's ability to see at near, intermediate and far distances without reliance on spectacles.

We are currently focused on further driving awareness and penetration of our system in the premium cataract surgery market, and in the near term, are primarily focusing our commercial efforts on our RxSight system within the United States. We believe this is the most compelling market given the large population of individuals above the age of 60 that are covered by health insurance, the concentrated base of cataract surgeons experienced with premium IOL offerings, the high gross domestic product per capita and the favorable US healthcare reimbursement system which has a well-established history of covering a portion of the cost for cataract surgery.

Overview of non-adjustable premium IOLs and their limitations

Premium IOLs are designed to correct for the shortcomings of conventional monofocal lenses by correcting for the additional visual problems of astigmatism and/or presbyopia. Astigmatism occurs when there is imperfection in the curvature of the cornea, resulting in blurred distance and near vision. Presbyopia is the gradual loss of the eyes' ability to focus on nearby objects. Individuals usually begin to experience the effects of presbyopia in their early 40s.

The two primary categories of alternative premium IOLs are presbyopia-correcting IOLs, which include multifocal and EDOF lenses, and astigmatism-correcting, or toric, lenses. Each type of lens offers its own unique set of benefits but also trade-offs.

- ***Presbyopia-Correcting IOLs***
  - ***Multifocal Lenses.*** Multifocal lenses have two or more corrective zones, which allow the patient to receive focused light from different distances. Although multifocal lenses provide patients with a wider range of vision compared to the standard monofocal IOLs, multifocal lenses split light across the multiple corrective zones on the lens, sometimes impacting the patient's visual quality. For example, approximately 2-3 times as many patients who choose a multifocal lens over a monofocal lens experience side effects such as glare and halos, as well as reduced contrast vision, which are especially problematic in dim and low light situations such as driving at night. For some patients these become more pronounced and can lead to explantation (removal of the IOL and replacement with another type of IOL).
  - ***EDOF Lenses.*** Unlike multifocal lenses, EDOF lenses have only one corrective zone; however, they create an elongated focal point that allows for a broader range of vision, although patients will still often require glasses for distance and near vision. EDOF lenses will still typically result in glare and halos, as well as reduced contrast vision, although generally less severe than those experienced with multifocal lenses.

- ***Astigmatism-Correcting or Toric Lenses.*** Toric lenses correct for astigmatism, a condition in which the cornea is not uniformly curved leading to distortion of near and distance vision. Approximately 70% of the population has clinically significant astigmatism of 0.5 diopters or more, according to the MarketScope 2021 IOL report. Corrective toric lenses can provide additional distance, intermediate or near vision correction depending on the power of the lens selected and if their optical design incorporates either multifocal or EDOF features. However, according to the same MarketScope report, surgeons only attempt to correct astigmatism 49% of the time and only 33% of cases use toric lenses. Survey results on the reason for the low adoption rate include poor precision in correcting astigmatism and the requirement of expensive diagnostic equipment.

On the two most recently published ESCRS clinical trend surveys, 44% of surgeons and 36% of surgeons reported factors that discourage them from offering premium IOLs due to concern over nighttime vision and loss of contrast sensitivity, respectively. A key limitation of alternative premium IOLs is that they cannot be adjusted after the surgery and, as such, require the patient to commit to a desired visual outcome prior to the procedure. However, in discussing vision optimization options with patients ahead of the procedure, it is not easy to demonstrate different visual outcomes to patients with cataracts. Once a premium IOL is selected, another key limitation is the ability of the surgeon to implant the IOL with the level of accuracy required to deliver the patient's expected outcome. Because the lens power of alternative premium IOLs cannot be changed after implantation, doctors and other providers typically spend a great deal of time on preoperative measurements to estimate the most suitable lens power for the patient; however the same diagnostic tests and predictive formulae used for selecting the spherical power of the premium IOL are also used for conventional IOLs. Additionally, the incision made to remove the cloudy lens and insert the IOL along with the resultant healing process often results in the creation of additional levels of astigmatism, which cannot be predicted with precision before cataract surgery. A separate LASIK procedure is the most common surgical procedure to correct any residual visual errors following the cataract procedure.

We believe that the need to commit to a visual outcome before surgery combined with the limited ability to adjust following the procedure are key factors contributing to the low levels of penetration of premium cataract surgery. When expectations regarding postoperative visual acuity and spectacle independence are not met, patients are often disappointed. As a result, surgeons are often less willing to recommend existing premium IOLs to their patients.

Our solution

We designed our RxSight system to address the shortcomings of existing premium IOL technologies and provide a solution that doctors and other providers can trust to improve visual outcomes. We began commercializing our solution in the United States in the third quarter of 2019 and are focused on establishing the RxSight system as the standard of care for premium IOL procedures. As of March 31, 2021, we had an installed base of 105 LDDs in ophthalmology practices, and since our inception over 10,000 surgeries have been performed with our system.

Overview of the RxSight system

Our RxSight system is the first and only FDA-approved IOL technology that enables doctors to customize and optimize visual acuity for patients after cataract surgery. With the RxSight system, the doctor performs a standard cataract procedure to implant the LAL, determines refractive error with patient input after healing is complete, then uses the LDD to reshape the LAL to achieve the patients' desired vision outcomes. Our RxSight system is comprised of two key components, along with other intraoperative and postoperative accessories:

- **RxSight Light Adjustable Lens**: The LAL is our proprietary IOL that can be adjusted postoperatively to improve uncorrected visual acuity. Our novel IOL is made of special photosensitive material that changes shape and power when a specific pattern of UV light is delivered from the LDD.

- **RxSight Light Delivery Device**: The LDD is our proprietary office-based light treatment device that delivers UV light in a precisely programmed pattern to induce a predictable change in the shape and refractive properties of the LAL, enabling surgeons to precisely modify the LAL based on the visual correction needed to achieve the patient's desired vision after cataract surgery.

Our foundational technology

We have developed our RxSight system over the last 20 years and have incorporated expertise and proprietary technologies across multiple disciplines, including optics, material science, chemistry, software and hardware engineering. The proprietary RxSight technology that enables post-operative adjustability is based on the principals of photochemistry. The LAL is made of a photosensitive material that changes shape and power when a specific pattern of UV light is delivered to the LAL.

Our LAL, which we manufacture using our proprietary silicone formulation, leverages the unique material properties of silicone. A silicone molecule consists of an inorganic silicon-oxygen backbone, which is a chain of alternating silicon and oxygen atoms with an attached side group, which is a pair of organic molecules bonded

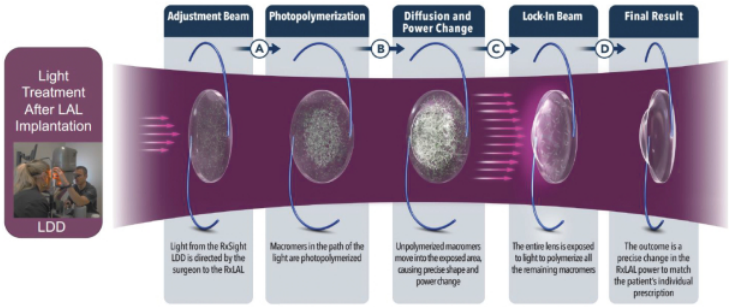
to each silicon atom in the chain. Through a process called polymerization, silicone monomers (short chain molecules) are reacted together to form silicone polymers (long chain molecules), which may be cross-linked at multiple points resulting in three-dimensional, rather than linear, structures. By varying chain length, attached side group and cross-linking design, silicone polymers can be tailored to have unique properties, leading to their broad use across a wide array of applications. We have developed a novel application of silicone to optimize the mechanical and optical properties of IOLs in order to improve vision in patients following cataract surgery.

To create the LAL, we use a composition of silicone polymers and monomers, the latter which we call “macromers”, mixed with photo-active molecules and other compounds. The initial composition of our lens material is a viscous liquid that is thermally cured in a lens mold. Thermal curing and photopolymerization use temperature and ultraviolet light, respectively, to initiate and propagate a polymerization reaction. To avoid polymerizing the macromers in the composition, the thermal curing is performed at a low temperature. The partial polymerization of the LAL results in a solid but soft silicone lens, leaving the photosensitive macromers unpolymerized and distributed throughout the lens. While the resulting lens is optically clear, the macromers and photo-active molecules remain free to continuously move within the lens.

After packaging and sterilization, the LAL is ready to be implanted as part of a standard cataract surgical procedure to replace the patient’s natural lens. Once wound healing is complete, a short exposure of UV light is applied to the LAL to adjust the refractive properties of the lens. When the UV light is directed to a specific portion of the lens, the exposed macromers in that portion of the lens are polymerized and become stationary. This creates an excess concentration of free macromers in the unexposed portion of the lens and sets up a diffusion gradient over which the unpolymerized macromers move from the concentrated area to the less concentrated area. Over the next one to two days, the unpolymerized macromers redistribute across the lens to achieve a uniform distribution. The redistribution of the macromers causes the exposed portion of the lens to swell relative to the unexposed portion of the lens, enabling refractive power change.

The movement of the macromers causes a highly predictable change in the curvature of the lens. If the central portion of the lens is exposed to UV light, unpolymerized macromers in the periphery of the lens move into the central portion. As a result, the central portion of the lens swells, creating a lens shape for correction of hyperopia. Conversely, if the periphery of the lens is exposed to UV light, unpolymerized macromers in the central portion of the lens migrate into the periphery. As a result, the periphery of the lens swells, creating a lens shape for correction of myopia. In addition to spherical correction for myopia or hyperopia, customized cylinder adjustments along any axis of the lens can be targeted to correct for astigmatism.

The table below illustrates the photopolymerization process that results in the change to the curvature of the lens:



To achieve the desired refractive change in the LAL, our LDD uses proprietary software and algorithms to deliver a short UV exposure treatment that polymerizes specific portions of the lens according to a predefined pattern of light, called a nomogram. Nomograms allow for adjustment of spherical and cylindrical refraction in 0.25 diopter increments, like the adjustment increments used to refract patients for glasses or contact lenses, as well as in other refractive procedures like LASIK, which has similar refractive accuracy. Designed for placement in the doctor's or other provider's office, the LDD is a combination of a standard slit lamp and a digital light projector. The slit lamp portion allows the doctor to see inside the patient's eye and align the light beam with the LAL. The digital light projector portion projects an image onto the LAL using DLP technology that has approximately 250,000 micro mirrors that are electronically activated to represent an image stored in memory.

Each UV light treatment consumes only a portion of the macromers in the lens, allowing the LAL to be adjusted multiple times. This process can be repeated up to 3 times over a period of several weeks, until the patient and doctor are satisfied. The entire lens is then polymerized to provide a stable correction. After adjustment light treatments are completed, one or two lock-in light treatments are applied to consume all remaining macromers and photo-active compounds. After the final lock-in treatment, the lens power can no longer be adjusted.

Our approach

With the RxSight system, the surgeon first performs a standard cataract implant procedure, replacing the patients' natural lens with the LAL. Following the surgery, after a healing period of 2 to 3 weeks, the patient returns to the doctor's or other provider's office and undergoes a standard post-operative refraction. Using a traditional phoropter and vision chart, the clinician determines the refractive error and the prescription required to give the patient the best vision. However, rather than giving the patient a prescription for glasses, the clinician inputs the prescription into the LDD's graphical user interface. The patient's eye is then dilated, and a contact lens is applied to the eye when they are seated in front of the LDD for a light treatment. Based on the prescription input, the LDD generates a programmed, predetermined exposure of UV light. For a period of

between 30 seconds and 2.5 minutes, the light painlessly and non-invasively re-shapes the LAL IOL in the eye, to correct the measured refractive error. The entire procedure takes approximately 3 to 5 minutes. The patient then returns approximately three to five days later for additional possible light treatments to adjust their vision as desired or to lock-in the lens. Although a patient can receive up to three adjustments, the average number of adjustments in our clinical trial was 1.6.

The RxSight system enables a fully interactive and iterative process to optimize visual acuity with patients able to compare possible vision outcomes based on their unique preferences and lifestyle requirements before selecting a final prescription for their adjustable lenses. In clinical practice since FDA approval, approximately two thirds of patients undergoing multiple adjustments have requested a change from their original spherical target highlighting the importance of adjustability and customization. From the time of surgery until 24 hours after the LAL is locked in, the patient is required to wear ultraviolet (UV) light protective glasses, as unprotected exposure to light can cause uncontrolled changes in the LAL. The patient may remove the glasses for sleeping, showering and applying eye drops as long as they are not exposed to sunlight.

Blended vision approach with RxSight

In clinical practice, doctors often use the enhanced accuracy and precision of the LAL, as well the ability to customize the correction in each eye after surgery, to improve upon the commonly used blended vision approach to presbyopia treatment. Blended vision (sometimes referred to as monovision or mini-monovision) is commonly selected by presbyopic patients without cataracts as a means to achieve spectacle independence. When used with contact lenses or LASIK, the vision in one eye is corrected more for far-distance, while the other eye is corrected more for near and intermediate distance. This approach is also commonly employed in conventional (monofocal) cataract surgery patients, with nearly 30% of patients receiving blended vision, about three times the rate for presbyopia correcting IOLs. While blended vision using conventional monofocal IOLs can provide improved near and intermediate vision for patients, it is susceptible to the same limitations of accuracy and precision as these IOLs have for distance vision, particularly for astigmatism correction. In addition, patients are very sensitive to which eye is used for near, as well as the difference in focusing power between the two eyes, neither of which can be fully evaluated prior to cataract surgery due to the presence of reduced vision (from the cataract). For all these reasons, doctors often stagger surgery in the two eyes to evaluate outcomes in the first before proceeding to the second.

We believe the LAL offers a number of potential advantages when taking a blended vision approach. First, because the LAL is going to be adjusted postoperatively, there is no refractive benefit to delaying surgery on the second eye. Doctors often choose to perform surgery in each eye within a week so that the LALs can be adjusted together to optimize vision with both eyes simultaneously. Additionally, the LAL reduces residual astigmatism more effectively (even for the most common low levels), which is known to improve blended vision performance. Finally, the LAL's spherical power can also be adjusted to customize the vision in both the near and distance eye, as well as to minimize the difference between the two. While this difference usually ends up being within a diopter or less, a level that is generally well accepted by patients, there is considerable variability between individuals. For all these reasons, approximately 80% of LAL patients in clinical practice receive some form of blended vision.

Key Benefits for Patients

We believe RxSight offers significant patient benefits relative to other commercially available premium IOLs:

- **Superior vision outcomes.** In the pivotal study that formed the basis for our FDA approval, the observed rate of eyes with 20/20 or better uncorrected distance visual acuity for our LAL was 70.1%. This compares favorably to the results of pivotal studies with similar study designs and patient populations that supported FDA approval of Alcon's Acrysof Toric (38.4%), and J&J's Tecnis Toric (43.6%).

- **Post-operative customization.** In contrast to alternative conventional and premium IOL solutions, our system enables patients to preview and compare possible vision outcomes after surgery based on their unique preferences and lifestyle requirements before they select a final prescription for their adjustable lens. With up to 3 possible light treatments, patients can dial-in their optimal visual acuity through an interactive and iterative process. After the initial light treatment, patients trial their vision for 3 to 5 days. Patients may then return for additional light treatments to adjust their vision as desired or to lock-in the lens.
- **No increase in glare and halo.** Our LALs do not induce higher rates of glare and halos compared to monofocal IOLs. In contrast, multifocal IOLs, generally relied upon to improve near vision, are associated with a higher incidence of unwanted side-effects including reduced contrast sensitivity and increased glare and halos around bright lights. This is true for both multifocal and EDOF IOLs resulting in a significant rate of lens removal of the IOL and replacement with another type of IOL. In FDA studies for the Alcon Panoptix, J&J Symfony and Alcon Vivity lenses, 48.8%, 59.2% and 17.0% of subjects, respectively, reported being bothered by halos postoperatively.
- **Minimally invasive procedure**. The RxSight system can reduce the potential for secondary surgical procedures by correcting residual refractive error after surgery using our office based LDD to shape the LAL. With other premium IOLs, a separate LASIK procedure is generally the only way to correct for residual visual errors following the primary cataract procedure.

Key benefits for doctors and other providers

We believe RxSight offers significant benefits to doctors and other providers relative to other commercially available premium IOLs, the primary benefits of which include the following:

- **Clear value proposition for patients, allowing doctors and other providers to build their premium cataract practices.** Rather than having to explain to patients the complicated trade-offs with respect to visual outcomes as well as predict refraction before surgery, the surgeon is able to simply tell the patient that their vision will be corrected post-operatively, similar to receiving a pair of glasses. The doctor or other provider can also share the clinical results with the patient, which we believe are compelling and give the patient reassurance that the procedure will provide them with the desired results.
- **Doctor and other provider confidence.** The clinical benefit of “dialing-in” to achieve superior visual outcomes after the procedure will give doctors and other providers more confidence to recommend a premium IOL solution that can meet patients’ expectations. The doctor does not need to decide prior to surgery whether the patient will be particularly sensitive to sub-optimal visual outcomes or side effects (such as glare, halo and loss of contrast). The patient is also unlikely to need a post-operative adjustment such as LASIK to improve the patient’s vision.
- **Fewer intraoperative measurements.** Doctors can spend a great deal of time on intraoperative measurements to better estimate the most suitable lens power to implant since the lens power of existing premium IOLs cannot be changed after implantation. With the RxSight system, surgeons are not as dependent on intraoperative equipment for measurements. Instead, the surgeon can focus on the surgical procedure as residual refractive error can be corrected post-operatively with the LDD adjustment.
- **Broad application across different patients’ needs.** We offer a single IOL that can address a broad range of patient types and needs, while providing a solution that doctors and other providers can trust to improve visual outcomes. For example, according to the Market Scope 2021 IOL report, surgeons only use Toric lenses in 33% of astigmatism cases, citing poor precision in correcting astigmatism and the requirement of expensive diagnostic equipment. With the ability to correct down to 0.5 diopters of astigmatism in 0.25 diopters steps, the LAL can address a much wider portion of the underserved astigmatic market.

- **Satisfied patients leading to potential referrals.** While patients need to wear UV protective glasses for a few weeks, and return for adjustment visits, patients ultimately have reduced dependence on glasses and few side effects. Improved visual outcomes can drive patient referrals and increase the number of premium IOL surgeries, which generally have higher revenue and profit margin than conventional procedures.

We believe these compelling points of differentiation relative to other commercially available premium IOLs offer key benefits for patients and doctors and other providers that will drive broad adoption of the RxSight system.

Clinical results and studies

The LAL has close to twenty years of clinical history, dating back to first human implantation in 2002. Prior to FDA approval at the end of 2017, most of the early clinical work was completed outside the United States. During this period, RxSight demonstrated the safety, long term stability and usability of this technology. These early clinical and commercial results led us to formally initiate US clinical studies. We have completed one phase 2 study and our phase 3 pivotal randomized clinical study.

Phase 2 study

In 2010, we completed an FDA Phase 2 study, where 74 subjects had one eye randomly mistargeted during cataract surgery to either -1.00, 0.00, or +1.00 D. Light treatments were performed to address spherical refractive error and 80.8% of the subject eyes achieved a manifest refraction spherical equivalent (MRSE) within 0.50 diopters of target. Three-year follow-up demonstrated excellent long-term safety of the LAL.

Phase 3 pivotal study

Based on these results and the development of light profiles that reduce residual astigmatism, a Phase 3 Pivotal randomized clinical study of 600 subjects was initiated to evaluate the safety and effectiveness of performing light treatments to correct postoperative spherical and cylindrical refractive error. One-year follow-up of subjects from 17 investigational sites was completed on July 20, 2016.

In this study, 391 subjects had the LAL implanted in one eye and the results were compared at the six-month post-operative visit against 193 subjects with a monofocal control IOL implanted in one eye. The LAL met all primary effectiveness endpoints and was approved by the FDA on November 22, 2017 as the first commercially available adjustable IOL. 70.1% of LAL subjects achieved monocular uncorrected distance visual acuity of 20/20 or better compared to 36.3% of the eyes implanted with the monofocal control IOL. In addition to being statistically significantly better than the control IOL, the observed rate of eyes with 20/20 or better uncorrected distance visual acuity was the highest reported for any approved intraocular lens and approximately twice what was observed by the two most popular astigmatism correcting IOLs (38.4% by Alcon's Acrysof Toric, and 43.6% by J&J's Tecnis Toric) in similar patient populations in the pivotal studies that led to their approvals by the FDA.

Residual astigmatism was dramatically reduced in the LAL subjects, with 82.4% of LAL subjects having 0.50 diopters or less of manifest astigmatism 6 months after cataract surgery compared to 51.3% of eyes with the monofocal control IOL. This is also significantly better than the performance of both the Acrysof Toric (61.6%) and Tecnis Toric (72.3%) IOLs in similar patient populations in the pivotal studies that led to their approvals by the FDA.

In addition to correcting residual astigmatism, LAL subjects received a correction of residual error in MRSE. 92.1% of LAL subjects were within 0.50 diopters of target (compared to 83.4% observed in the control group). In 2018, the European Database of Cataract Surgery (EUROQUO) showed that of 175,503 subjects, 74.0% of eyes were within 0.50 diopters of target. A survey of 97 LASIK research papers published between 2008 and 2015 showed that out of 65,974 subjects, 90.9% were within 0.50 diopters of target. Thus, the LAL demonstrated superior accuracy to conventional cataract surgery and equivalent performance to LASIK.

During the pivotal study, the residual astigmatism was treated using light treatments that corrected between 0.75 and 2.00 diopters per treatment. After completion of this study, a low astigmatism treatment of 0.50 diopters was developed. Under FDA guidance, we conducted a clinical study of 25 subjects who had exactly 0.50 diopters of residual astigmatism 3 weeks after implantation of the LAL. These subjects were treated with the new light treatment and effectiveness was evaluated 3 months after cataract surgery. On August 7, 2020, the FDA granted us approval to distribute this device improvement based on a mean manifest astigmatism of 0.14 diopters compared to a historical control of 0.40 diopters from a monofocal control IOL.

Reduction in "Outliers"

We believe it is important to interpret the results of clinical studies in the context of the premium lens market. Typically, customers will receive conventional monofocal IOL implantation with a relatively small out of pocket expense. For all premium lenses, however, the patient incurs a significant additional cost, with the expectation of an improved outcome. Therefore, when a patient receives a mediocre or poor outcome (i.e., "outlier" patients), they can be especially disappointed. The three FDA studies presented in Table 1 were conducted to support FDA approval of the listed IOL. While these studies were conducted independently of each other and not as a head-to head comparison, we believe a comparison of the results of these studies is meaningful as they included similar patient populations, study design, follow-up period and study endpoints, as shown in Table 1 below. Importantly, the proportion of these "outlier" patients in the studies was reduced with the LAL with the chance of having significant residual astigmatism (> 1.00 D) or degraded visual acuity (worse than 20/32) ranging from 1.3%-1.5% for the LAL compared to 5.9-16.6% for the other toric IOLs.

Study Lens	**LAL**	**Tecnis Toric**	**Acrysof Toric**
Number of Clinical Sites	17	14	11
Control Lens	Monofocal IOL	Monofocal IOL	Monofocal IOL
Study Lens Sample Size	391	174	244
Control Arm Sample Size	193	95	250
Study Arm Subject Age: Mean [Min, Max]	65.6 [41,80]	69.4 [41,87]	71.2 (N/A)
Study Outcomes	Statistical comparison of means and proportions	Statistical comparison of means and proportions	Statistical comparison of means and proportions
Range of Pre-operative Cylinder	0.75 - 3.50	0.75 - 3.62	0.75 – >2.00
Follow-Up Period for Primary Endpoints (months)	6 M	6 M	6M
Range of Lens Cylinder Refractive Correction	0.75 - 2.00 (per adjustment)	1.03 - 2.74	1.03 - 2.06
Residual astigmatism worse than 1.00 D (%)	**1.5%**	**5.9%**	**12.3%**
UCDVA worse than 20/32 (%)	**1.3%**	**10.9%**	**16.6%**
Study Lens Total Adverse Events	6.4%	6.9%	3.3%
Device Related Study Lens Surgical Re-interventions	1.7%	2.3%	1.6%

Table 1. Comparison of Toric IOL Studies using publicly available data for LAL(P160055), Tecnis Toric (P980040/S039) and Acrysof Toric (P930014/Sl5) IOLs.

Application to blended vision

Light treatment data from the first 2,325 commercially treated LAL's indicated that nearly 80% of commercial patients received some form of blended vision with a mean target of 1.00 diopters of add in their "near" eye. One of the unique aspects of the LAL is that patients undergo post cataract surgery light treatments during which they can provide feedback to their doctor about their visual preferences as the amount of refractive difference that is well tolerated between the two eyes is very patient dependent. Importantly, LDD data indicates that nearly two thirds of LAL patients elect to change the target refraction in either the near or distance eye compared to the originally selected target treatment, something that would not be possible with a conventional IOL (except through a second surgical procedure such as LASIK). The graph below shows a histogram of initial and final near add targets in LAL subjects.

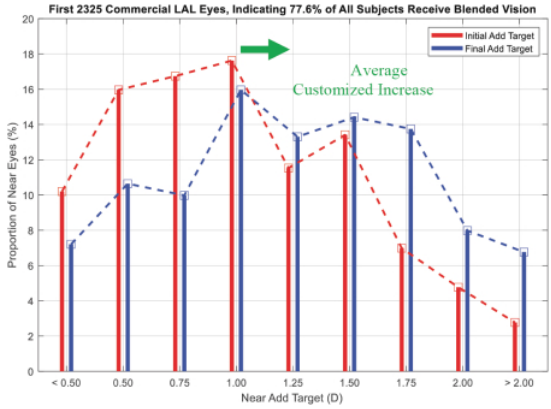


Figure 1: Distribution of initial and final Near Add of over 2,000 commercial LAL eyes.

Three surgeons have reported clinical results using blended vision. Their results are summarized in the table below:

Site	Near add	# of subjects	Proportion of subjects with simultaneous uncorrected binocular visual acuity of 20/20 at distance and J1 at near or better
Codet Vision Institute (Dr. Chayet)	Fixed 1.00 D	25	55%
Aloha LASER (Drs. Nikpoor and Faulkner)	Customized (1.50 D mean)	17	73%
Newsom Eye (Dr. Newsom)	Customized (1.29 D mean)	86	80%

The above results of up to 80% of patients with simultaneous uncorrected binocular visual acuity of 20/20 at distance and J1 (20/20) at near or better may be compared with the 40% of subjects achieving the similar level with the most recently approved diffractive multifocal IOL (Panoptix by Alcon).

Sales and marketing

We sell our RxSight system to cataract doctors and other providers and are initially focused on establishing commercial adoption in the United States. We commenced a limited launch in the third quarter of 2019 and full commercial launch in the first quarter of 2020 and are initially focused on surgeons that perform a high volume of premium cataract surgery procedures. The market is relatively concentrated as there are approximately 1,600 cataract surgeons that performed approximately 70-80% of the premium cataract procedures in the United States in 2020. These surgeons are typically part of larger ophthalmology practices with multiple cataract surgeons. According to MarketScope, there are approximately 4,000 surgeons that perform cataract surgery in the United States. These surgeons typically have refractive surgery practices offering LASIK and are skilled at selling premium procedures to patients on the basis that they offer better vision outcomes. When establishing new customer relationships with cataract surgeons, we typically enter into a sales contract for our LDD and consignment agreement for our LALs. While we are initially focused on the U.S. opportunity in the near term, we have received CE Mark and regulatory approval in Mexico for improving uncorrected visual acuity by adjusting the LAL power to correct residual postoperative refractive error and may selectively pursue future commercial expansion in Europe or other geographies that represent significant volume opportunity, including key markets in Asia. Market Scope estimates that the United States represents approximately 25% of the global premium IOL procedures and 40% of the global premium IOL market value.

We commercialize our products in the U.S. through our direct sales team which includes 6 sales directors, and a group of over 40 clinical specialists, field service and customer service personnel. Our sales directors and clinical specialists generally have relevant experience selling cataract surgery products, as well as medical device service and clinical experience. Our commercial strategy involves a “land and expand” sales model, through which we aim to drive adoption of our RxSight system by increasing our installed base of LDDs, which enable consumable revenues from the sale of our LALs. Our sales directors, all of whom have previous experience selling IOLs and capital equipment to cataract and refractive surgery practices, are responsible for establishing relationships with doctors and other providers and winning new customers. After training at our facility in California our sales directors are generally proficient to sell the LDD after two to three weeks, assisted, if necessary, by our clinical applications specialists. Our clinical specialists are focused on driving utilization of our LALs by helping customers succeed with our products and build their premium procedure practices. These team members are responsible for installing and training customers on the use of the LDD, fostering patient and education for doctors and other providers, training the clinic staff, ophthalmologists and surgeon on selling the benefits of our RxSight system to patients, assisting with patient flow processes for our light adjustable lens system, and providing ongoing customer support. Our clinical specialists will follow initial patients at new customers from implant to completion of LDD treatments, ensuring the surgery center, clinic, ophthalmologists, and surgeons are comfortable with the benefits of our system. While we believe we can cover this concentrated market with a focused sales force, we plan to continue to add highly qualified personnel to our commercial organization, with a strategic mix of sales directors and clinical specialists, to drive further awareness and penetration with cataract surgeons.

In addition to efforts focused on the high-volume cataract surgeons, we also aim to drive broad adoption with cataract surgeons and to make the RxSight system the standard of care for premium cataract surgery. To achieve this, our commercial organization is focused on driving awareness of the RxSight system through marketing efforts which include promotions at industry and society conferences, podium presentations, publications, social media, and educational webinars focused on highlighting the differentiated benefits of our system. While we

believe that most doctors and other providers who are experienced with premium IOLs require minimal training to utilize our system, we have also developed a robust education capability for doctors and other providers, including tools, training programs and peer-to-peer support to facilitate adoption across doctors and other providers with all levels of experience. Because cataract surgery using LALs is largely equivalent to the same surgery used for other IOL products, surgeons only require a one-time training on implantation of our LAL. The surgeon, optometrist and technicians are trained on the use of the LDD. Our clinical training specialist attends the first day the staff conducts the LDD treatments to answer questions and direct the process. The clinical training function is an essential component to properly onboard new customers in the United States and to help existing customers utilize the technology to its full potential. For this reason, all customer operations team functions are fully integrated with our sales team and collaborate on new customer onboarding as well as supporting customers with training of their new personnel, upgrades and new indications for use and on-call questions.

We believe providing ongoing support post-installation is critical to our success in commercializing the RxSight system. We maintain a team of field service engineers, distributed amongst our six core regions, who are responsible for the LDD installation, preventive maintenance and repairs when needed. This team is also responsible for conducting site surveys and ensuring a smooth installation process, typically over a four to five-hour window. The LDD's reliability has an MTBF (Mean-time-between-failure) of over 200 days, providing a stable uptime. In addition to our field service team, we have an internal customer experience department that directly supports the customer, clinical training specialists and the field service team. We measure our customers' onboarding satisfaction with an automated customer survey to all participants in the on-boarding training, after the surgeon has completed their first LAL surgery. The survey asks the customer to rate their satisfaction with the overall support and guidance provided by us during the product integration period. Our cumulative surveys, with 126 respondents, compiled as of Q1 2021 indicated 86.8% "Strongly Agree," and 13.2% "Agree" that they were satisfied with the overall support and guidance provided by us during the product integration period. We also elicit, in an open ended question, suggestions for improvement, with no comments noting a material dissatisfaction with the RxSight system or training. In addition, we conduct a customer satisfaction survey of all customers approximately every 12 months.

Research and development

Our research and development activities are focused on improving clinical outcomes, improving customer experience, expanding our indications for use, reducing manufacturing costs and lifecycle management. Since our initial FDA approval in November 2017, we have received fifteen supplemental approvals including:

- increasing range of available LAL powers (4.0 — 30.0 diopters from a previous range of 10.0 — 30.0 diopters);
- corrections of 0.50 diopters of residual refractive error (initial capability was for correction down to 0.75 diopters of residual refractive error);
- new LAL injector and cartridge for customer ease of use and smaller cataract incision size (less likely to induce corneal astigmatism);
- new UV spectacles with improved aesthetics and usability;
- addition of a photosensitive anterior layer that protects the lens from unwanted UV exposure (ActivShield); and
- Various manufacturing improvements for the LAL and LDD.

Ongoing future development activities are expected to include:

- reduced dependence on UV protective glasses and patient visits;

- cost reductions to the LDD; and
- continued LAL injector and cartridge improvement for surgeon and technician ease of use.

Research and development expenses were $21.9 million and $29.6 million for the year ended December 31, 2020 and 2019, respectively, and $6.6 million and $5.8 million for the three months ended March 31, 2021 and 2020, respectively.

Manufacturing and supply

We currently manufacture, assemble, test, and ship our LAL and LDD, and various accessory products including a custom injector system for use with our LAL at our campus of three facilities and approximately 110,000 square feet total in Aliso Viejo, California. We have intentionally pursued a vertically integrated manufacturing strategy offering critical advantages, including control over our product quality and rapid product iteration using strong R&D and quality groups. We believe our current manufacturing capacity is sufficient to meet our current expected demand for at least the next 12 months.

We are registered with the FDA as a medical device manufacturer and are licensed by the State of California to manufacture and distribute our medical devices. We are required to manufacture our products in compliance with the FDA's Quality System Regulation, or QSR (21 CFR 820). The FDA enforces the QSR through periodic inspections and may also inspect the facilities of our suppliers. We moved to our current Aliso Viejo, California facilities starting in April 2016, all of which have been registered with the FDA, the State of California, and the European Notified Body (British Standards Institution) for the manufacture and distribution of medical devices. The FDA conducted its most recent inspection of our facilities in May 2020.

We have received International Organization for Standardization, or ISO, 13485:2016 certification for our quality management system. ISO certification generally includes recertification audits every third year, scheduled annual surveillance audits and periodic unannounced audits. The most recent surveillance audit was conducted in January 2021 and recertification audit was conducted November 2018. Our next recertification audit and surveillance audit will be due November 2021. The last unannounced audit on our facilities was performed in May 2018. We have also received quality system certification to the Medical Device Single Audit Program (MDSAP) to cover the jurisdictions of United States, Canada, and Australia with plans to expand the certification to Brazil and Japan in November 2021 from the British Standards Institution, The MDSAP certification follows the ISO 13485:2016 certification schedule. To date, our surveillance and recertification audits have not identified any major non-conformities.

The LAL is a silicone intraocular lens made from a proprietary blend of custom chemical components. Chemical component vendors produce the raw materials, which we inspect, blend, further purify, and process, and formulate into uncured silicone blend. Using this uncured silicone, we mold the lens in one of our two Class 7 clean rooms. After curing, the molded lens is inspected and packaged and then sent to a third-party ethylene oxide sterilization vendor. After sterilization, the lens is returned to us for final inspection, packaging, and shipment to customers.

Our LDD is a UV projector medical device, which consists of an anterior segment biomicroscope, computer controllers for performing light treatments, and a biometrically designed patient interface and table. The optics are bonded into their mounts using epoxies, which are then oven cured, assembled into the main optical housing and optimized on a proprietary precision alignment station. The completed optical head is integrated into the table, along with a computer, power supplies and other electro-mechanical parts. We outsource the cables and circuit boards used in the LDD to certified specialty contract manufacturers. The fully assembled LDD is put through an electrical safety and final acceptance test process, and then reviewed by quality control, packaged and shipped directly to our customers for installation.

In addition, to aid the doctor in implanting the LAL, we provide several accessories including a custom insertion system and a contact lens. The insertion system consists of a disposable cartridge and a reusable injector handpiece. The disposable cartridge is processed, inspected, and packaged by us while having ethylene oxide sterilization performed by a third-party vendor. The reusable injector handpiece is manufactured by a third-party vendor and is inspected and packaged by us. We also manufacture, inspect, and package a reusable contact lens for administering UV light treatments. The end user is responsible for performing cleaning and sterilization of the injector handpiece and the contact lens following directions for use and hands on training provided by us. We also provide custom UV glasses that are manufactured by third party vendors, and then inspected and shipped by us from our facilities to our customers.

We use a combination of internally manufactured and externally sourced components to produce the LAL, LDD, custom insertion system, and other accessory products. Externally sourced components include off-the-shelf chemical, materials, sub-assemblies, and custom parts that are provided by qualified and approved suppliers. We also employ a third-party sterilization vendor. Some components are provided by single-source or sole source suppliers. While there are other suppliers that could make or provide any one of our single sourced components, we seek to manage single-source supplier risk by regularly assessing the quality and capacity of our suppliers, implementing supply and quality agreements where appropriate and actively managing lead times and inventory levels of sourced components. In addition, we are currently in the process of identifying and approving alternative suppliers to dual or multi-source certain of our LAL raw materials and LDD components. We generally seek to maintain sufficient supply levels to help mitigate any supply interruptions and enable us to find and qualify another source of supply. Order quantities and lead times for externally sourced components are based on our forecasts, which are derived from historical demand and anticipated future demand. Lead times for components may vary depending on the size of the order, time required to fabricate and test the components, specific supplier requirements and current market demand for the materials, sub-assemblies, and parts. In addition, COVID-19 has resulted in manufacturing interruptions at sole source suppliers in the United States, European Union, the U.K. and China, which we have been able to mitigate, to date, with selected pre-payment for product, expedite fees and longer-term orders.

Our suppliers are evaluated, qualified, and approved as part of our supplier quality program, which includes verification and monitoring procedures to ensure that our suppliers comply with FDA and ISO standards, as well as our own specifications and requirements. We inspect and verify externally sourced components under strict processes supported by internal policies and procedures. We maintain a rigorous change control policy to assure that no product or process changes are implemented without our prior review and approval.

Third-party reimbursement and patient billing

Dual aspect payment model

In the United States, the Centers for Medicare and Medicaid Services (CMS) has determined that the additional refractive correction provided by astigmatism correcting and presbyopia correcting (premium) IOLs is not a covered benefit. As described in two CMS rulings (CMS 05-01 and CMS 1536-R), premium IOLs have both a covered and non-covered aspect, providing the framework for the “dual-aspect payment model”. In effect since 2005, this model means that CMS does not reimburse the physician or the facility for the additional costs associated with a premium IOL, while still covering the cost of the conventional IOL procedure. Instead, the patient selecting a premium IOL is responsible for the additional charges from the physician and from the facility that exceed the regular charges for insertion of a conventional IOL that are submitted to CMS by each of these providers. As of 2017, CMS has recognized the LAL as an astigmatism correcting (premium) IOL, making it eligible for the dual aspect payment model. Most commercial payers mirror the Medicare rulings, but this can vary by payer.

Procedure coding and payment

In the United States, we typically sell our LAL products to ambulatory surgical centers (ASC) and (less commonly) to hospitals. These customers in turn bill various third-party payors, such as commercial payors and state and government payors, as well as patients directly for the services provided to each patient.

Third-party payors require physicians and hospitals to identify the service for which they are seeking reimbursement by using Current Procedural Terminology, or CPT, codes, which are created and maintained by the American Medical Association, or AMA. For cataract surgery, the most common specific CPT codes are 66984 (Cataract surgery with IOL, on stage) and 66982 (Cataract surgery, complex). The facility fees associated with these codes include payment for a conventional IOL, up to $150. A specific HCPCS code is listed on the CMS claim by the facility to indicate use of premium IOL for tracking purposes only (V2787 or V2788 for astigmatism-correcting or presbyopia-correction function of IOL respectively). Similarly, the physician includes HCPCS code A9270 (non-covered item or service) on their claim to Medicare (or another third party) to indicate charges for extended care related to the correction of refractive error.

While an Advanced Beneficiary Notice (ABN) or Notice of Exclusion from Medicare Benefits (NEMB) is not required, most providers issue an ABN or NEMB to alert patients that CMS (or non-Medicare payers) do not cover the additional charges associated with a premium IOL and to get the patient's agreement to pay these charges. Patients are then billed directly by the physician and the ASC for these charges. In some cases, the physician bills the patient exclusively and then reimburses the ASC for the additional cost of the Premium IOL.

Commercial payor and government program coverage

While the dual aspect payment model has been in use for over 15 years, the extent to which this model will be used by non-government third-party payors, such as commercial insurance, and managed healthcare organizations may vary. One third-party payor's decision does not ensure that other payors will also follow this model. As a result, the coverage determination process can require manufacturers to provide additional support for the use of a product to each payor separately. This can be a time-consuming process, with no assurance that the dual aspect model will be applied consistently.

Reimbursement outside of the United States

In international markets, reimbursement and healthcare payment systems also vary significantly by country, and many countries have instituted price ceilings on specific products and therapies. In many countries, analogous determinations to the dual aspect CMS ruling have been made, allowing for partial coverage of the cataract procedure by national health systems, with patients paying out of pocket for refractive services associated with the premium IOL. In other countries, such dual billing is not allowed, forcing patients to pay for the entire cost of the cataract surgery and IOL when a premium IOL is used. In such markets, it may be possible for doctors to charge separately for the cost of light treatments, which are not part of the cataract procedure. This method would require a different billing methodology by us than is currently used in the United States, where light treatments are included with the purchase of the LAL. There is no assurance that these methodologies will be allowed or that an adequate level of payment will be established, or that the third-party payors' reimbursement policies will not adversely affect the ability for manufacturers to sell products profitably.

Intellectual Property, License Agreements, and Other Material Agreements

Our success depends in part on our ability to obtain, maintain, protect, and enforce our intellectual property rights, including our patent rights, preserve the confidentiality of our trade secrets, operate without infringing, misappropriating or otherwise violating the intellectual property rights of others and prevent others from

infringing, misappropriating or otherwise violating our intellectual property rights. We rely on a combination of patent, trademark, trade secret, copyright and other intellectual property rights and measures to protect the products and technology that we consider important to our business. We also rely on know-how and continuing technological innovation to develop and maintain our competitive position.

Our policy is to seek to protect our proprietary position by, among other methods, pursuing and obtaining patent protection in the United States and in jurisdictions outside of the United States related to our technology, inventions, improvements and products that are important to the development and implementation of our business. Our patent portfolio covers various aspects of our LDD, LAL and related devices and methods.

The term of individual patents depends upon the legal term of the patents in the countries in which they are obtained. Generally, in the United States, issued patents are granted a term of 20 years from the earliest claimed non-provisional or Patent Cooperation Treaty ("PCT") filing date. In certain instances, a patent term can be adjusted to recapture a portion of delay by the U.S. Patent and Trademark Office, or the USPTO, in examining the patent application (patent term adjustment, or PTA) or extended to account for term effectively lost as a result of the FDA regulatory review period (patent term extension, or PTE), or both. Additionally, a patent term may be shortened if a patent is terminally disclaimed over an earlier filed patent. However, the life of the patent, and the protection it affords, is limited. In addition, we cannot provide any assurance that any patents will be issued from our pending or future applications or that any issued patents will adequately protect our current and future products. We also cannot predict the breadth of claims that may be allowed or enforced in our owned or in-licensed patents or whether such claims, if issued, will cover our products, provide sufficient protection from competitors or otherwise provide any competitive advantage. Any issued patents that we may own or in-license in the future may be challenged, invalidated, narrowed, held unenforceable, infringed or circumvented.

Our patent portfolio as of March 31, 2021 includes approximately 26 owned issued and non-expired U.S. patents, 11 pending U.S. non-provisional patent applications, three pending PCT applications, 16 issued and non-expired foreign patents, and 13 pending foreign patent applications. These owned patents, and the patents, if any, that issue from these patent applications are projected to expire between 2021 and 2041, in each case without taking into account any possible PTA or PTE and assuming payment of all appropriate maintenance, renewal, annuity, or other governmental fees.

As of March 31, 2021, we also have exclusively in-licensed approximately 5 issued and non-expired U.S. patents and 10 issued and non-expired foreign patents, which patents are projected to expire between 2031 and 2036, in each case without taking into account any possible PTA or PTE and assuming payment of all appropriate maintenance, renewal, annuity, or other governmental fees. These in-licensed patents are owned by the California Institute of Technology, or Caltech, and licensed to us, along with certain related technology, pursuant to our license agreement with Caltech effective as of July 28, 2015, or the Caltech Agreement.

Our patent portfolio, including our owned and exclusively in-licensed issued patents and patent applications, is generally directed to:

- Our current LAL : Some of the patents directed to our current LAL include, for example, U.S. Pat. No. 9,119,710, which is expected to expire in 2026, U.S. Pat. No. 10,470,874, which is expected to expire in 2026, and U.S. Pat. No. 10,874,505, which is expected to expire in 2033.
- Our future LAL as contemplated or in development: Some of the patents directed to our future LAL include, for example, U.S. Pat. No. 10,433,951, which is expected to expire in 2037, and U.S. Pat. No. 10,966,819, which is expected to expire in 2037.
- Our LDD: Some of the patents directed to our LDD include, for example, U.S. Pat. No. 10,864,075, which is expected to expire in 2038, and U.S. Pat. No. 10,932,864, which is expected to expire in 2039.

- Our lens adjustment procedure: Some of the patents directed to our lens adjustment procedure include, for example, U.S. Pat. No. 10,010,406, which is expected to expire in 2032, and U.S. Pat. No. 10,166,731, which is expected to expire in 2036.
- Our system accessories: A patent directed to our system accessories includes, for example, U.S. Pat. No. 10,456,240, which is expected to expire in 2038.

Pursuant to the Caltech agreement, we received an exclusive, royalty-bearing, nontransferrable, worldwide license under such patent rights and technology to manufacture, use and commercialize, in all fields, products covered by the licensed patents or that utilize the licensed technology. The licenses granted to us by Caltech are subject to certain retained rights of Caltech for educational and research purposes and certain retained rights of the U.S. government. We are subject to certain diligence obligations under the Caltech Agreement with respect to the commercialization of the licensed products. Pursuant to our license agreement with Caltech, we paid a $50,000 non-refundable license issue fee upon the execution of the agreement and agreed to reimburse Caltech approximately $64,680 for past patent prosecution and maintenance expenses. Further, we have an obligation to pay an annual license maintenance fee of $10,000. We are also obligated to pay (i) a low-single-digit royalty based on net sales of products covered by the licensed patents, which royalty obligation expires, on a country-by-country and product-by-product basis, upon the last-to-expire valid claim of a licensed patent covering such product in such country and (ii) a fraction of a single-digit royalty based on net sales of products covered only by the licensed technology, which royalty obligation expires, on a country-by-country-basis, seven years following the first commercial sale of such product in such country. Following the first commercial sale of a licensed product, we are required to pay a minimum annual royalty to Caltech of $50,000 on each anniversary of the effective date of the Caltech Agreement. We are also obligated to pay Caltech a mid-teen royalty on any applicable sublicensing revenue. Unless earlier terminated, the term of the Caltech Agreement continues until the later of the expiration, revocation, invalidation or unenforceability of the licensed patents or the expiration of our royalty obligations under the agreement. Caltech may terminate the Caltech Agreement for our insolvency, failure to maintain required insurance coverage levels, or if we materially breach the agreement, including our payment or diligence obligations thereunder, and do not cure such breach within specified time periods. Currently, we do not sell any licensed products under the agreement, and therefore we have no current royalty obligation to Caltech. We are considering the development of future products to which the intellectual property in-licensed from Caltech may be directed, however we do not believe these are material at this time.

Pursuant to the agreement with the Regents of the University of California (“Regents”) dated March 1, 2000 (the “Regents Agreement”), we received an exclusive, royalty bearing, sublicensable, worldwide license under certain Regents’ patent rights to make, have made, use, sell, offer to sell and import products and to practice methods in the research, development, and commercialization of products for commercial applications. This license was subject to certain retained rights of the Regents and Caltech for educational and research purposes and certain retained rights of the U.S. government. We were subject to certain diligence obligations under the Regents Agreement with respect to the commercialization of the licensed products. Pursuant to our license agreement with the Regents, we paid a $10,000 non-refundable license issue fee upon the execution of the Regents Agreement and agreed to reimburse the Regents approximately $57,000 for past patent prosecution and maintenance expenses. Further, we had an obligation to pay, and paid, an annual license maintenance fee of $5,000. We were also obligated to pay a low-single digit royalty based on net sales of products covered by the licensed patents, which royalty obligation expires, upon the last-to-expire valid claim of a licensed patent covering such product. Following the first commercial sale of a licensed product, we were required to pay, and paid, a minimum annual royalty to the Regents of $10,000 by February 28th for the calendar year in which the minimum payment is due. Upon a filing of an Investigational Device Exemption by us with the FDA for a trial involving more than 20 persons, or other equivalent applications, we paid $20,000 to the Regents. Following the first use of a licensed product in a patient as part of a Phase II or Phase III clinical trial, we paid $30,000

and $50,000, respectively to the Regents. Upon an approval by the FDA of a Pre-Marketing Approval Application or equivalent application submitted by us, we paid $175,000 to the Regents. We were also obligated to pay the Regents a percentage of all compensation received by us from sublicensees other than royalties on sales of the licensed products, not to exceed $500,000, for which there were no payments as we did not sublicense the licensed patents. In aggregate, since inception, we have paid approximately $525,000 in patent prosecution and maintenance fees, license fees, minimum royalties and milestone fees pursuant to the Regents Agreement. Unless earlier terminated, the term of the Regents Agreement continued until the expiration of the last-to-expire patent included in Regents' patent rights licensed under the Regents Agreement. The Regents had the right to terminate the agreement if we materially breached the agreement, including our payment or diligence obligations thereunder, and did not cure such breach within specified time periods. We had the right to terminate the agreement at will in whole or as to any portion of the Regents' patent rights by giving notice in writing to Regents. We terminated the Regents Agreement in March of 2021, as the last licensed patent covering our product expired. Upon the closing of this offering we are obligated to pay the Regents $25,000, which obligation survived the termination of the Regents Agreement.

Pursuant to the agreement with QAD, Inc. ("QAD") dated October 29, 2015 (the "QAD Agreement"), we receive a nonexclusive, non-transferable, perpetual license to use certain QAD software at the physical location where we install the software. Under the agreement, we purchase such QAD software through individual orders ("Purchase Orders"), and each Purchase Order has a respective payment fee and maintenance fee. We use the software licensed under the QAD agreement for inventory, shipping / receiving, sales order, work order, planning and financial transactions for the business. Maintenance for the software is offered by QAD and available for purchase by us on an annual basis, and such purchase was compulsory for the first year of the agreement. After the first year, maintenance purchased under the agreement automatically renews for successive one-year periods unless terminated by us or QAD 60 days prior to the effective date of any renewal term. Further, we grant QAD audit rights to verify our usage of QAD software, and if following such audit our use of the QAD software is in excess of our license, we are obligated to pay to QAD the amounts necessary to become compliant. QAD provides limited warranties to the software and retains all intellectual property ownership rights in the QAD software including any modifications made by us, however we receive a license to use any modifications made by us. Unless earlier terminated, the term of the QAD agreement is perpetual. Both parties have the right to terminate the agreement for convenience by giving the other party 90 days prior written notice and such termination does not affect the license granted. Either party to the agreement may terminate the agreement with notice, if the other materially breaches the agreement, and the breach is not cured within specified time periods. In addition, either party may terminate if the other party is adjudicated bankrupt or an official is appointed to manage its financial affairs. Upon termination for cause, we must immediately discontinue all use of the software.

We believe that we have certain know-how and trade secrets relating to our technology and current and future products. We rely on trade secrets to protect certain aspects of our technology related to our current and future products. However, trade secrets and know-how can be difficult to protect. We seek to protect our trade secrets and know-how, in part, by entering into confidentiality agreements with our employees, consultants, scientific advisors, service providers, and contractors but these agreements may not provide meaningful protection, and we cannot guarantee that we have executed such agreements with all applicable counterparties. These agreements may also be breached, and we may not have an adequate remedy for any such breach. We also seek to preserve the integrity and confidentiality of our data and trade secrets by maintaining physical security of our premises and physical and electronic security of our information technology systems. Although we take steps to protect our trade secrets and know-how, third parties may independently develop or otherwise gain access to our trade secrets and know-how.

For more information, please see “Risk Factors-Risks related to Intellectual Property”.

Competition

Competition in the surgical ophthalmology market is intense and is primarily driven by technological innovation and the regulatory approval required to commercialize products in the key markets around the world. The development of new or improved products may make existing products less attractive, reduce them to commodity status or even make them obsolete. We believe the principal competitive factors in our markets include:

- the quality of patient outcomes, oftentimes measured by visual acuity, and adverse event rates;
- patient experience, including patient recovery time and level of discomfort;
- acceptance by treating doctors and referral sources;
- doctor and other provider learning curves and willingness to adopt new technologies;
- ease-of-use and reliability;
- economic benefits and cost savings;
- strength of clinical evidence;
- effective distribution and marketing to surgeons and potential patients; and
- product price and qualification for coverage and reimbursement.

From a commercial perspective, we believe our primary competitors in the cataract IOL market are alternative premium IOL providers, including Alcon, Johnson & Johnson, Hoya, Bausch Health Companies and Carl Zeiss Meditec. The global cataract IOL market is highly concentrated, with these top five players accounting for approximately 70% of total market revenue, according to Market Scope. Our competitors are significantly larger than us with greater financial, marketing, sales and personnel resources, greater brand recognition and longer operating histories. We believe our ability to compete effectively will be dependent on our ability to build the commercial infrastructure necessary to effectively and cost-efficiently drive awareness of the unique value of our system.

In addition, patients who receive an LAL will be required to wear UV protective spectacles until final lock-in which is approximately 4-5 weeks after surgery. They will also be required to return for an additional 2-3 clinic visits compared to traditional cataract surgery. The additional clinic visits are non-surgical but do require the patient’s eyes to be dilated. Due to these additional requirements, market acceptance of the LAL may be impacted.

The two most popular premium IOLs approved for cataract treatment are Acrysof by Alcon and Tecnis by Johnson & Johnson. Alcon and Johnson & Johnson are the first and second largest IOL manufacturers, with a 2020 revenue share of the premium IOL market of 32.8% and 21.4%, respectively. The Acrysof and Tecnis families of IOLs are available in a monofocal Toric, multifocal Toric and EDOF Toric versions. The Toric versions of these lenses represent approximately 28% of all premium multifocal IOLs sold in 2020. The rest of the market is shared between Bausch and Lomb, Carl Zeiss, Hoya, with under 10% each as well as with a long list of smaller companies. From a technology perspective, we believe the LAL competes with nearly all of the existing IOLs, including conventional, premium astigmatism correcting and premium presbyopia correcting lenses.

Government regulation

Our products and operations are subject to extensive and ongoing regulation by the FDA under the Federal Food, Drug, and Cosmetic Act, or FDCA, and its implementing regulations, as well as other federal, state and local regulatory authorities in the United States, as well as foreign regulatory authorities. The FDA regulates, among other things, product design and development, pre-clinical and clinical testing, manufacturing, packaging, labeling, storage, record keeping and reporting, clearance or approval, marketing, distribution, promotion, import and export, and post-marketing surveillance in the United States to assure the safety and effectiveness of medical products for their intended use.

FDA regulation of medical devices

Unless an exemption applies, each new or significantly modified medical device we seek to commercially distribute in the United States will require either a premarket notification to the FDA requesting permission for commercial distribution under Section 510(k) of the Federal Food, Drug and Cosmetic Act, or FDCA, also referred to as a 510(k) clearance, or approval from the FDA of a PMA application. Both the 510(k) clearance and PMA processes can be resource intensive, expensive, and lengthy, and require payment of significant user fees, unless an exemption is available.

FDA classifies medical devices into one of three classes – Class I, Class II or Class III – depending on the degree of risk associated with each medical device and the extent of control needed to provide reasonable assurances with respect to safety and effectiveness.

Class I devices are those for which safety and effectiveness can be reasonably assured by adherence to the FDA's general controls for medical devices, which include compliance with the applicable portions of FDA's current good manufacturing practices for devices, as reflected in of the Quality System Regulation, or QSR, establishment registration and device listing, reporting of adverse events and malfunctions, and appropriate, truthful and non-misleading labeling and promotional materials. Some Class I devices, also called Class I reserved devices, also require premarket clearance by the FDA through the 510(k) premarket notification process described below. Most Class I products are exempt from the premarket notification requirements.

Class II devices are those that are subject to the FDA's general controls and any other special controls deemed necessary by the FDA to ensure the safety and effectiveness of the device. These special controls can include performance standards, patient registries, product-specific FDA guidance documents, special labeling requirements and post-market surveillance. Most Class II devices are subject to premarket review and clearance by the FDA through the 510(k) premarket notification process.

Class III devices include devices deemed by the FDA to pose the greatest risk such as life-supporting or life-sustaining devices, or implantable devices, in addition to those deemed novel and not substantially equivalent following the 510(k) process. Due to the level of risk associated with Class III devices, the FDA's general controls and special controls alone are insufficient to assure their safety and effectiveness. Devices placed in Class III generally require the submission of a PMA application, demonstrating the safety and effectiveness of the device which must be approved by the FDA prior to marketing, or the receipt of a 510(k) de novo classification, which provides for the reclassification of the device into Class I or II. The PMA approval process is generally more costly and time consuming than the 510(k) process. Through the PMA application process, the applicant must submit data and information demonstrating reasonable assurance of the safety and effectiveness of the device for its intended use to the FDA's satisfaction. Accordingly, a PMA application typically includes, but is not limited to, extensive technical information regarding device design and development, pre-clinical and clinical trial data, manufacturing information, labeling and financial disclosure information for the clinical investigators in device studies. The PMA application must provide valid scientific evidence that demonstrates to the FDA's satisfaction a reasonable assurance of the safety and effectiveness of the device for its intended use.

If a new medical device does not qualify for the 510(k) premarket notification process because no predicate device to which it is substantially equivalent can be identified, the device is automatically classified into Class III. The Food and Drug Administration Modernization Act of 1997 established a new route to market for low to moderate risk medical devices that are automatically placed into Class III due to the absence of a predicate device, called the "Request for Evaluation of Automatic Class III Designation," or the de novo classification process. This process allows a manufacturer whose novel device is automatically classified into Class III to request down-classification of its medical device into Class I or Class II on the basis that the device presents low or moderate risk, rather than requiring the submission and approval of a PMA. If the manufacturer seeks reclassification into Class II, the manufacturer must include a draft proposal for special controls that are necessary to provide a reasonable assurance of the safety and effectiveness of the medical device. The FDA may reject the reclassification petition if it identifies a legally marketed predicate device that would be appropriate for a 510(k) or determines that the device is not low to moderate risk and requires PMA or that general controls would be inadequate to control the risks and special controls cannot be developed.

Obtaining FDA marketing authorization, de novo down-classification, or approval for medical devices is expensive and uncertain, and may take several years, and generally requires significant scientific and clinical data.

Investigational device process

In the United States, absent certain limited exceptions, human clinical trials intended to support medical device clearance or approval require an IDE application. Some types of studies deemed to present "non-significant risk" are deemed to have an approved IDE once certain requirements are addressed, and IRB approval is obtained. If the device presents a "significant risk" to human health, as defined by the FDA, the sponsor must submit an IDE application to the FDA and obtain IDE approval prior to commencing the human clinical trials. The IDE application must be supported by appropriate data, such as animal and laboratory testing results, showing that it is safe to test the device in humans and that the testing protocol is scientifically sound. The IDE application must be approved in advance by the FDA for a specified number of subjects. Generally, clinical trials for a significant risk device may begin once the IDE application is approved by the FDA and the study protocol and informed consent are approved by appropriate institutional review boards at the clinical trial sites. There can be no assurance that submission of an IDE will result in the ability to commence clinical trials, and although the FDA's approval of an IDE allows clinical testing to go forward for a specified number of subjects, it does not bind the FDA to accept the results of the trial as sufficient to prove the product's safety and effectiveness, even if the trial meets its intended success criteria.

All clinical trials must be conducted in accordance with the FDA's IDE regulations that govern investigational device labeling, prohibit promotion and specify an array of recordkeeping, reporting and monitoring responsibilities of study sponsors and study investigators. Clinical trials must further comply with the FDA's good clinical practice regulations for institutional review board approval and for informed consent and other human subject protections. Required records and reports are subject to inspection by the FDA.

The results of clinical testing may be unfavorable, or, even if the intended safety and effectiveness success criteria are achieved, may not be considered sufficient for the FDA to grant marketing approval or clearance of a product. The commencement or completion of any clinical trial may be delayed or halted, or be inadequate to support approval of a PMA application, for numerous reasons, including, but not limited to, the following:

- The FDA or other regulatory authorities do not approve a clinical trial protocol or a clinical trial, or place a clinical trial on hold;
- Patients do not enroll in clinical trials at the rate expected;
- Patients do not comply with trial protocols;

- Patient follow-up is not at the rate expected;
- Patients experience adverse events;
- Patients die during a clinical trial, even though their death may not be related to the products that are part of the trial;
- Device malfunctions occur with unexpected frequency or potential adverse consequences;
- Side effects or device malfunctions of similar products already in the market that change the FDA's view toward approval of new or similar PMAs or result in the imposition of new requirements or testing;
- Institutional review boards and third-party clinical investigators may delay or reject the trial protocol;
- Third-party clinical investigators decline to participate in a trial or do not perform a trial on the anticipated schedule or consistent with the clinical trial protocol, investigator agreement, investigational plan, good clinical practices, the IDE regulations, or other FDA or IRB requirements;
- Third-party investigators are disqualified by the FDA;
- We or third-party organizations do not perform data collection, monitoring and analysis in a timely or accurate manner or consistent with the clinical trial protocol or investigational or statistical plans, or otherwise fail to comply with the IDE regulations governing responsibilities, records, and reports of sponsors of clinical investigations;
- Third-party clinical investigators have significant financial interests related to us or our study such that the FDA deems the study results unreliable, or we or investigators fail to disclose such interests;
- Regulatory inspections of our clinical trials or manufacturing facilities, which may, among other things, require us to undertake corrective action or suspend or terminate our clinical trials;
- Changes in government regulations or administrative actions;
- The interim or final results of the clinical trial are inconclusive or unfavorable as to safety or effectiveness; or
- The FDA concludes that our trial design is unreliable or inadequate to demonstrate safety and effectiveness.

The 510(k) clearance process

Under the 510(k) process, the manufacturer must submit to the FDA a premarket notification, demonstrating that the device is "substantially equivalent," as defined in the statute, to a legally marketed predicate device.

A predicate device is a legally marketed device that is not subject to premarket approval, i.e., a device that was legally marketed prior to May 28, 1976 (pre-amendments device) and for which a PMA is not required, a device that has been reclassified from Class III to Class II or I, or a device that was previously found substantially equivalent through the 510(k) process. A device is considered to be substantially equivalent if, with respect to the predicate device, it has the same intended use, and has either (i) the same technological characteristics; or (ii) different technological characteristics, but the information provided in the 510(k) submission demonstrates that the device does not raise different questions of safety or effectiveness than the predicate device. Clinical data is sometimes, but not always, required to support substantial equivalence.

Before the FDA will accept a 510(k) premarket notification for substantive review, the FDA will first assess whether the submission satisfies a minimum threshold of acceptability. If the FDA determines that the 510(k) submission lacks necessary information for substantive review, the FDA will issue a "Refuse to Accept" letter which generally outlines

the information the FDA believes is necessary to permit a substantive review and to reach a determination regarding substantial equivalence. An applicant must submit the requested information before the FDA will proceed with additional review of the submission. If a 510(k) submission is accepted for substantive review, the Medical Device User Fee Amendments sets a performance goal of 90 days for FDA review of a 510(k) submission, but the review time can be delayed if FDA raises questions or requests additional information during the review process. As a practical matter, clearance often takes longer, and clearance is never assured. Thus, as a practical matter, clearance often takes longer than 90 days. Although many 510(k) premarket notifications are cleared without clinical data, the FDA may require further information, including clinical data, to make a determination regarding substantial equivalence, which may significantly prolong the review process. If the FDA agrees that the device is substantially equivalent, it will grant clearance to commercially market the device.

If the FDA determines that the device is not "substantially equivalent" to a predicate device, or if the device is automatically classified into Class III, the device sponsor must then fulfill the much more rigorous premarketing requirements of the PMA approval process, or seek reclassification of the device through the de novo process. A manufacturer can also submit a petition for direct de novo review if the manufacturer is unable to identify an appropriate predicate device and the new device or new use of the device presents a moderate or low risk.

Medical devices can only be marketed for the indications for which they are cleared or approved. After a device receives 510(k) clearance, any modification that could significantly affect its safety or effectiveness, or that would constitute a new or major change in its intended use, will require a new 510(k) clearance or, depending on the modification, could require a PMA application or de novo classification. The determination as to whether or not a modification constitutes such a change is initially left to the manufacturer using available FDA guidance; however, the FDA may review this determination to evaluate the regulatory status of the modified product at any time and may require the manufacturer to cease marketing and recall the modified device until new 510(k) clearance or PMA approval is obtained. If the FDA disagrees with a manufacturer's determination regarding whether a new premarket submission is required for the modification of an existing device, the FDA can require the manufacturer to cease marketing and/or recall the modified device until 510(k) clearance or approval of a PMA application is obtained. The manufacturer may also be subject to significant regulatory fines or penalties.

The PMA approval process

Following receipt of a PMA application, the FDA conducts an administrative review to determine whether the application is sufficiently complete to permit a substantive review. If it is not, the agency will refuse to file the PMA. If it is, the FDA will accept the application for filing and begin the substantive review. The FDA, by statute and by regulation, has 180 days to review a filed PMA application, although the review of an application more often occurs over a significantly longer period of time. During this review period, the FDA may request additional information or clarification of information already provided, and the FDA may issue a major deficiency letter to the applicant, requesting the applicant's response to deficiencies communicated by the FDA. The FDA considers a PMA or PMA supplement to have been voluntarily withdrawn if an applicant fails to respond to an FDA request for information (e.g., major deficiency letter) within a total of 360 days. Before approving or denying a PMA, an FDA advisory committee may review the PMA at a public meeting and provide the FDA with the committee's recommendation on whether the FDA should approve the submission, approve it with specific conditions, or not approve it. The FDA is not bound by the recommendations of an advisory committee, but it considers such recommendations carefully when making decisions.

Prior to approval of a PMA, the FDA may conduct inspections of the clinical trial data and clinical trial sites, as well as inspections of the manufacturing facility and processes. Overall, the FDA review of a PMA application generally takes between one and three years but may take significantly longer. The FDA can delay, limit or deny approval of a PMA application for many reasons, including:

- The device may not be shown safe or effective to the FDA's satisfaction;

- The data from pre-clinical studies and/or clinical trials may be found unreliable or insufficient to support approval;
- The manufacturing process or facilities may not meet applicable requirements; and
- Changes in FDA approval policies or adoption of new regulations may require additional data.

If the FDA evaluation of a PMA is favorable, the FDA will issue either an approval letter, or an approvable letter, the latter of which usually contains a number of conditions that must be met in order to secure final approval of the PMA. When and if those conditions have been fulfilled to the satisfaction of the FDA, the agency will issue a PMA approval letter authorizing commercial marketing of the device, subject to the conditions of approval and the limitations established in the approval letter. If the FDA's evaluation of a PMA application or manufacturing facilities is not favorable, the FDA will deny approval of the PMA or issue a not approvable letter. The FDA also may determine that additional tests or clinical trials are necessary, in which case the PMA approval may be delayed for several months or years while the trials are conducted and data is submitted in an amendment to the PMA, or the PMA is withdrawn and resubmitted when the data are available. The PMA process can be expensive, uncertain and lengthy and a number of devices for which the FDA approval has been sought by other companies have never been approved by the FDA for marketing.

New PMA applications or PMA supplements are required for modification to the manufacturing process, equipment or facility, quality control procedures, sterilization, packaging, expiration date, labeling, device specifications, ingredients, materials or design of a device that has been approved through the PMA process. PMA supplements often require submission of the same type of information as an initial PMA application, except that the supplement is limited to information needed to support any changes from the device covered by the approved PMA application and may or may not require as extensive technical or clinical data or the convening of an advisory panel, depending on the nature of the proposed change.

In approving a PMA application, as a condition of approval, the FDA may also require some form of post-approval study or post-market surveillance, whereby the applicant conducts a follow-up study or follows certain patient groups for a number of years and makes periodic reports to the FDA on the clinical status of those patients when necessary to protect the public health or to provide additional or longer term safety and effectiveness data for the device. The FDA may also require post-market surveillance for certain devices cleared under a 510(k) notification, such as implants or life-supporting or life-sustaining devices used outside a device user facility. The FDA may also approve a PMA application with other post-approval conditions intended to ensure the safety and effectiveness of the device, such as, among other things, restrictions on labeling, promotion, sale, distribution and use. Significant modifications to the manufacturing process, labeling and design for a device which has received approval through the PMA process may require submission of a new PMA application or PMA supplement prior to marketing.

Ongoing regulation by the FDA

Even after the FDA permits a device to be marketed, numerous regulatory requirements apply, including but not limited to:

- establishment registration and device listing;
- the QSR, which requires manufacturers, including third-party manufacturers, to follow stringent design, testing, production, control, supplier/contractor selection, complaint handling, documentation, and other quality assurance procedures during the manufacturing process;
- labeling regulations, advertising and promotion requirements, restrictions on sale distribution or use of a device, each including the FDA general prohibition against the promotion of products for any uses other than those authorized by the FDA, which are commonly known as “off label” uses;

- the Medical Device Reporting, or MDR regulation, which requires that manufactures report to the FDA if their device may have caused or contributed to a death or serious injury or if their device malfunctioned and the device or a similar device marketed by the manufacturer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur;
- medical device corrections and removal reporting regulations, which require that manufactures report to the FDA field corrections or removals if undertaken to reduce a risk to health posed by a device or to remedy a violation of the FD&C Act that may present a risk to health;
- recall requirements, including a mandatory recall if there is a reasonable probability that the device would cause serious adverse health consequences or death;
- an order of repair, replacement or refund;
- device tracking requirements; and
- post market study and surveillance requirements.

After a device receives 510(k) clearance, any modification that could significantly affect its safety or effectiveness, or that would constitute a major change in its intended use, will require a new 510(k) or possibly a PMA. 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, the FDA may retroactively require us to seek 510(k) clearance or possibly a PMA. The FDA could also require us to cease marketing and distribution and/or recall the modified device until 510(k) clearance or a PMA is obtained. Also, in these circumstances, we may be subject to significant regulatory fines and penalties.

Some changes to an approved PMA device, including changes in indications, labeling, or manufacturing processes or facilities, require submission and FDA approval of a new PMA application or PMA supplement, as appropriate, before the change can be implemented. Supplements to a PMA often require the submission of the same type of information required for an original PMA application, except that the supplement is generally limited to that information needed to support the proposed change from the device covered by the original PMA. The FDA uses the same procedures and actions in reviewing PMA supplements as it does in reviewing original PMA applications.

FDA regulations require us to register as a medical device manufacturer with the FDA. Additionally, some states also require medical device manufacturers and/or distributors doing business within the state to register with the state or apply for a state license, which could subject our facility to state inspection as well as FDA inspection on a routine basis for compliance with the QSR and any applicable state requirements. These regulations require that we manufacture our products and maintain related documentation in a prescribed manner with respect to manufacturing, testing and control activities. Further, the FDA requires us to comply with various FDA regulations regarding labeling. Failure by us or by our suppliers to comply with applicable regulatory requirements can result in enforcement action by the FDA or state authorities, which may include any of the following sanctions:

- warning or untitled letters, fines, injunctions, consent decrees and civil penalties;
- customer notifications, voluntary or mandatory recall or seizure of our products;
- operating restrictions, partial suspension or total shutdown of production;
- delay in processing, clearing or approving submissions or applications for new products or modifications to existing products;

- FDA refusal to issue certificates to foreign governments needed to export products for sale in other countries;
- suspension or withdrawal of FDA approvals or clearances that have already been granted; and
- criminal prosecution.

Newly discovered or developed safety or effectiveness data may require changes to a product's labeling, including the addition of new warnings and contraindications, and also may require the implementation of other risk management measures. Also, new government requirements, including those resulting from new legislation, may be established, or the FDA's policies may change, which could delay or prevent regulatory clearance or approval of our products under development.

Our facilities, records and manufacturing processes are subject to periodic unscheduled inspections by the FDA. Failure to comply with the applicable United States medical device regulatory requirements could result in, among other things, warning letters, untitled letters, fines, injunctions, consent decrees, civil penalties, unanticipated expenditures, repairs, replacements, refunds, recalls or seizures of products, operating restrictions, total or partial suspension of production, the FDA's refusal to issue certificates to foreign governments needed to export products for sale in other countries, the FDA's refusal to grant future premarket clearances or approvals, withdrawals or suspensions of current product clearances or approvals and criminal prosecution.

When the FDA conducts an inspection, the inspectors will identify any deficiencies they believe exist in the form of a notice of inspectional observations, or Form FDA 483. If we receive a notice of inspectional observations or deficiencies from the FDA following an inspection, we would be required to respond in writing, and would be required to undertake corrective and/or preventive or other actions in order to address the FDA's or other regulators' concerns. Failure to address the FDA's concerns may result in the issuance of a warning letter or other enforcement or administrative actions.

International medical device premarket authorization process

The European Union has adopted numerous directives and standards regulating the design, manufacture, clinical trials, labeling and adverse event reporting for medical devices. Our products are regulated in the European Union as medical devices per European Union Directive 93/42/EEC, also known as the Medical Device Directive, or MDD. The MDD sets out the basic regulatory framework for medical devices in the European Union. The system of regulating medical devices operates by way of a certification for each medical device. Each certified device is marked with the CE mark which shows that the device has a Certificat de Conformité. There are national bodies known as Competent Authorities in each member state which oversee the implementation of the MDD within their jurisdiction. The means for achieving the requirements for the CE mark vary according to the nature of the device. Devices are classified in accordance with their perceived risks, similarly to the U.S. system. The class of a product determines the conformity assessment required before the CE mark can be placed on a product. Conformity assessments for our products are carried out as required by the MDD. Each member state can appoint Notified Bodies within its jurisdiction. If a Notified Body of a one-member state has issued a Certificat de Conformité, the device can be sold throughout the European Union without further conformance tests being required in other member states. The CE mark is contingent upon continued compliance with the applicable regulations and the quality system requirements of the ISO 13485 standard.

The new European Union Medical Devices Regulation 2017/745, or EU MDR, which was published in May 2017 with a transition period of three years, replaces the MDD and will expand and modify the pre-market and post-market obligations of the MDD. The date of application of the EU MDR has been postponed to May 26, 2021 with implementation dates based off of risk classification of the medical device. The EU MDR will impose additional

requirements on clinical evaluation process, safety, classification and performance of medical device products. The EU MDR will have no impact on our current and future products as registrations to the EU MDR are in process and are scheduled for completion prior to the implementation dates. In addition to inspections by the FDA and other regulatory entities, we are also subject to periodic inspections by applicable European Notified Body with respect to regulatory requirements that apply to medical devices designed and manufactured by us and clinical trials sponsored by us. We are also certified to the Medical Device Single Audit Program (MDSAP) for the jurisdictions of the United States, Canada, and Australia which allows for one single audit performed by Notified Body to cover those jurisdictions with respect to quality systems. The MDSAP certification with Japan and Brazil is in process and is expected at end of 2021.

Other U.S. regulatory matters

Medical device companies are subject to additional healthcare regulation and enforcement by the federal government and by authorities in the states and foreign jurisdictions in which they conduct their business. Manufacturing, sales, promotion and other activities following product clearance or approval are subject to regulation by numerous regulatory authorities in the United States in addition to the FDA, including the CMS, other divisions of the Department of Health and Human Services, the Department of Justice, the Consumer Product Safety Commission, the Federal Trade Commission, the Occupational Safety & Health Administration, the Environmental Protection Agency, and state and local governments. For example, in the United States, sales, marketing and scientific and educational programs also must comply with state and federal fraud and abuse, anti-kickback false claims, transparency, government price reporting, anti-corruption, and health information privacy and security laws and regulations. Internationally, other governments also impose regulations in connection with their healthcare reimbursement programs and the delivery of healthcare items and services. These laws include the following:

- U.S. federal healthcare fraud and abuse laws generally apply to our activities because our products are covered under federal healthcare programs such as Medicare and Medicaid. The Anti-Kickback Statute is particularly relevant because of its broad applicability. The federal Anti-Kickback Statute makes it illegal for any person, including a prescription medical device manufacturer (or a party acting on its behalf), to knowingly and willfully solicit, receive, offer or pay any remuneration that is intended to induce or reward referrals, including the purchase, recommendation, order or prescription of a particular medical device, for which payment may be made under a federal healthcare program, such as Medicare or Medicaid. Almost any financial arrangement with a healthcare provider, patient or customer could implicate the Anti-Kickback Statute. Statutory exceptions and regulatory safe harbors protect certain arrangements if specific requirements are met. The government can exercise enforcement discretion in taking action against arrangements that do not fit within a safe harbor. Further, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it. Moreover, the government may assert that a claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the civil False Claims Act. Penalties for violations of the Anti- Kickback Statute include, but are not limited to, criminal, civil and/or administrative penalties, damages, fines, disgorgement, individual imprisonment, possible exclusion from Medicare, Medicaid and other federal healthcare programs. Our exclusion would mean that procedures using our products would no longer be eligible for reimbursement under federal healthcare programs;
- Another development affecting the healthcare industry is the increased use of the federal Civil False Claims Act and, in particular, actions brought pursuant to the False Claims Act's "whistleblower" or "qui tam" provisions. In recent years, the number of suits brought against healthcare companies by private individuals has increased dramatically. The federal civil and criminal false claims acts, including the civil FCA, prohibit individuals or entities from, among other things, knowingly presenting, or causing to be presented, to the

federal government, claims for payment that are false or fraudulent or making a false statement to avoid, decrease or conceal an obligation to pay money to the federal government. No specific intent to defraud is required under the civil FCA. The criminal FCA provides for criminal penalties for submitting false claims, including imprisonment and criminal fines;

- The Civil Monetary Penalty Act of 1981 and implementing regulations impose penalties against any person or entity that, among other things, is determined to have presented or caused to be presented a claim to a federal healthcare program that the person knows or should know is for an item or service that was not provided as claimed or is false or fraudulent, or offering or transferring remuneration to a federal healthcare beneficiary that a person knows or should know is likely to influence the beneficiary's decision to order or receive items or services reimbursable by the government from a particular provider or supplier;
- HIPAA prohibits, among other things, executing or attempting to execute a scheme to defraud any healthcare benefit program or making false statements relating to healthcare matters. HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act and their implementing regulations, also imposes obligations, including mandatory contractual terms, with respect to safeguarding the privacy, security and transmission of individually identifiable health information;
- Federal consumer protection and unfair competition laws, which broadly regulate marketplace activities and activities that potentially harm consumers;
- The FDCA, which prohibits, among other things, the adulteration or misbranding of medical devices;
- Additionally, there has been a recent trend of increased federal and state regulation of payments made to doctors and other providers. The federal Physician Payments Sunshine Act requires applicable manufacturers of covered drugs, medical devices, biologics and medical supplies for which payment is available under Medicare, Medicaid, or the Children's Health Insurance Program, with specific exceptions, to annually report to CMS information regarding payments and other transfers of value to physicians and teaching hospitals, and beginning in 2022 (for payment and transfer of value data collected in 2021), for physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists & anesthesiologist assistants, and certified nurse midwives as well as information regarding ownership and investment interests held by physicians and their immediate family members;
- The Foreign Corrupt Practices Act (FCPA) prohibits any U.S. individual or business from paying, offering, or authorizing payment or offering of anything of value, directly or indirectly, to any foreign official, political party or candidate for the purpose of influencing any act or decision of the foreign entity in order to assist the individual or business in obtaining or retaining business. The FCPA also obligates companies whose securities are listed in the United States to comply with accounting provisions requiring us to maintain books and records that accurately and fairly reflect all transactions of the corporation, including international subsidiaries, if any, and to devise and maintain an adequate system of internal accounting controls for international operations;
- Analogous state and foreign laws and regulations, such as state anti-kickback, anti-referral, and false claims laws, which may apply to sales or marketing arrangements and claims involving healthcare items or services reimbursed by non-governmental third-party payors, including private insurers; state laws that require certain biotechnology, pharmaceutical, and medical device companies to comply with the industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government and may require applicable manufacturers to disclose or report certain information related to payments and other transfers of value to doctors and other providers and entities or sales, marketing, pricing, clinical trials, marketing expenditures and activities, and state and foreign laws that govern the privacy and security of health information in some circumstances, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts; and state laws related to insurance fraud in the case of claims involving private insurers.

Because of the breadth of these laws and the narrowness of available statutory and regulatory exemptions or safe harbors, it is possible that some of our activities, such as stock-option compensation paid to doctors that have entered into consulting agreements with us, could be subject to challenge under one or more of such laws. The growth of our business and sales organization and our expansion outside of the United States may increase the potential of violating these laws or our internal policies and procedures. The risk of our being found in violation of these or other laws and regulations is further increased by the fact that many have not been fully interpreted by the regulatory authorities or the courts, and their provisions are open to various interpretations. Any action brought against us for violations of these laws or regulations, even successfully defended, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. Also, we may be subject to private "qui tam" actions brought by individual whistleblowers on behalf of the federal or state governments. If our operations are found to be in violation of any of the federal, state and foreign laws described above or any other current or future fraud and abuse or other healthcare laws and regulations that apply to us, we may be subject to penalties, including significant civil, criminal and administrative penalties, including damages, fines, disgorgement, individual imprisonment, exclusion from participation in government funded healthcare programs, such as Medicare and Medicaid, integrity oversight and reporting obligations, contractual damages, reputational harm, diminished profits and future earnings, injunctions, requests for recall, seizure of products, total or partial suspension of production, denial or withdrawal of product approvals or refusal to allow a firm to enter into supply contracts, including government contracts, and we could be required to curtail or cease our operations. Any of the foregoing consequences could seriously harm our business and our financial results.

United States health care reform

Changes in healthcare policy could increase our costs and subject us to additional regulatory requirements that may interrupt commercialization of our current and future solutions. Current and future legislative proposals to further reform healthcare or reduce healthcare costs may limit coverage for the procedures associated with the use of our products or result in lower reimbursement for those procedures. The cost containment measures that payers and providers are instituting and the effect of any healthcare reform initiative implemented in the future could significantly reduce our revenues from the sale of our products. Changes in healthcare policy, including changes in the implementation or the repeal of the ACA in the United States, could increase our costs, decrease our revenue and impact sales of and reimbursement and coverage for our current and future products. Since its enactment, there have been judicial and Congressional challenges to certain aspects of the ACA. In particular, on December 14, 2018, a Texas U.S. District Court Judge ruled that the ACA is unconstitutional in its entirety because the "individual mandate" was repealed by Congress as part of the Tax Act. Additionally, on December 18, 2019, the U.S. Court of Appeals for the 5th Circuit upheld the District Court ruling that the individual mandate was unconstitutional and remanded the case back to the District Court to determine whether the remaining provisions of the ACA are invalid as well. On March 2, 2020, the United States Supreme Court granted the petitions for writs of certiorari to review this case and held oral arguments in November 2020. In June 2021, the United States Supreme Court held that Texas and other challengers had no legal standing to challenge the ACA, upholding the ACA. It is unclear how this Supreme Court decision, future litigation, other efforts to repeal and replace the ACA, and healthcare measures of the Biden administration will impact the ACA and our business. Other legislative changes have been proposed and adopted since the ACA was enacted, including aggregate reductions of Medicare payments to providers of 2% per fiscal year and reduced payments to several types of Medicare providers, which will remain in effect through 2030 absent additional congressional action, with the exception of a temporary suspension from May 1, 2020 through the end of 2021 due to the COVID-19 pandemic. Moreover, there recently has been heightened governmental scrutiny over the manner in which manufacturers set prices for their marketed products, which has resulted in several Congressional inquiries and proposed and enacted legislation designed, among other things, to bring more

transparency to product pricing. Complying with any new legislation or reversing changes implemented under the ACA could be time-intensive and expensive, resulting in a material adverse effect on our business.

The United States and some foreign jurisdictions are considering or have enacted a number of legislative and regulatory proposals to change the healthcare system in ways that could affect our ability to sell our products profitably. Among policy makers and payors in the United States and elsewhere, there is significant interest in promoting changes in healthcare systems with the stated goals of containing healthcare costs, improving quality or expanding access. Current and future legislative proposals to further reform healthcare or reduce healthcare costs may limit coverage of or lower reimbursement for the procedures associated with the use of our products. The cost containment measures that payors and providers are instituting and the effect of any healthcare reform initiative implemented in the future could impact our revenue from the sale of our products.

We believe that there will continue to be proposals by legislators at both the federal and state levels, regulators and third-party payors to reduce costs while expanding individual healthcare benefits. Certain of these changes could impose additional limitations on the rates we will be able to charge for our current and future products or the amounts of reimbursement available for our current and future products from governmental agencies or third-party payors. Current and future healthcare reform legislation and policies could have a material adverse effect on our business and financial condition.

Data privacy and security

Medical device companies may be subject to U.S. federal and state health information privacy, security and data breach notification laws, which may govern the collection, use, disclosure and protection of health-related and other personal information.

The Health Insurance Portability and Accountability Act of 1996, or HIPAA, imposes privacy, security and breach reporting obligations with respect to individually identifiable health information upon “covered entities” (health plans, health care clearinghouses and certain health care providers), and their respective business associates, individuals or entities that create, received, maintain or transmit protected health information in connection with providing a service for or on behalf of a covered entity. HIPAA mandates the reporting of certain breaches of health information to the U.S. Department of Health and Human Services, or HHS, affected individuals and if the breach is large enough, the media. Entities that are found to be in violation of HIPAA as the result of a breach of unsecured protected health information, or PHI, a complaint about privacy practices or an audit by HHS, may be subject to significant civil, criminal and administrative fines and penalties and/or additional reporting and oversight obligations if required to enter into a resolution agreement and corrective action plan with HHS to settle allegations of HIPAA non-compliance.

Even when HIPAA does not apply, failing to take appropriate steps to keep consumers’ personal information secure may constitute unfair acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C § 45(a). The FTC expects a company’s data security measures to be reasonable and appropriate in light of the sensitivity and volume of consumer information it holds, the size and complexity of its business, and the cost of available tools to improve security and reduce vulnerabilities. Personally identifiable health information is considered sensitive data that merits stronger safeguards. The FTC’s guidance for appropriately securing consumers’ personal information is similar to what is required by the HIPAA Security Rule.

In addition, certain state laws govern the privacy and security of health information in certain circumstances, some of which are more stringent than HIPAA and many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts. Failure to comply with these laws, where applicable, can result in the imposition of significant civil and/or criminal penalties and private litigation. For example, California enacted the California Consumer Privacy Act, or CCPA, which went into effect January 1, 2020. The CCPA, among other things, created new data privacy obligations for covered companies and provided

new privacy rights to California residents, including the right to opt out of certain disclosures of their information. The CCPA also created a private right of action with statutory damages for certain data breaches, thereby potentially increasing risks associated with a data breach.

Additionally, in November 2020, California voters passed the California Privacy Rights Act of 2020, or CPRA. The CPRA, which is expected to take effect on January 1, 2023 and create additional obligations with respect to certain data relating to consumers, significantly expands the CCPA, including by introducing additional obligations such as data minimization and storage limitations, granting additional rights to consumers, such as correction of personal information and additional opt-out rights, and creates a new entity, the California Privacy Protection Agency, to implement and enforce the law. The CCPA and CPRA may increase our compliance costs and potential liability. In addition to the CCPA, numerous other states' legislatures have passed or are considering similar laws that will require ongoing compliance efforts and investment.

The EU also has laws and regulations dealing with the collection, use and processing of personal data obtained from individuals in the EU, namely the EU General Data Protection Regulation, or GDPR. These regulations are often more restrictive than those in the United States and may restrict transfers of personal data to the United States unless certain requirements are met. The GDPR provides that EU member states may make their own further laws and regulations limiting the processing of genetic, biometric or health data, which could limit our ability to use and share personal data or could cause our costs to increase, and harm our business and financial condition. Further, the United Kingdom's decision to leave the European Union has created uncertainty with regard to data protection regulation in the United Kingdom. As of January 1, 2021, we are also subject to the UK General Data Protection Regulation and UK Data Protection Act of 2018, which retains the GDPR in the United Kingdom's national law. Failure to comply with any of these obligations could expose us to significant fines.

Employees and human capital

As of March 31, 2021, we had 171 full-time employees, including 55 employees in sales & marketing, 29 in general and administrative functions, 50 in research and development and 37 in manufacturing. None of our employees are represented by a labor union or covered under a collective bargaining agreement.

Our human capital resources objectives include, as applicable, identifying, recruiting, retaining, incentivizing and integrating our existing and new employees, advisors and consultants. The principal purposes of our equity and cash incentive plans are to attract, retain and reward personnel through the granting of stock-based and cash-based compensation awards, in order to increase stockholder value and the success of our company by motivating such individuals to perform to the best of their abilities and achieve our objectives.

Facilities

Our corporate headquarters is in Aliso Viejo, California where we lease three facilities housing our headquarters, manufacturing, research and development and administrative offices. The facility leases are for approximately 109,822 square feet in the aggregate. The leases terminate on a) September 30, 2024, with one option to extend for five years; b) January 31, 2026, with three options to extend for five years each; and c) March 31, 2023 with two options to extend for five years each. We believe that our existing facilities are adequate for our near-term needs but expect to need additional space as we grow. We believe that suitable additional or alternative space would be available in the future as required on commercially reasonable terms.

Legal proceedings

From time to time, we may become involved in litigation or other legal proceedings. Except as indicated above, we are not currently a party to any litigation or legal proceedings that, in the opinion of our management, are likely to have a material adverse effect on our business. Regardless of outcome, litigation can have an adverse impact on us because of defense and settlement costs, diversion of management resources, and other factors.

Management

Executive officers and directors

The following table sets forth the names, ages and positions of our executive officers and directors as of the date of this prospectus:

Name	Age	Position
Executive Officers:		
Ron Kurtz, M.D.	58	President, Chief Executive Officer & Director
Shelley Thunen	68	Chief Financial Officer
Eric Weinberg	60	Chief Commercial Officer
Ilya Goldshleger, Ph.D.	46	Chief Operating Officer
Non-Employee Directors:		
J. Andy Corley (1)(2)(3)	65	Chair of the Board
Bruce Robertson, Ph.D. (2)(3)	58	Director
William J. Link, Ph.D. (2)	75	Director
Daniel Schwartz, M.D.	65	Director
Christopher Cox (2)	68	Director
Rick Wolfen (1)	63	Director
Juliet Tammenoms Bakker (1)(3)	59	Director

(1) Member of the audit committee

(2) Member of the compensation committee

(3) Member of the corporate governance and nominating committee

Executive officers

Ron Kurtz, M.D. Dr. Kurtz joined RxSight, Inc. in June 2015 and has served as our President and Chief Executive Officer since January 2016 and as a member of our board of directors since February 2016. Prior to joining RxSight in June 2015, Dr. Kurtz co-founded LenSx Lasers, Inc. He served as LenSx's President and Chief Executive Officer until its acquisition by Alcon Inc. in August 2010, continuing as General Manager of Alcon LenSx, Inc. until March 2015. In 1997, he co-founded IntraLase Corp. and served as its President & CEO until November 1998 and then as its Vice-President and Medical Director until December 2005, thereafter consulting until December 2006. IntraLase became a publicly held Nasdaq-listed company in October 2004 and was acquired by Advanced Medical Optics, Inc. in April 2007. Dr. Kurtz serves on the boards of ODOS GmbH and Allegro Ophthalmics, Inc. Dr. Kurtz has served on the faculty of both the University of California, Irvine, and the University of Michigan. He earned his B.A. in Biochemistry from Harvard College and his M.D. from the University of California, San Diego.

We believe that Dr. Kurtz is qualified to serve on our board of directors due to his leadership track record, his experience as an ophthalmologist, and his service as our Chief Executive Officer and President.

Shelley Thunen. Ms. Thunen joined RxSight, Inc. in January 2016 as our Chief Administrative Officer and has served as our Chief Financial Officer since February 2017. From January 2013 to October 2015, Ms. Thunen served as the Chief Financial Officer of Endologix, Inc. From August 2010 to December 2012, Ms. Thunen served as Associate General Manager of Alcon LenSx, Inc. Prior to the Alcon acquisition of LenSx, Inc. in August 2010, she served as a board member and chair of the audit committee from April 2008 to August 2010, as well as Chief Financial Officer and Vice President, Operations from November 2009 to August 2010. Ms. Thunen joined IntraLase Corp. in May 2001 and was its Chief Financial Officer and later Executive Vice President & Chief Financial Officer until its acquisition by Advanced Medical Optics, Inc. in April 2007. Ms. Thunen served on the board of directors of eyeonics, Inc. from June 2007 to February 2008, and as a board member and chair of the audit committee of Restoration Robotics, Inc. (Nasdaq: HAIR) from July 2015 to November 2019, prior to its acquisition by Venus Concept Inc. (Nasdaq: VERO) She also has served as a board member and audit committee chair of Surface Ophthalmics, Inc since August 2020. Ms. Thunen received a B.A. in economics and an M.B.A. from the University of California, Irvine.

Eric Weinberg. Mr. Weinberg has served as our Chief Commercial Officer since June 2015. Prior to joining RxSight, he was a co-founder of LenSx Lasers, Inc. and served as Chief Commercial Officer from July 2008 to August 2010, prior to its acquisition by Alcon Inc. He went on to serve as Vice President of Surgical Development at Alcon LenSx, Inc. from August 2010 to April 2014. He joined IntraLase Corp. in September 1999 as Vice President of Sales and later as the Senior Vice President, Global Marketing until the company was acquired by Advanced Medical Optics, Inc. in April 2007. Mr. Weinberg served as Global Director of Refractive Surgery at Chiron Vision Corp. from March 1993 until October 1997, when it was acquired by Bausch & Lomb, Inc. He continued as Global Director of Refractive Surgery at Bausch & Lomb until August 1999. Mr. Weinberg began his career in medical devices at Steinway Instruments in 1980.

Ilya Goldshleger, Ph.D. Dr. Goldshleger joined RxSight, Inc. as the Vice President, Engineering and has served as our Chief Operating Officer since June 2019. Dr. Goldshleger joined RxSight in September 2015 as the Vice President of Engineering and was responsible for the development and engineering of the LAL and LDD system and its accessories. Prior to joining RxSight, Dr. Goldshleger held various management roles at Alcon LenSx, Inc. from 2010 to 2015 last serving as Director, R&D Optics and Diagnostics, and held various roles in research and development at LenSx Lasers, Inc. from October 2008 to its acquisition by Alcon, Inc. in August 2010. Dr. Goldshleger received a Master of Science in Physics and Mathematics from the Moscow Institute of Physics and Technology and a Ph.D. in Chemical Physics from the Russian Academy of Sciences.

Each of our executive officers serves at the discretion of our board of directors and holds office until his or her successor is duly elected and qualified or until his or her earlier resignation or removal.

Non-employee directors

J. Andy Corley. Mr. Corley has served as a member of our board of directors since January 2015. Mr. Corley has also served as a board member of Neurolenses, Inc. since 2012, where he currently serves as Chairman of the Board, and has been a partner at Flying L Partners since 2016. Mr. Corley co-founded eyeonics, Inc. in 1998 and served as its Chief Executive Officer and Chairman of the Board until the company was sold to Bausch & Lomb, Inc. in February 2008. Mr. Corley then served as President of the Surgical Division at Bausch & Lomb following its acquisition of eyeonics, Inc from 2008 to 2011. Mr. Corley also co-founded Chiron Vision Corp., a company focused on the development of LASIK, in 1987 and served as General Manager of the Refractive Surgery Division until December 1997. Mr. Corley received a Bachelor of Business Administration degree from Georgia Southern University.

We believe Mr. Corley is qualified to serve on our board of directors because of his experience in leading and investing in medical device companies.

Bruce Robertson, Ph.D. Dr. Robertson has served as a member of our board of directors since June 2015. Dr. Robertson has also served on the board of directors of Apollo Endosurgery, Inc. since 2007, CardioFocus, Inc. since 2006, Clarus Therapeutics, Inc. since 2007, Iconic Therapeutics, Inc. since 2014, Exagen Inc. since 2019 and Augmedics Ltd. since 2021. He serves as co-Head and Managing Director of H.I.G. BioHealth Partners. Prior to joining H.I.G., Dr. Robertson served as Managing Director at Toucan Capital, a venture capital fund focusing on life science investments. Dr. Robertson served as a General Partner at GIV Venture Partners from 2000 to 2002. Dr. Robertson has also worked in business development and research and development at IGEN International, Inc. and W.R. Grace & Company, Inc., respectively. Additionally, he served on the board of the University of Delaware Research Foundation and the board of the BioLife Fund of Virginia's Center for Innovative Technology. Dr. Robertson holds a B.S.E. in Chemical Engineering and B.A. in Mathematics from the University of Pennsylvania, a Ph.D. in Chemical Engineering from the University of Delaware, and an M.B.A. from Harvard Business School with High Distinction.

We believe Dr. Robertson is qualified to serve on our board of directors because of his experience investing in medical device companies.

William J. Link, Ph.D. Dr. Link has served as a member of our board of directors since November 2016. Dr. Link formed Flying L Management, LLC in 2017 and is the Managing Partner. Dr. Link has served as a managing director and co-founder of Versant Ventures Management LLC, a venture capital firm investing in early stage healthcare companies, since 1999. He has served as a member of the board of directors of Edwards Lifesciences Corp. since May 2009, Oyster Point Pharma, Inc. since July 2015, Glaukos, Inc. since June 2001, Lensar, Inc. since November 2017 and Tarsus Pharmaceuticals, Inc. since January 2017. Prior to co-founding Versant Ventures in November 1999, Dr. Link was a general partner at Brentwood Venture Capital from 1998 to 2020. From March 1986 to December 1997, Dr. Link was founder, chairman, and chief executive officer of Chiron Vision Corp. He also founded and served as President of American Medical Optics, Inc. (acquired by Allergan, Inc.) from 1978 to 1985. Dr. Link served as a director of Advanced Medical Optics, Inc. from September 2002 to February 2009, a director of Inogen, Inc. from July 2003 to February 2014 and a director of Second Sight Medical Products, Inc. from August 2003 to May 2020. Dr. Link also served as an assistant professor in the Department of Surgery at the Indiana University School of Medicine from 1973 to 1976. Dr. Link received a B.S., M.S., and a Ph.D. in mechanical engineering from Purdue University.

We believe Dr. Link is qualified to serve on our board of directors because of his experience in leading and investing in medical device companies.

Daniel Schwartz, M.D. Dr. Schwartz has served as a member of our board of directors since April 1997. Dr. Schwartz co-founded RxSight and is co-inventor of the Light Adjustable Lens. He has been a Physician in Residence at the Merkin Institute for Translational Research at Caltech since July 2020 and has served as Director of the Retina Division at the San Francisco VA Medical Center since 1994. Dr. Schwartz is also Professor Emeritus at the University of California, San Francisco. Prior to RxSight, he co-founded Serra Pharmaceuticals, Inc. in 1996, and served as a consultant until it merged with Karo Bio AB. Dr. Schwartz has published more than sixty peer-reviewed publications and holds over twenty patents in ophthalmology. Dr. Schwartz obtained his B.A. from Haverford College, his M.D. from University of California, San Francisco and completed his Ophthalmology residency at the Wilmer Institute at The Johns Hopkins Hospital.

We believe Dr. Schwartz is qualified to serve on our board of directors because of his experience as a co-founder of RxSight, Inc. and as an ophthalmologist.

Rick Wolfen. Mr. Wolfen has served as a member of our board of directors since December 2019. Mr. Wolfen founded Rock Asset Management, a commercial real estate development and management company, in 1994

and has served as its President since it was founded. He has also served as Managing Member of Sea Glass Ventures, LLC, an early-stage venture capital investor, since 2016. Mr. Wolfen joined Deauville Savings and Loan in 1984, where he oversaw real estate joint ventures as well as direct development and investment projects until 1987. He has served on the board of directors of Intelliflux Controls, Inc. since 2018, Materia, Inc. since 2014, and Global Tinker, Inc. since 2018. Mr. Wolfen received a B.A. in Economics and an M.B.A. from University of California, Los Angeles. He has served on the Board of the American Youth Soccer Organization Region 76 in Beverly Hills since 2002 and is presently Assistant Regional Commissioner.

We believe Mr. Wolfen is qualified to serve on our board of directors because of his experience as an investor and businessman.

Christopher Cox. Mr. Cox has served as a member of our board of directors since July 2015. From November 2014 until his retirement in January 2020, Mr. Cox was a partner at Morgan, Lewis & Bockius, LLP and president of Morgan Lewis Consulting LLC. From June 2009 until its combination with Morgan Lewis in November 2014, he was a partner at Bingham McCutchen LLP and president of Bingham Consulting LLC. From August 2005 to January 2009, he served as the 28th Chairman of the U.S. Securities and Exchange Commission. From January 1989 to August 2005, Mr. Cox served in Congress as a U.S. Representative from California. Mr. Cox has served as a member of the boards of directors of ACA Group since November 2018, and of NetChoice, Inc., since February 2020. He served on the board of trustees of the University of Southern California beginning in October 2011 and became a Life Trustee in March 2020. He has been a member of the advisory boards of Starr Investment Holdings, LLC since November 2018, RevOZ Capital since February 2020, the Loker Hydrocarbon Research Institute since April 2012, the Forum for Corporate Directors since November 2010 as an investor and, the Corporate Directors Roundtable since March 2013. He previously served on the boards of directors of Newport Corporation (now part of MKS Instruments) from November 2011 to April 2016, and of Alphaeon Corporation from May 2014 to December 2016 as well as the advisory boards of Creative Planning from January 2017 to December 2017 and Thomson Reuters Accelus from May 2011 to October 2014. Mr. Cox earned his B.A. from the University of Southern California, his M.B.A. from Harvard Business School, and his J.D. from Harvard Law School.

We believe Mr. Cox is qualified to serve on our board of directors because of his experience as the 28th Chairman of the U.S. Securities and Exchange Commission, an attorney and a former member of the U.S. House of Representatives.

Juliet Tammenoms Bakker. Ms. Tammenoms Bakker has served as a member of our board of directors since June 2015. Ms. Tammenoms Bakker co-founded Longitude Capital, a healthcare venture capital firm, where she has served as a Managing Director since January 2007. Prior to Longitude, Ms. Tammenoms Bakker served as a Managing Director of Pequot Ventures where she founded the life sciences investment practice. Ms. Tammenoms Bakker currently serves on the boards of Endogenex, Inc., Nalu Medical, Inc., and Ceribell, Inc. and she has previously served on the boards of over twenty companies including Eargo, Inc. (Nasdaq: EAR), Axonics Modulation Technologies (Nasdaq: AXNX), Insulet (Nasdaq: PODD), and Venus Concept (Nasdaq: VERO). Additionally, Ms. Tammenoms Bakker serves as a member of the Advisory Council for the College of Agriculture and Life Sciences at Cornell University and a board member of the Boys and Girls Club of Greenwich. Ms. Tammenoms Bakker holds an M.P.A. from the Harvard Kennedy School and a B.Sc. from the College of Agriculture and Life Sciences at Cornell University.

We believe Ms. Tammenoms Bakker is qualified to serve on our board of directors due to her extensive experience as an investor in medical technology companies and as a member of the boards of directors of multiple private companies.

Board composition

Our board of directors currently consists of eight members. After the completion of this offering, the number of directors will be fixed by our board of directors, subject to the terms of our amended and restated certificate of incorporation and amended and restated bylaws. Each of our current directors will continue to serve as a director until the election and qualification of his or her successor, or until his or her earlier death, resignation or removal.

Our amended and restated certificate of incorporation will provide that our board of directors will be divided into three classes with staggered three-year terms. Only one class of directors will be elected at each annual meeting of stockholders, with the other classes continuing for the remainder of their respective three-year terms. Our current directors will be divided among the three classes as follows:

- the Class I directors will be Ron Kurtz, M.D., J. Andy Corley, and Juliet Tammenoms Bakker, and their terms will expire at the annual meeting of stockholders to be held in 2021;
- the Class II directors will be Bruce Robertson, Ph.D., William J. Link, Ph.D., and Rick Wolfen, and their terms will expire at the annual meeting of stockholders to be held in 2022; and
- the Class III directors will be Christopher Cox and Daniel Schwartz, M.D., and their terms will expire at the annual meeting of stockholders to be held in 2023.

At each annual meeting of stockholders, upon the expiration of the term of a class of directors, the successor to each such director in the class will be elected to serve from the time of election and qualification until the third annual meeting following his or her election and until his or her successor is duly elected and qualified, in accordance with our amended and restated certificate of incorporation. 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 our directors.

This classification of our board of directors may have the effect of delaying or preventing changes in control of our company.

Director independence

Upon the completion of this offering, we anticipate that our common stock will be listed on the Nasdaq Global Market. Under the rules of Nasdaq, independent directors must comprise a majority of a listed company's board of directors within one year of the completion of this offering. In addition, the rules of Nasdaq require that, subject to specified exceptions, each member of a listed company's audit, compensation and corporate governance and nominating committees be independent. Audit committee members and compensation committee members must also satisfy the independence criteria set forth in Rule 10A-3 and Rule 10C-1, respectively, under the Securities Exchange Act of 1934, as amended (the Exchange Act). Under the rules of Nasdaq, a director will only qualify as an "independent director" if, in the opinion of that company's board of directors, that person does not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

To be considered to be independent for purposes of Rule 10A-3 and under the rules of Nasdaq, a member of an audit committee of a listed company may not, other than in his or her capacity as a member of the audit committee, the board of directors or any other board committee: (1) accept, directly or indirectly, any consulting, advisory or other compensatory fee from the listed company or any of its subsidiaries or (2) be an affiliated person of the listed company or any of its subsidiaries.

To be considered independent for purposes of Rule 10C-1 and under the rules of Nasdaq, the board of directors must affirmatively determine that each member of the compensation committee is independent, including a consideration of all factors specifically relevant to determining whether the director has a relationship to the company which is material to that director's ability to be independent from management in connection with the duties of a compensation committee member, including, but not limited to: (i) the source of compensation of such director, including any consulting, advisory or other compensatory fee paid by the company to such director and (ii) whether such director is affiliated with the company, a subsidiary of the company or an affiliate of a subsidiary of the company.

Our board of directors undertook a review of its composition, the composition of its committees and the independence of our directors and considered whether any director has a material relationship with us that could compromise his or her ability to exercise independent judgment in carrying out his or her responsibilities. Based upon information requested from and provided by each director concerning his background, employment and affiliations, including family relationships, our board of directors has determined that Messrs. Corley, Cox, and Wolfen, Drs. Robertson, Schwartz and Link, and Ms. Tammenoms Bakker, representing seven of our eight directors, do not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director and that each of these directors is "independent" as that term is defined under the rules of Nasdaq.

In making these determinations, our board of directors considered the current and prior relationships that each non-employee director has with our company and all other facts and circumstances our board of directors deemed relevant in determining their independence, including the beneficial ownership of our capital stock by each non-employee director, and the transactions involving them described in the section titled "Certain Relationships and Related Party Transactions." There are no family relationships among any of our directors or executive officers.

Board leadership structure

Our board of directors is currently chaired by Mr. Corley. As a general policy, our board of directors believes that separation of the positions of Chair of our board of directors and Chief Executive Officer reinforces the independence of our board of directors from management, creates an environment that encourages objective oversight of management's performance and enhances the effectiveness of our board of directors as a whole. As such, Dr. Kurtz serves as our Chief Executive Officer while Mr. Corley serves as the Chair of our board of directors but is not an officer of the Company. We currently expect and intend the positions of Chair of our board of directors and Chief Executive Officer to continue to be held by two individuals in the future.

Role of the board in risk oversight

Our board of directors has an active role, as a whole and also at the committee level, in overseeing the management of our risks. Our board of directors is responsible for general oversight of risks and regular review of information regarding our risks, including credit risks, liquidity risks and operational risks. The compensation committee is responsible for overseeing the management of risks relating to our executive compensation plans and arrangements. The audit committee is responsible for overseeing the management of risks relating to accounting matters and financial reporting. Although each committee is responsible for evaluating certain risks and overseeing the management of such risks, our entire board of directors is regularly informed through discussions from committee members about such risks. Our board of directors believes its administration of its risk oversight function has not negatively affected the board of directors' leadership structure.

Board committees

Our board of directors has an audit committee, a compensation committee, and a corporate governance and nominating committee, each of which has the composition and the responsibilities described below. In addition, from time to time, special committees may be established under the direction of our board of directors when necessary to address specific issues.

Audit committee

Upon the effectiveness of the registration statement of which this prospectus forms a part, the members of our audit committee will be . will be the chair of our audit committee and will be our audit committee financial expert, as that term is defined under the SEC rules implementing Section 407 of the Sarbanes-Oxley Act of 2002, and possesses financial sophistication, as defined under the rules of Nasdaq. Our audit committee will oversee our corporate accounting and financial reporting process and assist our board of directors in monitoring our financial systems. Our audit committee will also:

- select and hire the independent registered public accounting firm to audit our financial statements;
- help to ensure the independence and performance of the independent registered public accounting firm;
- approve audit and non-audit services and fees;
- review financial statements and discuss with management and the independent registered public accounting firm our annual audited and quarterly financial statements, the results of the independent audit and the quarterly reviews and the reports and certifications regarding internal controls over financial reporting and disclosure controls;
- prepare the audit committee report that the SEC requires to be included in our annual proxy statement;
- review reports and communications from the independent registered public accounting firm;
- review the adequacy and effectiveness of our internal controls and disclosure controls and procedure;
- review our policies on risk assessment and risk management;
- review and monitor conflicts of interest situations, and approve or prohibit any involvement in matters that may involve a conflict of interest or taking of a corporate opportunity;
- review related party transactions; and
- establish and oversee procedures for the receipt, retention and treatment of accounting related complaints and the confidential submission by our employees of concerns regarding questionable accounting or auditing matters.

Our audit committee will operate under a written charter, to be effective prior to the completion of this offering, which will satisfy the applicable rules of the SEC and the listing standards of Nasdaq.

Compensation Committee

Upon the effectiveness of the registration statement of which this prospectus forms a part, the members of our compensation committee will be . will be the chair of our compensation committee. Our compensation committee will oversee our compensation policies, plans and benefits programs. The compensation committee will also:

- oversee our overall compensation philosophy and compensation policies, plans and benefit programs;

- review and approve or recommend to the board of directors for approval compensation for our executive officers and directors;
- prepare the compensation committee report that the SEC will require to be included in our annual proxy statement; and
- administer our equity compensation plans.

Our compensation committee will operate under a written charter, to be effective prior to the completion of this offering, which will satisfy the applicable rules of the SEC and the listing standards of Nasdaq.

Corporate governance and nominating committee

Upon the effectiveness of the registration statement of which this prospectus forms a part, the members of our corporate governance and nominating committee will be . will be the chair of our corporate governance and nominating committee. Our corporate governance and nominating committee will oversee and assist our board of directors in reviewing and recommending nominees for election as directors. Specifically, the corporate governance and nominating committee will:

- identify, evaluate and make recommendations to our board of directors regarding nominees for election to our board of directors and its committees;
- consider and make recommendations to our board of directors regarding the composition of our board of directors and its committees;
- review developments in corporate governance practices;
- evaluate the adequacy of our corporate governance practices and reporting; and
- evaluate the performance of our board of directors and of individual directors.

Our corporate governance and nominating committee will operate under a written charter, to be effective prior to the completion of this offering, which will satisfy the applicable rules of the SEC and the listing standards of Nasdaq.

Director compensation

Prior to this offering, we have not implemented a formal policy with respect to compensation payable to our non-employee directors. Other than as set forth in the table below, we did not pay any compensation to any of our non-employee directors in 2020. We granted stock options to Mr. Corley for his service as the chairman of our board of directors, and such grants were made in 2015. We also reimburse our directors for expenses associated with attending meetings of our board of directors and its committees. Following the completion of this offering, we expect to implement an annual cash and equity compensation program for our non-employee directors as described below.

Outside director compensation policy

In July 2021, our board of directors adopted our outside director compensation policy. We expect our stockholders to approve the policy prior to the completion of this offering. After the completion of this offering, each non-employee director will be eligible to receive compensation for his or her service consisting of annual cash retainers and equity awards under our outside director compensation policy. Our board of directors will have the discretion to revise non-employee director compensation as it deems necessary or appropriate.

Cash Compensation. All non-employee directors will be eligible to receive the following cash compensation for their services following the completion of this offering:

- $40,000 per year for services as a board member;
- $50,000 per year additionally for service as non-executive chairman of the board of directors;
- $10,000 per year additionally for service as chairman of the audit committee;
- $10,000 per year additionally for service as an audit committee member;
- $7,500 per year additionally for service as chairman of the compensation committee; and
- $7,500 per year additionally for service as a compensation committee member;
- $5,000 per year additionally for service as chairman of the nominating and corporate governance committee; and
- $5,000 per year additionally for service as a nominating and corporate governance committee member.

Notwithstanding the foregoing, if our board or any one committee of our board meets in excess of 8 times in a year (measured from annual meeting to annual meeting), such non-employee directors will be provided a fee of $1,500 for each additional meeting attended.

Each annual cash retainer and additional annual fee will be paid quarterly in arrears on a prorated basis.

Equity Compensation. Non-employee directors will be eligible to receive all types of awards (except incentive stock options) under the 2021 Equity Incentive Plan, or the 2021 Plan (or the applicable equity plan in place at the time of grant), including discretionary awards not covered under the outside director compensation policy. Following the completion of this offering, nondiscretionary, automatic grants of stock options will be made to our non-employee directors as follows:

- *Initial RSU Grant*. Each person who first becomes a non-employee director after the completion of this offering automatically will be granted an award of restricted stock units, or an Initial Award, covering a number of shares of our common stock having a value of $125,000, with any resulting fraction rounded down to the nearest whole share. The Initial Award will be granted automatically on the first trading day on or after the date on which such individual first becomes a non-employee director, or the Initial Start Date, whether through election by our stockholders or appointment by our board to fill a vacancy. If an individual was a member of our board and also an employee, becoming a non-employee director due to termination of employment will not entitle the non-employee director to an Initial Award. Each Initial Award will be scheduled to vest as follows: 1/3rd of the restricted stock units subject to the Initial Award will be scheduled to vest on each annual anniversary of the Initial Start Date (or, if there is no corresponding day in the applicable month, then the last day of such month), in each case subject to the non-employee director continuing to be a non-employee director through the applicable vesting date.
- *Annual RSU Grant*. Each non-employee director automatically will be granted an award of restricted stock units, or an Annual Award, with a value of $125,000 on the date of each annual meeting of our board of directors, or the Annual Meeting; provided that the first Annual Award granted to an individual who first becomes a non-employee director following the effective date of the policy will have a value equal to the product of (A) $125,000 multiplied by (B) a fraction, (i) the numerator of which is the number of fully completed months between the applicable Initial Start Date and the date of the first Annual Meeting to occur after such individual first becomes a non-employee director, and (ii) the denominator of which is 12; provided further that any resulting fraction with respect to an Annual Award shall be rounded down to the nearest

whole share underlying the restricted stock unit. Each Annual Award will be scheduled to vest in full on the earlier of (i) the one-year anniversary of the grant date or (ii) the date of the next Annual Meeting following the grant date, in each case subject to the non-employee director continuing to be a non-employee director through the applicable vesting date.

- *IPO RSU Grant*. On the first trading day following the completion of this offering, each non-employee director automatically will be granted an award of restricted stock units, or an IPO Award, covering a number of shares having a value equal to the product of (A) $125,000 multiplied by (B) a fraction, (i) the numerator of which is the number of full months between the effective date of the policy and the projected date of the first Annual Meeting to occur after the effective date, and (ii) the denominator of which is 12; provided that any resulting fraction with respect to an IPO Award shall be rounded down to the nearest whole restricted stock unit. Each IPO Award will be scheduled to vest in full on the date of the first Annual Meeting following the effective date of the policy, in each case subject to the non-employee director continuing to be a non-employee director through the applicable vesting date.

The "value" for the Initial Awards, Annual Awards and IPO Awards described above means the grant date fair value calculated in accordance with U.S. generally accepted accounting principles, or such other methodology our board of directors or compensation committee may determine.

In the event of a change in control, as such term is defined in the 2021 Plan, each non-employee director will fully vest in his or her outstanding equity awards, including any Initial Awards, Annual Awards and IPO Awards, provided that the non-employee director continues to be a non-employee director through the date of the change in control. Additionally, in the event of a non-employee director's death or termination due to disability, such non-employee director will fully vest in his or her outstanding equity awards as of immediately prior to the non-employee director's death or termination due to disability.

Pursuant to our outside director compensation policy, no non-employee director may be issued, in any fiscal year, cash retainers or fees and equity awards with an aggregate value greater than $500,000, increased to $1,000,000 for the fiscal year an individual initially becomes a member of our board of directors.

The following table presents the total compensation that each of our non-employee directors received during the year ended December 31, 2020.

	Fees earned or paid in cash ($)	Option awards ($)	All other compensation ($)	Total ($)
J. Andy Corley(1)	120,000	—	—	120,000
Bruce Robertson, Ph.D.	—	—	—	—
William J. Link, Ph.D.	—	—	—	—
Daniel Schwartz, M.D.	75,000	—	—	75,000
Christopher Cox(2)	50,000	19,405	—	69,405
Rick Wolfen	—	—	—	—
Juliet Tammenoms Bakker	—	—	—	—

(1) Mr. Corley was paid $120,000 in 2020 in fees for his service as the chairman of our board of directors.

(2) The option grant to Mr. Cox vests monthly over 24 months from the date of grant of July 30, 2020.

Directors who are also our employees or officers receive no additional compensation for their service as directors. During 2020, Dr. Kurtz served as an employee director. See the section titled “Executive Compensation” for additional information about Dr. Kurtz’s compensation.

Compensation committee interlocks and inside participation

None of our executive officers currently serves, or in the past fiscal year has served, as a member of the board of directors or compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of any entity that has one or more executive officers serving on our board of directors or compensation committee.

Code of business conduct and ethics

Prior to the completion of this offering, we intend to adopt a written code of business conduct and ethics that will apply to our directors, officers and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller or persons performing similar functions. Following this offering, the code of business conduct and ethics will be available on our website at www.rxsight.com. We intend to disclose future amendments to such code, or any waivers of its requirements, applicable to any principal executive officer, principal financial officer, principal accounting officer or controller or persons performing similar functions or our directors on our website identified above. Information contained on the website is not incorporated by reference into this prospectus and should not be considered to be part of this prospectus.

Executive compensation

Summary compensation table

The following table sets forth information regarding the compensation of our named executive officers for the year ended December 31, 2020.

Name and principal position	Year	Salary($)	Bonus($) (1)	Option awards($)	All other compensation ($)	Total($)
Ron Kurtz, M.D *President and Chief Executive Officer*	2020	$309,583	$ 113,000	$ 404,100	$ —	$ 826,683
Shelley Thunen *Chief Financial Officer*	2020	$250,510	$ 83,209	$ 404,100	$ —	$ 737,819
Eric Weinberg *Chief Commercial Officer*	2020	$272,595	$ 83,949	$ 606,150	$ —	$ 962,964
Ilya Goldshleger, Ph.D. *Chief Operating Officer*	2020	$287,094	$ 96,105	$1,212,300	$ —	$1,595,499

(1) The bonus is annual discretionary bonus, based on performance in 2019, as determined by the Board of Directors.

Outstanding equity awards at fiscal year-end

The following table sets forth the number of stock options outstanding that are held by each of our named executive officers as of December 31, 2020:

				Option awards	
Name	Grant date(1)	Number of securities underlying unexercised options (#) Exercisable	Number of securities underlying unexercised options (#) Unexercisable	Option exercise price ($)(2)	Option expiration date
Ron Kurtz, M.D	07/29/2015	1,487,025	0	$ 0.38	07/29/2025
President and Chief Executive Officer	03/14/2017	451,250	23,750	$ 0.42	03/14/2027
	04/23/2020	81,252	416,667	$ 1.46	04/23/2030
Shelley Thunen	02/04/2016	333,334	0	$ 0.38	02/04/2026
Chief Financial Officer	10/27/2016	300,000	0	$ 0.42	10/27/2026
	03/14/2017	65,909	2,866	$ 0.42	03/14/2027
	07/26/2018	90,625	59,375	$ 1.83	07/26/2028
	04/23/2020	83,333	416,667	$ 1.46	04/23/2030
Eric Weinberg	07/29/2015	2,388,049	0	$ 0.38	07/29/2025
Chief Commercial Officer	03/14/2017	347,136	16,146	$ 0.42	03/14/2027
	04/18/2019	125,000	25,000	$ 2.23	04/18/2029
	04/23/2020	125,000	625,000	$ 1.46	04/23/2030

				Option awards	
Name	Grant date(1)	Number of securities underlying unexercised options (#) Exercisable	Number of securities underlying unexercised options (#) Unexercisable	Option exercise price ($)(2)	Option expiration date
Ilya Goldshleger, Ph.D.	10/27/2015	425,000	0	$ 0.38	10/27/2025
Chief Operating Officer	07/28/2016	50,000	0	$ 0.40	07/28/2026
	10/27/2016	100,000	0	$ 0.42	10/27/2026
	03/14/2017	95,833	4,167	$ 0.42	03/14/2027
	04/26/2017	206,250	18,750	$ 0.40	04/26/2027
	01/25/2018	109,375	40,625	$ 1.83	01/25/2028
	07/26/2018	120,833	79,167	$ 1.83	07/26/2028
	04/18/2019	263,333	52,667	$ 2.23	04/18/2029
	04/23/2020	250,000	1,250,000	$ 1.46	04/23/2030

(1) Each of the outstanding options to purchase shares of our common stock was granted pursuant to our 2015 Equity Incentive Plan, as amended.

(2) This column represents the fair market value of a share of our common stock on the date of grant, as determined by our board of directors.

Employment arrangements with our named executive officers

Ron Kurtz, M.D.

We have entered into a new offer letter agreement, effective as of July 16, 2021, with Dr. Kurtz, our President and Chief Executive Officer. This letter has no specific term and provides for at-will employment. Dr. Kurtz's annual base salary as of July 16, 2021 is $500,000 and he is eligible for an annual target cash incentive payment equal to 75% of his salary.

Pursuant to Mr. Kurtz's offer letter, our board of directors is expected to grant Mr. Kurtz an option to purchase shares of our common stock on the date of our initial public offering, pursuant to the terms of the 2021 Plan and the form of option agreement thereunder. The option will have a per share exercise price equal to the fair market value of one share of our common stock on the date of grant. The option will cover a number of shares of our common stock having a grant date fair value equal to $3,100,000, as determined in accordance with a Black-Scholes valuation model.

Shelley Thunen

We have entered into a new offer letter agreement, effective as of July 16, 2021, with Ms. Thunen, our Chief Financial Officer. This letter has no specific term and provides for at-will employment. Ms. Thunen's annual base salary as of July 16, 2021 is $375,000 and she is eligible for an annual target cash incentive payment equal to 50% of her base salary.

Pursuant to Ms. Thunen's offer letter, our board of directors is expected to grant Ms. Thunen an option to purchase shares of our common stock on the date of our initial public offering, pursuant to the terms of the 2021 Plan and the form of option agreement thereunder. The option will have a per share exercise price equal to the fair market value of one share of our common stock on the date of grant. The option will cover a number of shares of our common stock having a grant date fair value equal to $900,000, as determined in accordance with a Black-Scholes valuation model.

Eric Weinberg

We have entered into a new offer letter agreement, effective as of July 16, 2021, with Mr. Weinberg, our Chief Commercial Officer. This letter has no specific term and provides for at-will employment. Mr. Weinberg's annual base salary as of July 16, 2021 is $375,000 and he is eligible for an annual target cash incentive payment equal to 50% of his base salary.

Pursuant to Mr. Weinberg's offer letter, our board of directors is expected to grant Mr. Weinberg an option to purchase shares of our common stock on the date of our initial public offering, pursuant to the terms of the 2021 Plan and the form of option agreement thereunder. The option will have a per share exercise price equal to the fair market value of one share of our common stock on the date of grant. The option will cover a number of shares of our common stock having a grant date fair value equal to $800,000, as determined in accordance with a Black-Scholes valuation model.

Ilya Goldshleger, Ph.D.

We have entered into a new offer letter agreement, effective as of July 16, 2021, with Dr. Goldshleger, our Chief Operating Officer. This letter has no specific term and provides for at-will employment. Dr. Goldshleger's annual base salary as of July 16, 2021 is $375,000 and he is eligible for an annual target cash incentive payment equal to 50% of his base salary.

Pursuant to Mr. Goldshleger's offer letter, our board of directors is expected to grant Mr. Goldshleger an option to purchase shares of our common stock on the date of our initial public offering, pursuant to the terms of the 2021 Plan and the form of option agreement thereunder. The option will have a per share exercise price equal to the fair market value of one share of our common stock on the date of grant. The option will cover a number of shares of our common stock having a grant date fair value equal to $900,000, as determined in accordance with a Black-Scholes valuation model.

Potential payments upon termination or change of control

We have entered into a change in control and severance agreement, effective as of July 16, 2021, with each of Mr. Kurtz, Ms. Thunen, Mr. Weinberg and Mr. Goldshleger. Each change in control and severance agreement was approved by our board of directors in July 2021.

Pursuant to each applicable named executive officer's severance agreement, if, within the change in control period beginning on the date a letter of intent or similar agreement is made between us and an acquiror, provided such date occurs no earlier than 9 months prior to a "change in control" (as defined in the applicable agreement), and ending 12 months following a change in control, we terminate the employment of the named executive officer without "cause" or the executive resigns for "good reason" (as such terms are defined in the applicable agreement), and within 60 days following such termination, the named executive officer executes a waiver and release of claims in our favor that becomes effective and irrevocable, the named executive officer will be entitled to receive (i) a lump sum payment equal to the sum of (A) 12 months (18 months with respect to Mr. Kurtz) of the named executive officer's then current annual base salary and (B) 12 months (18 months with respect to Mr. Kurtz) of the named executive officer's annual target bonus as in effect in the year of the applicable termination, (ii) reimbursement of premiums to maintain group health insurance continuation benefits pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, or COBRA for the named executive officer and his or her respective eligible dependents for up to 12 months (18 months with respect to Mr. Kurtz), and (iii) vesting acceleration as to 100% of the then-unvested shares subject to each of the named executive officer's then outstanding equity awards (and in the case of awards with performance vesting, unless the applicable award agreement governing such award provides otherwise, all performance goals and other vesting criteria will be deemed achieved at target levels of achievement).

Pursuant to each applicable named executive officer's severance agreement, if, outside of the change in control period, we terminate the employment of the named executive officer without cause (excluding death or disability) or the executive resigns for good reason, and within 60 days following such termination, the named executive officer executes a waiver and release of claims in our favor that becomes effective and irrevocable, the named executive officer will be entitled to receive (i) a lump sum payment equal to the sum of (A) 12 months of the named executive officer's then current annual base salary and (B) 12 months of the named executive officer's annual target bonus as in effect in the year of the applicable termination, and (ii) reimbursement of premiums to maintain group health insurance continuation benefits pursuant to "COBRA" for the named executive officer and the officer's respective eligible dependents for up to 12 months.

Pursuant to each applicable named executive officer's severance agreement, if we experience a change in control, and the named executive officer remains our employee through the date of such change in control, 100% of the then-unvested shares subject to the named executive officer's then outstanding equity awards will accelerate and fully vest (and in the case of awards with performance vesting, unless the applicable award agreement governing such award provides otherwise, all performance goals and other vesting criteria will be deemed achieved at target levels of achievement).

Pursuant to each applicable named executive officer's severance agreement, in the event any payment to an executive would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code, as amended, or the Code (as a result of a payment being classified as a parachute payment under Section 280G of the Code), the executive will receive such payment as would entitle the executive to receive the greatest after-tax benefit, even if it means that we pay the executive a lower aggregate payment so as to minimize or eliminate the potential excise tax imposed by Section 4999 of the Code.

Employee benefit and stock plans

2021 Equity Incentive Plan

Prior to the effectiveness of this offering, we expect that our board of directors will adopt, and our stockholders will approve, our 2021 Plan. We expect that our 2021 Plan will become effective on the business day immediately prior to the effective date of the registration statement of which this prospectus forms a part. Our 2021 Plan will provide for the grant of incentive stock options, within the meaning of Section 422 of the Code, to our employees and any parent and subsidiary corporations' employees, and for the grant of nonstatutory stock options, stock appreciation rights, restricted stock, restricted stock units, or RSUs, and performance awards to our employees, directors, and consultants and our parent and subsidiary corporations' employees and consultants. Our 2015 Plan will terminate immediately prior to effectiveness of the 2021 Plan with respect to the grant of future awards.

Authorized Shares. Subject to the adjustment provisions of and the automatic increase described in our 2021 Plan, a total of shares of our common stock will be reserved for issuance pursuant to our 2021 Plan. In addition, subject to the adjustment provisions of our 2021 Plan, the shares reserved for issuance under our 2021 Plan also will include any shares subject to awards granted under our 2015 Plan or 2006 Plan that, on or after the business day immediately prior to the effective date of the registration statement of which this prospectus forms a part, expire or otherwise terminate without having been exercised or issued in full, are tendered to or withheld by us for payment of an exercise price or for satisfying tax withholding obligations, or are forfeited to or repurchased by us due to failure to vest (provided that the maximum number of shares that may be added to our 2021 Plan pursuant to outstanding awards under the 2015 Plan and 2006 Plan is shares). Subject to the adjustment provisions of our 2021 Plan, the number of shares available for issuance under our 2021 Plan

will also include an annual increase on the first day of each fiscal year beginning with the 2022 fiscal year and ending on the ten year anniversary of the date our board of directors approved the 2021 Plan, in an amount equal to the least of:

- shares of our common stock;
- 4% of the outstanding shares of our common stock on the last day of our immediately preceding fiscal year; or
- such lesser number of shares of our common stock as the administrator may determine.

If a stock option or stock appreciation right granted under the 2021 Plan expires or becomes unexercisable without having been exercised in full or is surrendered pursuant to an exchange program or, with respect to restricted stock, RSUs or stock settled performance awards, is forfeited to, or repurchased by, us due to failure to vest, then the unpurchased shares (or for awards other than stock options or stock appreciation rights, the forfeited or repurchased shares) which were subject thereto will become available for future grant or sale under the 2021 Plan (unless the 2021 Plan has terminated). With respect to stock appreciation rights, only the net shares actually issued will cease to be available under the 2021 Plan and all remaining shares under stock appreciation rights will remain available for future issuance under the 2021 Plan (unless the 2021 Plan has terminated). Subject to the exceptions listed above, shares that have actually been issued under the 2021 Plan under any award will not be returned to the 2021 Plan;. Shares used to pay the exercise price of an award or to satisfy the tax withholding obligations related to an award will become available for future grant or sale under the 2021 Plan. To the extent an award is paid out in cash rather than shares, the cash payment will not result in a reduction in the number of shares available for issuance under the 2021 Plan.

Plan Administration. We expect that our compensation committee will administer our 2021 Plan and may further delegate authority to one or more subcommittees or officers to the extent such delegation complies with applicable laws. Subject to the provisions of our 2021 Plan, the administrator will have the power to administer our 2021 Plan and make all determinations deemed necessary or advisable for administering our 2021 Plan, including but not limited to: the power to determine the fair market value of our common stock; select the service providers to whom awards may be granted; determine the number of shares covered by each award; approve forms of award agreements for use under our 2021 Plan; determine the terms and conditions of awards (including, but not limited to, the exercise price, the times or times at which the awards may be exercised, any vesting acceleration or waiver or forfeiture restrictions, and any restriction or limitation regarding any award or the shares relating thereto); construe and interpret the terms of our 2021 Plan and awards granted under it, including but not limited to determining whether and when a change in control has occurred; establish, amend, and rescind rules and regulations relating to our 2021 Plan, and adopt sub-plans relating to the 2021 Plan; interpret, modify, or amend each award, including but not limited to the discretionary authority to extend the post-termination exercisability period of awards; allow participants to satisfy tax withholding obligations in any manner permitted by the 2021 Plan; delegate ministerial duties to any of our employees; authorize any person to take any steps and execute, on our behalf, any documents required for an award previously granted by the administrator to be effective; temporarily suspend the exercisability of an award if the administrator deems such suspension to be necessary or appropriate for administrative purposes, provided that, unless prohibited by applicable laws, such suspension shall be lifted in all cases not less than ten trading days before the last date that the award may be exercised; allow a participant to defer the receipt of payment of cash or the delivery of shares that would otherwise be due to such participant under an award; and make any determinations necessary or appropriate under the adjustment provisions of the 2021 Plan. The administrator also has the authority to allow participants the opportunity to transfer outstanding awards to a financial institution or other person or entity selected by the administrator and to institute an exchange

program by which outstanding awards may be surrendered or canceled in exchange for awards of the same type which may have a higher or lower exercise price or different terms, awards of a different type or cash, or by which the exercise price of an outstanding award is increased or reduced. The administrator's decisions, interpretations, and other actions will be final and binding on all participants to the full extent permitted by law.

Stock Options. Our 2021 Plan permits the grant of options. The exercise price of options granted under our 2021 Plan must be at least equal to the fair market value of our common stock on the date of grant, except that options may be granted with a lower exercise price to a service provider who is not a U.S. taxpayer, or pursuant to certain transactions. The term of an option is determined by the administrator, provided that the term of an incentive stock option may not exceed ten years. With respect to any participant who owns more than 10% of the voting power of all classes of our outstanding stock, the term of an incentive stock option granted to such participant must not exceed five years and the exercise price must equal at least 110% of the fair market value on the grant date. The administrator determines the methods of payment of the exercise price of an option, which may include cash, check, or wire transfer, cashless exercise, net exercise, promissory note, shares, or other consideration or method of payment acceptable to the administrator, to the extent permitted by applicable law. After the termination of service of an employee, director, or consultant, he or she may exercise his or her option for the period of time stated in his or her option agreement. In the absence of a specified time in an award agreement, if termination is due to death or disability, the option will remain exercisable for six months. In all other cases, in the absence of a specified time in an award, the option will remain exercisable for thirty days. These exercise periods may be tolled in certain circumstances, for example if exercise prior to the end of the applicable period is not permitted because of applicable laws. However, in no event may an option be exercised later than the expiration of its term.

Stock Appreciation Rights. Our 2021 Plan permits the grant of stock appreciation rights. Stock appreciation rights allow the recipient to receive the appreciation in the fair market value of our common stock between the exercise date and the date of grant. The term of stock appreciation rights is determined by the administrator. After the termination of service of an employee, director, or consultant, he or she may exercise his or her stock appreciation right for the period of time stated in his or her stock appreciation rights agreement. In the absence of a specified time in an award agreement, if termination is due to death or disability, the stock appreciation rights will remain exercisable for six months. In all other cases, in the absence of a specified time in an award agreement, the stock appreciation rights will remain exercisable for thirty days following the termination of service. These exercise periods may be tolled in certain circumstances, for example if exercise prior to the end of the applicable period is not permitted because of applicable laws. However, in no event may a stock appreciation right be exercised later than the expiration of its term. Subject to the provisions of our 2021 Plan, the administrator determines the other terms of stock appreciation rights, including when such rights become exercisable and whether to pay any increased appreciation in cash or with shares of our common stock, or a combination thereof, except that the per share exercise price for the shares to be issued pursuant to the exercise of a stock appreciation right must be no less than 100% of the fair market value per share on the date of grant.

Restricted Stock. Our 2021 Plan permits the grant of restricted stock. Restricted stock awards are grants of shares of our common stock that vest in accordance with terms and conditions established by the administrator. The administrator determines the number of shares of restricted stock granted to any employee, director, or consultant and, subject to the provisions of our 2021 Plan, determines the terms and conditions of such awards. The administrator has the authority to impose whatever conditions to vesting it determines to be appropriate (for example, the administrator will be able to set restrictions based on the achievement of specific performance goals or continued service to us); provided, however, that the administrator, in its sole discretion, may accelerate the time at which any restrictions will lapse or be removed. Recipients of restricted stock

awards generally have voting and dividend rights with respect to such shares upon grant without regard to vesting, unless the administrator provides otherwise. Shares of restricted stock that do not vest will be subject to our right of repurchase or forfeiture.

Restricted Stock Units. Our 2021 Plan permits the grant of RSUs. Each RSU will represent an amount equal to the fair market value of one share of our common stock. Subject to the provisions of our 2021 Plan, the administrator determines the terms and conditions of RSUs, including the vesting criteria and the form and timing of payment. The administrator has the authority to set vesting criteria based upon the achievement of company-wide, divisional, business unit, or individual goals (including, but not limited to, continued employment or service), or any other basis determined by the administrator in its discretion. The administrator, in its sole discretion, may pay earned RSUs in the form of cash, in shares, or in some combination of both. Notwithstanding the foregoing, the administrator, in its sole discretion, may accelerate the vesting, or reduce or waive the criteria that must be met for vesting, of the RSUs or the time at which any restrictions will lapse or be removed.

Performance Awards. Our 2021 Plan permits the grant of performance awards. Performance awards are awards that will result in a payment to a participant only if performance goals established by the administrator are achieved or the awards otherwise vest. The administrator may establish performance objectives or other vesting criteria in its discretion, which, depending on the extent to which they are met, will determine the number or the value of performance awards to be paid out to participants. The administrator has the authority to set performance objectives based on the achievement of company-wide, divisional, business unit, or individual goals (including, but not limited to, continued employment or service), or any other basis determined by the administrator in its discretion. Each performance award's threshold, target, and maximum payout values are established by the administrator on or before the grant date. After the grant of a performance award, the administrator, in its sole discretion, may reduce or waive any performance criteria or other vesting provisions for such performance award. The administrator, in its sole discretion, may pay earned performance awards in the form of cash, in shares, or in some combination thereof.

Non-Employee Directors. Our 2021 Plan provides that all outside (non-employee) directors will be eligible to receive all types of awards (except for incentive stock options) under our 2021 Plan. In order to provide a maximum limit on the awards that can be made to our non-employee directors, our 2021 Plan provides that in any given fiscal year, a non-employee director will not be paid, issued or granted cash retainer fees and equity awards having a grant-date fair value greater than $500,000 (increased to $1,000,000 in connection with his or her initial service). The grant-date fair values will be determined according to GAAP. The maximum limits do not reflect the intended size of any potential grants or a commitment to make grants to our outside directors under our 2021 Plan in the future.

Non-Transferability of Awards. Unless the administrator provides otherwise, our 2021 Plan generally does not allow for the transfer of awards other than by will or by the laws of descent or distribution and only the recipient of an award may exercise an award during his or her lifetime. If the administrator makes an award transferrable, such award will contain such additional terms and conditions as the administrator deems appropriate.

Certain Adjustments. If any extraordinary dividend or other extraordinary distribution (whether in cash, shares, other securities, or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, reclassification, repurchase, or exchange of shares of our common stock or other of our securities, other change in our corporate structure affecting the shares, or any similar equity restructuring transaction affecting our shares occurs (including a change in control), the administrator, to prevent diminution or enlargement of the benefits or potential benefits intended to be provided under the 2021 Plan, will adjust the number and class of shares that may be delivered under the 2021 Plan or the number, class, and price of shares covered by each outstanding award, and the numerical share

limits set forth in our 2021 Plan. The conversion of any of our convertible securities and ordinary course repurchases of our shares or other securities will not be treated as an event that will require adjustment under the 2021 Plan.

Dissolution or Liquidation. In the event of our proposed liquidation or dissolution, the administrator will notify participants as soon as practicable and, to the extent not exercised, all awards will terminate immediately prior to the consummation of such proposed plan.

Merger or Change in Control. Our 2021 Plan provides that in the event of a merger or change in control, as defined under our 2021 Plan, each outstanding award will be treated as the administrator determines, without a requirement to obtain a participant's consent, including, without limitation, that such award will be continued by the successor corporation or a parent or subsidiary of the successor corporation. An award generally will be considered continued if, following the transaction, (i) the award gives the right to purchase or receive the consideration received in the transaction by holders of our shares or (ii) the award is terminated in exchange for an amount of cash or property, if any, equal to the amount that would have been received upon the exercise or realization of the award at the closing of the transaction, which payment may be subject to any escrow applicable to holders of our common stock in connection with the transaction or subjected to the award's original vesting schedule. The administrator will not be required to treat all awards or portions thereof, the vested and unvested portions of an award, or all participants similarly.

In the event that a successor corporation or its parent or subsidiary does not continue an outstanding award, then such award will fully vest, all restrictions on such award will lapse, all performance goals or other vesting criteria applicable to such award will be deemed achieved at 100% of target levels, and such award will become fully exercisable, if applicable, for a specified period prior to the transaction, unless specifically provided for otherwise under the applicable award agreement or other written agreement with the participant. The award will then terminate upon the expiration of the specified period of time. If an option or stock appreciation right is not continued, the administrator will notify the participant in writing or electronically that such option or stock appreciation right will be exercisable for a period of time determined by the administrator in its sole discretion and the option or stock appreciation right will terminate upon the expiration of such period.

With respect to awards granted to an outside director, in the event of a change in control, all of his or her options and stock appreciation rights, if any, will vest fully and become immediately exercisable, all restrictions on his or her restricted stock and RSUs will lapse, and all performance goals or other vesting requirements for his or her performance awards will be deemed achieved at 100% of target levels, and all other terms and conditions met.

Clawback. Awards will be subject to any clawback policy that we are required to adopt pursuant to the listing standards of any national securities exchange or association on which our stock is listed or as otherwise required by applicable laws, and the administrator will also be able to specify in an award agreement that the participant's rights, payments, or benefits with respect to an award will be subject to reduction, cancellation, forfeiture, or recoupment upon the occurrence of certain specified events.

Amendment; Termination. The administrator will have the authority to amend, alter, suspend, or terminate our 2021 Plan, provided that we will obtain stockholder approval of any amendment to the extent necessary or desirable to comply with applicable laws. However, no amendment, alteration, suspension, or termination of our 2021 Plan or an Award under it may, taken as a whole, materially impair the existing rights of any participant without the participant's consent. Our 2021 Plan will continue in effect until it is terminated, provided that incentive stock options may not be granted after the ten year anniversary of the date our board of directors approved the 2021 Plan, and the automatic annual share increase will end on the ten year anniversary of the date our board of directors approved the 2021 Plan.

2015 Equity Incentive Plan, as amended

Our 2015 Plan was originally adopted by our board of directors and approved by our stockholders in 2015. Our 2015 Plan was most recently amended in March 2021.

Our 2015 Plan allows us to provide incentive stock options, within the meaning of Section 422 of the Code, nonqualified stock options, performance shares, performance share units, stock appreciation rights, restricted stock, stock grants or stock units (each, an "award" and the recipient of such award, a "participant") to eligible employees, officers, directors and consultants of ours and any subsidiary of ours. It is expected that as of one business day prior to the effectiveness of the registration statement of which this prospectus forms a part, our 2015 Plan will be terminated and we will not grant any additional awards under our 2015 Plan thereafter. However, our 2015 Plan will continue to govern the terms and conditions of the outstanding awards previously granted under our 2015 Plan.

As of March 31, 2021, stock options covering 47,866,502 shares of our common stock were outstanding under our 2015 Plan.

Plan Administration. Our 2015 Plan is administered by our board of directors or one or more committees appointed by our board of directors, or the administrator. The administrator has full power to make all determinations it deems necessary or advisable for administration of our 2015 Plan, including the authority to construe and interpret the terms of our 2015 Plan and the awards granted under our 2015 Plan. The administrator's powers also include the power to amend the terms and conditions of any outstanding award as provided in our 2015 Plan. The administrator's determinations and decisions are final and binding on all participants and any other persons holding awards.

Eligibility. Employees, directors and consultants of ours or our subsidiary companies are eligible to receive awards, provided such consultants render bona fide services not in connection with the offer and sale of securities in a capital-raising transaction and do not directly promote or maintain a market for our securities. Only our employees or employees of our subsidiary companies are eligible to receive incentive stock options.

Stock Options. Stock options have been granted under our 2015 Plan. Subject to the provisions of our 2015 Plan, the administrator determines the term of a stock option, the number of shares subject to a stock option and the time period in which a stock option may be exercised.

The term of a stock option is stated in the applicable award agreement, but the term of a stock option may not exceed 10 years from the grant date. The administrator determines the exercise price of stock options, which generally may not be less than 100% of the fair market value of our common stock on the grant date, unless expressly determined in writing by the administrator on the stock option's grant date. However, an incentive stock option granted to an individual who directly or by attribution owns more than 10% of the total combined voting power of all of our classes of stock or of any parent or subsidiary may have a term of no longer than five years from the grant date and will have an exercise price of at least 110% of the fair market value of our common stock on the grant date. In addition, to the extent that the aggregate fair market value of the shares with respect to which incentive stock options are exercisable for the first time by an employee during any calendar year (under all our plans and any parent or subsidiary) exceeds $100,000, such stock options will be treated as nonstatutory stock options.

The administrator determines how a participant may pay the exercise price of a stock option, and the permissible methods are generally set forth in the applicable award agreement. If a participant's service to us or any subsidiary of ours is terminated, as applicable, that participant may exercise the vested portion of his or her stock option for the period of time stated in the applicable award agreement. Vested stock options generally will remain exercisable for three months or such other period of time as set forth in the applicable

award agreement if a participant ceases to provide services for a reason other than death, disability or, if set forth in an award agreement, termination for cause. If a participant's service is terminated due to death or disability, vested stock options generally will remain exercisable for 1 year from the date of termination (or such other period as set forth in the applicable award agreement). The administrator may provide in an award agreement that options will terminate immediately upon a participant's termination for cause. In no event will a stock option remain exercisable beyond its original term. If a participant does not exercise his or her stock option within the time specified in the award agreement, the stock option will terminate. Except as described above, the administrator has the discretion to determine the post-termination exercisability periods for a stock option.

Non-transferability of Awards. Unless determined otherwise by the administrator, awards may not be transferred in any manner other than by will or by the laws of descent and distribution, and with respect to non-statutory stock options, by instrument to an inter vivos or testamentary trust or by gift to immediate family. In addition, during an applicable participant's lifetime, only that participant may exercise their award.

Certain Adjustments. Upon a change in our corporate capitalization, such as a stock split, stock dividend or a corporate transaction, any merger, consolidation, combination, exchange of shares or the like, separation, including a spin-off, or other distribution of stock or property of the Company, any reorganization or any partial or complete liquidation of the Company, the administrator will adjust the number and class of shares that may be delivered under our 2015 Plan, the number, class and price of shares subject to outstanding awards granted under our 2015 Plan, and in the award limits set forth in our 2015 Plan, in order to prevent dilution or enlargement of rights. Additionally, the administrator will make adjustments in the terms and conditions of, and the criteria included in, awards in recognition of unusual or nonrecurring events affecting the Company or the financial statements of the Company or of changes in applicable laws, regulations, or accounting principles, whenever the administrator determines that such adjustments are appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under our 2015 Plan.

Change in Control. In the event of a change in control (as defined in our 2015 Plan), unless otherwise specifically prohibited under applicable laws, or by the rules and regulations of any governing governmental agencies or national securities exchange or trading system, or unless the otherwise specified in an award agreement, our board of directors may treat awards as follows: (i) elect to terminate options or stock appreciation rights in exchange for a cash payment equal to the amount by which the fair market value of the shares subject to such option or stock appreciation right to the extent the option or stock appreciation right has vested exceeds the exercise price with respect to such shares; (ii) elect to terminate options or stock appreciation rights provided that each participant is first notified of and given the opportunity to exercise his/her vested options or stock appreciation rights for a specified period of time (of not less than 15 days) from the date of notification and before the option or stock appreciation right is terminated; (iii) permit awards to be assumed by a new parent corporation or a successor corporation (or its parent) and replaced with a comparable award of the parent corporation or successor corporation (or its parent); (iv) amend an award agreement to accelerate vesting; (v) provide that vesting of any award shall accelerate if the participant is terminated other than for cause or if the participant resigns for good reason (as such terms are defined in the 2015 Plan); (vi) or implement any combination of the foregoing or implement any other action with respect to an award that it deems appropriate.

Amendment and Termination. Our board of directors may, at any time, terminate or amend our 2015 Plan in any respect, including, without limitation, amendment of any form of award agreement or instrument to be executed pursuant to our 2015 Plan, but no such amendment may adversely affect in any material any award without the written consent of the holder of such award. To the extent necessary and desirable to comply with applicable laws, we will obtain stockholder approval of any amendment to our 2015 Plan. As noted above, it is expected that as of one business day prior to the effectiveness of the registration statement of which this prospectus forms a part, our 2015 Plan will be terminated and we will not grant any additional awards under our 2015 Plan thereafter.

2006 Stock Plan

Our 2006 Plan was originally adopted by our board of directors and approved by our stockholders in 2006. Our 2006 Plan was terminated in 2015 in connection with the adoption of our 2015 Plan and as a result no new awards may be issued under our 2006 Plan. However, our 2006 Plan will continue to govern the terms and conditions of the outstanding awards previously granted under our 2006 Plan.

Prior to its termination, our 2006 Plan allowed us to grant incentive stock options, within the meaning of Section 422 of the Code, nonstatutory stock options, and stock purchase rights (each, an "award" and the recipient of such award, a "participant") to eligible employees and consultants of ours and any parent or subsidiary of ours.

As of March 31, 2021, stock options covering 1,476,338 shares of our common stock were outstanding under our 2006 Plan.

Plan Administration. Our 2006 Plan is administered by our board of directors or one or more committees appointed by our board of directors. Different committees may administer our 2006 Plan with respect to different service providers. The administrator has all authority and discretion necessary or appropriate to administer our 2006 Plan and to control its operation, including the authority to construe and interpret the terms of our 2006 Plan and the awards granted under our 2006 Plan. The administrator's decisions are final and binding on all participants and any other persons holding awards.

Eligibility. Employees and consultants of ours or our parent or subsidiary companies were eligible to receive awards under the 2006 Plan. Only our employees or employees of our parent or subsidiary companies were eligible to receive incentive stock options.

Stock Options. Stock options have been granted under our 2006 Plan. Subject to the provisions of our 2006 Plan, the administrator determined the term of an option, the number of shares subject to an option, and the time period in which an option may be exercised.

Non-transferability of Awards. Unless determined otherwise by the administrator, awards may not be sold, pledged, assigned, hypothecated or otherwise transferred in any manner other than by will or by the laws of descent and distribution.

Certain Adjustments. If there is a stock split, reverse stock split, stock dividend, combination, recapitalization or reclassification of the common stock, or any other increase or decrease in the number of issued shares of common stock effected without receipt by the participants of consideration by us, the number of shares of common stock covered by each outstanding award, as well as the price per share of common stock covered by each such outstanding award, shall be proportionately adjusted by the administrator for any increase or decrease in the number of issued shares of common stock.

Dissolution or Liquidation. In the event of our proposed dissolution or liquidation, each award will terminate immediately prior to the consummation of such proposed action, unless otherwise determined by the administrator.

Change of Control. In the event of a corporate transaction (including a change in control), the administrator may, in its discretion, (1) provide for an assumption or substitution of, or adjustment to, each outstanding award by the successor corporation or a parent or subsidiary of the successor corporation, and/or (2) provide for termination of awards as a result of the corporate transaction on such terms and conditions as it deems appropriate, including providing for cancellation of awards for a cash payment to the participant. The administrator need not provide for identical treatment of each outstanding award. Notwithstanding the foregoing, in the event of a change in control, the vesting and exercisability of each outstanding award shall accelerate such that the awards shall become fully vested and exercisable, in each case effective as of immediately prior to the consummation of the transaction. To the extent an award is not being assumed or substituted, such award shall terminate upon such consummation and the administrator shall notify the award holder of such fact at least five (5) days prior to the date on which the award terminates.

Amendment and Termination. Our board of directors may, at any time, amend our 2006 Plan in any respect, but no such amendment may materially and adversely affect the rights of any award holder under any outstanding grant, without his or her consent. As noted above, our 2006 Plan was terminated in 2015.

2021 Employee Stock Purchase Plan

Prior to the effectiveness of this offering, we expect that our board of directors will adopt, and our stockholders will approve, our 2021 ESPP. Our 2021 ESPP will be effective on the business day immediately prior to the effective date of the registration statement of which this prospectus forms a part. We believe that allowing our employees to participate in our 2021 ESPP will provide them with a further incentive towards promoting our success and accomplishing our corporate goals.

Authorized Shares. A total of shares of our common stock will be available for sale under our 2021 ESPP. The number of shares of our common stock that will be available for sale under our 2021 ESPP also includes an annual increase on the first day of each fiscal year beginning with our 2020 fiscal year, equal to the least of:

- shares;
- 1% of the outstanding shares of our common stock as of the last day of the immediately preceding fiscal year; or
- such other amount as the administrator may determine.

2021 ESPP Administration. We expect that the compensation committee of our board of directors will administer our 2021 ESPP and will have full and exclusive discretionary authority to construe, interpret, and apply the terms of the 2021 ESPP, delegate ministerial duties to any of our employees, designate separate offerings under the 2021 ESPP, designate our subsidiaries and affiliates as participating in the 2021 ESPP, determine eligibility, adjudicate all disputed claims filed under the 2021 ESPP, and establish procedures that it deems necessary for the administration of the 2021 ESPP, including, but not limited to, adopting such procedures and sub-plans as are necessary or appropriate to permit participation in the 2021 ESPP by employees who are foreign nationals or employed outside the United States. The administrator's findings, decisions and determinations are final and binding on all participants to the full extent permitted by law.

Eligibility. Generally, all of our employees will be eligible to participate if they are customarily employed by us, or any participating subsidiary or affiliate, for at least 20 hours per week and more than five months in any calendar year. The administrator, in its discretion, may, prior to an enrollment date, for all options to be granted on such enrollment date in an offering, determine that an employee who (i) has not completed at least two years of service (or a lesser period of time determined by the administrator) since his or her last hire date, (ii) customarily works not more than 20 hours per week (or a lesser period of time determined by the administrator), (iii) customarily works not more than five months per calendar year (or a lesser period of time determined by the administrator), (iv) is a highly compensated employee within the meaning of Section 414(q) of the Code, or (v) is a highly compensated employee within the meaning of Section 414(q) of the Code with compensation above a certain level or is an officer or subject to disclosure requirements under Section 16(a) of the Exchange Act, is or is not eligible to participate in such offering period.

However, an employee may not be granted rights to purchase shares of our common stock under our 2021 ESPP if such employee:

- immediately after the grant would own capital stock and/or hold outstanding options to purchase such stock possessing 5% or more of the total combined voting power or value of all classes of capital stock of ours or of any parent or subsidiary of ours; or

- holds rights to purchase shares of our common stock under all employee stock purchase plans of ours or any parent or subsidiary of ours that accrue at a rate that exceeds $25,000 worth of shares of our common stock for each calendar year in which such rights are outstanding at any time.

Offering Periods. Our 2021 ESPP will include a component that allows us to make offerings intended to qualify under Section 423 of the Code and a component that allows us to make offerings not intended to qualify under Section 423 of the Code, as described in our 2021 ESPP. Our 2021 ESPP will provide for offering periods as may be determined by the administrator in its discretion, in each case on a uniform and nondiscriminatory basis. Offering periods will expire on the earliest to occur of (i) the completion of the purchase of shares of common stock on the last exercise date occurring within 27 months of the applicable enrollment date on which the option to purchase shares was granted, or (ii) such shorter period as may be established by the administrator.

Contributions. Our 2021 ESPP will permit participants to purchase shares of our common stock through contributions (in the form of payroll deductions or otherwise to the extent permitted by the administrator) of up to 85% of their eligible compensation, which includes a participant's base straight time gross earnings but excludes payments for incentive compensation, bonuses, payments for overtime and shift premium, equity compensation income and other similar compensation. Unless otherwise determined by the administrator, a participant may make a onetime decrease (but not increase) to the rate of his or her contributions to 0% during an offering period.

Exercise of Purchase Right. Amounts contributed and accumulated by the participant will be used to purchase shares of our common stock at the end of each offering. Prior to the commencement of offerings under the 2021 ESPP, the administrator will determine the maximum number of shares that a participant may purchase. The purchase price of the shares will be 85% of the lower of the fair market value of our common stock on the first trading day of the offering period or on the exercise date. Participants may end their participation at any time during an offering period and will be paid their accrued contributions that have not yet been used to purchase shares of our common stock. Participation ends automatically upon termination of employment with us.

Non-Transferability. A participant may not transfer contributions credited to his or her account nor any rights granted under our 2021 ESPP other than by will, the laws of descent and distribution or as otherwise provided under our 2021 ESPP.

Merger or Change in Control. Our 2021 ESPP provides that in the event of a merger or change in control, as defined under our 2021 ESPP, a successor corporation (or a parent or subsidiary of the successor corporation) will assume or substitute each outstanding purchase right. If the successor corporation refuses to assume or substitute for the outstanding purchase right, the offering period with respect to which the purchase right relates will be shortened, and a new exercise date will be set that will be before the date of the proposed merger or change in control. The administrator will notify each participant that the exercise date has been changed and that the participant's option will be exercised automatically on the new exercise date unless prior to such date the participant has withdrawn from the offering period.

Amendment; Termination. The administrator will have the authority to amend, suspend or terminate our 2021 ESPP. Our 2021 ESPP automatically will terminate in 2041, unless we terminate it sooner.

Executive Incentive Compensation Plan

We expect our board of directors to approve our Executive Incentive Compensation Plan, or Master Bonus Plan which will become effective on the date it is approved.

Our board of directors or a committee appointed by our board of directors will administer the Master Bonus Plan, provided that unless and until our board of directors determines otherwise, our compensation committee will administer the Master Bonus Plan. The Master Bonus Plan allows the administrator to provide awards to

our “officers” as defined in Rule 16a-1(f) of the Securities and Exchange Act of 1934, as amended, whether such individual is so employed at the time the Master Bonus Plan is adopted or becomes so employed subsequent to the adoption of the Master Bonus Plan. The administrator, in its sole discretion, may establish a target award for each participant under the Master Bonus Plan, which may be expressed as a percentage of the participant’s average annual base salary for the applicable performance period, a fixed dollar amount, or such other amount or based on such other formula as the administrator determines to be appropriate.

Under the Master Bonus Plan, the administrator determines the performance goals, if any, applicable to any target award (or portion thereof) for a performance period, which may include, without limitation, goals related to: attainment of research and development milestones; revenue; capital raising; cash flow; cash position;; corporate transactions; earnings per share; expenses; financial milestones; gross margin; growth in stockholder value; leadership development or succession planning; license or research collaboration arrangements; market share; net income (loss); new product or business development; new product invention or innovation; number of customers; operating cash flow; operating income (loss); operating margin (loss); overhead or other expense reductions; patents; product release timelines; regulatory milestones or regulatory-related goals; revenue growth; stock price; total stockholder return; working capital; and individual objectives such as peer reviews or other subjective or objective criteria. As determined by the administrator, the performance goals may be based on GAAP or non GAAP results and any actual results may be adjusted by the administrator for one-time items or unbudgeted or unexpected items or payments of awards under the Master Bonus Plan when determining whether the performance goals have been met. The performance goals may be based on any factors the administrator determines relevant, including without limitation on an individual, divisional, portfolio, project, business unit, segment, or company-wide basis. Any criteria used may be measured on such basis as the administrator determines, including without limitation: (a) in absolute terms, (b) in combination with another performance goal or goals (for example, but not by way of limitation, as a ratio or matrix), (c) in relative terms (including, but not limited to, results for other periods, passage of time or against another company or companies or an index or indices), (d) on a per-share basis, (e) against our performance as a whole or a segment or (f) on a pre-tax or after-tax basis. The performance goals may differ from participant to participant and from award to award. Failure to meet the applicable performance goals will result in a failure to earn the target award, subject to the administrator’s discretion to modify an award. The administrator also may determine that a target award (or portion thereof) will not have a performance goal associated with it but instead will be granted (if at all) as determined by the administrator.

The administrator may, in its sole discretion and at any time, increase, reduce, or eliminate a participant’s actual award, or increase, reduce, or eliminate the amount allocated to the bonus pool for a particular performance period. The actual award may be below, at or above a participant’s target award, in the administrator’s discretion. The administrator may determine the amount of any increase, reduction, or elimination on the basis of such factors as it deems relevant, and it is not required to establish any allocation or weighting with respect to the factors it considers.

Actual awards under the Master Bonus Plan generally will be paid in cash (or its equivalent) in a single lump sum only after they are earned and approved by the administrator, provided that the administrator reserves the right, in its sole discretion, to settle an actual award with a grant of an equity award with such terms and conditions, including vesting requirements, as determined by the administrator in its sole discretion. Unless otherwise determined by administrator, to earn an actual award, a participant must be employed by us (or an affiliate of us, as applicable) through the date the bonus is paid. Payment of bonuses occurs as soon as administratively practicable after the end of the applicable performance period, but in no case after the later of (i) the 15th day of the third month of the fiscal year immediately following the fiscal year in which the bonuses vest and (ii) March 15 of the calendar year immediately following the calendar year in which the bonuses vest.

Awards under our Master Bonus Plan will be subject to reduction, cancellation, forfeiture, or recoupment in accordance with any clawback policy that we adopt pursuant to the listing standards of any national securities exchange or association on which our securities are listed or as is otherwise required by the Dodd-Frank Wall Street Reform and Consumer Protection Act or other applicable laws.

The administrator will have the authority to amend or terminate the Master Bonus Plan. However, such action may not materially alter or materially impair the existing rights of any participant with respect to any earned bonus without the participant's consent. The Master Bonus Plan will remain in effect until terminated in accordance with the terms of the Master Bonus Plan.

401(k) plan

We maintain a defined contribution 401(k) retirement savings plan for the benefit of our employees, including our named executive officers, who satisfy certain eligibility requirements. Under the 401(k) plan, eligible employees may elect to defer a portion of their compensation, within the limits prescribed by the Code, on a pre-tax or after-tax (Roth) basis, through contributions to the 401(k) plan. The 401(k) plan is intended to qualify under Sections 401(a) and 501(a) of the Code. As a tax-qualified retirement plan, pre-tax contributions to the 401(k) plan and earnings on those pre-tax contributions are not taxable to the employees until distributed from the 401(k) plan, and earnings on Roth contributions are not taxable when distributed from the 401(k) plan. We do not match contributions made by our employees or provide any other form of employer contributions, except as required by applicable law with respect to mandatory top-heavy contributions.

Limitation 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 Delaware law. Delaware law 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 will also be empowered 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 intend to enter into an indemnification agreement with each member of our board of directors and each of our officers prior to the completion of the offering. These agreements provide for the indemnification of our directors and officers for certain expenses and liabilities incurred in connection with any action, suit, proceeding or alternative dispute resolution mechanism or hearing, inquiry or investigation that may lead to the foregoing, to which they are a party, or are threatened to be made a party, by

reason of the fact that they are or were a director, officer, employee, agent or fiduciary of our company, or any of our subsidiaries, by reason of any action or inaction by them while serving as an officer, director, agent or fiduciary, or by reason of the fact that they were serving at our request as a director, officer, employee, agent or fiduciary of another entity. In the case of an action or proceeding by or in the right of our company or any of our subsidiaries, no indemnification will be provided for any claim where a court determines that the indemnified party is prohibited from receiving indemnification. We believe that these charter and bylaw provisions and indemnification agreements are necessary to attract and retain qualified persons as directors and officers.

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. Moreover, 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 (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.

Certain relationships and related party transactions

Other than compensation arrangements, including employment, termination of employment and change in control arrangements, with our directors and executive officers, including those discussed in the sections titled “Management” and “Executive Compensation,” and the registration rights described in the section titled “Description of Capital Stock—Registration Rights,” the following is a description of each transaction since January 1, 2018 and each currently proposed transaction in which:

- we have been or are to be a participant;
- the amount involved exceeded or exceeds $120,000; and
- any of our directors, executive officers or holders of more than 5% of our outstanding capital stock, or any immediate family member of, or person sharing the household with, any of these individuals or entities, had or will have a direct or indirect material interest.

On July 29, 2015, in connection with his appointment to the Board, the Board approved compensation for Christopher Cox consisting of (i) cash in the amount of $50,000 per annum (the “Cox Annual Cash Payment”), an initial stock option award of 500,000 shares of Common Stock vesting monthly in equal amounts over 24 months, and (iii) an annual stock option award in the amount of 25,000 shares of Common Stock beginning following the one-year anniversary of Mr. Cox joining the Board, subject to vesting monthly in equal amounts over 24 months following the date of grant (the “Cox Annual Grant”). To date, the Company has paid each of the Cox Annual Cash Payments and made the Cox Annual Grants owed to Mr. Cox pursuant to the aforementioned Board approvals.

On January 1, 2019, the Company entered into a consulting agreement with Yelroc Consulting, Inc., an entity owned by J. Andy Corley (the “Corley Consulting Agreement”). Under the Corley Consulting Agreement, J. Andy Corley agreed to serve as Chairman of the Board, help lead the Company’s strategic discussions and negotiations, and provide technical and commercial consulting experience. Mr. Corley is compensated for his services under the Corley Consulting Agreement at the rate of $10,000 per month and is also reimbursed for reasonable and customary business expenses that he incurs as a result of performing his consulting services. The original term of the Corley Consulting Agreement was until December 31, 2020. Amendment No. 1 to the Corley Consulting Agreement by and between the Company and Yelroc Consulting, Inc., dated as of December 16, 2020, extended the term of the Corley Consulting Agreement until December 31, 2021.

On January 1, 2019, the Company entered into a consulting agreement with Daniel M. Schwartz, MD (the “Schwartz Consulting Agreement”). Under the Schwartz Consulting Agreement, Daniel Schwartz agreed to serve as a member of the Board and assist with the Company’s strategic discussions and negotiations. Mr. Schwartz is compensated for his services under the Schwartz Consulting Agreement at the rate of $6,250 per month and is also reimbursed for reasonable and customary business expenses that he incurs as a result of performing his consulting services. The original term of the Schwartz Consulting Agreement was until December 31, 2020. Amendment No. 1 to the Schwartz Consulting Agreement by and between the Company and Daniel M. Schwartz, MD, dated as of December 16, 2020, extended the term of the Schwartz Consulting Agreement until December 31, 2021.

On April 18, 2019, the Company entered into an Amended and Restated Secured Full Recourse Promissory Note with Daniel Schwartz for $160,000.00 (“Schwartz Promissory Note”). The Schwartz Promissory Note contains a 7.0% annual interest rate and a three year term. The Schwartz Promissory Note is secured by a Stock Pledge Agreement.

Sales of securities

None.

Investor rights agreement

We are party to an amended and restated investor rights agreement with certain holders of our capital stock, including (i) RxSight I, LLC, (ii) H.I.G. BioVentures - Calhoun, LLC, (iii) Longitude Venture Partners II, L.P., (iv) RA Capital Healthcare Fund, L.P. and (v) BP Calhoun Associates LLC. Under our investor rights agreement, certain holders of our capital stock have the right to demand that we file a registration statement or request that their shares of our capital stock be covered by a registration statement that we are otherwise filing. See the section titled "Description of Capital Stock—Registration Rights" for additional information regarding these registration rights.

Indemnification agreements

We have entered, and intend to continue to enter, into separate indemnification agreements with each of our directors and executive officers, in addition to the indemnification provided for in our amended and restated certificate of incorporation and amended and restated bylaws. The indemnification agreements and our amended restated certificate of incorporation and amended and restated bylaws that will be in effect upon the completion of this offering require us to indemnify our directors, executive officers and certain controlling persons to the fullest extent permitted by Delaware law. See the section titled "Executive Compensation—Limitation of Liability and Indemnification" for additional information.

Equity grants to executive officers and directors

We have granted options to our named executive officers and certain of our non-employee directors as more fully described in the sections titled "Director Compensation" and "Executive Compensation."

Related party transaction policy

Our audit committee will have the primary responsibility for reviewing and approving or disapproving "related party transactions," which are transactions between us and related persons in which the aggregate amount involved exceeds or may be expected to exceed $120,000 and in which a related person has or will have a direct or indirect material interest. The charter of our audit committee will provide that our audit committee shall review and approve in advance any related party transaction.

Prior to the completion of this offering, we intend to adopt a formal written policy providing that we are not permitted to enter into any transaction that exceeds $120,000 and in which any related person has a direct or indirect material interest without the consent of our audit committee. In approving or rejecting any such transaction, our audit committee is to consider the relevant facts and circumstances available and deemed relevant to our audit committee, including whether the transaction is on terms no less favorable than terms generally available to an unaffiliated third party under the same or similar circumstances and the extent of the related person's interest in the transaction.

Principal Stockholders

The following table sets forth the beneficial ownership of our common stock as of March 31, 2021 by:

- each person, or group of affiliated persons, who is known by us to beneficially own more than 5% of our common stock;
- each of the named executive officers;
- each of our directors; and
- all of our current executive officers and directors as a group.

We have determined beneficial ownership in accordance with the rules of the SEC, and thus it represents sole or shared voting or investment power with respect to our 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 that they beneficially owned, subject to community property laws where applicable. The information does not necessarily indicate beneficial ownership for any other purpose, including for purposes of Sections 13(d) and 13(g) of the Exchange Act.

We have based our calculation of the percentage of beneficial ownership prior to this offering on 195,708,393 shares of our common stock outstanding as of March 31, 2021, which includes 153,415,871 shares of our common stock resulting from the conversion of all 148,509,849 outstanding shares of our convertible preferred stock at March 31, 2021 into our common stock immediately prior to the completion of this offering, as if this conversion had occurred as of March 31, 2021. We have based our calculation of the percentage of beneficial ownership after this offering on shares of our common stock outstanding immediately after the completion of this offering, assuming no exercise by the underwriters of their option to purchase additional shares. We have deemed shares of our common stock subject to stock options that are currently exercisable or exercisable within 60 days of March 31, 2021, to be outstanding and to be beneficially owned by the person holding the stock option for the purpose of computing the percentage ownership of that person. We did not deem these shares outstanding, however, for the purpose of computing the percentage ownership of any other person.

Unless otherwise indicated, the address of each beneficial owner listed in the table below is c/o RxSight, Inc., 100 Columbia, Aliso Viejo, CA 92656.

	Shares Beneficially Owned Prior to this Offering		Shares Beneficially Owned After this Offering	
Name of Beneficial Owner	**Shares**	**Percentage**	**Shares**	**Percentage**
5% Stockholders:				
RxSight I, LLC[1]	20,833,333	10.65%		
Longitude Venture Partners II, L.P.[2]	19,541,667	9.97%		
Entities affiliated with Richard M. Wolfen[3]	19,010,352	9.71%		
H.I.G. BioVentures – Calhoun, LLC[4]	14,791,665	7.53%		
RA Capital Healthcare Fund[5]	12,166,663	6.20%		
BP Calhoun Associates[6]	11,034,861	5.63%		

Name of Beneficial Owner	Shares Beneficially Owned Prior to this Offering		Shares Beneficially Owned After this Offering	
	Shares	Percentage	Shares	Percentage
Named Executive Officers and Directors:				
William J. Link, Ph.D.[7]	20,833,333	10.65%		
Juliet Tammenoms Bakker[8]	19,541,667	9.97%		
Richard M. Wolfen[9]	19,010,352	9.71%		
Bruce Robertson, Ph.D.[10]	14,791,665	7.53%		
Ron Kurtz, M.D.[11]	8,391,559	4.29%		
Daniel Schwartz[12]	6,529,220	3.30%		
Eric Weinberg[13]	5,992,578	3.02%		
J. Andy Corley[14]	3,782,262	1.93%		
Ilya Goldshleger[15]	1,930,582	*		
Shelley Thunen[16]	1,152,107	*		
Christopher Cox[17]	620,415	*		
All executive officers and directors as a group (11 persons)[18]	102,575,740	50.08%		

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

(1) Consists of 20,833,333 shares of Series H Preferred Stock held by RxSight I, LLC. William J. Link is a managing member of RxSight I, LLC and may be deemed to share voting and investment power over the securities held by RxSight I, LLC. William disclaims beneficial ownership of such shares except to the extent of his respective pecuniary interests therein. The address of RxSight I, LLC is 11 Linda Isle, Newport Beach, CA 92660.

(2) Consists of 16,666,667 shares of Series G Preferred Stock and 2,500,000 shares of Series H Preferred Stock, and 375,000 warrants for shares of Series H Preferred Stock held by Longitude Venture Partners II, L.P. ("LVP II"). Longitude Capital Partners II, LLC ("LCP II") is the general partner of LVP II and may be deemed to have voting and investment power over the securities held by LVP II Patrick G. Enright and Juliet Tammenoms Bakker are managing members of LCP II and may be deemed to share voting and investment power over the securities held by LVP II, LCP II and each of Mr. Enright and Ms. Tammenoms Bakker disclaim beneficial ownership of such shares except to the extent of their respective pecuniary interests therein. The address of LVP II is 2740 Sand Hill Road, 2nd Floor, Menlo Park, CA 94025.

(3) Consists of (i) 2,412,554 shares of Common Stock, 121,027 shares of Series A Preferred Stock, 1,877,904 shares of Series B Preferred Stock, 3,948,337 shares of Series C Preferred Stock (4,047,439 shares of Common Stock on an as converted basis), 118,719 shares of Series D Preferred Stock (138,270 shares of Common Stock on an as converted basis), 62,500 shares of Series E Preferred Stock (76,025 shares of Common Stock on an as converted basis), 1,200,000 shares of Series F Preferred Stock (1,824,600 shares of Common Stock on an as converted basis), 2,540,469 shares of the Series G Preferred Stock, and 958,332 shares of the Series H Preferred Stock held by Werner F. Wolfen & Mary G. Wolfen, Trustees of the Wolfen Revocable Trust date 7/22/02; (ii) 400,000 shares of Common Stock and 1,015,483 shares of Series G Preferred Stock held by Werner F. Wolfen and Mary G. Wolfen, Trustees of the Wolfen Family Foundation; (iii) 12,359 shares of Common Stock, 28,927 shares of Series A Preferred Stock, 20,843 shares of Series B Preferred Stock, 100,000 shares of Series D Preferred Stock (116,470 shares of Common Stock on an as converted basis), 50,000 shares of Series E Preferred Stock (60,820 shares of Common Stock on an as converted basis), 439,577 shares of Series G Preferred Stock, and 100,000 shares of Series H Preferred Stock, and 15,000 warrants for shares of Series H Preferred Stock held by Richard M. Wolfen; (iv) 262,812 shares of Series B Preferred Stock, 100,000 shares of Series D Preferred Stock (116,467 shares of Common Stock on an as converted basis), and 139,648 shares of Series F Preferred Stock (212,334 shares of Common Stock on an as converted basis) held by W&M Wolfen Receptacle Trust; (v) 56,948 shares of Series B Preferred Stock, 57,143 shares of Series C Preferred Stock (58,777 shares of Common Stock on an as converted basis), 71,429 shares of Series D Preferred Stock (83,193 shares of Common Stock on an as converted basis), 62,500 shares of Series E Preferred Stock (76,025 shares of Common Stock on an as converted basis), 67,116 shares of Series G Preferred Stock, and 239,582 shares of Series H Preferred Stock held by Lawrence P. Wolfen Testamentary Trust; (vi) 56,947 shares of Series B Preferred Stock, 57,143 shares of Series C Preferred Stock (58,577 shares of Common Stock on an as converted basis), 71,429 shares of Series D Preferred Stock (83,193 shares of Common Stock on an as converted basis), 62,500 shares of Series E Preferred Stock (76,025 shares of Common Stock on an as converted basis), 67,116 shares of Series G Preferred Stock, and 239,582 shares of Series H Preferred Stock held by Cynthia R. Scott Trust dated 7/1/2008; (vii) 57,143 shares of Series C Preferred Stock (58,577 shares of Common Stock on an as converted basis) and 191,667 shares of Series H Preferred Stock held by James A Wolfen 2008 Trust dated 5/19/2008; (viii) 59,896 shares of Series B Preferred Stock and 76,662 shares of Series F Preferred Stock (116,563 shares of Common Stock on an as converted basis) held by Mary G. Wolfen 2020 Annuity Trust RxSight; (ix) 59,896 shares of Series B Preferred Stock and 76,662 shares of Series F Preferred Stock (116,563 shares of Common Stock on an as converted basis) held by Werner F. Wolfen 2020 Annuity Trust RxSight; (x) 77,474 shares of Series B Preferred Stock and 48,060 shares of Series D Preferred Stock (55,973 shares of Common Stock on an as converted basis) held by R&K Wolfen Receptacle Trust; (xi) 8,698 shares of Series B Preferred Stock and 53,514 shares of Series F Preferred Stock (81,368 shares of Common Stock on an as converted basis) held

by Mary G. Wolfen 2018 Annuity Trust RxSight; (xii) 8,698 shares of Series B Preferred Stock and 53,514 shares of Series F Preferred Stock (81,368 shares of Common Stock on an as converted basis) held by Werner F. Wolfen 2018 Annuity Trust RxSight; (xiii) 36,263 shares of Series B Preferred Stock and 14,321 shares of Series D Preferred Stock (16,679 shares of Common Stock on an as converted basis) held by Karen Africk Wolfen 2020 Annuity Trust RxSight; (xiv) 36,263 shares of Series B Preferred Stock and 14,321 shares of Series D Preferred Stock (16,679 shares of Common Stock on an as converted basis) held by Richard M. Wolfen 2020 Annuity Trust RxSight; (xv) 11,649 shares of Series D Preferred Stock held (13,567 shares of Common Stock on an as converted basis) by Karen Africk Wolfen 2018 Annuity Trust RxSight; and (xvi) 11,649 shares of Series D Preferred Stock (13,567 shares of Common Stock on an as converted basis) held by Richard M. Wolfen 2018 Annuity Trust. The address of all "Wolfen Entities" is 919 North Roxbury Drive, Beverly Hills, CA 90210.

(4) Consists of 10,000,000 shares of Series G Preferred Stock, 4,166,666 shares of Series H Preferred Stock, and 624,999 warrants for shares of Series H Preferred Stock held by H.I.G. BioVentures – Calhoun, LLC. Affiliates of H.I.G. Capital manage all aspects of H.I.G. BioVentures – Calhoun, LLC. Anthony Tamer and Sami Mnaymneh are the managing partners of H.I.G. Capital and as such have the right to direct all activities related thereto. Alex Zisson, Dr. Michael Wasserman, and Dr. Bruce Robertson are the managing directors of H.I.G. BioVentures – Calhoun, LLC, an affiliate of H.I.G. Capital. Dr. Robertson, a director of RxSight, disclaims beneficial ownership of the shares owned by H.I.G. BioVentures – Calhoun, LLC except to the extent of his pecuniary interests therein. The address of H.I.G. BioVentures – Calhoun, LLC is 1450 Brickell Avenue, 31st Floor, Miami, FL 33131.

(5) Consists of (i) 6,833,333 shares of Series G Preferred Stock, 2,716,666 shares of Series H Preferred Stock, and 407,499 warrants for shares of Series H Preferred Stock held by RA Capital Healthcare Fund, L.P. (RA Healthcare); and (ii) 1,500,000 shares of Series G Preferred Stock, 616,666 shares of Series H Preferred Stock, and 92,499 warrants for shares of Series H Preferred Stock held by held by Blackwell Partners LLC-Series A (Blackwell). RA Capital Management, L.P. is the investment manager for RA Healthcare and Blackwell. The general partner of RA Capital Management, L.P. is RA Capital Management GP, LLC, of which Peter Kolchinsky and Rajeev Shah are the managing members. RA Capital Management, L.P., RA Capital Management GP, LLC, Peter Kolchinsky and Rajeev Shah may be deemed to have voting and investment power over the shares held of record by RA Healthcare and Blackwell. RA Capital Management, L.P., RA Capital Management GP, LLC, Peter Kolchinsky and Rajeev Shah disclaim beneficial ownership of such shares, except to the extent of any pecuniary interest therein. The address of the entities listed above is 200 Berkeley Street, 18th Floor, Boston, Massachusetts 02116.

(6) Consists of 8,333,333 shares of Series G Preferred Stock and 2,349,155 shares of Series H Preferred Stock, and 352,373 warrants for shares of Series H Preferred Stock held by BP Calhoun Associates. The address of BP Calhoun Associates is 285 Riverside Ave., #200, Westport, CT 06880.

(7) Consists of the shares described in note 1 above.

(8) Consists of the shares described in note 2 above.

(9) Consists of the shares described in note 3 above.

(10) Consists of the shares described in note 4 above.

(11) Consists of (i) 8,274,060 shares of Common Stock held by Cricklewood LP and (iii) 117,499 shares of Common Stock issuable pursuant to options held directly by Mr. Kurtz exercisable within 60 days of March 31, 2021. Ronald Kurtz, our Chief Executive Officer and a member of our board directors is the manager of the general partner of Cricklewood LP and shares voting and investment control of the general partner of Cricklewood LP with Jennifer Simpson, Mr. Kurtz's spouse.

(12) Consists of (i) 4,483,751 shares of Common Stock held directly by Daniel Schwartz, (ii) 40,000 shares of Series C Preferred Stock held (41,004 shares of Common Stock on an as converted basis) directly by Daniel Schwartz, and (iii) 2,004,465 shares of Common Stock issuable pursuant to options held directly by Daniel Schwartz exercisable within 60 days of March 31, 2021.

(13) Consists of (i) 3,292,467 shares of Common Stock held by EJW Living Trust and (ii) 2,700,111 shares of Common Stock issuable pursuant to options held directly by Eric Weinberg exercisable within 60 days of March 31, 2021.

(14) Consists of (i) 3,698,929 shares of Common Stock held by Andy Corley Living Trust dated 7/17/2013 and (ii) 83,333 shares of Common Stock issuable pursuant to options held directly by Andy Corley exercisable within 60 days of March 31, 2021.

(15) Consists of 1,930,582 shares of Common Stock issuable pursuant to options held directly by Ilya Goldshleger exercisable within 60 days of March 31, 2021.

(16) Consists of (i) 500,000 shares of Common Stock held by Shelley B. Thunen Revocable Family Trust, as Amended and 652,107 shares of Common Stock issuable pursuant to options held directly by Shelley B. Thunen exercisable within 60 days of March 31, 2021.

(17) Consists of 620,415 shares of Common Stock issuable pursuant to options held directly by Chris Cox exercisable within 60 days of March 31, 2021.

(18) Consists of the shares described in notes 7 through 17 above.

Description of capital stock

The following description summarizes certain terms of our capital stock, as they are expected to be in effect upon the completion of this offering. We expect to adopt an amended and restated certificate of incorporation and bylaws in connection with the completion of this offering, and this description summarizes certain of the provisions that are expected to be included in those documents. This summary does not purport to be complete and is qualified in its entirety by the provisions in our certificate of incorporation and bylaws, copies of which have been filed with the SEC as exhibits to the registration statement of which this prospectus is a part, and to the applicable provisions of Delaware law.

Upon the completion of this offering and the filing of our amended and restated certificate of incorporation to be effective upon completion of this offering, our authorized capital stock will consist of shares of common stock, par value $0.0001 per share, and shares of convertible preferred stock, par value $0.0001 per share.

Upon the completion of this offering, all of the outstanding shares of our convertible preferred stock will convert into an aggregate of 153,415,871 shares of our common stock.

Based on 195,708,393 shares of common stock outstanding as of March 31, 2021, after giving effect to the automatic conversion of all of our outstanding 153,415,871 shares of convertible preferred stock at March 31, 2021 into an aggregate of 153,415,871 shares of common stock upon the completion of this offering and the issuance of shares of common stock in this offering, there will be shares of common stock outstanding upon the completion of this offering. As of March 31, 2021, we had 428 stockholders of record. As of March 31, 2021, there were 47,866,502 shares of common stock subject to outstanding options.

Common stock

Voting rights

Each holder of common stock is entitled to one vote for each share on all matters submitted to a vote of the stockholders, including the election of directors. Our certificate of incorporation and bylaws to be in effect upon the completion of this offering do not provide for cumulative voting rights. Because of this, the holders of a plurality of the shares of common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they should so choose. With respect to matters other than the election of directors, at any meeting of the stockholders at which a quorum is present or represented, the affirmative vote of a majority of the voting power of the shares present in person or represented by proxy at such meeting and entitled to vote on the subject matter shall be the act of the stockholders, except as otherwise required by law. The holders of a majority of the stock issued and outstanding and entitled to vote, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders.

Dividends

Subject to preferences that may be applicable to any then-outstanding convertible preferred stock, holders of our common stock are entitled to receive dividends, if any, as may be declared from time to time by our board of directors out of legally available funds.

Liquidation

In the event of our liquidation, dissolution or winding up, holders of our common stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of our debts and other liabilities and the satisfaction of any liquidation preference granted to the holders of any then-outstanding shares of convertible preferred stock.

Rights and preferences

Holders of our common stock have no preemptive, conversion, subscription or other rights, and there are no redemption or sinking fund provisions applicable to our common stock. The rights, preferences and privileges of the holders of our common stock are subject to and may be adversely affected by the rights of the holders of shares of any series of our convertible preferred stock that we may designate in the future.

Fully paid and nonassessable

All of our outstanding shares of common stock are, and the shares of common stock to be issued in this offering, upon payment and delivery in accordance with the underwriting agreement, will be fully paid and nonassessable.

Preferred stock

Upon the completion of this offering, our board of directors will have the authority, without further action by the stockholders, to issue up to _____ 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, redemption rights, 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 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 change in our control 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.

Common stock options

As of March 31, 2021, we had outstanding options to purchase an aggregate of 47,866,502 shares of our common stock, with a weighted-average exercise price of $1.05 per share, under our 2015 Plan. After March 31, 2021, we issued options to purchase an aggregate of 75,000 shares of our common stock, with a weighted-average exercise price of $1.93 per share, under our 2015 Plan.

Registration rights

After the completion of this offering, under our investor rights agreement, the holders of up to _____ shares of common stock or their transferees, have the right to require us to register the offer and sale of their shares, or to include their shares in any registration statement we file, in each case as described below.

Demand registration rights

After the completion of this offering, the holders of up to _____ shares of our common stock will be entitled to certain demand registration rights. At any time beginning after 180 days following the completion of this offering, the holders of at least 50% of the shares having registration rights then outstanding can request that we file a registration statement to register the offer and sale of their shares. We are only obligated to effect up to two such registrations. Each such request for registration must cover securities the anticipated aggregate gross proceeds of which, before deducting underwriting discounts and expenses, is at least $20 million. These demand registration rights are subject to specified conditions and limitations, including the right of the underwriters to limit the number of shares included in any such registration under certain circumstances. If we determine that it would be materially detrimental to us and our stockholders to effect such a demand registration, we have the right to defer such registration, not more than once in any twelve month period, for a period of up to 90 days.

Form S-3 registration rights

After the completion of this offering, the holders of up to _____ shares of our common stock will be entitled to certain Form S-3 registration rights. At any time after 180 days following the completion of this offering when we are eligible to file a registration statement on Form S-3, the holders of the shares having these rights then outstanding can request that we register the offer and sale of their shares of our common stock on a registration statement on Form S-3 so long as the request covers securities the anticipated aggregate public offering price of which is at least $1 million. These stockholders may make an unlimited number of requests for registration on a registration statement on Form S-3. However, we will not be required to effect a registration on Form S-3 if we have effected two such registrations within the twelve-month period preceding the date of the request. These Form S-3 registration rights are subject to specified conditions and limitations, including the right of the underwriters to limit the number of shares included in any such registration under certain circumstances. Additionally, if we determine that it would be seriously detrimental to us and our stockholders to effect such a demand registration, we have the right to defer such registration, not more than once in any twelve month period, for a period of up to 90 days.

Piggyback registration rights

After the completion of this offering, the holders of up to _____ shares of our common stock will be entitled to certain "piggyback" registration rights. If we propose to register the offer and sale of shares of our common stock under the Securities Act, all holders of these shares then outstanding can request that we include their shares in such registration, subject to certain marketing and other limitations, including the right of the underwriters to limit the number of shares included in any such registration statement under certain circumstances. As a result, whenever we propose to file a registration statement under the Securities Act, other than with respect to (1) a registration related to any employee benefit plan or a corporate reorganization or other transaction covered by Rule 145 promulgated under the Securities Act, (2) a registration relating to the offer and sale of debt securities, (3) a registration on any registration form that does not permit secondary sales or (4) a registration pursuant to the demand or Form S-3 registration rights described in the preceding two paragraphs above, the holders of these shares are entitled to notice of the registration and have the right, subject to certain limitations, to include their shares in the registration.

Expenses of registration

We will pay all expenses up to $50,000 relating to any demand registrations, Form S-3 registrations and piggyback registrations, subject to specified exceptions.

Termination

The registration rights terminate upon the earliest of (1) the date that is three years after the completion of this offering, (2) immediately prior to the completion of certain liquidation events and (3) as to a given holder of registration rights, the date after the completion of this offering when such holder of registration rights can sell all of such holder's registrable securities during any ninety day period pursuant to Rule 144 promulgated under the Securities Act and such holder holds less than one percent (1%) of our outstanding securities.

Anti-takeover effects of certain provisions of Delaware law, our amended and restated certificate of incorporation and our amended and restated bylaws

Certain provisions of Delaware law and certain provisions that will be included in our amended and restated certificate of incorporation and amended and restated bylaws summarized below may be deemed to have an anti-takeover effect and may delay, deter or prevent a tender offer or takeover attempt that a stockholder might consider to be in its best interests, including attempts that might result in a premium being paid over the market price for the shares held by stockholders.

Preferred stock

Our amended and restated certificate of incorporation will contain provisions that permit our board of directors to issue, without any further vote or action by the stockholders, shares of preferred stock in one or more series and, with respect to each such series, to fix the number of shares constituting the series and the designation of the series, the voting rights (if any) of the shares of the series and the powers, preferences or relative, participation, optional and other special rights, if any, and any qualifications, limitations or restrictions, of the shares of such series.

Classified board

Our amended and restated certificate of incorporation will provide that our board of directors is divided into three classes, designated Class I, Class II and Class III. Each class will be an equal number of directors, as nearly as possible, consisting of one third of the total number of directors constituting the entire board of directors. The term of initial Class I directors shall terminate on the date of the 2022 annual meeting, the term of the initial Class II directors shall terminate on the date of the 2023 annual meeting, and the term of the initial Class III directors shall terminate on the date of the 2024 annual meeting. At each annual meeting of stockholders beginning in 2022, successors to the class of directors whose term expires at that annual meeting will be elected for a three-year term.

Removal of directors

Our amended and restated certificate of incorporation will provide that stockholders may only remove a director for cause by a vote of no less than a majority of the shares entitled to vote.

Director vacancies

Our amended and restated certificate of incorporation will authorize only our board of directors to fill vacant directorships.

No cumulative voting

Our amended and restated certificate of incorporation will provide that stockholders do not have the right to cumulate votes in the election of directors.

Special meetings of stockholders

Our amended and restated certificate of incorporation and amended and restated bylaws will provide that, except as otherwise required by law, special meetings of the stockholders may be called only by an officer at the request of a majority of our board of directors, by the Chair of our board of directors, by our President or by our Chief Executive Officer.

Advance notice procedures for director nominations

Our bylaws will provide that stockholders seeking to nominate candidates for election as directors at an annual or special meeting of stockholders must provide timely notice thereof in writing. To be timely, a stockholder's notice generally will have to be delivered to and received at our principal executive offices before notice of the meeting is issued by the secretary of the company, with such notice being served not less than 90 nor more than 120 days before the meeting. Although the amended and restated bylaws will not give the board of directors the power to approve or disapprove stockholder nominations of candidates to be elected at an annual meeting, the amended and restated bylaws may have the effect of precluding the conduct of certain business at a meeting if the proper procedures are not followed or may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect its own slate of directors or otherwise attempting to obtain control of the company.

Action by written consent

Our amended and restated certificate of incorporation and amended and restated bylaws will provide that any action to be taken by the stockholders must be effected at a duly called annual or special meeting of stockholders and may not be effected by written consent.

Amending our certificate of incorporation and bylaws

Our amended and restated certificate of incorporation may be amended or altered in any manner provided by the Delaware General Corporation Law, or the DGCL. Our amended and restated bylaws may be adopted, amended, altered or repealed by stockholders only upon approval of at least majority of the voting power of all the then outstanding shares of the common stock, except for any amendment of the above provisions, which would require the approval of a two-thirds majority of our then outstanding common stock. Additionally, our amended and restated certificate of incorporation will provide that our bylaws may be amended, altered or repealed by the board of directors.

Authorized but unissued shares

Our authorized but unissued shares of common stock and preferred stock will be available for future issuances without stockholder approval, except as required by the listing standards of Nasdaq, and could be utilized for a variety of corporate purposes, including future offerings to raise additional capital, acquisitions and employee benefit plans. The existence of authorized but unissued and unreserved common stock and preferred stock could render more difficult or discourage an attempt to obtain control of the company by means of a proxy contest, tender offer, merger or otherwise.

Exclusive jurisdiction

Our amended and restated bylaws will provide that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for any derivative action or proceeding brought on our behalf, any action asserting a claim of breach of fiduciary duty, any action asserting a claim arising pursuant to the DGCL, any action regarding our amended and restated certificate of incorporation or our amended and restated bylaws, or any action asserting a claim against us that is governed by the internal affairs doctrine. This Delaware forum provision does not apply to actions arising under the Securities Exchange Act of 1934 in which the federal courts have exclusive jurisdiction. Our amended and restated bylaws will provide further, unless we consent to the selection of an alternative forum, that the federal district courts of the United States of America shall be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act of 1933 against any person in connection with any offering of the Company's securities, including but not limited to any auditor, underwriter, selling shareholder, expert, control person, or other defendant.

Business combinations with interested stockholders

We are governed by Section 203 of the DGCL. Subject to certain exceptions, Section 203 of the DGCL prohibits a public Delaware corporation from engaging in a business combination (as defined in such section) with an "interested stockholder" (defined generally as any person who beneficially owns 15% or more of the outstanding voting stock of such corporation or any person affiliated with such person) for a period of three years following the time that such stockholder became an interested stockholder, unless (i) prior to such time the board of directors of such corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder; (ii) upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of such corporation at the time the transaction commenced (excluding for purposes of

determining the voting stock of such corporation outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned (A) by persons who are directors and also officers of such corporation and (B) by 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 (iii) at or subsequent to such time the business combination is approved by the board of directors of such corporation and authorized at a meeting of stockholders (and not by written consent) by the affirmative vote of at least 66 $^{2}/_{3}$% of the outstanding voting stock of such corporation not owned by the interested stockholder.

Our amended and restated certificate of incorporation and our amended and restated bylaws will provide that we must indemnify our directors and officers to the fullest extent authorized by the DGCL. We are expressly authorized to, and do, carry directors' and officers' insurance providing coverage for our directors, officers and certain employees for some liabilities. We believe that these indemnification provisions and insurance are useful to attract and retain qualified directors and executive directors.

The limitation on liability and indemnification provisions in our certificate of incorporation and bylaws may discourage stockholders from bringing a lawsuit against directors for breach of their fiduciary duty. These provisions may also have the effect of reducing the likelihood of derivative litigation against directors and officers, even though such an action, if successful, might otherwise benefit us and our stockholders. In addition, your investment may be adversely affected to the extent we pay the costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions.

Listing

We have applied to list our common stock on the Nasdaq Global Market under the symbol "RXST."

Transfer agent and registrar

The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company, LLC. The transfer agent and registrar's address is 6201 15th Avenue, Brooklyn, New York 11219, and its telephone number is 718-921-8300. Our shares of common stock will be issued in uncertificated form only, subject to limited circumstances.

Shares eligible for future sale

Prior to this offering, there has been no public market for our common stock, and although we expect that our common stock will be approved for listing on the Nasdaq Global Market, we cannot assure investors that there will be an active public market for our common stock following this offering. We cannot predict what effect, if any, sales of our shares in the public market or the availability of shares for sale will have on the market price of our common stock. Future sales of substantial amounts of common stock in the public market, including shares issued upon exercise of outstanding options, or the perception that such sales may occur, however, could adversely affect the market price of our common stock and also could adversely affect our future ability to raise capital through the sale of our common stock or other equity-related securities of ours at times and prices we believe appropriate.

Upon completion of this offering, based on our shares outstanding as of March 31, 2021 and after giving effect to the automatic conversion of all of the 153,415,871 shares of our convertible preferred stock outstanding at March 31, 2021, shares of our common stock will be outstanding, or shares of common stock if the underwriters exercise their option to purchase additional shares in full. All of the shares of common stock expected to be sold in this offering will be freely tradable without restriction or further registration under the Securities Act unless held by our "affiliates," as that term is defined in Rule 144 under the Securities Act. The remaining outstanding shares of our common stock will be deemed "restricted securities" as that term is defined under Rule 144. Restricted securities may be sold in the public market only if their offer and sale is registered under the Securities Act or if the offer and sale of those securities qualify for an exemption from registration, including exemptions provided by Rules 144 and 701 under the Securities Act, which are summarized below.

As a result of the lock-up agreements and market stand-off provisions described below and the provisions of Rules 144 or 701 and no exercise of the underwriters' option to purchase additional shares, the shares of our common stock that will be deemed "restricted securities" will be available for sale in the public market following the completion of this offering as follows:

- shares will be eligible for sale on the date of this prospectus; and
- shares will be eligible for sale upon expiration of the lock-up agreements and market stand-off provisions described below, beginning more than 180 days after the date of this prospectus.

Lock-up agreements and market stand-off agreements

Our officers, directors and the holders of substantially all of our capital stock, options and warrants have entered into market stand-off agreements with us and have entered into or will enter into lock-up agreements with the underwriters, subject to certain exceptions, not to dispose of or hedge any of their common stock or securities convertible into or exchangeable for shares of common stock during the period from the date of this prospectus continuing through the date 180 days after the date of this prospectus, except with the prior consent of J.P. Morgan Securities LLC and BofA Securities, Inc. See the section titled "Underwriting" for additional information.

Rule 144

Rule 144, as currently in effect, generally provides that, once we have been subject to the public company reporting requirements of Section 13 or Section 15(d) of the Exchange Act for at least 90 days, a stockholder who is not deemed to have been one of our affiliates at any time during the preceding 90 days and who has beneficially owned the shares of our capital stock proposed to be sold for at least six months is entitled to sell

such shares in reliance upon Rule 144 without complying with the volume limitation, manner of sale or notice conditions of Rule 144 (subject to the lock-up agreement referred to above, if applicable). If such stockholder has beneficially owned the shares of our capital stock proposed to be sold for at least one year, then such person is entitled to sell such shares in reliance upon Rule 144 without complying with any of the conditions of Rule 144 (subject to the lock-up agreement referred to above, if applicable).

Rule 144 also provides that a stockholder who is deemed to have been one of our affiliates at any time during the preceding 90 days and who has beneficially owned the shares of our common stock proposed to be sold for at least six months is entitled to sell such shares in reliance upon Rule 144, upon expiration of any applicable lock-up agreements and within any three month period beginning 90 days after the date of this prospectus a number of shares that does not exceed the greater of the following:

- 1% of the number of shares of our capital stock then outstanding, which will equal shares immediately after the completion of this offering, assuming no exercise by the underwriters of their option to purchase additional shares; or
- the average weekly trading volume of our common stock during the four calendar weeks preceding the filing of a notice on Form 144 with respect to such sale.

Sales of our capital stock made in reliance upon Rule 144 by a stockholder who is deemed to have been one of our affiliates at any time during the preceding 90 days are also subject to the current public information, manner of sale and notice conditions of Rule 144. Notwithstanding the availability of Rule 144, the holders of substantially all of our restricted securities have entered into lock-up agreements as referenced above and their restricted securities will become eligible for sale (subject to the above limitations under Rule 144) upon the expiration of the restrictions set forth in those agreements.

Rule 701

Rule 701 generally provides that, once we have been subject to the public company reporting requirements of Section 13 or Section 15(d) of the Exchange Act for at least 90 days, a stockholder who purchased shares of our common stock pursuant to a written compensatory benefit plan or contract and who is not deemed to have been one of our affiliates at any time during the preceding 90 days may sell such shares (to the extent such shares are not subject to a lock-up agreement) in reliance upon Rule 144 without complying with the current public information or holding period conditions of Rule 144. Rule 701 also provides that a stockholder who purchased shares of our common stock pursuant to a written compensatory benefit plan or contract and who is deemed to have been one of our affiliates during the preceding 90 days may sell such shares under Rule 144 without complying with the holding period condition of Rule 144 (subject to the lock-up agreement referred to above, if applicable). However, all stockholders who purchased shares of our common stock pursuant to a written compensatory benefit plan or contract are required to wait until 90 days after the date of this prospectus before selling such shares pursuant to Rule 701 (subject to the lock-up agreement referred to above, if applicable).

Registration rights

After the completion of this offering, the holders of up to shares of our common stock will, subject to the lock-up agreements referred to above, be entitled to certain rights with respect to the registration of such shares under the Securities Act. The registration of these shares of our common stock under the Securities Act would result in these shares becoming eligible for sale in the public market without restriction under the Securities Act immediately upon the effectiveness of such registration, subject to the Rule 144 limitations applicable to affiliates. See the section titled “Description of Capital Stock—Registration Rights” for a description of these registration rights.

Registration statement

After the completion of this offering, we intend to file a registration statement on Form S-8 under the Securities Act to register all of the shares of our common stock subject to equity awards outstanding or reserved for issuance under our equity compensation plans. The shares of our common stock covered by such registration statement will be eligible for sale in the public market without restriction under the Securities Act immediately upon the effectiveness of such registration statement, subject to vesting restrictions, the conditions of Rule 144 applicable to affiliates, and any applicable market stand-off agreements and lock-up agreements. See the section titled “Executive Compensation—Employee Benefit and Stock Plans” for a description of our equity compensation plans.

Material U.S. federal income tax considerations for non-U.S. holders of our common stock

The following is a summary of the material U.S. federal income tax considerations of the ownership and disposition of our common stock acquired in this offering by a "non-U.S. holder" (as defined below), but does not purport to be a complete analysis of all the potential tax considerations relating thereto. This summary is based upon the provisions of the Internal Revenue Code of 1986, as amended (the Code), Treasury Regulations promulgated thereunder, administrative rulings and judicial decisions, all as of the date hereof. These authorities may be changed, possibly retroactively, so as to result in U.S. federal income tax considerations different from those set forth below. We have not sought, and do not intend to seek, any ruling from the Internal Revenue Service (IRS), with respect to the statements made and the conclusions reached in the following summary, and there can be no assurance that the IRS or a court will agree with such statements and conclusions.

This summary also does not address the tax considerations arising under the laws of any non-U.S., state or local jurisdiction or under U.S. federal gift and estate tax rules, and does not address tax considerations applicable to an investor's particular circumstances or to investors that may be subject to special tax rules, including, without limitation:

- banks, insurance companies, regulated investment companies, real estate investment trusts or other financial institutions;
- tax-exempt organizations or governmental organizations;
- persons subject to the alternative minimum tax or the Medicare surtax on net investment income;
- pension plans and tax-qualified retirement plans;
- controlled foreign corporations, passive foreign investment companies and corporations that accumulate earnings to avoid U.S. federal income tax;
- brokers or dealers in securities;
- traders in securities;
- persons that own, or are deemed to own, more than 5% of our capital stock (except to the extent specifically set forth below);
- certain former citizens or long-term residents of the United States;
- partnerships (or entities or arrangements classified as such for U.S. federal income tax purposes), other pass-through entities and investors therein;
- persons who hold our common stock as a position in a hedging transaction, "straddle," "conversion transaction" or other risk reduction transaction;
- persons who hold or receive our common stock pursuant to the exercise of any employee stock option;
- persons who do not hold our common stock as a capital asset within the meaning of Section 1221 of the Code (generally, property held for investment); or
- persons deemed to sell our common stock under the constructive sale provisions of the Code.

In addition, if a partnership, entity or arrangement classified as a partnership or flow-through entity for U.S. federal income tax purposes holds our common stock, the tax treatment of a partner generally will depend on

the status of the partner, upon the activities of the partnership or other entity and on certain determinations made at the partner level. A partner in a partnership or other such entity that will hold our common stock should consult his, her or its tax advisor regarding the tax considerations of the ownership and disposition of our common stock through a partnership or other such entity, as applicable.

You are urged to consult your tax advisor with respect to the application of the U.S. federal income tax laws to your particular situation, as well as any tax considerations of the purchase, ownership and disposition of our common stock arising under the U.S. federal gift or estate tax rules or under the laws of any state, local, non-U.S. or other taxing jurisdiction or under any applicable tax treaty.

Non-U.S. holder defined

For purposes of this discussion, you are a "non-U.S. holder" if you are a beneficial owner of our common stock that, for U.S. federal income tax purposes, is not a partnership (including any entity or arrangement treated as a partnership and the equity holders therein) or:

- an individual who is a citizen or resident of the United States;
- a corporation or other entity taxable as a corporation created or organized in the United States or under the laws of the United States or any political subdivision thereof, or otherwise treated as such for U.S. federal income tax purposes;
- an estate whose income is subject to U.S. federal income tax regardless of its source; or
- a trust (x) whose administration is subject to the primary supervision of a U.S. court and that has one or more U.S. persons who have the authority to control all substantial decisions of the trust or (y) that has made a valid election under applicable Treasury Regulations to be treated as a U.S. person.

Distributions

As described in the section titled "Dividend Policy," we have not declared or paid any cash dividends on our capital stock since inception, and we do not anticipate paying any cash dividends following the completion of this offering. However, if we do make distributions on our common stock, those payments 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. To the extent those distributions exceed both our current and our accumulated earnings and profits, the excess will constitute a return of capital and will first reduce your basis in our common stock, but not below zero, and then will be treated as gain from the sale of stock as described below under "—Gain on Disposition of Common Stock."

Subject to the discussions below on effectively connected income and in the sections titled "—Backup Withholding and Information Reporting" and "—Foreign Account Tax Compliance Act (FATCA)," any dividend paid to you generally will be subject to U.S. federal withholding tax either at a rate of 30% of the gross amount of the dividend or such lower rate as may be specified by an applicable income tax treaty between the United States and your country of residence. In order to receive a reduced treaty rate, you must provide us with a properly executed IRS Form W-8BEN or IRS Form W-8BEN-E or other appropriate version of IRS Form W-8 certifying qualification for the reduced rate. Under applicable Treasury Regulations, we may withhold up to 30% of the gross amount of the entire distribution even if the amount constituting a dividend, as described above, is less than the gross amount. If you are eligible for a reduced rate of U.S. federal withholding tax pursuant to an income tax treaty, you may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS. You should consult your tax advisor regarding your entitlement to benefits under any applicable tax treaty. If you hold our common stock through a financial institution or other

agent acting on your behalf, you will be required to provide appropriate documentation to the agent, which then will be required to provide certification to us or our paying agent, either directly or through other intermediaries.

Dividends received by you that are treated as effectively connected with your conduct of a U.S. trade or business (and, if required by an applicable income tax treaty, are attributable to a permanent establishment or fixed base maintained by you in the United States) are generally exempt from the 30% U.S. federal withholding tax, subject to the discussion below in the sections titled "—Backup Withholding and Information Reporting" and "—Foreign Account Tax Compliance Act (FATCA)." In order to obtain this exemption, you must provide us with a properly executed IRS Form W-8ECI or other applicable IRS Form W-8 properly certifying such exemption. Such effectively connected dividends, although not subject to U.S. federal withholding tax, are taxed at the same federal income tax rates applicable to U.S. persons, net of certain deductions and credits, subject to an applicable income tax treaty providing otherwise. In addition, if you are a corporate non-U.S. holder, dividends you receive that are effectively connected with your conduct of a U.S. trade or business may also be subject to a branch profits tax at a rate of 30% or such lower rate as may be specified by an applicable income tax treaty between the United States and your country of residence. You should consult your tax advisor regarding any applicable tax treaties that may provide for different rules.

Gain on disposition of common stock

Subject to the discussion in the section titled "—Backup Withholding and Information Reporting," you generally will not be required to pay 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 your conduct of a U.S. trade or business (and, if an applicable income tax treaty so provides, the gain is attributable to a permanent establishment or fixed base maintained by you in the United States);
- you are an individual who is present in the United States for a period or periods aggregating 183 days or more during the taxable year in which the sale or disposition occurs and certain other conditions are met; or
- our common stock constitutes a United States real property interest (USRPI) by reason of our status as a "United States real property holding corporation" (USRPHC) for U.S. federal income tax purposes at any time within the shorter of the five-year period preceding your disposition of, or your holding period for, our common stock, unless our common stock is regularly traded on an established securities market and you hold no more than 5% of our outstanding common stock, directly, indirectly and constructively, at all times, during the shorter of the five-year period ending on the date of the taxable disposition or your holding period for our common stock.

We believe that we are not currently and will not become a USRPHC for U.S. federal income tax purposes, and the remainder of this discussion so assumes. 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 U.S. and worldwide real property interests plus our other business assets, there can be no assurance that we will not become a USRPHC in the future. If our common stock constitutes a USRPI and either our common stock is not regularly traded on an established securities market or you hold more than 5% of our outstanding common stock, directly, indirectly and constructively, during the applicable testing period, you will generally be taxed on any gain in the same manner as gain that is effectively connected with the conduct of a U.S. trade or business, except that the branch profits tax generally will not apply. If our common stock constitutes a USRPI and our common stock is not regularly traded on an established securities market, your proceeds on the disposition of shares will also generally be subject to withholding at a rate of 15%. You are encouraged to

consult your own tax advisors regarding the possible consequences to you if we are, or were to become, a USRPHC.

If you are a non-U.S. holder described in the first bullet point above, you will be required to pay tax on the gain derived from the sale (net of certain deductions and credits) or other disposition of our common stock under the same U.S. federal income tax rates applicable to U.S. persons, and a corporate non-U.S. holder described in the first bullet point above also may be subject to the branch profits tax at a 30% rate, or such lower rate as may be specified by an applicable income tax treaty. If you are an individual non-U.S. holder described in the second bullet point above, you will be subject to tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on the gain derived from the sale or other disposition of our common stock, which gain may be offset by certain U.S. source capital losses for the year, provided you have timely filed U.S. federal income tax returns with respect to such losses. You should consult your tax advisor regarding any applicable income tax or other treaties that may provide for different rules.

Backup withholding and information reporting

Generally, we or the applicable agent must report annually to the IRS the amount of dividends paid to you and the amount of tax withheld, if any. Pursuant to applicable income tax treaties or other agreements, the IRS may make these reports available to tax authorities in your country of residence.

Payments of dividends on or of proceeds from the disposition of our common stock made to you may also be subject to backup withholding at a current rate of 24% and information reporting unless you establish an exemption, for example, by properly certifying your non-U.S. status on a properly completed IRS Form W-8BEN or W-8BEN-E or another appropriate version of IRS Form W-8. Notwithstanding the foregoing, backup withholding and information reporting may apply if either we or our paying agent has actual knowledge, or reason to know, that you are a U.S. person.

Backup withholding is not an additional tax; rather, the U.S. federal income tax liability of persons subject to backup withholding will be reduced by the amount of tax withheld. If withholding results in an overpayment of taxes, a refund or credit may generally be obtained from the IRS, provided that the required information is furnished to the IRS in a timely manner.

Foreign account tax compliance act (FATCA)

The Foreign Account Tax Compliance Act, Treasury Regulations issued thereunder and official IRS guidance, collectively “FATCA,” generally impose a U.S. federal withholding tax of 30% on dividends on and the gross proceeds from a sale or other disposition of our common stock paid to a “foreign financial institution” (as specially defined under these rules), unless otherwise provided by the Treasury Secretary or such institution enters into an agreement with the U.S. government to, among other things, withhold on certain payments and to collect and provide to the U.S. tax authorities certain information regarding certain U.S. account holders of such institution (which includes certain equity and debt holders of such institution, as well as certain account holders that are foreign entities with U.S. owners) or otherwise establishes an exemption. Subject to the following paragraph, FATCA also generally imposes a U.S. federal withholding tax of 30% on dividends on and the gross proceeds from a sale or other disposition of our common stock paid to a “non-financial foreign entity” (as specially defined under these rules) unless otherwise provided by the Treasury Secretary or such entity provides the withholding agent with a certification identifying the substantial direct and indirect U.S. owners of the entity, certifies that it does not have any substantial U.S. owners, or otherwise establishes an exemption. The withholding tax will apply regardless of whether the payment otherwise would be exempt from U.S. nonresident and backup withholding tax, including under the other exemptions described above. Under certain

circumstances, a non-U.S. holder might be eligible for refunds or credits of such taxes. An intergovernmental agreement between the United States and an applicable foreign country may modify the requirements described in this section. Prospective investors should consult with their own tax advisors regarding the application of FATCA withholding to their investment in, and ownership and disposition of, our common stock.

The Treasury Secretary has issued proposed Treasury Regulations, which, if finalized in their present form, would eliminate withholding under FATCA with respect to payment of gross proceeds from a sale or other disposition of our common stock. In its preamble to such proposed Treasury Regulations, the Treasury Secretary stated that taxpayers may generally rely on the proposed Treasury Regulations until final regulations are issued.

The preceding discussion of U.S. federal tax considerations is for general information only. It is not tax advice to investors in their particular circumstances. Each prospective investor should consult its own tax advisor regarding the particular U.S. federal, state and local and non-U.S. tax considerations of purchasing, holding and disposing of our common stock, including the consequences of any proposed change in applicable laws.

Underwriting

We are offering the shares of common stock described in this prospectus through a number of underwriters. J.P. Morgan Securities LLC and BofA Securities, Inc. are acting as joint book-running managers of the offering and as representatives of the underwriters. SVB Leerink LLC is also acting as a book-running manager of the offering. We have entered into an underwriting agreement with the underwriters. Subject to the terms and conditions of the underwriting agreement, we have agreed to sell to the underwriters, and each underwriter has severally agreed to purchase, at the initial public offering price less the underwriting discounts and commissions set forth on the cover page of this prospectus, the number of shares of common stock listed next to its name in the following table:

Name	Number of shares
J.P. Morgan Securities LLC	
BofA Securities, Inc.	
SVB Leerink LLC	
Wells Fargo Securities, LLC	
BTIG, LLC	
Total	

The underwriters are committed to purchase all the shares of common stock offered by us if they purchase any shares. The underwriting agreement also provides that if an underwriter defaults, the purchase commitments of non-defaulting underwriters may also be increased, or the offering may be terminated.

The underwriters propose to offer the common stock directly to the public at the initial public offering price set forth on the cover page of this prospectus and to certain dealers at that price less a concession not in excess of $ per share. After the initial offering of the shares to the public, if all of the common stock is not sold at the initial public offering price, the underwriters may change the offering price and the other selling terms. Sales of shares made outside of the United States may be made by affiliates of the underwriters.

The underwriters have an option to purchase up to additional shares of common stock from us to cover sales of shares by the underwriters which exceed the number of shares specified in the table above. The underwriters have 30 days from the date of this prospectus to exercise this option to purchase additional shares. If any shares are purchased with this option to purchase additional shares, the underwriters will purchase shares in approximately the same proportion as shown in the table above. If any additional shares of common stock are purchased, the underwriters will offer the additional shares on the same terms as those on which the shares are being offered.

The underwriting fee is equal to the public offering price per share of common stock less the amount paid by the underwriters to us per share of common stock. The underwriting fee is $ per share. The following table shows the per share and total underwriting discounts and commissions to be paid to the underwriters assuming both no exercise and full exercise of the underwriters' option to purchase additional shares.

	Without option to purchase additional shares exercise	With full option to purchase additional shares exercise
Per Share	$	$
Total	$	$

We estimate that the total expenses of this offering, including registration, filing and listing fees, printing fees and legal and accounting expenses, but excluding the underwriting discounts and commissions, will be approximately $ million. We have agreed to reimburse the underwriters for expenses of up to $ relating to the clearance of this offering with the Financial Industry Regulatory Authority.

A prospectus in electronic format may be made available on the websites maintained by one or more underwriters, or selling group members, if any, participating in the offering. The underwriters may agree to allocate a number of shares to underwriters and selling group members for sale to their online brokerage account holders. Internet distributions will be allocated by the representatives to underwriters and selling group members that may make Internet distributions on the same basis as other allocations.

We have agreed that we will not (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, or submit to, or file with, the Securities and Exchange Commission a registration statement under the Securities Act of 1933, relating to, any shares of our common stock or securities convertible into or exercisable or exchangeable for any shares of our common stock, or publicly disclose the intention to make any offer, sale, pledge, loan, disposition or filing, or (ii) enter into any swap or other arrangement that transfers all or a portion of the economic consequences associated with the ownership of any shares of common stock or any such other securities (regardless of whether any of these transactions are to be settled by the delivery of shares of common stock or such other securities, in cash or otherwise), in each case without the prior written consent of the representatives for a period of 180 days after the date of this prospectus, other than the shares of our common stock to be sold hereunder and any shares of our common stock issued upon the exercise of options granted under our existing stock-based compensation plans.

The restrictions on our actions, as described above, do not apply to the shares of common stock to be sold in this offering and any shares of our common stock issued upon the exercise of options granted under our stock-based compensation plans.

Our directors and executive officers, and substantially all of our stockholders, or the “lock-up parties”, have entered into lock-up agreements with the underwriters prior to the commencement of this offering pursuant to which each lock-up party, with limited exceptions, for a period of 180 days after the date of this prospectus, or the restricted period, may not (and may not cause any of their direct or indirect affiliates to), without the prior written consent of the representatives, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend or otherwise transfer or dispose of, directly or indirectly, any shares of our common stock or any securities convertible into or exercisable or exchangeable for our common stock (including, without limitation, common stock or such other securities which may be deemed to be beneficially owned by such lock-up parties in accordance with the rules and regulations of the SEC and securities which may be issued upon exercise of a stock option or warrant (collectively with the common stock, the “lock-up securities”)), (ii) enter into any hedging, swap or other agreement or transaction that transfers, in whole or in part, any of the economic consequences of ownership of the lock-up securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of lock-up securities, in cash or otherwise, (iii) make any demand for, or exercise any right with respect to, the registration of any lock-up securities, or (iv) publicly disclose the intention to do any of the foregoing. Such persons or entities have further acknowledged that these undertakings preclude them from engaging in any hedging or other transactions or arrangements (including, without limitation, any short sale or the purchase or sale of, or entry into, any put or call option, or combination thereof, forward, swap or any other derivative transaction or instrument, however described or defined) designed or intended, or which could reasonably be expected to lead to or result in, a sale or disposition or transfer (by any person or entity, whether or not a signatory to such agreement) of any economic consequences

of ownership, in whole or in part, directly or indirectly, of any lock-up securities, whether any such transaction or arrangement (or instrument provided for thereunder) would be settled by delivery of lock-up securities, in cash or otherwise.

The restrictions described in the immediately preceding paragraph and contained in the lock-up agreements between the underwriters and the lock-up parties do not apply, subject in certain cases to various conditions, to certain transactions, including:

(i) transfers as a bona fide gift or gifts, or for bona fide estate planning purposes, including a bona fide gift to a charitable organization, as such term is described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

(ii) transfers by will, other testamentary document, or intestacy;

(iii) transfers to any trust or other entity formed for the direct or indirect benefit of the under-signed or the immediate family of the lock-up party, or if the lock-up party is a trust, to a trustor or beneficiary of the trust or to the estate of a beneficiary of such trust (for purposes of this Letter Agreement, “immediate family” shall mean any relationship by blood, current or former marriage, domestic partnership or adoption, not more remote than first cousin);

(iv) transfers to any immediate family member;

(v) transfers to any corporation, partnership, limited liability company or other entity of which the lock-up party or the immediate family of the lock-up party are directly or indirectly the legal and beneficial owner of all of the outstanding equity securities or similar interests;

(vi) transfers to a nominee or custodian of a person or entity to whom a disposition or transfer would be permissible under clauses (i) through (vi) above;

(vii) if the lock-up party is a corporation, partnership, limited liability company, trust or other business entity, (A) to another corporation, partnership, limited liability company, trust or other business entity that is an affiliate (as defined in Rule 405 promulgated under the Securities Act of 1933, as amended) of the lock-up party, or to any investment fund or other entity controlling, controlled by, managing or managed by or under common control with the lock-up party or affiliates of the lock-up party (including, for the avoidance of doubt, where the lock-up party is a partnership, to its general partner or a successor partnership or fund, or any other funds managed by such partnership), or (B) as part of a distribution to members or shareholders of the undersigned;

(viii) transfers by operation of law, such as pursuant to a qualified domestic order, divorce settlement, divorce decree, separation agreement, or court order;

(ix) transfers to the Company from an employee or other service provider of the Company upon death, disability or termination of employment or other service relationship, in each case, of such employee or other service provider;

(x) reserved;

(xi) transfers to the Company in connection with the vesting, settlement, or exercise of restricted stock units, options, warrants or other rights to purchase shares of Common Stock (including, in each case, by way of “net” or “cashless” exercise), including for the payment of exercise price and tax and remittance payments due as a result of the vesting, settlement, or exercise of such restricted stock units, options, warrants or rights, provided that any such shares of Common Stock received upon such

exercise, vesting or settlement shall be subject to the terms of the lock-up agreements with the lock-up parties, and provided further that any such restricted stock units, options, warrants or rights are held by the lock-up party pursuant to an agreement or equity awards granted under a stock incentive plan or other equity award plan, each such agreement or plan which is described in this prospectus and the registration statement of which it is a part; or

(xii) transfers pursuant to a *bona fide* third-party tender offer, merger, consolidation or other similar transaction that is approved by the Board of Directors of the Company and made to all holders of the Company's capital stock involving a Change of Control (as defined below) of the Company (for purposes hereof, "Change of Control" shall mean the transfer (whether by tender offer, merger, consolidation or other similar transaction), in one transaction or a series of related transactions, to a person or group of affiliated persons, of shares of capital stock if, after such transfer, such person or group of affiliated persons would hold at least a majority of the out-standing voting securities of the Company (or the surviving entity)); provided that in the event that such tender offer, merger, consolidation or other similar transaction is not completed, the lock-up party Lock-Up Securities shall remain subject to the provisions of the lock-up agreements with the lock-up parties.

The representatives, in their sole discretion, may release the common stock subject to the lock-up agreements described above in whole or in part at any time with or without notice.
We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act of 1933.

We have applied to list our common stock on the Nasdaq Global Market under the symbol "RXST."

In connection with this offering, the underwriters may engage in stabilizing transactions, which involves making bids for, purchasing and selling shares of common stock in the open market for the purpose of preventing or retarding a decline in the market price of the common stock while this offering is in progress. These stabilizing transactions may include making short sales of the common stock, which involves the sale by the underwriters of a greater number of shares of common stock than they are required to purchase in this offering, and purchasing shares of common stock on the open market to cover positions created by short sales. Short sales may be "covered" shorts, which are short positions in an amount not greater than the underwriters' option to purchase additional shares referred to above, or may be "naked" shorts, which are short positions in excess of that amount. The underwriters may close out any covered short position either by exercising their option to purchase additional shares, in whole or in part, or by purchasing shares in the open market. In making this determination, the underwriters will consider, among other things, the price of shares available for purchase in the open market compared to the price at which the underwriters may purchase shares through the option to purchase additional shares. 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 common stock in the open market that could adversely affect investors who purchase in this offering. To the extent that the underwriters create a naked short position, they will purchase shares in the open market to cover the position.

The underwriters have advised us that, pursuant to Regulation M of the Securities Act of 1933, they may also engage in other activities that stabilize, maintain or otherwise affect the price of the common stock, including the imposition of penalty bids. This means that if the representatives of the underwriters purchase common stock in the open market in stabilizing transactions or to cover short sales, the representatives can require the underwriters that sold those shares as part of this offering to repay the underwriting discount received by them.

These activities may have the effect of raising or maintaining the market price of the common stock or preventing or retarding a decline in the market price of the common stock, and, as a result, the price of the

common stock may be higher than the price that otherwise might exist in the open market. If the underwriters commence these activities, they may discontinue them at any time. The underwriters may carry out these transactions on The Nasdaq Global Market, in the over-the-counter market or otherwise.

Prior to this offering, there has been no public market for our common stock. The initial public offering price will be determined by negotiations between us and the representatives of the underwriters. In determining the initial public offering price, we and the representatives of the underwriters expect to consider a number of factors including:

- the information set forth in this prospectus and otherwise available to the representatives;
- our prospects and the history and prospects for the industry in which we compete;
- an assessment of our management;
- our prospects for future earnings;
- the general condition of the securities markets at the time of this offering;
- the recent market prices of, and demand for, publicly traded common stock of generally comparable companies; and
- other factors deemed relevant by the underwriters and us.

Neither we nor the underwriters can assure investors that an active trading market will develop for our common stock, or that the shares will trade in the public market at or above the initial public offering price.

Certain of the underwriters and their affiliates may provide from time to time in the future certain commercial banking, financial advisory, investment banking and other services for us and such affiliates in the ordinary course of their business, for which they may receive customary fees and commissions. For example, an affiliate of BofA Securities, Inc. is collateral agent under our Credit Agreement. In addition, from time to time, certain of the underwriters and their affiliates may effect transactions for their own account or the account of customers, and hold on behalf of themselves or their customers, long or short positions in our debt or equity securities or loans, and may do so in the future.

Selling restrictions

General

Other than in the United States, no action has been taken by us or the underwriters that would permit a public offering of the securities offered by this prospectus in any jurisdiction where action for that purpose is required. The securities offered by this prospectus may not be offered or sold, directly or indirectly, nor may this prospectus or any other offering material or advertisements in connection with the offer and sale of any such securities be distributed or published in any jurisdiction, except under circumstances that will result in compliance with the applicable rules and regulations of that jurisdiction. Persons into whose possession this prospectus comes are advised to inform themselves about and to observe any restrictions relating to the offering and the distribution of this prospectus. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities offered by this prospectus in any jurisdiction in which such an offer or a solicitation is unlawful.

Notice to prospective investors in the European Economic Area

In relation to each Member State of the European Economic Area, or, each a Member State, no shares have been offered or will be offered pursuant to the offering to the public in that Member State prior to the publication of a prospectus in relation to the shares which has been approved by the competent authority in that Member State or, where appropriate, approved in another Member State and notified to the competent authority in that Member State, all in accordance with the Prospectus Regulation, except that offers of shares may be made to the public in that Member State at any time under the following exemptions under the Prospectus Regulation:

(a) to any legal entity which is a qualified investor as defined under the Prospectus Regulation;

(b) to fewer than 150 natural or legal persons (other than qualified investors as defined under the Prospectus Regulation), subject to obtaining the prior consent of the underwriters; or

(c) in any other circumstances falling within Article 1(4) of the Prospectus Regulation,

provided that no such offer of shares shall require us or any underwriter to publish a prospectus pursuant to Article 3 of the Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the Prospectus Regulation and each person who initially acquires any shares or to whom any offer is made will be deemed to have represented, acknowledged and agreed to and with each of the underwriters and us that it is a "qualified investor" within the meaning of Article 2(e) of the Prospectus Regulation. In the case of any shares being offered to a financial intermediary as that term is used in the Prospectus Regulation, each such financial intermediary will be deemed to have represented, acknowledged and agreed that the shares acquired by it in the offer have not been acquired on a non-discretionary basis on behalf of, nor have they been acquired with a view to their offer or resale to, persons in circumstances which may give rise to an offer of any shares to the public other than their offer or resale in a Member State to qualified investors as so defined or in circumstances in which the prior consent of the underwriters have been obtained to each such proposed offer or resale.
For the purposes of this provision, the expression an "offer to the public" in relation to shares in any Member State means the communication in any form and by any means of sufficient information on the terms of the offer and any shares to be offered so as to enable an investor to decide to purchase or subscribe for any shares, and the expression "Prospectus Regulation" means Regulation (EU) 2017/1129.

Notice to prospective investors in the United Kingdom

In addition, in the United Kingdom, this document is being distributed only to, and is directed only at, and any offer subsequently made may only be directed at persons who are "qualified investors" (as defined in the Prospectus Regulation) (i) who have professional experience in matters relating to investments falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended, or the Order, and/or (ii) who are high net worth companies (or persons to whom it may otherwise be lawfully communicated) falling within Article 49(2)(a) to (d) of the Order, or, all such persons together being referred to as relevant persons, or otherwise in circumstances which have not resulted and will not result in an offer to the public of the shares in the United Kingdom within the meaning of the Financial Services and Markets Act 2000.

Any person in the United Kingdom that is not a relevant person should not act or rely on the information included in this document or use it as basis for taking any action. In the United Kingdom, any investment or investment activity that this document relates to may be made or taken exclusively by relevant persons.

Notice to prospective investors in Canada

The shares may be sold only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 Prospectus Exemptions or subsection 73.3(1) of the Securities Act (Ontario), and are permitted clients, as defined in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations. Any resale of the shares must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this prospectus (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for particulars of these rights or consult with a legal advisor.

Pursuant to section 3A.3 of National Instrument 33-105 Underwriting Conflicts (NI 33-105), the underwriters are not required to comply with the disclosure requirements of NI 33-105 regarding underwriter conflicts of interest in connection with this offering.

Notice to prospective investors in Switzerland

The shares may not be publicly offered in Switzerland and will not be listed on the SIX Swiss Exchange, or SIX, or on any other stock exchange or regulated trading facility in Switzerland. This document does not constitute a prospectus within the meaning of, and has been prepared without regard to the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27f of the SIX Listing Rules or the listing rules of any other stock exchange or regulated trading facility in Switzerland. Neither this document nor any other offering or marketing material relating to the shares or the offering may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this document nor any other offering or marketing material relating to the offering, us or the shares have been or will be filed with or approved by any Swiss regulatory authority. In particular, this document will not be filed with, and the offer of shares will not be supervised by, the Swiss Financial Market Supervisory Authority, or FINMA, and the offer of shares has not been and will not be authorized under the Swiss Federal Act on Collective Investment Schemes, or CISA. The investor protection afforded to acquirers of interests in collective investment schemes under the CISA does not extend to acquirers of shares.

Notice to prospective investors in the Dubai International Financial Centre, or DIFC

This document relates to an Exempt Offer in accordance with the Markets Rules 2012 of the Dubai Financial Services Authority, or the DFSA. This document is intended for distribution only to persons of a type specified in the Markets Rules 2012 of the DFSA. It must not be delivered to, or relied on by, any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with Exempt Offers. The DFSA has not approved this prospectus supplement nor taken steps to verify the information set forth herein and has no responsibility for this document. The securities to which this document relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the securities offered should conduct their own due diligence on the securities. If you do not understand the contents of this document, you should consult an authorized financial advisor.

In relation to its use in the DIFC, this document is strictly private and confidential and is being distributed to a limited number of investors and must not be provided to any person other than the original recipient, and may not be reproduced or used for any other purpose. The interests in the securities may not be offered or sold directly or indirectly to the public in the DIFC.

Notice to prospective investors in the United Arab Emirates

The shares have not been, and are not being, publicly offered, sold, promoted or advertised in the United Arab Emirates (including the Dubai International Financial Centre) other than in compliance with the laws of the United Arab Emirates (and the Dubai International Financial Centre) governing the issue, offering and sale of securities. Further, this prospectus does not constitute a public offer of securities in the United Arab Emirates (including the Dubai International Financial Centre) and is not intended to be a public offer. This prospectus has not been approved by or filed with the Central Bank of the United Arab Emirates, the Securities and Commodities Authority or the Dubai Financial Services Authority.

Notice to prospective investors in Australia

This prospectus:

- does not constitute a disclosure document or a prospectus under Chapter 6D.2 of the Corporations Act 2001 (Cth), or the Corporations Act;
- has not been, and will not be, lodged with the Australian Securities and Investments Commission, or ASIC, as a disclosure document for the purposes of the Corporations Act and does not purport to include the information required of a disclosure document for the purposes of the Corporations Act; and
- may only be provided in Australia to select investors who are able to demonstrate that they fall within one or more of the categories of investors, available under section 708 of the Corporations Act, Exempt Investors.

The shares may not be directly or indirectly offered for subscription or purchased or sold, and no invitations to subscribe for or buy the shares may be issued, and no draft or definitive offering memorandum, advertisement or other offering material relating to any shares may be distributed in Australia, except where disclosure to investors is not required under Chapter 6D of the Corporations Act or is otherwise in compliance with all applicable Australian laws and regulations. By submitting an application for the shares, you represent and warrant to us that you are an Exempt Investor.

As any offer of shares under this document will be made without disclosure in Australia under Chapter 6D.2 of the Corporations Act, the offer of those securities for resale in Australia within 12 months may, under section 707 of the Corporations Act, require disclosure to investors under Chapter 6D.2 if none of the exemptions in section 708 applies to that resale. By applying for the shares you undertake to us that you will not, for a period of 12 months from the date of issue of the shares, offer, transfer, assign or otherwise alienate those shares to investors in Australia except in circumstances where disclosure to investors is not required under Chapter 6D.2 of the Corporations Act or where a compliant disclosure document is prepared and lodged with ASIC.

Notice to prospective investors in Japan

The shares have not been and will not be registered pursuant to Article 4, Paragraph 1 of the Financial Instruments and Exchange Act. Accordingly, none of the shares nor any interest therein may be offered or sold, directly or indirectly, in Japan or to, or for the benefit of, any “resident” of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan), or to others for re-offering or resale, directly or indirectly, in Japan or to or for the benefit of a resident

of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Financial Instruments and Exchange Act and any other applicable laws, regulations and ministerial guidelines of Japan in effect at the relevant time.

Notice to prospective investors in Hong Kong

The shares have not been offered or sold and will not be offered or sold in Hong Kong, by means of any document, other than (a) to "professional investors" as defined in the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong), or the SFO, of Hong Kong and any rules made thereunder; or (b) in other circumstances which do not result in the document being a "prospectus" as defined in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) of Hong Kong), or the CO, or which do not constitute an offer to the public within the meaning of the CO. No advertisement, invitation or document relating to the shares has been or may be issued or has been or may be in the possession of any person for the purposes of issue, whether in Hong Kong or elsewhere, which is directed at, or the contents of which are likely to be accessed or read by, the public of Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to shares which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" as defined in the SFO and any rules made thereunder.

Notice to prospective investors in Singapore

Singapore SFA Product Classification — In connection with Section 309B of the SFA and the CMP Regulations 2018, unless otherwise specified before an offer of shares, the we have determined, and hereby notify all relevant persons (as defined in Section 309A(1) of the SFA), that the shares are "prescribed capital markets products" (as defined in the CMP Regulations 2018) and Excluded Investment Products (as defined in MAS Notice SFA 04-N12: Notice on the Sale of Investment Products and MAS Notice FAA-N16: Notice on Recommendations on Investment Products).

Each underwriter has acknowledged that this prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, each underwriter has represented and agreed that it has not offered or sold any shares or caused the shares to be made the subject of an invitation for subscription or purchase and will not offer or sell any shares or cause the shares to be made the subject of an invitation for subscription or purchase, and has not circulated or distributed, nor will it circulate or distribute, this prospectus or any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares, whether directly or indirectly, to any person in Singapore other than:

(a) to an institutional investor (as defined in Section 4A of the Securities and Futures Act (Chapter 289) of Singapore, as modified or amended from time to time, or the SFA) pursuant to Section 274 of the SFA;

(b) to a relevant person (as defined in Section 275(2) of the SFA) pursuant to Section 275(1) of the SFA and in accordance with the conditions specified in Section 275 of the SFA; or

(c) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the shares are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

(a) a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or

(b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor, securities or securities-based derivatives contracts (each term as defined in Section 2(1) of the SFA) of that corporation or the

beneficiaries' rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired the shares pursuant to an offer made under Section 275 of the SFA except:

(i) to an institutional investor or to a relevant person, or to any person arising from an offer referred to in Section 276(4)(i)(B) of the SFA;

(ii) where no consideration is or will be given for the transfer;

(iii) where the transfer is by operation of law;

(iv) as specified in Section 276(7) of the SFA; or

(v) as specified in Regulation 37A of the Securities and Futures (Offers of Investments) (Securities and Securities-based Derivatives Contracts) Regulations 2018.

Notice to prospective investors in Bermuda

Shares may be offered or sold in Bermuda only in compliance with the provisions of the Investment Business Act of 2003 of Bermuda which regulates the sale of securities in Bermuda. Additionally, non-Bermudian persons (including companies) may not carry on or engage in any trade or business in Bermuda unless such persons are permitted to do so under applicable Bermuda legislation.

Notice to prospective investors in Saudi Arabia

This document may not be distributed in the Kingdom of Saudi Arabia except to such persons as are permitted under the Offers of Securities Regulations as issued by the board of the Saudi Arabian Capital Market Authority, or the CMA, pursuant to resolution number 2-11-2004 dated 4 October 2004 as amended by resolution number 1-28-2008, as amended, or the CMA Regulations. The CMA does not make any representation as to the accuracy or completeness of this document and expressly disclaims any liability whatsoever for any loss arising from, or incurred in reliance upon, any part of this document. Prospective purchasers of the securities offered hereby should conduct their own due diligence on the accuracy of the information relating to the securities. If you do not understand the contents of this document, you should consult an authorized financial adviser.

Notice to prospective investors in the British Virgin Islands

The shares are not being, and may not be, offered to the public or to any person in the British Virgin Islands for purchase or subscription by or on behalf of us. The shares may be offered to companies incorporated under the BVI Business Companies Act, 2004 (British Virgin Islands), or BVI Companies, but only where the offer will be made to, and received by, the relevant BVI Company entirely outside of the British Virgin Islands.

Notice to prospective investors in China

This prospectus will not be circulated or distributed in the PRC and the shares will not be offered or sold, and will not be offered or sold to any person for re-offering or resale directly or indirectly to any residents of the PRC except pursuant to any applicable laws and regulations of the PRC. Neither this prospectus nor any advertisement or other offering material may be distributed or published in the PRC, except under circumstances that will result in compliance with applicable laws and regulations.

Notice to prospective investors in Korea

The shares have not been and will not be registered under the Financial Investments Services and Capital Markets Act of Korea, or the FSCMA, and the decrees and regulations thereunder and the shares have been and will be offered in Korea as a private placement under the FSCMA. None of the shares may be offered, sold or delivered directly or indirectly, or offered or sold to any person for re-offering or resale, directly or indirectly, in Korea or to any resident of Korea except pursuant to the applicable laws and regulations of Korea, including the FSCMA and the Foreign Exchange Transaction Law of Korea, or the FETL, and the decrees and regulations thereunder. The shares have not been listed on any of securities exchanges in the world including, without limitation, the Korea Exchange in Korea. Furthermore, the purchaser of the shares shall comply with all applicable regulatory requirements (including but not limited to requirements under the FETL) in connection with the purchase of the shares. By the purchase of the shares, the relevant holder thereof will be deemed to represent and warrant that if it is in Korea or is a resident of Korea, it purchased the shares pursuant to the applicable laws and regulations of Korea.

Notice to prospective investors in Taiwan

The shares have not been and will not be registered with the Financial Supervisory Commission of Taiwan pursuant to relevant securities laws and regulations and may not be sold, issued or offered within Taiwan through a public offering or in circumstances which constitutes an offer within the meaning of the Securities and Exchange Act of Taiwan that requires a registration or approval of the Financial Supervisory Commission of Taiwan. No person or entity in Taiwan has been authorized to offer, sell, give advice regarding or otherwise intermediate the offering and sale of the shares in Taiwan.

Notice to prospective investors in South Africa

Due to restrictions under the securities laws of South Africa, no “offer to the public” (as such term is defined in the South African Companies Act, No. 71 of 2008 (as amended or re-enacted), or the South African Companies Act, is being made in connection with the issue of the shares in South Africa. Accordingly, this document does not, nor is it intended to, constitute a “registered prospectus” (as that term is defined in the South African Companies Act) prepared and registered under the South African Companies Act and has not been approved by, and/or filed with, the South African Companies and Intellectual Property Commission or any other regulatory authority in South Africa. The shares are not offered, and the offer shall not be transferred, sold, renounced or delivered, in South Africa or to a person with an address in South Africa, unless one or other of the following exemptions stipulated in section 96 (1) applies:

Section 96 (1) (a) the offer, transfer, sale, renunciation or delivery is to:

(i) persons whose ordinary business, or part of whose ordinary business, is to deal in securities, as principal or agent;

(ii) the South African Public Investment Corporation;

(iii) persons or entities regulated by the Reserve Bank of South Africa;

(iv) authorized financial service providers under South African law;

(v) financial institutions recognized as such under South African law;

(vi) a wholly-owned subsidiary of any person or entity contemplated in (c), (d) or (e), acting as agent in the capacity of an authorized portfolio manager for a pension fund, or as manager for a collective investment scheme (in each case duly registered as such under South African law); or

(vii) any combination of the person in (i) to (vi); or

Section 96 (1) (b) the total contemplated acquisition cost of the securities, for any single addressee acting as principal is equal to or greater than ZAR1,000,000 or such higher amount as may be promulgated by notice in the Government Gazette of South Africa pursuant to section 96(2)(a) of the South African Companies Act.

Information made available in this prospectus should not be considered as "advice" as defined in the South African Financial Advisory and Intermediary Services Act, 2002.

Notice to prospective investors in Israel

This document does not constitute a prospectus under the Israeli Securities Law, 5728-1968, or the Securities Law, and has not been filed with or approved by the Israel Securities Authority. In Israel, this prospectus is being distributed only to, and is directed only at, and any offer of the shares of common stock is directed only at, (i) a limited number of persons in accordance with the Israeli Securities Law and (ii) investors listed in the first addendum, or the Addendum, to the Israeli Securities Law, consisting primarily of joint investment in trust funds, provident funds, insurance companies, banks, portfolio managers, investment advisors, members of the Tel Aviv Stock Exchange, underwriters, venture capital funds, entities with equity in excess of NIS 50 million and "qualified individuals," each as defined in the Addendum (as it may be amended from time to time), collectively referred to as qualified investors (in each case, purchasing for their own account or, where permitted under the Addendum, for the accounts of their clients who are investors listed in the Addendum). Qualified investors are required to submit written confirmation that they fall within the scope of the Addendum, are aware of the meaning of same and agree to it.

Legal Matters

The validity of the issuance of our common stock offered in this prospectus will be passed upon for us by Wilson Sonsini Goodrich & Rosati, Professional Corporation, San Diego, California. Davis Polk & Wardwell LLP, Menlo Park, California, is acting as counsel for the underwriters. Certain members of, and investment partnerships comprised of members of, and persons associated with, Wilson Sonsini Goodrich & Rosati, Professional Corporation, own an interest representing less than one percent of the shares of our common stock.

Experts

Ernst & Young LLP, our independent registered public accounting firm, has audited our consolidated financial statements at December 31, 2020 and 2019, and for each of the two years in the period ended December 31, 2020, as set forth in their report. We've included our financial statements in the prospectus and elsewhere in the registration statement in reliance on Ernst & Young LLP's report, given on their authority as experts in accounting and auditing.

Where you can find additional information

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the shares of our common stock offered by this prospectus. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement, as permitted by the rules and regulations of the SEC. For further information with respect to us and our common stock, we refer you to the registration statement, including the exhibits filed as a part of the registration statement. Statements contained in this prospectus concerning the contents of any contract or any other document is 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 in this prospectus relating to a contract or document filed as an exhibit is qualified in all respects by the filed exhibit. The SEC maintains an Internet website that contains the registration statement of which this prospectus forms a part, as well as the exhibits thereto. These documents, along with future reports, proxy statements and other information about us, are available at the SEC's website, www.sec.gov.

As a result of this offering, we will become subject to the information and reporting requirements of the Securities Exchange Act of 1934, as amended, and, in accordance with this law, will file periodic reports, proxy statements and other information with the SEC. We also maintain a website at www.rxsight.com where these materials are available. Upon the completion of this offering, you may access these materials free of charge as soon as reasonably practicable after they are electronically filed with, or furnished to, the SEC. Information contained on, or that can be accessible through, our website is not a part of this prospectus and the inclusion of our website address in this prospectus is an inactive textual reference only.

RxSight, Inc.
Index to financial statements

RxSight, Inc.
Unaudited interim condensed consolidated financial statements
Index to financial statements

Report of independent registered public accounting firm

The Stockholders and the Board of Directors of RxSight, Inc.

Opinion on the financial statements

We have audited the accompanying consolidated balance sheets of RxSight, Inc. (the Company) as of December 31, 2020 and 2019, the related consolidated statements of operations and comprehensive income, redeemable common stock, stock options and convertible preferred stock and stockholders' deficit and cash flows for the years then ended, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2020 and 2019, and the results of its operations and its cash flows for the years then ended in conformity with U.S. generally accepted accounting principles.

Basis for opinion

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

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting 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.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 2015.

Irvine, California
May 14, 2021

RxSight, Inc.
Consolidated balance sheets

(In thousands, except number of shares and per share amounts)	December 31, 2020	December 31, 2019
Assets		
Current assets:		
Cash and cash equivalents	$ 13,994	$ 7,958
Short-term investments	54,981	72,710
Accounts receivable	2,865	789
Inventories, net of reserves of $316 and $224, respectively	8,288	7,219
Prepaid and other current assets	1,372	1,523
Total current assets	81,500	90,199
Property and equipment, net	13,287	14,858
Operating leases right-of-use assets	5,319	4,392
Restricted cash	461	872
Other assets	110	111
Total assets	$ 100,677	$ 110,432
Liabilities, redeemable common stock, redeemable stock options, redeemable convertible preferred stock and stockholders' deficit		
Current liabilities:		
Accounts payable	$ 1,134	$ 2,199
Accrued expenses and other current liabilities	4,174	5,268
Warrant liability	5,018	—
Lease liabilities	1,274	990
Total current liabilities	11,600	8,457
Long-term warrant liabilities	3,828	71,881
Long-term lease liabilities	5,079	4,526
Long-term accrued compensation	—	2,598
Term loan, net	24,399	—
Total liabilities	44,906	87,462
Commitments and contingencies (*Note 16)*		
Redeemable common stock:		
Common stock, $0.001 par value, 253,559,829 shares authorized, 39,394,430 and 36,816,339 shares issued and outstanding as of December 31, 2020 and 2019, respectively	80,780	56,422
Notes receivable for common stock issued	(803)	(855)
Redeemable stock options	53,085	59,631
Redeemable convertible preferred stock:		
Preferred stock, $0.001 par value, 171,196,994 shares authorized, 148,509,849 and 148,491,099 shares issued and outstanding as of December 31, 2020 and 2019, respectively	353,300	327,581
Stockholders' deficit:		
Series G common stock, $0.001 par value, 1 share authorized and outstanding as of December 31, 2020 and 2019	—	—
Series W common stock, $0.001 par value, 1 share authorized and no shares outstanding as of December 31, 2020 and 2019	—	—
Additional paid-in capital	—	—
Accumulated other comprehensive (loss) income	(3)	46
Accumulated deficit	(430,588)	(419,855)
Total stockholders' deficit	(430,591)	(419,809)
Total liabilities, redeemable common stock, redeemable stock options, redeemable convertible preferred stock and stockholders' deficit	$ 100,677	$ 110,432

See accompanying notes.

RxSight, Inc.
Consolidated statements of operations and comprehensive income

(In thousands, except per share amounts)	Year ended December 31, 2020	2019
Sales	$ 14,678	$ 2,241
Cost of sales	12,973	4,060
Gross profit (loss)	1,705	(1,819)
Operating expenses:		
Selling, general and administrative	15,176	15,203
Research and development	21,934	29,569
Loss (gain) on sale of equipment	7	(521)
Total operating expenses	37,117	44,251
Loss from operations	(35,412)	(46,070)
Other income (expense), net:		
Change in fair value of warrants	63,011	169,230
Expiration of warrants	—	803
Interest expense	(510)	(26)
Interest and other income	543	2,307
Income before income taxes	27,632	126,244
Income tax expense	57	24
Net income	27,575	126,220
Accretion to redemption value of redeemable preferred stock and redeemable stock options	(24,209)	(82,121)
Earnings allocated to redeemable preferred stock	—	(17,972)
Net (loss) income attributable to common stockholders	3,366	26,127
Other comprehensive income		
Unrealized (loss) gain on short-term investments	(49)	68
Foreign currency translation gain	—	5
Total other comprehensive (loss) income	(49)	73
Comprehensive income	$ 27,526	$ 126,293
Net income (loss) per share:		
Attributable to redeemable common stock, basic	$ 0.09	$ 0.74
Attributable to redeemable common stock, diluted	$ 0.01	$ 0.58
Attributable to Series G common stock, basic	$ (0.39)	$ 0.01
Attributable to Series G common stock, diluted	$ (0.62)	$ 0.01
Weighted-average shares used in computing net income (loss) per share:		
Attributable to redeemable common stock, basic	38,295,453	35,431,642
Attributable to redeemable common stock, diluted	57,148,725	212,591,455
Attributable to Series G common stock, basic and diluted	1	1

See accompanying notes.

RxSight, Inc.
Consolidated statements of redeemable common stock, stock options, convertible preferred stock and stockholders' deficit

(In thousands, except number of shares)	Redeemable common stock Shares	Redeemable common stock Amount	Notes receivable for common stock issued	Redeemable stock options	Redeemable convertible preferred stock Shares	Redeemable convertible preferred stock Amount	Series G common stock Shares	Series G common stock Amount	S commo Shares	S
Balance at December 31, 2018	34,552,416	$ 25,105	$ (779)	$ 51,034	147,907,929	$ 257,279	1	$ —	1	$
Adjustment to accumulated deficit from adoption of ASC 842	—	—	—	—	—	—	—	—	—	
Exercise of stock options	2,263,923	5,717	—	(4,826)	—	—	—	—	—	
Exercise of warrants	—	—	—	—	583,170	1,604	—	—	—	
Stock-based compensation expense	—	—	—	—	—	—	—	—	—	
Accretion to redemption value of redeemable stock options	—	—	—	13,423	—	—	—	—	—	
Accretion to redemption value of redeemable stock	—	25,600	—	—	—	68,698	—	—	—	
Unrealized gain on short-term investments and cash equivalents, net of tax	—	—	—	—	—	—	—	—	—	
Foreign currency translation adjustment	—	—	—	—	—	—	—	—	—	
Change in notes receivable for common stock issued	—	—	(76)	—	—	—	—	—	—	
Net income	—	—	—	—	—	—	—	—	—	
Balance at December 31, 2019	36,816,339	$ 56,422	$ (855)	$ 59,631	148,491,099	$ 327,581	1	$ —	1	$
Exercise of stock options	2,578,091	6,075	—	(5,083)	—	—	—	—	—	
Exercise of warrants	—	—	—	—	18,750	47	—	—	—	
Stock-based compensation expense	—	—	—	—	—	—	—	—	—	
Accretion to redemption value of redeemable stock options	—	—	—	(1,463)	—	—	—	—	—	
Accretion to redemption value of redeemable stock	—	18,283	—	—	—	25,672	—	—	—	
Unrealized loss on short-term investments and cash equivalents, net of tax	—	—	—	—	—	—	—	—	—	
Change in notes receivable for common stock issued	—	—	52	—	—	—	—	—	—	
Net income	—	—	—	—	—	—	—	—	—	
Balance at December 31, 2020	39,394,430	$ 80,780	$ (803)	$ 53,085	148,509,849	$ 353,300	1	$ —	1	$

See accompanying notes.

RxSight, Inc.
Consolidated statements of cash flows

(In thousands)	Year ended December 31, 2020	2019
Operating Activities:		
Net income	$ 27,575	$ 126,220
Adjustments to reconcile net income to net cash used in operating activities:		
Depreciation and amortization	3,853	3,757
Amortization of right-of-use lease assets	159	173
Amortization of debt issuance costs and premium	85	—
Change in fair value of warrants	(63,011)	(169,230)
Expiration of warrants	—	(803)
Amortization of discount on short-term investments	(446)	(1,963)
Stock-based compensation	4,185	4,598
Loss (gain) on sale of equipment	7	(521)
Provision for excess and obsolete inventory	238	1,121
Change in operating assets and liabilities:		
Accounts receivable	(2,076)	(789)
Inventories, net	(1,307)	(5,471)
Prepaid and other assets	180	(337)
Accounts payable	(954)	1,133
Accrued expenses and other liabilities	(3,691)	1,493
Net cash used in operating activities	(35,203)	(40,619)
Investing Activities:		
Purchases of property and equipment	(2,539)	(4,086)
Proceeds from sale of equipment	3	603
Maturity of short-term investments	116,000	130,000
Purchase of short-term investments	(97,873)	(132,387)
Net cash provided by (used in) investing activities	15,591	(5,870)
Financing Activities:		
Proceeds from term loan	25,000	—
Payments of debt issuance costs	(687)	—
Proceeds from exercise of warrants	23	700
Principal payments on finance lease liabilities	(142)	(185)
Notes receivable for common stock issued	51	(76)
Proceeds from exercise of stock options	992	891
Net cash provided by financing activities	25,237	1,330
Effect of foreign exchange rate on cash, cash equivalents and restricted cash	**—**	**5**
Net increase (decrease) in cash, cash equivalents and restricted cash	5,625	(45,154)
Cash, cash equivalents and restricted cash—beginning of year	**8,830**	**53,984**
Cash, cash equivalents and restricted cash—end of year	**$ 14,455**	**$ 8,830**

(In thousands)	Year ended December 31, 2020	2019
Supplemental disclosure of cash flow information:		
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	$ 987	$ 1,370
Cash paid for income taxes	$ 61	$ 19
Cash paid for interest on financing leases	$ 14	$ 26
Cash paid for interest on term loan	$ 411	$ —
Non-cash investing and financing activities:		
Right-of-use assets obtained in exchange for lease obligations:		
Operating lease	$ 1,953	$ 5,430
Finance lease	$ 48	$ 369
Lease obligations recorded for right-of-use assets:		
Operating lease	$ 1,953	$ 6,012
Finance lease	$ 48	$ 350
Acquisition of property and equipment included in accounts payable and accrued expenses and other current liabilities	$ 40	$ 232
Reclassification of warrant liabilities upon exercise of warrant	$ 24	$ 904
Accretion to redemption value of redeemable stock and stock options	$ 38,308	$ 103,123
Payment-in-kind interest income added to principal of notes receivable	$ 54	$ 56

See accompanying notes.

RxSight, Inc.
Notes to consolidated financial statements

Note 1—Organization and basis of presentation

The company

RxSight™, Inc. (the "Company") is a California corporation headquartered in Aliso Viejo, California and has two wholly owned subsidiaries. One subsidiary is located in Amsterdam, Netherlands, with registered branches in the United Kingdom and Ireland (closed in 2020). The Netherlands entity also has a wholly owned subsidiary in Germany. A second subsidiary, closed in 2020, was located in Tijuana, Mexico. The Company is engaged in the research and development, manufacture and sale of light adjustable intraocular lenses used in cataract surgery along with capital equipment used with the lenses. The Company's products, which include the light adjustable lens ("LAL"® or "RxLAL"®) and a specially designed machine for delivering light to the eye, the Light Delivery Device ("LDD"), are approved by the United States ("U.S.") Food and Drug Administration (FDA) for sale in the U.S. and have regulatory approval in the U.S and Europe. The Company began marketing its products in the U.S. during the second quarter of 2019 and in Europe during the third quarter of 2019. The RxLAL is a premium intraocular lens ("IOL") which is partially reimbursable under Medicare. The Company competes with other IOLs in the premium market in the U.S. and Europe.

Basis of presentation and principles of consolidation

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") and include the accounts of RxSight, Inc. and its wholly-owned subsidiaries, RxSight, B.V., located in the Netherlands, RxSight GmbH, located in Germany, and RxSight S de R.L. de C.V., located in Mexico. All significant inter-company balances and transactions have been eliminated in consolidation.

Liquidity and financial position

As of December 31, 2020, the Company has cash, cash equivalents and short-term investments of $69.0 million.

The Company began generating revenue from its principal operations in 2019. The Company has a limited operating history, and the revenue and income potential of the Company's business and market are unproven. The Company has experienced recurring net losses and negative cash flows from operating activities since its inception. For the years ended December 31, 2020 and 2019, the Company incurred losses from operations of $35.4 million and $46.1 million, respectively. Due to the Company's continuing research and development activities, the Company expects to continue to incur net operating losses into the foreseeable future. Successful transition to attaining profitable operations is dependent upon gaining market acceptance of the Company's products and achieving a level of revenues adequate to support the Company's cost structure.

The Company plans to continue to fund its losses from operations using its cash, cash equivalents and short-term investments as of December 31, 2020 and meet its capital funding needs through equity or debt financings, other third-party funding, collaborations, strategic alliances and licensing arrangements or a combination of these. If the Company raises additional funds by issuing equity securities, its stockholders may experience dilution. Any future debt financing into which the Company enters may impose additional covenants that restrict operations, including limitations on its ability to incur liens or additional debt, pay dividends, repurchase common stock, make certain investments or engage in certain merger, consolidation or asset sale transactions. Any debt financing or additional equity raise may contain terms that are not favorable to the Company or its stockholders. If the Company is required to enter into collaborations and other arrangements to address its liquidity needs, it may have to give up certain rights that limit its ability to develop and commercialize product candidates or may have other terms that are not favorable to the Company or its

stockholders, which could materially and adversely affect its business and financial prospects. There can be no assurance that the Company will be able to obtain additional financing on acceptable terms, or at all. If the Company is not able to secure adequate additional funding, the Company may be forced to make reductions in spending, extend payment terms with suppliers, liquidate assets where possible and/or suspend or curtail planned programs. Any of these actions could materially harm the Company's business, results of operations and future prospects.

COVID-19

The Company has been actively monitoring the novel coronavirus, or COVID-19, situation and its impact. In response to the pandemic, numerous state and local jurisdictions imposed "shelter-in-place" orders, quarantines and other restrictions. Starting in March 2020 in the United States, governmental authorities recommended, and in certain cases required, that elective, specialty and other procedures and appointments be suspended or canceled. Similarly, in March 2020, the governor of California, where the Company's headquarters is located, issued "stay at home" orders limiting non-essential activities, travel and business operations. Such orders or restrictions resulted in reduced operations at the Company's headquarters, slowdowns and delays, travel restrictions and cancellation of events. These orders and restrictions significantly decreased the number of procedures performed using the Company's products during March and April 2020.

In response to the impact of COVID-19, the Company implemented a variety of measures to help manage through the impact and position it to resume operations quickly and efficiently once these restrictions were lifted. These measures included: remote work as needed, suspension of non-essential travel, restrictions on in-person work-related meetings, the wearing of personal protective equipment, social distancing, increased facility cleaning and air purification in all of the Company's buildings and daily health monitoring of all Company employees to prevent or contain COVID-19 exposure. In addition, the Company took steps to preserve liquidity, reduce expenses and monitor operations to mitigate the impact on its current and future financial condition. The impact of COVID-19 continues to change and cannot be predicted. As a result, the Company expects the pandemic could continue to negatively impact its business, financial condition and results of operations.

Operating segments

Operating segments are defined as components for which discrete financial information is available for evaluation by the chief operating decision maker to make resource allocation decisions and conduct performance assessments. The Company determined that it operates and manages its business (including its non-US subsidiaries) in one reportable segment: the research and development, manufacture and sale of light adjustable lenses and related capital equipment.

Emerging growth company status

The Company is an emerging growth company, as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act. Under the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies. The Company has irrevocably elected to not take this exemption and, as a result, will adopt new or revised accounting standards on the relevant effective dates on which adoption of such standards is required for other public companies that are not emerging growth companies.

Note 2—Summary of accounting policies

Use of estimates

The preparation of consolidated financial statements in conformity with GAAP requires management to make informed estimates, judgments and assumptions that affect the reported amounts in the consolidated financial statements and disclosures in the accompanying notes as of the date of the accompanying consolidated financial statements. Management considers many factors in selecting appropriate financial accounting policies and in developing the estimates and assumptions that are used in the preparation of these consolidated financial statements. Management must apply significant judgment in this process. In addition, other factors may affect estimates, including the expected business and operational changes, the sensitivity and volatility associated with the assumptions used in developing estimates and whether historical trends are expected to be representative of future trends. The estimation process often may yield a range of potentially reasonable estimates of the ultimate future outcomes, and management must select an amount that falls within that range of reasonable estimates. On an on-going basis, management evaluates the most critical estimates and assumptions, including those related to revenue recognition; valuation of the Company's common stock, warrants and other equity awards; estimated timing of redemption of equity instruments, the realization of income tax assets and estimates of tax liabilities, and obsolete and slow-moving inventory. Actual results may differ materially from the estimates used in the preparation of the accompanying consolidated financial statements under different assumptions or conditions.

Cash equivalents

Cash equivalents consist of investments in money market accounts. The Company considers all highly liquid investments with original maturities of three months or less at the date of purchase that can be liquidated without prior notice or penalty to be cash equivalents.

Short-term investments

Short-term investments are classified based on the maturity date of the related securities. Based on the nature of the assets, the Company's short-term investments, which are government securities, are classified as available-for-sale and are recorded at their estimated fair value as determined by prices for identical or similar securities at the balance sheet date. The Company's short-term investments consist of Level 1 and Level 2 financial instruments in the fair value hierarchy. Unrealized gains and losses are recorded as a component of other comprehensive income (loss) within stockholders' deficit on the consolidated balance sheets. Realized gains and losses are included as other income (expense) in the accompanying consolidated statements of operations and comprehensive income. The cost basis for realized gains and losses on available-for-sale securities is determined on a specific identification basis. Management determines the appropriate classification of its investments at the time of purchase and reevaluates such determination at each balance sheet date. The Company periodically reviews its investments for unrealized losses other than credit losses and whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable. In determining whether the carrying value is recoverable, management considers the following factors:

- whether the investment has been in a continuous realized loss position for over 12 months;
- the duration to maturity of investments;
- intention and ability to hold the investment to maturity and if it is not more likely than not that we will be required to sell the investment before recovery of the amortized cost bases;
- the credit rating, financial condition and near-term prospects of the issuer and
- the type of investments made.

The Company had $2,000 of unrealized losses and $46,000 of unrealized gains related to short-term investments as of December 31, 2020 and 2019, respectively. To date, the Company has not identified any unrealized losses other than credit losses for its short-term investments as determined by prices for identical or similar securities at the balance sheet date. The Company's short-term investments consist of Level 1 and Level 2 financial instruments in the fair value hierarchy.

Restricted cash

Restricted cash consists of cash held as collateral for a letter of credit as security for future facility lease payments and corporate credit cards at the Company's bank. Restricted cash decreased $411,000 during the year ended December 31, 2020 to $461,000 as required for these operating activities.

The following table provides a reconciliation of cash and cash equivalents and restricted cash reported within the consolidated balance sheets to the amount reported in the consolidated statement of cash flows for the years ended December 31, 2020 and 2019 (in thousands).

	Year ended December 31,	
	2020	**2019**
Cash and cash equivalents	$ 13,994	$ 7,958
Restricted cash	461	872
Cash, cash equivalents and restricted cash in the consolidated statements of cash flows	$ 14,455	$ 8,830

Concentration of credit risk and other risks and uncertainties

Financial instruments which potentially subject the Company to concentration of credit risk consist primarily of cash, cash equivalents, short-term investments and accounts receivable. The Company's policy is to invest cash in institutional money market funds and marketable securities of the U.S. government to limit the amount of credit exposure. The Company currently maintains a portfolio of cash equivalents and short-term investments in short-term money market funds and U.S. treasury bills. Additionally, the Company has established guidelines regarding diversification of its investments and their maturities, which are designed to maintain principal and maximize liquidity. The Company has not experienced material losses on cash equivalents and short-term investments.

The Company's products require approval from the FDA and foreign regulatory agencies before commercial sales can commence. There can be no assurance that the Company's products will receive any of these required approvals. The denial or delay of such approvals may have a material adverse impact on the Company's business and may impact business in the future. In addition, after the approval by the FDA, there is still an ongoing risk of adverse events that did not appear during the device approval process.

The Company is subject to risks common to companies in the medical device industry, including, but not limited to, new technological innovations, clinical development risk, establishment of appropriate commercial partnerships, protection of proprietary technology, compliance with government and environmental regulations, uncertainty of market acceptance of our products, product liability and the need to obtain additional financing.

Accounts receivable

Accounts receivable pertain to contracts with customers who are granted credit by the Company in the ordinary course of business and are recorded at net realizable value. Accounts receivable are generally due 30 days after invoicing. The Company reserves for bad debts by establishing an allowance for doubtful accounts. The

allowance is developed using an aging of receivables where receivables are segregated into various categories based upon due date, and a historical loss percentage is applied to each category that is adjusted for current receivable composition, specific risk, prevailing economic condition and supportable forecasted economic conditions. Once a receivable is deemed uncollectible after collection efforts have been exhausted, it is written off against the allowance for doubtful accounts. The Company closely monitors the credit quality of its customers and has yet to experience a credit loss. The Company does not generally require collateral or other security on receivables. As of December 31, 2020, the Company had one customer who individually accounted for approximately 35% of gross accounts receivable, and as of December 31, 2019, the Company had four customers who individually accounted for approximately 22%, 22%, 21% and 19% of gross accounts receivable. After evaluation of the collectability of accounts receivable, the Company did not record an allowance for doubtful accounts as of December 31, 2020 and 2019.

Inventories

Inventories consist of raw materials, work-in-process and finished goods. Raw materials are comprised of chemicals and parts used in the production of the Company lenses, injectors, and LDDs. Finished goods are comprised of lenses, injectors, accessories and LDDs. Inventories are valued at the lower of cost or net realizable value. Cost is computed using standard cost, which approximates actual cost on a first-in, first-out basis. The carrying value of inventories is reviewed for potential impairment whenever indicators suggest that the cost of inventories exceeds the carrying value and management adjusts the inventories to its net realizable value. The cost of finished goods and work-in-process is comprised of raw materials, direct labor, other direct costs and related production overhead to the extent that these costs do not exceed the net realizable value of the goods produced. For the first six months of the year ended December 31, 2019, the Company was developing its production processes for the LDD and completing its qualification and validation of the manufacturing processes. Inventories built during this time was produced to complete the validation and finalize the development and manufacturability of the LDD for commercial production. As such, certain direct and indirect costs related to production during this time in excess of net realizable value were not capitalized as inventories and were included in research and development costs in the accompanying consolidated statement of operations and comprehensive income for the year ended December 31, 2019. The amount charged to research and development for the year ended 2019 was $1.2 million. The Company periodically reviews inventories for potential impairment and adjusts inventories for estimated losses from obsolescence, material expirations or unmarketable inventories and writes down the cost of inventories to net realizable value at the time such determinations are made.

Long-lived assets

Property and equipment and leasehold improvements are recorded at cost, net of accumulated depreciation and amortization. Property and equipment are depreciated over the estimated useful lives of the related assets, generally three to five years, using a straight-line method. Leasehold improvements are amortized on the straight-line method over the shorter of the lease term or their estimated economic lives. Repairs and maintenance costs are charged directly to operations as incurred, while renewals and betterments are capitalized.

All long-lived assets are reviewed for impairment whenever circumstances such as events or changes in the business indicate that an asset or asset group's carrying value may not be recoverable based on undiscounted future operating cash flows to be derived from their use. Factors that are considered important that could trigger an impairment review include a current period operating or cash flow loss or a history of operating or cash flow losses and a projection or forecast that demonstrates continuing losses or insufficient income associated with the use of a long-lived asset or asset group. Other factors include a significant change in the manner of the use of the asset or a significant negative industry or economic trend. This evaluation is

performed based on estimated undiscounted future cash flows from operating activities compared with the carrying value of the related assets. If the undiscounted future cash flows are less than the carrying value, an impairment loss is recognized, measured by the difference between the carrying value and the estimated fair value of the assets. Fair value is determined primarily using the discounted cash flows expected to be generated from the use of assets. Significant management judgment is required in the forecast of future operating results that are used in the preparation of expected cash flows.

Leases

Lease right-of-use assets represent the Company's right to use an underlying asset for the lease term, and lease liabilities represent the Company's obligation to make lease payments arising from the lease. Operating lease right-of-use assets and liabilities are recognized when the Company takes possession of the leased property (the "Commencement Date") based on the present value of lease payments over the lease term. The Company estimates the incremental borrowing rate based upon the cost of its own debt financing, current market interest rates and quoted offerings or the rate implicit in the lease. Operating lease right-of-use assets also include any lease payments made at or before lease commencement and exclude any lease incentives received. The lease terms used to calculate the right-of-use asset and related lease liability include options to extend or terminate the lease when it is reasonably certain that the Company will exercise that option. Rent expense on noncancelable leases containing known future scheduled rent increases is recorded on a straight-line basis over the term of the respective leases beginning on the Commencement Date. The difference between rent expense and rent paid is accounted for as a component of operating lease right-of-use assets on the accompanying consolidated balance sheets. Landlord improvement allowances and other such lease incentives are recorded as property and equipment and as reduction of the right-of-use leased assets and are amortized on a straight-line basis as a reduction to operating lease costs. Leases with an initial term of 12 months or less are expensed as incurred and are not recorded as right-of-use assets on the consolidated balance sheets (see Note 15 – Leases).

Fair value of financial instruments

The Company uses fair value measurements to record fair value adjustments to certain assets and liabilities and to determine fair value disclosures. The Company's financial instruments consist principally of cash, cash equivalents, short-term investments, accounts receivable, accounts payable, operating lease liabilities, warrant liabilities and a term loan. Fair value is measured as the price that would be received from the sale of an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques that are consistent with the market, income or cost approach are used to measure fair value. The fair value hierarchy prioritizes the inputs to valuation techniques used to measure fair value into three levels:

Level 1—Observable inputs such as unadjusted quoted prices in active markets that are accessible at the measurement date for identical unrestricted assets or liabilities.

Level 2—Inputs (other than quoted prices included in Level 1) that are either directly or indirectly observable for the asset or liability, for substantially the full term of the asset or liability, through correlation with market data. These include quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active and inputs to valuation models or other pricing methodologies that do not require significant judgment because the inputs used in the model, such as interest rates and volatility, can be corroborated by readily observable market data.

Level 3—One or more significant inputs that are unobservable and supported by little or no market activity and reflect the use of significant management judgment and assumptions. Level 3 assets and liabilities

include those whose fair value measurements are determined using pricing models, discounted cash flow methodologies or similar valuation techniques and significant management judgment or estimation. These include the Black-Scholes option-pricing model which uses inputs such as expected volatility, risk-free interest rate and expected term to determine fair market valuation.

Assets and liabilities are classified based on the lowest level of input that is significant to the fair value measurements. The Company reviews the fair value hierarchy classification at each reporting date. Changes in the ability to observe valuation inputs may result in a reclassification of levels for certain assets or liabilities within the fair value hierarchy. The Company did not have any transfers of assets and liabilities between the levels of the fair value measurement hierarchy during the years presented.

Cash, cash equivalents, accounts receivable and accounts payable are carried at their estimated fair value because of the short-term nature of these assets and liabilities. The Company's short-term investments in government securities are carried at fair value, determined based on publicly available quoted market prices for identical securities at the measurement date. The Company believes the fair values of its operating lease liabilities and term loan at December 31, 2020 and 2019 approximated their carrying values, based on the borrowing rates that were available for loans with similar terms as of that date.

Warrants to purchase stock

The Company recognizes the freestanding warrants to purchase shares of redeemable convertible preferred stock as liabilities at fair value as these warrant instruments are embedded in contracts that may be cash settled. The redeemable convertible preferred stock warrants were issued for no cash consideration as detachable freestanding instruments but can be converted to redeemable convertible preferred stock at the holder's option based on the exercise price of the warrant. However, the deemed liquidation provisions of the redeemable convertible preferred stock are considered contingent redemption provisions that are not solely within the control of the Company. Therefore, the redeemable convertible preferred stock is classified in temporary equity on the accompanying consolidated balance sheets, and the warrants to purchase the redeemable convertible preferred stock are classified as liabilities. The Company recognized a freestanding warrant to purchase a share of Series W common stock as a liability at fair value because this instrument is not indexed to the Company's own stock as the settlement calculation incorporates variables other than those used to determine the fair value of a fixed-for-fixed forward or option on equity shares. The common stock warrant was issued for cash consideration as a freestanding instrument and can be converted to one share of common stock, Series W, at the holder's option based on the exercise price of the warrant.

The warrants were recorded on the accompanying consolidated balance sheets at their fair value on the date of issuance and are subject to re-measurement to fair value at each balance sheet date. Changes in fair value are recognized as a component of other income (expense), net in the accompanying consolidated statements of operations and comprehensive income. Upon issuance of the Series W common stock warrant, the Company engaged valuation specialists to assist with determining its fair value using a Monte Carlo simulation approach. In addition, the Company engaged the valuation specialists to derive an estimated fair value of the preferred stock warrants using a probability weighted expected return model/option pricing model ("PWERM/OPM") hybrid valuation model. The Company will continue to adjust the warrant liabilities for changes in fair value until the earlier of the exercise or expiration of the warrants, the completion of a deemed liquidation event, including the Special Redemption (see Note 9), the conversion of convertible preferred stock into common stock or until the holders of the convertible preferred stock can no longer trigger a deemed liquidation event. Pursuant to the terms of the preferred stock warrants, upon the conversion of the class of preferred stock underlying the warrant, the warrants automatically become exercisable for shares of the Company's common stock based upon the conversion ratio of the underlying class of preferred stock. The exercise of the common stock warrant or consummation of a qualified initial public offering will result in the automatic conversion of all

classes of the Company's preferred stock into common stock. Upon such conversion of the underlying classes of preferred stock, the warrants will be classified as a component of equity and will no longer be subject to remeasurement.

Stock-based compensation

The Company accounts for stock options on the date of grant to employees, directors and consultants based on the estimated fair value of the award, which requires the recognition of compensation expense for all equity-based payments, including stock options. The fair value of the awards is estimated using the Black-Scholes option-pricing model and recognized in expense in the consolidated statement of operations and comprehensive income over requisite service period, which is generally four years. The Company amortizes the stock-based compensation for equity awards with service conditions on a straight-line basis over the vesting period of the awards. Certain executives and consultants have been granted stock options that contain performance conditions. Compensation cost for stock options with performance conditions is recognized based upon the probability of that performance condition being met. Forfeitures of unvested stock option awards are recognized as reductions of expense as they occur.

The Black-Scholes option-pricing model requires the use of assumptions about a number of variables, such as the fair value of the Company's common stock, the risk-free interest rate, dividend yield, expected term and expected volatility:

- Given the absence of a public trading market, the fair value of the Company's common stock is determined by the Company's Board of Directors (the "Board") at the time of each option grant by considering a number of objective and subjective factors. These factors include the valuation of a select group of public peer group companies within the medical device industry that focus on technological advances and development that the Board believes is comparable to the Company's operations; operating and financial performance; the lack of liquidity of the common stock and trends in the broader economy and medical device industry also impact the determination of the fair value of the common stock. In addition, the Company regularly engages a third-party valuation specialist to assist with estimates related to the valuation of the Company's common stock;
- The risk-free interest rate used is based on the published U.S. Department of Treasury interest rates in effect at the time of stock option grant for zero coupon U.S. Treasury notes with maturities approximating each grant's expected term;
- The dividend yield is zero as the Company has not paid dividends and does not anticipate paying a cash dividend in the foreseeable future;
- The expected term for options granted is calculated using the "simplified method" and represents the average time that options are expected to be outstanding based on the mid-point between the vesting date and the end of the contractual term of the award;
- Expected volatility is derived from the historical volatilities of a select group of comparable peer companies, for a look-back period commensurate with the expected term of the stock options, as the Company has no trading history of common stock.

As a result of the Special Redemption provisions of the Company's Articles of Incorporation (adopted in October 2017), stock option awards are reflected in temporary equity in the accompanying consolidated balance sheet and statement of redeemable common stock, stock options, preferred stock and stockholders' deficit at their redemption value. The redemption value was calculated as the estimated redemption amount at the estimated date of redemption less the stock option award strike price, recognized over the same period as the grant date fair value share-based compensation expense recorded in the Statements of Operations and Comprehensive

Income. Changes in the projected redemption value and redemption date are accounted for prospectively. The redemption value reflected in the accompanying financial statements is recorded as a reduction of permanent equity, and in the absence of retained earnings, first from additional paid-in capital and then from accumulated deficit.

Net income (loss) per share

The Company computes basic net income (loss) per share to redeemable common stock and Class G common stock using the two-class method required for companies with participating securities based upon the weighted-average number of common shares outstanding during the period. Diluted net income (loss) per share assumes the conversion, exercise or issuance of all potential common stock equivalents, unless the effect of inclusion would be anti-dilutive. For purposes of this calculation, common stock equivalents include the Company's redeemable stock options, warrants and the shares issuable upon the conversion of the redeemable preferred stock. For redeemable stock options and redeemable preferred stock, the calculation of diluted income (loss) per share includes an adjustment for the additional share of undistributed earnings and accretion to redemption value for the period that the common stockholders are entitled to if exercise is assumed. For warrants that are recorded as a liability in the accompanying consolidated balance sheets, the calculation of diluted income (loss) per share requires that, to the extent the average market price of the underlying shares for the reporting period exceeds the exercise price of the warrants and the presumed exercise of the warrants is dilutive to income (loss) per share for the period, an adjustment is made to net income (loss) used in the calculation to remove the change in fair value of the warrants from the numerator for the period. Likewise, an adjustment to the denominator is required to reflect the related dilutive shares, if any, under the treasury stock method.

The following tables show the computation of basic and diluted net income (loss) per share for 2020 and 2019 (redeemable common stock in thousands, except number of shares):

	Year Ended December 31,	
	2020	2019
Redeemable Common Stock		
Numerator:		
Net income available to stockholders, basic	$ 3,366	$ 26,127
Effect of dilutive securities:		
Redeemable preferred stock	—	86,670
Preferred stock warrants	—	(2,214)
Redeemable stock options	(2,511)	12,822
Net income available to stockholders, diluted	$ 855	$ 123,405
Denominator:		
Weighted-average shares outstanding, basic	38,295,453	35,431,642
Effect of dilutive securities:		
Redeemable preferred stock	—	153,152,669
Preferred stock warrants	—	1,147,959
Redeemable stock options	18,853,272	22,859,185
Weighted-average shares, diluted	57,148,725	212,591,455
Basic net income per share	$ 0.09	$ 0.74
Diluted net income per share	$ 0.01	$ 0.58
Series G Common Stock		
Numerator:		
Net income available to stockholder, basic	$ (0.39)	$ 0.01
Effect of dilutive securities:		
Redeemable preferred stock and warrants	(0.23)	—
Net income available to stockholder, diluted	$ (0.62)	$ 0.01
Denominator:		
Weighted-average shares outstanding, basic and diluted	1	1
Basic net (loss) income per share	$ (0.39)	$ 0.01
Diluted net (loss) income per share	$ (0.62)	$ 0.01

For the year ended December 31, 2020, a weighted-average of 14,922,837 shares from redeemable stock options and 153,746,459 shares from redeemable preferred stock and warrants were anti-dilutive and therefore not included in the calculation of diluted net income per share for redeemable common stock. For the year ended December 31, 2019, a weighted-average of 6,642,612 shares from redeemable stock options were anti-dilutive and therefore not included in the calculation of diluted net income per share for redeemable common stock.

Income taxes

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit

carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The likelihood of realizing the tax benefits related to a potential deferred tax asset is evaluated, and a valuation allowance is recognized to reduce that deferred tax asset if it is more likely than not that all or some portion of the deferred tax asset will not be realized. Deferred tax assets and liabilities are calculated at the beginning and end of the year; the change in the sum of the deferred tax asset, valuation allowance and deferred tax liability during the year generally is recognized as a deferred tax expense or benefit. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in operations in the period that includes the enactment date.

Significant judgment is required in determining the Company's provision for income taxes, deferred tax assets and liabilities and the valuation allowance recorded against net deferred tax assets. The Company assesses the likelihood that deferred tax assets will be recovered as deductions from future taxable income. The evaluation of the need for a valuation allowance is performed on a jurisdiction-by-jurisdiction basis and includes a review of all available positive and negative evidence. Factors reviewed include projections of pre-tax book income for the foreseeable future, determination of cumulative pre-tax book income after permanent differences, earnings history and reliability of forecasting. The Company recognized a full valuation allowance on deferred tax assets as of December 31, 2020 and 2019 after evaluating that it is more likely than not that deferred tax assets will not be realized as of those dates.

The Company evaluates the accounting for uncertainty in income tax recognized in the consolidated financial statements and determines whether it is more likely than not that a tax position will be sustained upon examination by the appropriate taxing authorities before any part of the benefit is recorded in its consolidated financial statements. For those tax positions where it is "not more likely than not" that a tax benefit will be sustained, no tax benefit is recognized. Where applicable, associated interest and penalties are also recorded. The Company has not accrued any liabilities for any such uncertain tax positions as of December 31, 2020 or 2019. The Company is subject to U.S. federal and state tax authority examinations for all the years since inception due to net operating loss and tax credit carryforwards. The net operating losses and tax credits are subject to adjustment until the statute closes on the year the attributes are ultimately utilized.

The Company's income tax returns are based on calculations and assumptions that are subject to examination by the Internal Revenue Service and other tax authorities. In addition, the calculation of the Company's tax liabilities involves dealing with uncertainties in the application of complex tax regulations. The Company recognizes liabilities for uncertain tax positions based on a two-step process. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount that is more than 50% likely of being realized upon settlement. While the Company believes it has appropriate support for the positions taken on its tax returns, the Company regularly assesses the potential outcomes of examinations by tax authorities in determining the adequacy of its provision for income taxes. The Company continually assesses the likelihood and amount of potential revisions and adjusts the income tax provision, income taxes payable and deferred taxes in the period in which the facts that give rise to a revision become known.

The Company is required to file federal and state income tax returns in the United States, United Kingdom, Ireland, Netherlands, Germany and Mexico. The preparation of these income tax returns requires the Company to interpret the applicable tax laws and regulations in effect on such jurisdictions, which could impact the amount of tax paid. An amount is accrued for the estimate of additional tax liabilities, including interest and penalties, for any uncertain tax positions taken or expected to be taken in an income tax return. The accrual for uncertain tax positions is updated when more definitive information becomes available.

Revenue recognition

The Company commenced sales of its products in June 2019. The Company's revenue is generated from the sale of light adjustable intraocular lenses (RxLAL) used in cataract surgery along with a specifically designed machine for delivering light to the eye, the Light Delivery Device (LDD), to adjust the lens post-surgery, as needed. Revenue is recognized from sales of products in the U.S. and Europe. Customers are primarily comprised of ambulatory surgery centers, hospitals, and physician private practices.

The Company recognizes revenue when promised goods or services are transferred to customers at a transaction price that reflects the consideration to which the Company expects to be entitled in exchange for those goods and services. Specifically, the Company applies the following five steps to recognize revenue: (i) identify the contract(s) with a customer; (ii) identify the performance obligations in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when, or as, the Company satisfies a performance obligation. The Company applies the five-step model to contracts when it is probable that it will collect the consideration to which it is entitled in exchange for the goods or services it transfers to the customer. At contract inception, the Company assesses the goods promised within each customer contract to determine the individual deliverables in its product offerings as separate performance obligations and assesses whether each promised good or service is distinct. The transaction price is determined based on the consideration expected to be received, based either on the stated value in contractual arrangements or the estimated cash to be collected in non-contracted arrangements. The Company recognizes revenue as the amount of the transaction price that is allocated to the respective performance obligation when, or as, the performance obligation is satisfied, considering whether or not this occurs at a point in time or over time. The Company elected to account for shipping costs as fulfillment costs rather than a promised service and excludes from revenue any taxes collected from customers that are remitted to government authorities.

The Company's LDD contracts contain multiple performance obligations bundled for one transaction price, with all obligations generally satisfied within one year. For these bundled arrangements, the Company accounts for individual products and services as separate performance obligations if they are distinct, that is, if a product or service is separately identifiable from other items in the bundled package, and if a customer can benefit from it on its own or with other resources that are readily available to the customer. The Company's LDD contracts include a combination of the following performance obligations: (1) LDD capital asset and related components, (2) training and (3) device service (initial year). Each of these three performance obligations are considered distinct. The LDD capital asset is distinct because the customer can benefit from it together with other resources that are readily available to the customer. Training on the use of the machine is offered as a distinct activity after installation of the LDD to enhance the customer's ability to utilize the machine by having an industry professional provide best practices and customize training to the specific needs of the customer. Each LDD comes with a twelve-month manufacturer's warranty (service-type) that includes preventative maintenance, unscheduled service (labor and parts) and software updates. After the first year, service contracts can be purchased separately on a standalone basis. The Company recognizes revenue as performance obligations are satisfied by transferring control of the product or service to a customer. Specifically, revenue for the LDD capital asset is recognized at a point in time at installation. Revenue for training is also recorded at a point in time, generally 30 days after installation. Revenue for the device service is recognized ratably over time after installation, generally 12 months. The Company has determined that the transaction price is the invoice price, net of adjustments, if any. The allocation to the separate performance obligations is based upon the relative standalone selling price. Standalone selling prices are based on observable prices at which the Company separately sells the products or services The Company estimates the standalone selling price using the market assessment approach considering market conditions and entity-specific factors including, but not limited to, features and functionality of the products and services, geographies, type of customer and market conditions. The Company regularly reviews and updates standalone selling prices as necessary.

RxLALs are held at customer sites on consignment. The single performance obligation is satisfied and revenue is recognized for RxLALs upon customer notification that the RxLALs have been implanted in a patient. For the years ended December 31, 2020 and 2019, credits related to returns and rebates on list prices were not significant.

The Company has adopted the practical expedient permitting the direct expensing of costs incurred to obtain contracts where the amortization of such costs would occur over one year or less, and it applied to substantially all the Company's contracts.

As of December 31, 2020 and 2019, the Company recognized deferred revenue on its consolidated balance sheets of $345,000 and $10,000, respectively, related to the service agreement performance obligation. Revenue for service agreements is recognized ratably over the term of each contract.

For the years ended December 31, 2020 and 2019, revenue from contracts with customers consisted of the following (in thousands):

	2020	2019
LDD (including training)	$10,159	$1,187
LAL	4,256	1,026
Service warranty, service contracts, and accessories	263	28
	$14,678	$2,241

For the year ended December 31, 2020, the Company had one customer who individually accounted for 27% of revenue, and for the year ended December 31, 2019, the Company had two customers who individually accounted for approximately 35% and 14% of revenue.

Cost of sales

Cost of sales consists of materials, labor and manufacturing overhead incurred to produce the Company's products as well as the cost of shipping and handling.

Research and development expenses

Research and development expenses are expensed as incurred. Research and development expenses consist of upfront fees and milestones paid to collaborators and expenses incurred in performing research and development activities for new products and technology. The expenses include personnel-related costs, including compensation and benefits and stock-based compensation, consultants hired to perform research projects, costs incurred at clinical trial sites, regulatory and manufacturing engineering costs related to FDA premarket approval submission preparation, various laboratory and research supplies, write-off of pre-approved inventory utilized for clinical trial and research purposes, costs incurred in the development of manufacturing processes in excess of capitalizable value, fees paid to contract research organizations and direct FDA related costs. The Company also accrued the costs of ongoing clinical trials associated with programs that have been terminated or discontinued for which there is no future economic benefit at the time the decision is made to terminate or discontinue the program.

Comprehensive income

All components of comprehensive income, including net income (loss), are reported in the consolidated financial statements in the period in which they are recognized. Comprehensive income is defined as the change in equity during a period from transactions and other events and circumstances from non-owner sources, including unrealized gains and losses on marketable securities and foreign currency translation adjustments.

Recent accounting pronouncements

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* (ASU 2016-13), which amends the impairment model by requiring entities to use a forward-looking approach based on expected losses rather than incurred losses to estimate credit losses on certain types of financial instruments, including trade receivables. This may result in the earlier recognition of allowances for losses. In November 2018, the FASB issued ASU 2018-19, *Codification Improvements to Topic 326, Financial Instruments—Credit Losses*, which provided additional implementation guidance on the previously issued standard. The Company adopted the standard on January 1, 2020, and determined there was no cumulative-effect transition adjustment to the opening balance of accumulated deficit for recognition of additional credit losses upon adoption of this standard as of January 1, 2020 based on its outstanding accounts receivable, the composition and credit quality of its short-term investments and current economic conditions as of that date.

In February 2018, the FASB issued ASU 2018-02, *Income Statement – Reporting Comprehensive Income (Topic 220): Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income*, which allows an entity to elect to reclassify the income tax effects of the Tax Cuts and Jobs Act (Tax Reform) on items within accumulated other comprehensive income to retained earnings. An entity that does not elect to reclassify the income tax effects of the Tax Reform is required to disclose, in the period of adoption, a statement that an election was not made to reclassify the income tax effects of the Tax Reform from accumulated other comprehensive income to retained earnings. The standard became effective for the Company on April 1, 2019. The Company elected not to reclassify the income tax effects of the Tax Reform from accumulated other comprehensive income to retained earnings.

In June 2018, the FASB issued ASU No. 2018-07, *Compensation – Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting*, which simplifies the accounting for share-based payments granted to nonemployees for goods and services. Under the guidance, the measurement of equity-classified non-employee awards will be fixed at the grant date and may be accounted for using certain practical expedients that are already available for employee awards. In November 2019, FASB issued ASU No. 2019-08, *Compensation – Stock Compensation (Topic 718) and revenue from Contracts with Customers (Topic 606)*, which requires all share-based payments to customers to adopt the measurement approach in accordance with ASC 718. The amount recorded as a reduction of the transaction price is measured using the grant date fair value of the share-based payment. The award is measured and classified under ASC 718 for its entire life, unless the award is modified after it vests, and the grantee is no longer a customer. The Company elected to early adopt both ASUs effective January 1, 2019, and the adoption did not have a material impact on the Company's consolidated financial statements.

In August 2018, the FASB issued ASU No. 2018-13, *Fair Value Measurement: Disclosure Framework – Changes to the Disclosure Requirements for Fair Value Measurement*, which adds and modifies certain disclosure requirements for fair value measurements. Under the new guidance, entities will no longer be required to disclose the amount of and reasons for transfers between Level 1 and Level 2 of the fair value hierarchy, or valuation processes for Level 3 fair value measurements. However, public companies will be required to disclose the range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements, and related changes in unrealized gains and losses included in other comprehensive income. The updated guidance was effective for the Company starting in the first quarter of 2020. As a result, the Company modified certain fair value measurement disclosures primarily related to its Level 3 liabilities.

In August 2018, the FASB issued ASU 2018-15, *Intangibles – Goodwill and Other – Internal Use Software (Subtopic 350-40): Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract*, which changes the accounting for implementation costs incurred in a cloud computing

arrangement that is a service contract. The update aligns the requirements for capitalizing implementation costs incurred in a hosting arrangement with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software. The implementation costs should be presented as a prepaid expense in the balance sheet and expensed over the term of the hosting arrangement. This standard is effective for the Company beginning January 1, 2021, and early adoption is permitted. The Company does not expect adoption to have a material impact on its consolidated financial statements.

In December 2019, the FASB issued ASU 2019-12, *Income Taxes (ASC 740): Simplifying the Accounting for Income Taxes*. ASU 2019-12 simplifies the accounting for income taxes by eliminating certain exceptions to the guidance in ASC 740 related to the approach for intraperiod tax allocation, the methodology for calculating income taxes in an interim period and the recognition of deferred tax liabilities for outside basis differences. The Company elected to early adopt ASU 2019-12 effective December 31, 2019, and the adoption did not have a material impact to the Company's consolidated financial statements.

In June 2020, the FASB issued ASU No. 2020-06, *Accounting for Convertible Instruments and Contracts in an Entity's Own Equity*, which is intended to simplify the accounting for convertible instruments. This new guidance eliminates certain models that require separate accounting for embedded conversion features and eliminates certain of the conditions for equity classification for contracts in an entity's own equity. Accordingly, a convertible debt instrument will be accounted for as a single liability measured at its amortized cost, as long as no other features require bifurcation and recognition as derivatives. The new guidance can be adopted through either a modified retrospective method of transition or a fully retrospective method of transition. ASU 2020-06 is effective for public business entities for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years. Early adoption is permitted for fiscal years beginning after December 15, 2020, including interim periods within those fiscal years. The Company is in the process of determining the impact of the adoption of the standard on its consolidated financial statements as well as whether to early adopt the new standard.

Note 3 – Short-term investments

Short-term investments, principally U.S. Treasury bills, are available-for-sale and consisted of the following (in thousands):

	As of December 31, 2020		
	Amortized cost	Unrealized loss, net	Estimated fair value
Government securities	$ 54,983	$ (2)	$ 54,981

	As of December 31, 2019		
	Amortized cost	Unrealized gain, net	Estimated fair value
Government securities	$ 72,664	$ 46	$ 72,710

All available-for-sale securities held as of December 31, 2020 and 2019 had a maturity of less than one year. The Company has classified all marketable securities, regardless of maturity, as short-term investments based upon the Company's ability and intent to use any and all of those marketable securities to satisfy the Company's liquidity requirements. The Company does not intend to sell the available-for-sale debt securities that are in an unrealized loss position, and it is not more likely than not that the Company will be required to sell these debt securities before recovery of their amortized cost bases, which may be at maturity.

Note 4—Inventories

Inventories consisted of the following (in thousands):

	December 31, 2020	December 31, 2019
Finished goods	$ 5,092	$ 3,650
Raw materials	1,827	1,548
Work-in-process	1,685	2,245
	8,604	7,443
Less: reserve for excess and obsolete inventory	(316)	(224)
	$ 8,288	$ 7,219

At December 31, 2020 and 2019, finished goods included $2.7 million and $1.5 million of inventory held on consignment at customer sites, respectively.

Note 5—Property and equipment

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

	December 31, 2020	December 31, 2019
Machinery and equipment	$ 11,153	$ 9,960
Leasehold improvements	10,152	8,365
Construction in progress	1,474	2,783
Computer hardware and software	1,101	919
Production molds	867	529
Furniture and fixtures	855	646
Right-of-use equipment	58	195
	25,660	23,397
Less: Accumulated depreciation and amortization	(12,373)	(8,539)
	$ 13,287	$ 14,858

The Company recorded $3.9 million and $3.8 million in depreciation and amortization expense for the years ended December 31, 2020 and 2019, respectively. During the year ended December 31, 2019, the Company sold six LDDs that were classified within machinery and equipment, as they were previously used for training and clinical studies, and recognized an aggregate gain of $521,000.

Note 6—Fair value of financial instruments

The table and disclosures below (in thousands) present the Company's assets and liabilities measured at fair value on a recurring basis and indicate the fair value hierarchy of the valuation techniques utilized by the Company to determine such fair value. See Note 9—Common Stock Warrant Liability and Note 11—Convertible Preferred Stock Warrants for more information on the valuation technique and inputs used for the fair value measurements of the warrant liabilities, including quantitative information about the significant unobservable inputs used in the fair value measurements of the warrant liabilities.

Money market funds are liquid investments and are actively traded. The pricing information on these investment instruments is readily available and can be independently validated as of the measurement date.

This approach results in the classification of these securities as Level 1 of the fair value hierarchy. U.S. Government securities are measured at fair value using Level 2 inputs. The Company reviews trading activity and pricing for these investments as of each measurement date. When sufficient quoted pricing for identical securities is not available, the Company uses market pricing and other observable market inputs for similar securities obtained from various third-party data providers. These inputs represent quoted prices for similar assets in active markets or these inputs have been derived from observable market data. This approach results in the classification of these securities as Level 2 of the fair value hierarchy.

The carrying amounts of certain financial instruments such as cash and cash equivalents, accounts receivable, prepaid expenses, other current assets, accounts payable, accrued expenses and other current liabilities as of December 31, 2020 and December 31, 2019 approximate their related fair values due to the short-term maturities of these instruments.

	As of December 31, 2020			
	Level I	Level II	Level III	Total
Assets:				
Money market securities	$11,822	$ —	$ —	$11,822
Government securities	—	54,981	—	54,981
Total assets at fair value	$11,822	$54,981	$ —	$66,803
Liabilities:				
Common stock warrant liability	$ —	$ —	$ (5,018)	$ (5,018)
Redeemable convertible preferred stock warrant liability	—	—	(3,828)	(3,828)
Total liabilities at fair value	$ —	$ —	$ (8,846)	$ (8,846)

	As of December 31, 2019			
	Level I	Level II	Level III	Total
Assets:				
Money market securities	$5,179	$ —	$ —	$ 5,179
Government securities	—	72,710	—	72,710
Total assets at fair value	$5,179	$72,710	$ —	$ 77,889
Liabilities:				
Common stock warrant liability	$ —	$ —	$(69,646)	$(69,646)
Redeemable convertible preferred stock warrant liability	—	—	(2,235)	(2,235)
Total liabilities at fair value	$ —	$ —	$(71,881)	$(71,881)

The following table sets forth changes in the estimated fair values for the Company's warrant liabilities measured using significant unobservable inputs (in thousands):

	Year ended December 31,	
	2020	2019
Beginning of year	$ 71,881	$ 242,818
Exercise of preferred stock warrants	(24)	(904)
Expiration of preferred stock warrants	—	(803)
Change in fair value of common stock warrant	(64,628)	(167,818)
Change in fair value of preferred stock warrants	1,617	(1,412)
End of year	$ 8,846	$ 71,881

The term loan is not actively traded. The Company measures the value of the debt instrument by considering prevailing interest rates, the pricing of public debt of similar reporting entities with consistent credit standing and its own nonperformance risk, including credit risk. Because significant pricing inputs are unobservable, the debt instrument is classified as Level 3 in the fair value hierarchy. The carrying amount of the term loan approximated its fair value at December 31, 2020.

Note 7—Accrued expenses and other current liabilities

Accrued expenses and other current liabilities consisted of the following (in thousands):

	December 31, 2020	December 31, 2019
Compensation	$ 2,943	$ 4,427
Vendor invoices	745	427
Deferred revenue	417	63
Customer deposits	21	315
Other	48	36
	$ 4,174	$ 5,268

Note 8—Term loan

On October 29, 2020, the Company entered into a loan facility (“Term Loan”) with an initial draw of $25 million. Proceeds were used to help fund the Company’s ongoing operations. As part of the Term Loan, the lender committed to providing further loans of up to $35 million to the Company at its election (or for one specific draw, upon occurrence of a revenue milestone) during various draw periods in the future, provided the Company is not in default at the time of the additional loan draws.

The Term Loan is secured by substantially all of the Company’s assets, including a negative lien on the Company’s intellectual property assets. The Company is subject to various standard covenants, such as quarterly reporting, annual audits, submission of annual projections and limitations on dividends, further investments and indebtedness. The Term Loan also contains a covenant (“Performance to Plan”) that provides that, beginning on March 31, 2022 and measured monthly, the Company must achieve trailing twelve-month revenue equal to or greater than 50% of the Company’s annual operating budget as approved by the Company’s board of directors and the lender. If the Company completes an initial public offering of at least $70 million in proceeds, the Company may continue the Performance to Plan covenant or may replace it with a positive lien on its intellectual property. As of December 31, 2020, the Company was in compliance with all covenants.

Interest for all borrowings under the Term Loan is determined as the greater of (1) 9.25% or (2) 9.09% plus the greater of 30-day LIBOR published in the Wall Street Journal and 0.16%. The Company may elect an interest rate equal to 10.25% plus the greater of (1) the Wall Street Journal Prime rate or (2) 7%. The interest rate resets monthly on the last day of the month prior to the month in which interest accrues, and an actual/360-day convention applies. If the Company is considered to be in default as defined by the Term Loan, additional interest of 5% applies. The LIBOR rate is subject to change to another basis, presently undetermined, when LIBOR ceases to exist.

The Term Loan requires 36 months of interest-only payments, followed by 23-months of amortization. If the Company is in compliance with the Performance to Plan covenant through October 31, 2023, the interest-only period is extended by 12 months, and the amortization period is reduced by 11 months. Payments are due on the first day of each month in arrears. All unpaid amounts under the Term Loan mature on October 1, 2025.

The Term Loan is prepayable at any time without penalty; however, the loan must be prepaid in full or in specific increments, and amounts prepaid may not be subsequently reborrowed. The loan may also be accelerated by the lender in the event of a default.

If the loan is not fully prepaid by December 31, 2021, the Company will become subject to an additional fee (the "Exit Fee"). The fee is 3% of the original draw amount if prepaid between January 1, 2022 and October 31, 2022 ($750,000), 4% if prepaid between November 1, 2022 and October 31, 2023 ($1 million) and 5% ($1.3 million) if paid subsequently, including at maturity. The Exit Fee is being accreted to the carrying value of the debt as a debt premium and interest expense over the life of the loan using the effective interest method. Third-party professional service fees totaling $687,000 were incurred by the lender and the Company that are directly attributable to execution of the Term Loan transaction. These issuance costs have been recorded as a discount to the carrying amount of the debt and are being amortized to interest expense over the effective term of the debt using the effective interest method.

As of December 31, 2020, annual principal payments due under the Term Loan were as follows (in thousands):

Year Ended December 31,	
2021	$ —
2022	—
2023	1,087
2024	13,043
2025	10,870
Total	25,000
Less: unamortized issuance costs and Exit Fee	(601)
Term loan, net	$ 24,399

During 2020, the interest rate charged on cash payments was 9.25%. The effective interest rate during the same period was 11.31%.

Note 9—Common stock warrant liability

Warrant agreement and share purchase agreement

On October 12, 2017, the Company issued a "Strategic Partner" a warrant to purchase Series W common stock (the "Warrant Agreement") for a non-refundable payment of $60 million. This Series W common stock warrant (the "Series W Warrant") had an initial expiration date of December 31, 2018 unless extended as provided for in the Warrant Agreement. On December 27, 2018, the Strategic Partner chose to extend the expiration date of the Series W Warrant, by making an additional non-refundable payment of $40 million, until the sooner of the achievement of performance milestones (as defined in the Warrant Agreement) or November 22, 2021. On March 18, 2020, the Company and the Strategic Partner signed an amendment to the Warrant Agreement that removed the milestone triggers for early exercise and changed the expiration date to March 31, 2021.

Concurrent with the Warrant Agreement, the Strategic Partner and the Company entered into a Share Purchase Agreement (the "Purchase Agreement"). Under the Purchase Agreement, the Strategic Partner purchased one share of the Company's non-voting $0.001 par value per share Series G common stock for $0.01. Upon exercise of the Series W Warrant, the Strategic Partner will receive one share of voting, $0.001 par value, Series W common stock. Per the Warrant Agreement, the exercise price of the Series W Warrant is $630.0 million plus adjustments for the Company's cash, working capital, indebtedness and transaction expenses, subject to an escrow holdback of $92.0 million and a shareholder representative holdback of $500,000. The Warrant Agreement also provides for

potential aggregate milestone payments of up to $827 million for various sales-based and operating milestones and $185 million for certain regulatory milestones, either at the time of the Series W Warrant's exercise or at dates subsequent, as defined in the Warrant Agreement. Upon notice of exercise of the Series W Warrant by the Strategic Partner and receipt of the required funds, a Special Redemption, as defined in the Company's Articles of Incorporation, will trigger automatic redemption of all the Company's outstanding capital instruments, except for the Series G common stock and Series W common stock, and the Strategic Partner will acquire the Company.

Under the Warrant Agreement, the Company is solely responsible for all research and preclinical, clinical and other development and commercialization of the LAL and LDD products. While the Series W Warrant is outstanding, the Company retains all decision-making rights regarding development and commercialization of its products.

The Series W warrant fair value was determined by management, with input and assistance from a third-party valuation specialist, upon issuance and is revalued as of each reporting date. The valuation specialist utilized a Monte Carlo Simulation ("MCS") under the income method utilizing assumptions and financial data prepared by the Company. This valuation approach uses a discounted cash flow ("DCF") method to calculate the starting equity value of the Company based upon future cash flow generation. The starting equity value of the Company is determined utilizing (1) forecasted financial projections for the next five years developed by management, (2) a terminal value assigned using an exit multiple method, and (3) a discount rate based on the weighted average cost of capital. Then a simulated equity value of the Company as of the expected exercise date is determined using the MCS method. The MCS inputs include: (1) the assumed amount of time until the exercise of the warrant, (2) the risk-free interest rate over the period until the assumed warrant exercise, (3) the assumed volatility in the value of the equity of the company, and (4) the starting equity value of the Company as determined from the discounted cash flow method. In order to determine the overall value of the warrant, the valuation specialists also simulate the payments for sales-based, operating and regulatory milestones based upon similar inputs to determine the expected overall purchase price of the Company. The net difference between the expected purchase price and the average simulated equity value determines the "option payoff". Finally, management assigns a probability that the Strategic Partner will exercise the warrant which is applied to the present value of the "option payoff" to arrive at the recorded value reflected in the accompanying consolidated financial statements.

The following table presents the assumptions used in the DCF and MCS calculations to determine the fair value of the Series W warrant:

	Year ended December 31,	
	2020	**2019**
Terminal value—exit multiple	7.00	7.00
Weighted average cost of capital discount rate	22.0%	22.0%
Expected life (in years)	0.25 year	0.92 and 2.09 years
Risk-free interest rate	0.9%	1.58% and 1.59%
Expected volatility	56.9%	59.6% and 66.8%

Special redemption

On October 25, 2017, the Company adopted the 12th Amended and Restated Articles of Incorporation (the "Amendment"). Under Article IV of the Amendment, if the Strategic Partner exercises the Series W Warrant, an automatic redemption, conversion, termination and cancellation of all then outstanding shares of the Company's capital stock, options and warrants will occur without any further action required. Immediately prior to the automatic redemption, all outstanding preferred shares convert to common shares, unvested stock options accelerate and become fully vested and all stock options terminate along with any preferred stock warrants outstanding. Shareholders, option holders and warrant holders have the right to receive the initial per

share price less the strike price as defined in the Warrant Agreement. The Strategic Partner will advance (through an exchange agent) the funds to the Company, which will then disburse the funds to all shareholders, option holders and warrant holders. If the Series W Warrant is terminated or expires unexercised, Article IV of the Amendment is terminated and is of no further force and effect.

Upon adoption, management determined that the exercise of the Series W Warrant by the Strategic Partner (and therefore, the Special Redemption) was a probable, though not certain event. As a result, as of October 2017, the Company began accreting common stock to the expected redemption value and reflected the redemption value of stock options in temporary equity. During the year ended December 31, 2020, the Company recorded $18.3 million of accretion of common stock and a credit of $1.5 million related to the value of redeemable stock options, which reflected the expected redemption value less strike price on vested stock options outstanding. During the year ended December 31, 2019, the Company recorded $25.6 million of accretion of common stock and an entry to record $13.4 million in redemption value related to redeemable stock options. In December 2020, management determined that exercise of the Series W Warrant was no longer probable, at which point accretion to redemption value of common stock and the entry to record the redemption value of stock options ceased.

Note 10—Redeemable convertible preferred stock and stockholders' deficit

Redeemable convertible preferred stock

The Amendment authorized eight classes of preferred stock, Series A through F, the "Prior Preferred Stock" and Series G and H, the "Senior Preferred Stock". All of the Company's redeemable convertible preferred stock has been classified as temporary equity on the accompanying consolidated balance sheets, as all such preferred stock is redeemable either at the option of the holder or upon an event outside the control of the Company (i.e., a change in control). The redeemable convertible preferred stock is redeemable per the Special Redemption (see Note 9) or upon certain change in control events (including liquidation, sale or transfer of control of the Company); however, the Special Redemption is not a certain event, and all change in control events are outside of the Company's control. In the event of the Special Redemption, the holders will receive redemption proceeds as defined in the Warrant Agreement. In the event of liquidation, holders of the convertible preferred stock may have the right to receive its liquidation preference under the terms of the Company's Amendment.

As a result of management's determination that the Special Redemption is probable, but not certain, the Company began accreting to the expected redemption value of the redeemable convertible preferred stock in October 2017. The Company recorded $25.7 million and $68.7 million of accretion on all redeemable convertible preferred stock for the years ended December 31, 2020 and 2019, respectively. In December 2020, management determined that the Special Redemption was no longer probable, at which point accretion to redemption value ceased.

The following tables summarize information related to issuance of the Company's preferred stock (in thousands, except number of shares and per share amounts):

						As of December 31, 2020	
	Par value	Date of issuance	Share price at issuance	Shares authorized(1)	Shares issued and outstanding(1)	Liquidation preference	Carrying value(2) share capital
Series A	$0.001	Feb-2000	$ 3.950	3,676,668	3,676,668	$ 14,523	$ 13,535
Series B	$0.001	May-2003	$ 0.878	17,989,209	17,989,209	15,795	39,715
Series C	$0.001	Feb-2007	$ 1.250	12,069,000	12,069,000	15,086	28,136
Series D	$0.001	Aug-2009	$ 1.750	6,857,143	6,857,143	12,000	18,503
Series E	$0.001	Oct-2011	$ 2.000	3,650,000	3,650,000	7,300	10,350
Series F	$0.001	May-2012	$ 2.500	5,245,000	5,156,500	12,891	18,305
Series G	$0.001	Jun-2015	$ 1.200	60,251,641	59,799,409	71,759	135,682
Series H	$0.001	Feb-2017	$ 1.200	61,458,333	39,311,920	47,174	89,074
				171,196,994	148,509,849	$ 196,528	$ 353,300

						As of December 31, 2019	
	Par value	Date of issuance	Share price at issuance	Shares authorized(1)	Shares issued and outstanding(1)	Liquidation preference	Carrying value(2) share capital
Series A	$0.001	Feb-2000	$ 3.950	3,676,668	3,676,668	$ 14,523	$ 13,535
Series B	$0.001	May-2003	$ 0.878	17,989,209	17,989,209	15,795	34,929
Series C	$0.001	Feb-2007	$ 1.250	12,069,000	12,069,000	15,086	26,105
Series D	$0.001	Aug-2009	$ 1.750	6,857,143	6,857,143	12,000	17,753
Series E	$0.001	Oct-2011	$ 2.000	3,650,000	3,650,000	7,300	10,042
Series F	$0.001	May-2012	$ 2.500	5,245,000	5,156,500	12,891	17,807
Series G	$0.001	Jun-2015	$ 1.200	60,251,641	59,799,409	71,759	125,362
Series H	$0.001	Feb-2017	$ 1.200	61,458,333	39,293,170	47,152	82,048
				171,196,994	148,491,099	$ 196,506	$ 327,581

(1) The shares authorized, issued and outstanding do not reflect any anti-dilution provisions of Series C, Series D, Series E and Series F as a result of the Series G financing.

(2) The carrying value reflects the gross proceeds received from the sale of the preferred stock less issuance costs and the fair value at issuance of preferred stock warrants classified as a liability, plus accretion of redemption value.

Series H financing

On February 24, 2017, the Company issued 29,694,317 shares of Series H preferred stock (par value $0.01) at a price per share of $1.20 for gross proceeds of $35.6 million. On March 23 and 24, 2017, the Company completed a second and third closing, respectively, and issued a total of 9,261,307 shares of Series H preferred stock, for $11.1 million. Warrants were also issued as part of the Series H financing (see Note 11). In addition to warrant expense, Series H financing closing costs were $285,000.

Conversion rights

As a result of the Series G financing and as a continued provision of the Series H financing, certain anti-dilution provisions were triggered in the Series G offering in the Prior Preferred Stock. This resulted in an increase in the number of authorized shares of common stock. Additionally, the number of shares of common stock issued would increase if Series C, Series D, Series E and Series F preferred stock (the "Conversion Shares") converted to common stock. This increase is determined by a conversion factor based on the original issuance price ("OIP") of the individual Conversion Shares. The Prior Preferred Shares conversion to common stock would

increase the number of common shares outstanding by 4,906,022 if all the Conversion Shares exercise their conversion rights.

Liquidation rights

In the event of a liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, or upon an asset transfer or acquisition (a “Liquidation Event”), the priority for amounts available for distribution to the Preferred Stockholders are as follows:

- Series G, Series H
- Series B, Series C, Series D, Series E, Series F
- Series A

Preferred stock is entitled to a liquidation preference at OIP, plus any declared but unpaid dividends. If the Company’s assets are insufficient to make payment in full to all these equity holders, then the assets will be distributed ratably in proportion to the full amounts to which they would otherwise be entitled to receive.

Once the holders of preferred stock have been paid, any remaining assets available shall be distributed among the holders of common stock and any previously converted preferred shares based upon the number of shares of common stock held by each (on an as converted basis).

Optional conversions

Preferred stock is convertible at the option of the holder into common stock on a one for one basis.

The following table shows the common stock equivalent of preferred stock, if converted, as a result of the anti-dilution provisions enacted during the Series G financing.

Converted shares	**Fully diluted on conversion(1)**	
	12/31/2020	**12/31/2019**
Series A	3,676,668	3,676,668
Series B	17,989,209	17,989,209
Series C	12,371,908	12,371,908
Series D	7,986,447	7,986,447
Series E	4,439,858	4,439,858
Series F	7,840,452	7,840,452
Series G	59,799,409	59,799,409
Series H	39,311,920	39,293,170
Total	**153,415,871**	**153,397,121**

(1) Excludes preferred stock warrants (Note 11).

Automatic conversions

The preferred stock is subject to automatic conversion under several circumstances:

- Each individual class of preferred stock can be converted into shares of common stock based on the following:
  - *Series A and Series B*—If a majority of Series A and Series B preferred stockholders, voting together as a single class, make such an election.
  - *Series C, Series D, Series E, Series F*—Each share of the Series C, Series D, Series E and Series F preferred stock classes shall automatically be converted into shares of common stock if a majority of each separate series, voting together as a single class, make such an election.

- *Series G and H*—Upon a vote of more than 51% of the Series G and H preferred stockholders, voting together as a single class, all Series G and H preferred stock shares will automatically be converted into shares of common stock.

- Preferred stock is automatically converted into shares of common stock upon the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of common stock for the account of the Company, at an offering price per share greater than or equal to $2.40 (adjusted for any stock dividends, combinations, splits, recapitalizations and similar equity transactions with respect to the common stock) and in which the gross cash proceeds to the Company are at least $40 million and after which the common stock is listed on the New York Stock Exchange, the American Stock Exchange or the NASDAQ Stock Market.
- Immediately prior to the closing of the exercise of the Series W Warrant and under the Special Redemption, each share will be mandatorily redeemed, cancelled, retired and shall cease to exist and be converted into the right to receive the per share redemption payment in cash.

Redemptions

As of October 2017, under the provisions of the Special Redemption, if the Strategic Partner exercised the Series W Warrant, the Company would have mandatorily redeemed, canceled and retired all outstanding shares of preferred stock and converted them to cash with a right to receive the per share redemption payments as defined in the Warrant Agreement. As of March 31, 2021, the Series W Warrant expired unexercised and all redemption provisions of the Special Redemption lapsed.

Common stock

Each share of common stock is entitled to one vote. Common stock reserved for future issuance consisted of the following:

	December 31, 2020	December 31, 2019
Conversion of preferred stock	153,415,871	153,397,121
Preferred stock warrants	2,334,082	2,352,832
Common stock warrant	1	1
Stock options issued and outstanding under the 2006 and 2015 plans	43,501,180	35,951,102
Total shares of common stock reserved	199,251,134	191,701,056

Dividends

Any dividends preferred or otherwise, are payable, when and if declared by the Company's Board of Directors, are non-cumulative and priority is given to the Senior Preferred, Prior Preferred and common stockholders as follows:

- Senior Preferred at a rate of 8% of the OIP per share
- Prior Preferred at 8% of OIP per share
- Common stockholders

No dividends were declared to date or during the years ended December 31, 2020 and 2019.

Note 11—Convertible preferred stock warrants

Series F, G and H convertible preferred stock warrants were recorded at fair value at issuance and are revalued as of each reporting date until exercised or expired. The fair value of Series F, G and H convertible preferred

stock warrants were determined with the assistance of valuation specialists using a Probability-Weighted Expected Return Model and Option Pricing Model (PWERM/OPM) Hybrid Method. This method essentially utilizes a combination of market and income method approaches for each part of the calculation of enterprise value and combines them in a probabilistic manner. The valuation considers several future scenarios for the Company, each of which assumes a shareholder exit either through initial public offering ("IPO"), sale ("M&A") or dissolution. Based upon the current IPO market, M&A values for private companies and the historical likelihood of dissolution or no exit, the Company concluded that the probabilities and time frames are reasonable. Implicit in the timing used in the application of the PWERM/OPM Hybrid Method is also the possibility of no exit. The option pricing model's inputs included: (1) the assumed time until a liquidity event, (2) the risk-free interest rate over the period until the assumed liquidity event, (3) the assumed volatility in the value of the equity of the company (which corresponds to the model's underlying asset volatility), (4) the enterprise value and preferred investment amount and (5) the key price points in the Company's capital structure in terms of exit levels on the assumed liquidation date. A significant increase (decrease) in any of these inputs in isolation, particularly the estimated price of the Company's preferred stock, would have resulted in a significantly higher (lower) fair value measurement.

The following scenario probability-weighted assumptions were used to revalue the convertible preferred stock warrants to fair value:

	Year ended December 31,			
	2020		2019	
	Range	Weighted average	Range	Weighted average
Expected volatility	83.4% to 97.4%	94.6%	60.7% to 66.6%	61.9%
Risk adjusted discount factor	16% to 31%	25%	16% to 22%	20%
Expected life (in years)	0.4 to 2.0 years	1.1 years	0.9 to 2.3 years	1.9 years
Expected dividend yield	0.0%	0.0%	0.0%	0.0%

As a result of the Series G financing, certain anti-dilution provisions were triggered in the conversion shares and the Series F warrants, if converted to common stock. Series F warrants would have increased by a conversion factor of 1.52 to 134,564, an increase of 46,064. If Series F warrants had been exercised, total cash proceeds would be approximately $200,000 to the Company.

The Series F warrants expired on June 3, 2019, and the Company recognized a gain on expiration of $157,000.

During the year ended December 31, 2019, 583,170 Series G warrants were exercised and converted to Series G convertible preferred stock. The remaining 416,830 warrants expired unexercised on June 3, 2019, and the Company recognized a gain on expiration of $646,000.

In February and March 2017, the Company issued 2,690,378 warrants to purchase shares of Series H convertible preferred stock with an exercise price of $1.20. Series H warrants were initially issued with a five-year life; in November 2017, they were extended another five years to 2027. As of December 31, 2020 and 2019, the Company had 2,334,082 and 2,352,832 Series H warrants outstanding, respectively. The fair value of Series H warrants was $1.64 and $0.95 per share as of December 31, 2020 and 2019, respectively. Thus, outstanding Series H warrants had an estimated fair value of $3.8 million and $2.2 million as of December 31, 2020 and 2019, respectively. During the year ended December 31, 2020, 18,750 Series H warrants were exercised. There were no exercises of Series H warrants during the year ended December 31, 2019.

The Series H warrants are classified as liabilities on the accompanying consolidated balance sheets and re-measured at fair value as of each balance sheet date. Changes in fair value are recognized as a component of

other income (expense), net in the accompanying consolidated statement of operations and comprehensive income.

Note 12—Stock-based compensation expense

As of December 31, 2020 and 2019, the Company had two stock-based incentive compensation plans, the Calhoun Vision, Inc. 2015 Equity Incentive Plan (the "2015 Stock Plan") and the Calhoun Vision, Inc. 2006 Stock Plan (the "2006 Stock Plan") (collectively the "Plans").

The 2006 Stock Plan expired in 2016. No stock options may be granted under this stock plan. Outstanding awards will continue to vest under the original grant terms. Options forfeited or expired will be cancelled. The 2015 Stock Plan permits the grant of incentive stock options, nonqualified stock options, stock appreciation rights, restricted stock (non-vested awards), stock awards, performance shares, performance share units and stock units, together the "Awards". Each Award under the 2015 Stock Plan has a maximum term of 10 years from the grant date.

Option awards are generally granted with an exercise price of no less than 100% of estimated fair market value on the date of grant. Time based awards generally vest over four years as follows: one fourth of the total number of shares vest and become exercisable on the one-year anniversary; 1/48th of the total number of shares subject to the option vest and become exercisable on each monthly anniversary thereafter for the remaining 3 years. The purpose of the Plans is to provide a means by which eligible recipients of stock awards may be given an opportunity to benefit from increases in the value of the common stock in order to retain or procure the services of the employees, members of the Board and consultants.

A summary of stock option activities for the years ended December 31, 2020 and 2019 is as follows:

	Shares available for grant	Number of options	Weighted average exercise price	Weighted average grant date fair value	Weighted avg remaining contractual life (years)
Options outstanding as of December 31, 2018	2,246,556	36,894,665	$ 0.65		7.00
Granted	(2,671,000)	2,671,000	$ 2.16	$ 1.11	
Exercised		(2,263,923)	$ 0.39	$ 0.19	
Forfeited	525,431	(525,640)	$ 1.24	$ 0.59	
Expired	500,000	(825,000)	$ 1.27	$ 0.07	
Options outstanding as of December 31, 2019	600,987	35,951,102	$ 0.75		6.00
Issued	12,200,000				
Granted	(11,980,000)	11,980,000	$ 1.46	$ 0.81	
Exercised		(2,578,091)	$ 0.38	$ 0.20	
Forfeited	1,739,331	(1,751,831)	$ 1.80	$ 0.87	
Expired		(100,000)	$ 0.40	$ —	
Options outstanding as of December 31, 2020	2,560,318	43,501,180	$ 0.93		6.46
Exercisable as of December 31, 2020		31,298,846	$ 0.69		5.50

At December 31, 2020 and 2019, the intrinsic value of options vested was $26.2 million and $29.2 million, respectively, and of all options outstanding was $26.4 million and $31.1 million, respectively. During 2020 and

2019, the total cash received from the exercise of stock options was $991,000 and $891,000, respectively. The total fair value less strike price of these options was $2.8 million and $3.5 million, respectively.

Vested and non-vested options granted by the Company were comprised of the following:

		As of December 31, 2020	
Plan name	Exercise price	Options outstanding	Options exercisable
2006 Stock Plan	$ 0.40	2,067,000	2,067,000
2015 Stock Plan	$ 0.38—$2.23	41,434,180	29,231,846
		43,501,180	31,298,846

		As of December 31, 2019	
Plan name	Exercise price	Options outstanding	Options exercisable
2006 Stock Plan	$ 0.40	2,454,500	2,454,500
2015 Stock Plan	$ 0.38—$2.23	33,496,602	26,678,747
		35,951,102	29,133,247

Stock-based compensation expense was classified in the accompanying consolidated statements of operations and comprehensive income as follows (in thousands):

	Year ended December 31,	
	2020	2019
Research and development	$ 2,200	$ 1,855
Selling, general and administrative	1,344	2,336
Cost of goods sold	641	407
	$ 4,185	$ 4,598

As of December 31, 2020 and 2019, there were 12,202,334 and 6,817,855 unvested options, respectively. Total unrecognized expense related to unvested stock options was approximately $9.8 million and $5.2 million as of December 31, 2020 and 2019, respectively. Amounts are expected to be recognized over a weighted average period of approximately 2.9 and 2.0 years, respectively.

The following table presents the range and weighted-average assumptions, used in the Black-Scholes option pricing model to determine the fair value of stock options:

	Year ended December 31,			
	2020		2019	
	Range	Weighted average	Range	Weighted average
Expected volatility	60.1% to 61.9%	61.2%	52.0% to 54.2%	52.6%
Risk-free interest rate	0.3% to 0.9%	0.4%	1.8% to 2.7%	2.4%
Expected life (in years)	5.52 to 10.0 years	6.11 years	5.52 to 10.0 years	6.11 years
Expected dividend yield	0.0%	0.0%	0.0%	0.0%
Grant date fair value	$1.46	$1.46	$0.38 to $2.23	$2.16

Awards to non-employees

Expenses related to stock options issued to non-employees have been calculated using the fair value of the options at the date of grant based on the Black-Scholes option pricing model using assumptions consistent with those used for stock options issued to employees, except that the contractual term used is the expected term.

Expense is recorded as services are provided by the non-employee. As of December 31, 2020, the 43,501,180 outstanding options were comprised of 34,459,603 options granted to employees and 9,041,577 options granted to non-employees. As of December 31, 2019, the 35,951,102 outstanding options were comprised of 25,250,060 options granted to employees and 10,701,042 options granted to non-employees. During the years ended December 31, 2020 and 2019, the Company granted 200,000 and 300,000 shares to non-employees, respectively. Expense related to stock options issued to non-employees was $419,000 and $1.7 million for the years ended December 31, 2020 and 2019, respectively.

Performance-based awards

During 2018, the Board approved performance-based stock options for two employees with vesting based on the attainment of certain performance conditions during the years ended December 31, 2019 and 2018. Performance conditions were not met in either year. Therefore, no expense related to redeemable stock options was recorded related to these performance-based awards during the year ended December 31, 2019, and they were cancelled as of December 31, 2019.

Note 13—Income taxes

The components of income before income taxes are as follows (in thousands):

	Year ended December 31,	
	2020	2019
U.S. income before taxes	$ 27,577	$ 126,145
Foreign income before taxes	55	99
Income before income taxes	$ 27,632	$ 126,244

Income tax expense for the years ended December 31, 2020 and 2019 consists of the following (in thousands):

	Year ended December 31,	
	2020	2019
Current:		
Federal	$ —	$ —
State	46	1
Foreign	11	23
	57	24
Deferred:		
Federal	(7,179)	(6,909)
State	(2,642)	(2,283)
Foreign	—	—
	(9,821)	(9,192)
Change in valuation allowance	9,821	9,192
Income tax expense	$ 57	$ 24

The significant components that comprised the Company's net deferred taxes are as follows (in thousands):

	December 31, 2020	December 31, 2019
Deferred tax assets:		
Net operating loss	$ 52,138	$ 43,277
Amortization	134	152
Stock-based compensation	2,297	1,986
Research and development credit	6,663	5,314
Right-of-use liability	1,585	1,112
Depreciation	298	114
Other	740	1,841
Gross deferred tax assets	63,855	53,796
Less: valuation allowance	(62,366)	(52,545)
Total net deferred tax assets	1,489	1,251
Deferred tax liabilities:		
Right-of-use asset	(1,489)	(1,251)
Net deferred tax assets	$ —	$ —

A reconciliation of the provision for income taxes with the expected income tax computed by applying the federal statutory income tax rate to loss before provision for income taxes was calculated as follows (amounts in thousands):

	December 31, 2020		December 31, 2019	
	Rate	Amount	Rate	Amount
Income tax provision at the federal statutory tax rate	21.0%	$ 5,793	21.0%	$ 26,519
State taxes, net of federal benefit	-5.3%	(1,468)	-0.9%	(1,075)
Research and development credits	-4.7%	(1,306)	-1.9%	(2,342)
Stock-based compensation	0.4%	122	0.2%	230
Other non-deductible permanent items	-47.9%	(13,204)	-28.3%	(35,662)
Section 382 limitation and credit expiration	1.5%	426	2.3%	2,959
Other	-0.5%	(127)	0.2%	203
Change in valuation allowance	35.6%	9,821	7.3%	9,192
Provision for income taxes	0.1%	$ 57	0.0%	$ 24

The tax effects of items that give rise to significant portions of deferred tax assets are primarily net operating loss carryforwards. The Company evaluates the recoverability of deferred tax assets and assesses all available positive and negative evidence to estimate if sufficient future taxable income will be generated to use the existing deferred tax assets. Based on the weight of all the evidence, including a history of operating losses and the Company's ability to generate future taxable income to realize these assets, a full valuation allowance has been recorded to offset the net deferred tax asset as realization of such asset is uncertain. The Company's valuation allowance increased by $9.8 million in 2020.

As of December 31, 2020, the Company had federal net operating loss carryforwards of $230,218,711 and state net operating loss carryforwards of $68,778,139 which may be available to offset future taxable income for tax purposes. Of the $230,218,711 in federal NOLs, $109,268,399 will not expire and will be able to offset 80% of taxable income in future years. Of the $68,778,139 in state NOLs, $11,322,562 will not expire and will be able to offset 80% of taxable income in future years. The remaining federal NOL carryforwards will begin to expire

between 2021 and 2037, and the remaining state NOL carryforwards will expire between 2028 and 2040. In addition, the Company also had federal credit carry forwards of $3,875,373, net of Section 382 limitations, and state credit carry forwards of $6,340,004 as of December 31, 2020, which may be available to offset future tax liabilities. The federal credits will expire between 2037 and 2040, and the state credits do not expire.

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was enacted in response to the COVID-19 pandemic. The CARES Act, among other things, permits NOL carryovers and carrybacks to offset 100% of taxable income for taxable years beginning before 2021. In addition, the CARES Act allows NOLs incurred in 2018, 2019 and 2020 to be carried back to each of the five preceding taxable years to generate a refund of previously paid income taxes. Due to the Company's history of net operating losses, the CARES Act is not expected to have a material impact on the Company's consolidated financial statements.

On December 27, 2020, the United States enacted the Consolidated Appropriations Act, 2021 (the Appropriations Act). Included in the tax provisions are a number of items directly related to COVID-19 relief such as a provision allowing recipients of Paycheck Protection Program (PPP) loans to deduct associated costs and an extension and significant expansion of the employee retention credit originally enacted in the CARES Act. There was no material impact to the Company from the provisions of the Appropriations Act in 2020.

On June 29, 2020, the state of California enacted Assembly Bill No. 85 (AB 85) suspending California net operating loss utilization and imposing a cap on the amount of business incentive tax credits companies can utilize, effective for tax years 2020, 2021 and 2022. There was no material impact from the provisions of AB 85 in 2020.

Utilization of the net operating loss carryforwards may be subject to substantial annual limitation due to ownership change limitations that may have occurred or that could occur in the future, as required by Section 382 of the Internal Revenue Code of 1986, as amended (the "Code"), as well as similar state provisions. These ownership changes may limit the amount of net operating loss carryforwards that can be utilized annually to offset future taxable income and tax, respectively. In general, an "ownership change," as defined by Section 382 of the Code, results from a transaction or series of transactions over a three-year period resulting in an ownership change of more than 50 percentage points of the outstanding stock of a company by certain stockholders or public groups.

During 2019, the Company completed a preliminary study to assess whether an ownership change has occurred. The results of the preliminary study were extended through December 31, 2019. Based upon the preliminary study, the Company determined that it was more likely than not an ownership change had occurred during 2017, causing the annual utilization of the net operating loss and credit carryforwards to be limited. At December 31, 2019, the Company reduced the deferred tax assets related to the net operating loss and credit carryforwards generated through the date of the ownership change, reflecting the result of the annual limitations on the utilization of those attributes. Due to the existence of the valuation allowance, the reduction of the deferred tax assets with respect to the NOL and credit carryforwards had no impact on the Company's effective tax rate.

The following changes occurred in the amount of unrecognized tax benefits (in thousands):

	Year ended December 31,	
	2020	**2019**
Beginning balance of unrecognized tax benefits	$ 2,056	$ 2,116
Additions for current year tax positions	486	615
Reductions for prior year tax positions	12	(676)
Ending balance	$ 2,554	$ 2,055

None of the unrecognized tax benefits, if recognized, would impact the annual effective rate, due to the valuation allowance. The Company's unrecognized tax benefits are recorded as a reduction in deferred tax assets. The Company does not expect any significant increases or decreases to the Company's unrecognized tax benefits within the next 12 months.

The Company is subject to U.S. federal and various states income taxes. The federal returns for tax years 2017 through 2020 remain open to examination and the state returns remain subject to examination for tax years 2016 through 2020. Carryforward attributes that were generated in years where the statute of limitations is closed may still be adjusted upon examination by the Internal Revenue Service or other respective tax authorities. All other state jurisdictions remain open to examination.

Prior to the adoption of ASU 2019-12 in 2019, intraperiod tax allocation rules required the Company to allocate the provision for income taxes between continuing operations and other categories of earnings, such as other comprehensive income. In periods in which the Company had a year-to-date pre-tax loss from continuing operations and pre-tax income in other categories of earnings, such as other comprehensive income, the tax provision was allocated to the other categories of earnings. The Company then recorded a related tax benefit in continuing operations. However, with the adoption of ASU 2019-12 in 2019, the Company is no longer required to allocate the tax provision to the other categories of earnings and related benefit to continuing operations under these circumstances.

Note 14—Notes receivable for redeemable common stock

During 2016 and 2017, the Company entered into or renewed full recourse promissory notes with former or current Board Members and certain other parties with an aggregate principal of $693,000, which included unpaid principal and accrued interest thereon. The notes bear interest at 7%, compounded annually. The initial maturity of the notes was amended to extend the maturity dates into 2021 and 2022 in exchange for payments totaling $105,000. Common stock was originally issued as consideration for the promissory notes and is being held as collateral. As of December 31, 2020 and 2019, accrued interest was $110,000 and $162,000, respectively.

The promissory notes and outstanding interest thereon are reported as a component of temporary equity in the accompanying consolidated balance sheets and statements of redeemable common stock, stock options, preferred stock and stockholders' deficit.

Note 15—Leases

In February 2016, the Financial Accounting Standards Board ("FASB") issued ASU No. 2016-02, *Leases,* and its subsequent related amendments (collectively referred to as "ASC 842"), which requires that lessees recognize a right-to-use asset and related lease liability for all significant finance and operating leases not considered short-term leases (less than 12 months) and specifies where in the consolidated statement of cash flows the related lease payments are to be presented. It also changes the definition of a lease and expands the disclosure requirements of lease arrangements. The Company early adopted this standard on January 1, 2019 and elected the modified retrospective method for all lease arrangements at the beginning of the period of adoption. Results for reporting periods beginning on or after January 1, 2019 are presented under ASC 842.

For leases that commenced before the effective date of ASC 842, the Company did not elect the three practical expedients permitted within ASC 842 but re-evaluated prior conclusions about lease identification, lease classification and initial direct costs. A cumulative adjustment for the adoption of ASC 842 has been recorded in the accompanying statement of redeemable common stock, stock options, preferred stock and stockholder's deficit as of January 1, 2019 in the amount of $37,000. The Company elected the hindsight practical expedient,

which permits the use of hindsight when determining the lease term and impairment of right-of-use assets. Further, the Company elected a short-term lease exception policy, permitting the Company not to apply the recognition requirements of this standard to short-term leases (i.e., leases with 12 months or less). The Company has accounted for lease and non-lease components separately. As a result of adopting ASC 842 as of January 1, 2019, the Company recorded an operating lease right-of-use asset of $5.3 million and related operating lease liability of $5.9 million primarily related to facilities and certain equipment, based on the present value of the future lease payments on the date of adoption. The Company also recorded a finance lease right-of-use asset of $317,000 and related debt liability of $315,000 on the date of adoption. Adopting ASC 842 did not have a material impact on the Company's consolidated statements of operations and cash flows. The Company has operating and finance leases for facilities and certain equipment. Leases with an initial term of 12 months or less are not recorded on the consolidated balance sheets. Lease expense for operating leases is recognized on a straight-line basis over the lease term. The Company does not combine lease and non-lease components in the recognition of lease expense.

The Company's leases have remaining non-cancelable lease terms of approximately 1 year to 6 years, some of which include options to extend the leases for up to 10 years. The exercise of lease renewal options is at the Company's sole discretion. The Company recognizes rent expense for minimum lease payments on a straight-line basis over the expected lease term, including rent holidays, rent escalation clause and/or cancelable option periods where failure to exercise such options would result in an economic penalty.

As of December 31, 2020 and 2019, the Company held three leases for office, manufacturing and warehouse facilities in Aliso Viejo, California. The three leases are for 19,680, 42,106 and 48,036 square feet and expire on March 31, 2023, September 30, 2024 and January 31, 2026, respectively. For one of the facilities operating leases, the lessor provided $900,000 in tenant allowances.

The following table presents the lease balances within the consolidated balance sheets (in thousands):

Leases	Classification	December 31, 2020	December 31, 2019
Assets			
Operating	Operating leases right-of-use assets	$ 5,319	$ 4,392
Finance	Property and equipment, net	58	195
Total lease assets		5,377	4,588
Liabilities			
Current			
Operating	Lease liabilities	1,247	861
Finance	Lease liabilities	27	129
Noncurrent			
Operating	Long-term lease liabilities	5,042	4,472
Finance	Long-term lease liabilities	37	54
Total lease liabilities		$ 6,353	$ 5,516

As the implicit rates in the Company's leases were not readily available, the incremental borrowing rate was determined based upon information available at the lease commencement date in determining the present value of future lease payments.

For the years ended December 31, 2020 and 2019, the components of operating and finance lease expenses were as follows (in thousands):

Lease cost	Classification	December 31, 2020	December 31, 2019
Operating lease cost	Cost of goods sold	$ 13	$ 15
	Research and development	180	2
	Selling, general and administrative expenses	1,544	1,228
Finance lease cost	Amortization of right-of-use asset included in Research and development expenses	115	149
	Amortization of right-of-use asset included in Selling, general and administrative expenses	44	25
Finance lease cost	Interest expense	14	26

Maturities of the Company's operating and finance lease liabilities as of December 31, 2020 were as follows (in thousands):

Year ending December 31,	Operating leases	Finance leases
2021	$ 1,849	$ 32
2022	1,881	23
2023	1,682	18
2024	1,456	—
2025	951	—
Thereafter	79	—
Total lease payments	7,898	73
Less: imputed interest	1,608	10
Total lease liabilities	$ 6,290	$ 63

The weighted average remaining lease term and weighted average discount rate used to determine lease liabilities related to the Company's operating and finance leases as of December 31, 2020 and 2019 were:

Lease term and discount rate	December 31, 2020	December 31, 2019
Weighted average remaining lease term (years)		
Operating leases	4.21	4.87
Finance leases	2.42	1.59
Weighted average discount rate		
Operating leases	10.5%	10.2%
Finance leases	10.5%	10.5%

Note 16—Commitments and contingencies

Letter of credit

The Company has a standby letter of credit, expiring September 30, 2024, issued by a financial institution as required security for one operating lease. The aggregate amount of the letter of credit was $360,000 and $570,000 as of December 31, 2020 and 2019, respectively.

Legal matters

From time-to-time, the Company may be involved in certain legal proceedings or regulatory matters arising in the ordinary course of business, including without limitation, actions with respect to intellectual property, employment, regulatory, product liability and contractual matters. In connection with these proceedings or matters, the Company regularly assesses the probability and amount (or range) of possible issues based on the developments in these proceedings or matters. A liability is recorded in the consolidated financial statements if it is determined that it is probable that a loss has been incurred, and that the amount (or range) of the loss can be reasonably estimated. Because of the uncertainties related to any pending proceedings or matters, the Company is currently unable to predict their ultimate outcome and, with respect to any legal proceeding or regulatory matter where no liability has been accrued, to make a reasonable estimate of the possible loss (or range of loss) that could result from an adverse outcome. At December 31, 2020 and 2019, there were no legal proceedings, regulatory matters, or other disputes or claims for which a material loss was considered probable or for which the amount (or range) of loss was reasonably estimable. However, regardless of the outcome, legal proceedings, regulatory matters, and other disputes and claims can have an adverse impact on the Company because of legal costs, diversion of management time and resources, and other factors.

Special redemption of equity instruments

The Company committed to redeem all common and preferred stock, preferred stock warrants and stock options in the event that the Series W Warrant was exercised using the funds provided by the Warrant Holder. On March 31, 2021, the Series W Warrant expired; therefore, the Special Redemption had no effect and is unenforceable by the various equity holders. As of December 31, 2020, management believed the exercise of the Warrant, and therefore the Special Redemption, was not probable. Management believed that the estimates used to value the equity instruments were based upon reasonable assumptions about the likelihood as to the occurrence, timing and financial forecast of the Company upon the expected exercise of the Series W Warrant and that the accompanying consolidated financial statements represent fairly in all material respects the impact on the Company as of and for the years ended December 31, 2020 and 2019.

Accrued compensation

As of December 31, 2019, the Company recorded accrued compensation of $2.6 million related to bonuses contingent upon a change of control in connection with the exercise of the Series W Warrant. Unrecognized compensation expense related to these contingent bonuses was $795,000 as of December 31, 2019. Amounts were included in long-term accrued compensation for the year ended December 31, 2019 on the accompanying consolidated balance sheets. In March 2021, the Series W warrant expired unexercised (see Note 17). In accordance with ASC 855, *Subsequent Events*, this is a recognizable subsequent event as it relates to this estimated accrued compensation and, accordingly, the liability balance for the year ended December 31, 2020 was derecognized.

Note 17—Subsequent events

For purposes of the financial statements as of December 31, 2020 and the year then ended, the Company evaluated subsequent events for recognition and measurement purposes through May 14, 2021, the date the consolidated financial statements were issued. Except as described below, the Company has concluded that no events or transactions have occurred that require disclosure.

On March 29, 2021, the Company made a $5 million additional draw on its Term Loan for general corporate purposes.

On March 31, 2021, the Warrant to purchase Series W common stock terminated at 11:59 p.m. Central Time as the Strategic Partner did not provide notice of exercise of the Warrant to purchase Series W common stock.

RxSight, Inc.
Condensed consolidated balance sheets

(In thousands, except number of shares and per share amounts)	March 31, 2021 (Unaudited)	December 31, 2020
Assets		
Current assets:		
Cash and cash equivalents	$ 24,385	$ 13,994
Short-term investments	39,997	54,981
Accounts receivable	2,266	2,865
Inventories, net of reserves of $316 and $121, respectively	9,760	8,288
Prepaid and other current assets	1,436	1,372
Total current assets	77,844	81,500
Property and equipment, net	12,838	13,287
Operating leases right-of-use assets	5,038	5,319
Restricted cash	461	461
Other assets	110	110
Total assets	**$ 96,291**	**$ 100,677**
Liabilities, redeemable common stock, stock options, convertible preferred stock and stockholders' deficit		
Current liabilities:		
Accounts payable	$ 1,861	$ 1,134
Accrued expenses and other current liabilities	3,679	4,174
Warrant liability	—	5,018
Lease liabilities	1,317	1,274
Total current liabilities	6,857	11,600
Long-term warrant liability	3,828	3,828
Long-term lease liabilities	4,733	5,079
Term loan, net	29,472	24,399
Total liabilities	44,890	44,906
Commitments and contingencies (*Note 12*)		
Redeemable common stock:		
Common stock, $0.001 par value, 253,559,829 shares authorized, 39,394,430 shares issued and outstanding as of December 31, 2020	—	80,780
Notes receivable for common stock issued	—	(803)
Redeemable stock options	—	53,085
Convertible preferred stock:		
Preferred stock, $0.001 par value, 171,196,994 shares authorized, 148,509,849 shares issued and outstanding as of March 31, 2021 and December 31, 2020 (redeemable), respectively	353,300	353,300
Stockholders' deficit:		
Common stock, $0.001 par value, 253,559,829 shares authorized, 42,292,522 shares issued and outstanding as of March 31, 2021	42	—
Additional paid-in capital	136,269	—
Notes receivable for common stock issued	(817)	—
Series G common stock, $0.001 par value, 1 share authorized and outstanding as of March 31, 2021 and December 31, 2020	—	—
Series W common stock, $0.001 par value, 1 share authorized and no shares outstanding as of March 31, 2021 and December 31, 2020	—	—
Accumulated other comprehensive loss	—	(3)
Accumulated deficit	(437,393)	(430,588)
Total stockholders' deficit	(301,899)	(430,591)
Total liabilities, redeemable common stock, stock options, convertible preferred stock and stockholders' deficit	$ 96,291	$ 100,677

See accompanying notes.

RxSight, Inc.
Condensed consolidated statements of operations and comprehensive loss (unaudited)

(In thousands, except per share amounts)	Three months ended March 31, 2021	2020
Sales	$ 3,484	$ 2,888
Cost of sales	2,365	2,810
Gross profit	1,119	78
Operating expenses:		
Selling, general and administrative	5,611	3,698
Research and development	6,643	5,777
Total operating expenses	12,254	9,475
Loss from operations	(11,135)	(9,397)
Other income (expense), net:		
Change in fair value of warrants	—	(7,407)
Expiration of warrant	5,018	—
Interest expense	(698)	(5)
Interest and other income	17	312
Loss before income taxes	(6,798)	(16,497)
Income tax expense	7	5
Net loss	(6,805)	(16,502)
Accretion to redemption value of redeemable preferred stock and redeemable stock options	—	(4,246)
Net loss attributable to common stockholders	(6,805)	(20,748)
Other comprehensive income		
Unrealized gain on short-term investments	7	77
Foreign currency translation loss	(4)	(1)
Total other comprehensive income	3	76
Comprehensive loss	$ (6,802)	$ (16,426)
Net loss per share:		
Attributable to redeemable common stock, basic and diluted	—	$ (0.56)
Attributable to Series G common stock, basic and diluted	$ (0.16)	$ (0.66)
Attributable to common stock, basic and diluted	$ (0.16)	—
Weighted-average shares used in computing net loss per share:		
Attributable to redeemable common stock, basic and diluted	—	36,883,830
Attributable to Series G common stock, basic and diluted	1	1
Attributable to common stock, basic and diluted	41,281,994	—

See accompanying notes.

RxSight, Inc.
Condensed consolidated statements of redeemable common stock, stock options, convertible preferred stock and stockholders' deficit (unaudited)

(In thousands, except number of shares)	Redeemable common stock		Notes receivable for common stock issued	Redeemable stock options	Redeemable Convertible preferred stock		Common stock		Additional paid-in capital	Accumulated other comprehensive (loss) income	Accumulated deficit	Total stockholders' deficit
	Shares	Amount			Shares	Amount	Shares	Amount				
Balance at December 31, 2019	36,816,339	$ 56,422	$ (855)	$ 59,631	148,491,099	$ 327,581	1	$ —	$ —	$ 46	$ (419,855)	$ (419,809)
Exercise of stock options	117,278	303	—	(257)	—	—	—	—	—	—	—	—
Stock-based compensation expense	—	—	—	—	—	—	—	—	623	—	—	623
Accretion to redemption value of redeemable stock options	—	—	—	(2,924)	—	—	—	—	—	—	2,924	2,924
Accretion to redemption value of redeemable stock	—	3,493	—	—	—	7,170	—	—	(623)	—	(10,040)	(10,663)
Unrealized gain on short-term investments and cash equivalents, net of tax	—	—	—	—	—	—	—	—	—	77	—	77
Foreign currency translation adjustment	—	—	—	—	—	—	—	—	—	(1)	—	(1)
Change in notes receivable for common stock issued	—	—	84	—	—	—	—	—	—	—	—	—
Net loss	—	—	—	—	—	—	—	—	—	—	(16,502)	(16,502)
Balance at March 31, 2020	36,933,617	$ 60,218	$ (771)	$ 56,450	148,491,099	$ 334,751	1	$ —	$ —	$ 122	$ (443,473)	$ (443,351)

See accompanying notes.

RxSight, Inc.
Condensed consolidated statements of redeemable common stock, stock options, convertible preferred stock and stockholders' deficit (unaudited)

(In thousands, except number of shares)	Redeemable common stock		Notes receivable for common stock issued	Redeemable stock options	Convertible preferred stock		Common stock		Additional paid-in capital	Notes receivable for common stock issued	Accumulated other comprehensive (loss) income	Accumulated deficit	Total stockholders' deficit
	Shares	Amount			Shares	Amount	Shares	Amount					
Balance at December 31, 2020	39,394,430	$ 80,780	$ (803)	$ 53,085	148,509,849	$353,300	1	$ —	$ —	$ —	$ (3)	$ (430,588)	$ (430,591)
Exercise of stock options	2,898,092	6,922	—	(5,715)	—	—	—	—	—	—	—	—	—
Stock-based compensation expense	—	—	—	—	—	—	—	—	1,239	—	—	—	1,239
Unrealized gain on short-term investments and cash equivalents, net of tax	—	—	—	—	—	—	—	—	—	—	7	—	7
Foreign currency translation adjustment	—	—	—	—	—	—	—	—	—	—	(4)	—	(4)
Change in notes receivable for common stock issued	—	—	(14)	—	—	—	—	—	—	—	—	—	—
Reclassification of 42,292,522 shares of redeemable common stock to 42,292,522 shares of common stock	(42,292,522)	(87,702)	817	—	—	—	42,292,522	42	87,660	(817)	—	—	86,885
Reclassification of redeemable common stock options to common stock options	—	—	—	(47,370)	—	—	—	—	47,370	—	—	—	47,370
Net loss	—	—	—	—	—	—	—	—	—	—	—	(6,805)	(6,805)
Balance at March 31, 2021	—	$ —	$ —	$ —	148,509,849	$353,300	42,292,523	$ 42	$ 136,269	$ (817)	$ —	$ (437,393)	$ (301,899)

See accompanying notes.

RxSight, Inc.
Condensed consolidated statements of cash flows (unaudited)

(In thousands)	Three months ended March 31, 2021	2020
Operating Activities:		
Net loss	$ (6,805)	$ (16,502)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	958	900
Amortization of right-of-use lease assets	8	53
Amortization of debt issuance costs and premium	114	—
Change in fair value of warrants	—	7,407
Gain on expiration of warrant	(5,018)	—
Amortization of discount on short-term investments	(10)	(278)
Stock-based compensation	1,239	623
Provision for excess and obsolete inventory	(7)	9
Change in operating assets and liabilities:		
Accounts receivable	600	76
Inventories, net	(1,465)	(1,587)
Prepaid and other assets	(89)	179
Accounts payable	721	581
Accrued expenses and other liabilities	(498)	(3,679)
Net cash used in operating activities	(10,252)	(12,218)
Investing Activities:		
Purchases of property and equipment	(498)	(848)
Maturity of short-term investments	20,000	35,000
Purchase of short-term investments	(4,999)	(9,927)
Net cash provided by investing activities	14,503	24,225
Financing Activities:		
Proceeds from term loan	5,000	—
Payments of debt issuance costs	(40)	—
Principal payments on finance lease liabilities	(9)	(55)
Notes receivable for common stock issued	(14)	84
Proceeds from exercise of stock options	1,207	46
Net cash provided by financing activities	6,144	75
Effect of foreign exchange rate on cash, cash equivalents and restricted cash	(4)	(1)
Net increase in cash, cash equivalents and restricted cash	10,391	12,081
Cash, cash equivalents and restricted cash—beginning of period	14,455	8,830
Cash, cash equivalents and restricted cash—end of period	$ 24,846	$ 20,911
Supplemental disclosure of cash flow information:		
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	$ 294	$ 200
Cash paid for income taxes	$ 11	$ 3
Cash paid for interest on financing leases	$ 2	$ 5
Cash paid for interest on term loan	$ 582	$ —
Non-cash investing and financing activities:		
Acquisition of property and equipment included in accounts payable and accrued expenses and other current liabilities	$ 60	$ 71
Payment-in-kind interest income added to principal of notes receivable	$ 13	$ 14
Reclassification of 42,292,522 shares of redeemable common stock to 42,292,522 shares of common stock	$ 87,702	
Reclassification of redeemable common stock options to common stock options	$ 47,370	

See accompanying notes.

Note 1—Organization and Basis of Presentation

RxSight™, Inc. (the "Company") is a California corporation headquartered in Aliso Viejo, California and has two wholly owned subsidiaries. One subsidiary is located in Amsterdam, Netherlands, with registered branches in the United Kingdom and Ireland (closed in 2020). The Netherlands entity also has a wholly owned subsidiary in Germany. A second subsidiary, closed in 2020, was located in Tijuana, Mexico. The Company is engaged in the research and development, manufacture and sale of light adjustable intraocular lenses used in cataract surgery along with capital equipment used with the lenses. The Company's products, which include the light adjustable lens ("LAL"® or "RxLAL"®) and a specially designed machine for delivering light to the eye, the Light Delivery Device ("LDD"), are approved by the United States ("U.S.") Food and Drug Administration ("FDA") for sale in the U.S. and have regulatory approval in the U.S and Europe. The Company began marketing its products in the U.S. during the second quarter of 2019 and in Europe during the third quarter of 2019. The RxLAL is a premium intraocular lens ("IOL") which is partially reimbursable under Medicare. The Company competes with other IOLs in the premium market in the U.S. and Europe.

The accompanying financial statements include the accounts of RxSight, Inc. and its wholly owned subsidiaries, RxSight, B.V., located in the Netherlands, RxSight GmbH, located in Germany, and RxSight S de R.L. de C.V., located in Mexico. All significant inter-company balances and transactions have been eliminated in consolidation.

Basis of presentation

The Company's financial statements have been prepared in accordance with United States generally accepted accounting principles, or U.S. GAAP.

Liquidity and financial position

As of March 31, 2021, the Company has cash, cash equivalents and short-term investments of $64.4 million.

The Company began generating revenue from its principal operations in 2019. The Company has a limited operating history, and the revenue and income potential of the Company's business and market are unproven. The Company has experienced recurring net losses and negative cash flows from operating activities since its inception. For the three months ended March 31, 2021 and 2020, the Company incurred losses from operations of $11.1 million and $9.4 million, respectively. Due to the Company's continuing research and development activities, the Company expects to continue to incur net operating losses into the foreseeable future. Successful transition to attaining profitable operations is dependent upon gaining market acceptance of the Company's products and achieving a level of revenues adequate to support the Company's cost structure.

The Company plans to continue to fund its losses from operations using its cash, cash equivalents and short-term investments as of March 31, 2021 and meet its capital funding needs through equity or debt financings, other third-party funding, collaborations, strategic alliances and licensing arrangements or a combination of these. If the Company raises additional funds by issuing equity securities, its stockholders may experience dilution. Any future debt financing into which the Company enters may impose additional covenants that restrict operations, including limitations on its ability to incur liens or additional debt, pay dividends, repurchase common stock, make certain investments or engage in certain merger, consolidation or asset sale transactions. Any debt financing or additional equity raise may contain terms that are not favorable to the Company or its stockholders. If the Company is required to enter into collaborations and other arrangements to address its liquidity needs, it may have to give up certain rights that limit its ability to develop and commercialize product candidates or may have other terms that are not favorable to the Company or its stockholders, which could materially and adversely affect its business and financial prospects. There can be no assurance that the Company will be able to obtain additional financing on acceptable terms, or at all. If the Company is not able to secure adequate additional funding, the Company may be forced to make reductions in

spending, extend payment terms with suppliers, liquidate assets where possible and/or suspend or curtail planned programs. Any of these actions could materially harm the Company's business, results of operations and future prospects.

Unaudited interim financial statements

The interim condensed consolidated balance sheet as of March 31, 2021, and the interim condensed consolidated statements of operations and comprehensive loss, redeemable common stock, stock options, convertible preferred stock and stockholders' deficit and cash flows for the three months ended March 31, 2021 and 2020 are unaudited. These unaudited interim condensed consolidated financial statements have been prepared on the same basis as the Company's annual financial statements and, in the opinion of management, reflect all adjustments (consisting only of normal recurring adjustments) that are necessary for a fair statement of the Company's financial information. The financial data and the other financial information disclosed in these notes to the condensed consolidated financial statements related to the three-month periods are also unaudited. The condensed consolidated results of operations for the three months ended March 31, 2021 are not necessarily indicative of the results to be expected for the year ending December 31, 2021 or for any other future annual or interim period. The condensed consolidated balance sheet as of December 31, 2020 included herein was derived from the audited financial statements as of that date. Certain information and footnote disclosures normally included in annual financial statements prepared in accordance with U.S. GAAP have been condensed consolidated or omitted. Therefore, these interim condensed consolidated financial statements should be read in conjunction with the Company's audited financial statements included elsewhere in this prospectus.

COVID-19

The Company has been actively monitoring the novel coronavirus, or COVID-19, situation and its impact. In response to the pandemic, numerous state and local jurisdictions imposed "shelter-in-place" orders, quarantines and other restrictions. Starting in March 2020 in the United States, governmental authorities recommended, and in certain cases required, that elective, specialty and other procedures and appointments be suspended or canceled. Similarly, in March 2020, the governor of California, where the Company's headquarters is located, issued "stay at home" orders limiting non-essential activities, travel and business operations. Such orders or restrictions resulted in reduced operations at the Company's headquarters, slowdowns and delays, travel restrictions and cancellation of events. These orders and restrictions significantly decreased the number of procedures performed using the Company's products during March and April 2020.

In response to the impact of COVID-19, the Company implemented a variety of measures to help manage through the impact and position it to resume operations quickly and efficiently once these restrictions were lifted. These measures included: remote work as needed, suspension of non-essential travel, restrictions on in-person work-related meetings, the wearing of personal protective equipment, social distancing, increased facility cleaning and air purification in all of the Company's buildings and daily health monitoring of all Company employees to prevent or contain COVID-19 exposure. In addition, the Company took steps to preserve liquidity, reduce expenses and monitor operations to mitigate the impact on its current and future financial condition. The impact of COVID-19 continues to change and cannot be predicted. As a result, the Company expects the pandemic could continue to negatively impact its business, financial condition and results of operations.

Note 2—Summary of accounting policies

Use of estimates

The preparation of consolidated financial statements in conformity with GAAP requires management to make informed estimates, judgments and assumptions that affect the reported amounts in the consolidated financial

statements and disclosures in the accompanying notes as of the date of the accompanying consolidated financial statements. On an on-going basis, management evaluates the most critical estimates and assumptions for continued reasonableness. In particular, management makes estimates with respect to revenue recognition; valuation of the Company's common stock, warrants and other equity awards; estimated timing of redemption of equity instruments, the realization of income tax assets and estimates of tax liabilities, and obsolete and slow-moving inventory. Actual results may differ materially from the estimates used in the preparation of the accompanying consolidated financial statements under different assumptions or conditions.

Significant accounting policies

There have been no significant changes to the accounting policies during the three months ended March 31, 2021 as compared to the significant accounting policies described in Note 2 of the "Notes to Consolidated Financial Statements" in the Company's audited consolidated financial statements included in the audited financial statements included elsewhere in this prospectus.

Cash equivalents

Cash equivalents consist of investments in money market accounts. The Company considers all highly liquid investments with original maturities of three months or less at the date of purchase that can be liquidated without prior notice or penalty to be cash equivalents.

Short-term investments

Short-term investments are classified based on the maturity date of the related securities. Based on the nature of the assets, the Company's short-term investments, which are government securities, are classified as available-for-sale and are recorded at their estimated fair value as determined by prices for identical or similar securities at the balance sheet date. The Company's short-term investments consist of Level 1 and Level 2 financial instruments in the fair value hierarchy. Unrealized gains and losses are recorded as a component of other comprehensive loss within stockholders' deficit on the consolidated balance sheets. Realized gains and losses are included as other income (expense) in the accompanying consolidated statements of operations and comprehensive income. The cost basis for realized gains and losses on available-for-sale securities is determined on a specific identification basis. Management determines the appropriate classification of its investments at the time of purchase and reevaluates such determination at each balance sheet date. The Company periodically reviews its investments for unrealized losses other than credit losses and whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable. In determining whether the carrying value is recoverable, management considers the following factors:

- whether the investment has been in a continuous realized loss position for over 12 months;
- the duration to maturity of investments;
- intention and ability to hold the investment to maturity and if it is not more likely than not that we will be required to sell the investment before recovery of the amortized cost bases;
- the credit rating, financial condition and near-term prospects of the issuer and
- the type of investments made.

The Company had $7,000 and $77,000 of unrealized gains related to short-term investments as of March 31, 2021 and 2020, respectively. To date, the Company has not identified any unrealized losses other than credit losses for its short-term investments as determined by prices for identical or similar securities at the balance sheet date. The Company's short-term investments consist of Level 1 and Level 2 financial instruments in the fair value hierarchy.

Cash and Cash Equivalents

The following table provides a reconciliation of cash and cash equivalents and restricted cash to the amount reported in the consolidated statement of cash flows for the three months ended March 31, 2021 and 2020 (in thousands):

	Three months ended March 31,	
	2021	**2020**
Cash and cash equivalents	$ 24,385	$ 20,039
Restricted cash	461	872
Cash, cash equivalents and restricted cash in the consolidated statements of cash flows	$ 24,846	$ 20,911

Concentration of credit risk and other risks and uncertainties

Financial instruments which potentially subject the Company to concentration of credit risk consist primarily of cash, cash equivalents, short-term investments and accounts receivable. The Company's policy is to invest cash in institutional money market funds and marketable securities of the U.S. government to limit the amount of credit exposure. The Company currently maintains a portfolio of cash equivalents and short-term investments in short-term money market funds and U.S. treasury bills. Additionally, the Company has established guidelines regarding diversification of its investments and their maturities, which are designed to maintain principal and maximize liquidity. The Company has not experienced material losses on cash equivalents and short-term investments.

Accounts receivable

As of December 31, 2020, the Company had one customer who individually accounted for approximately 35% of gross accounts receivable. After evaluation of the collectability of accounts receivable, the Company did not record an allowance for doubtful accounts as of March 31, 2021 and December 31, 2020.

Inventories

Inventories consist of raw materials, work-in-process and finished goods. Raw materials are comprised of chemicals and parts used in the production of the Company lenses, injectors, and LDDs. Finished goods are comprised of lenses, injectors, accessories and LDDs. Inventories are valued at the lower of cost or net realizable value. Cost is computed using standard cost, which approximates actual cost on a first-in, first-out basis. The carrying value of inventories is reviewed for potential impairment whenever indicators suggest that the cost of inventories exceeds the carrying value and management adjusts the inventories to its net realizable value. The cost of finished goods and work-in-process is comprised of raw materials, direct labor, other direct costs and related production overhead to the extent that these costs do not exceed the net realizable value of the goods produced. The Company periodically reviews inventories for potential impairment and adjusts inventories for estimated losses from obsolescence, material expirations or unmarketable inventories and writes down the cost of inventories to net realizable value at the time such determinations are made.

Fair value of financial instruments

The Company uses fair value measurements to record fair value adjustments to certain assets and liabilities and to determine fair value disclosures. The Company's financial instruments consist principally of cash, cash equivalents, short-term investments, accounts receivable, accounts payable, operating lease liabilities, warrant liabilities and a term loan. Fair value is measured as the price that would be received from the sale of an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques that are consistent

with the market, income or cost approach are used to measure fair value. The fair value hierarchy prioritizes the inputs to valuation techniques used to measure fair value into three levels:

Level 1—Observable inputs such as unadjusted quoted prices in active markets that are accessible at the measurement date for identical unrestricted assets or liabilities.

Level 2—Inputs (other than quoted prices included in Level 1) that are either directly or indirectly observable for the asset or liability, for substantially the full term of the asset or liability, through correlation with market data. These include quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active and inputs to valuation models or other pricing methodologies that do not require significant judgment because the inputs used in the model, such as interest rates and volatility, can be corroborated by readily observable market data.

Level 3—One or more significant inputs that are unobservable and supported by little or no market activity and reflect the use of significant management judgment and assumptions. Level 3 assets and liabilities include those whose fair value measurements are determined using pricing models, discounted cash flow methodologies or similar valuation techniques and significant management judgment or estimation. These include the Black-Scholes option-pricing model which uses inputs such as expected volatility, risk-free interest rate and expected term to determine fair market valuation.

Assets and liabilities are classified based on the lowest level of input that is significant to the fair value measurements. The Company reviews the fair value hierarchy classification at each reporting date. Changes in the ability to observe valuation inputs may result in a reclassification of levels for certain assets or liabilities within the fair value hierarchy. The Company did not have any transfers of assets and liabilities between the levels of the fair value measurement hierarchy during the years presented.

Cash, cash equivalents, accounts receivable and accounts payable are carried at their estimated fair value because of the short-term nature of these assets and liabilities. The Company's short-term investments in government securities are carried at fair value, determined based on publicly available quoted market prices for identical securities at the measurement date. The Company believes the fair values of its operating lease liabilities and term loan at March 31, 2021 and December 31, 2020 approximated their carrying values, based on the borrowing rates that were available for loans with similar terms as of that date.

Warrants to purchase stock

The Company recognizes the freestanding warrants to purchase shares of convertible preferred stock as liabilities at fair value as these warrant instruments are embedded in contracts that may be cash settled. The convertible preferred stock warrants were issued for no cash consideration as detachable freestanding instruments but can be converted to convertible preferred stock at the holder's option based on the exercise price of the warrant. However, the deemed liquidation provisions of the convertible preferred stock are considered contingent redemption provisions that are not solely within the control of the Company. Therefore, the convertible preferred stock is classified in temporary equity on the accompanying consolidated balance sheets, and the warrants to purchase the convertible preferred stock are classified as liabilities. The Company recognized a freestanding warrant to purchase a share of Series W common stock as a liability at fair value because this instrument was not indexed to the Company's own stock as the settlement calculation incorporated variables other than those used to determine the fair value of a fixed-for-fixed forward or option on equity shares. The common stock warrant was issued for cash consideration as a freestanding instrument and could be converted to one share of common stock, Series W, at the holder's option based on the exercise price of the warrant and prior to the expiration date of March 31, 2021.

The warrants were recorded on the accompanying consolidated balance sheets at their fair value on the date of issuance and are subject to re-measurement to fair value at each balance sheet date. Changes in fair value are

recognized as a component of other income (expense), net in the accompanying condensed consolidated statements of operations and comprehensive loss. Upon issuance of the Series W common stock warrant, the Company engaged valuation specialists to assist with determining its fair value using a Monte Carlo simulation approach. In addition, the Company engaged the valuation specialists to derive an estimated fair value of the preferred stock warrants using a probability weighted expected return model/option pricing model ("PWERM/OPM") hybrid valuation model. The Company will continue to adjust the warrant liabilities for changes in fair value until the earlier of the exercise or expiration of the warrants, the completion of a deemed liquidation event, or the conversion of convertible preferred stock into common stock or until the holders of the convertible preferred stock can no longer trigger a deemed liquidation event. Pursuant to the terms of the preferred stock warrants, upon the conversion of the class of preferred stock underlying the warrant, the warrants automatically become exercisable for shares of the Company's common stock based upon the conversion ratio of the underlying class of preferred stock. The exercise of the common stock warrant or consummation of a qualified initial public offering would result in the automatic conversion of all classes of the Company's preferred stock into common stock. Upon such conversion of the underlying classes of preferred stock, the warrants would be classified as a component of equity and will no longer be subject to remeasurement.

Net loss per share

The Company computes basic net loss per share for common stock using the two-class method required for companies with participating securities based upon the weighted-average number of common shares outstanding during the period. Diluted net loss per share assumes the conversion, exercise or issuance of all potential common stock equivalents, unless the effect of inclusion would be anti-dilutive. For purposes of this calculation, common stock equivalents include the Company's stock options, warrants and the shares issuable upon the conversion of the preferred stock. For stock options and preferred stock, the calculation of diluted loss per share requires an adjustment for the additional share of undistributed earnings and accretion to redemption value for the period that the common stockholders are entitled to if exercise is assumed. For warrants that are recorded as a liability in the accompanying condensed consolidated balance sheets, the calculation of diluted loss per share requires that, to the extent the average market price of the underlying shares for the reporting period exceeds the exercise price of the warrants and the presumed exercise of the warrants is dilutive to the loss per share for the period, an adjustment is made to net loss used in the calculation to remove the change in fair value of the warrants from the numerator for the period. Likewise, an adjustment to the denominator is required to reflect the related dilutive shares, if any, under the treasury stock method.

For the three months ended March 31, 2021 and 2020, as a result of the Company's net loss, basic and diluted net loss per share are the same. For the three months ended March 31, 2021 and 2020, a weighted-average of 42,486,861 and 34,791,186 shares from redeemable stock options were anti-dilutive, respectively, and therefore not included in the calculation of diluted net loss per share for common stock. For the three months ended March 31, 2021 and 2020, a weighted-average 155,749,953 shares from redeemable preferred stock and warrants were anti-dilutive and therefore not included in the calculation of diluted net loss per share for redeemable common stock.

Revenue recognition

The Company's revenue is generated from the sale of light adjustable intraocular lenses (RxLAL) used in cataract surgery along with a specifically designed machine for delivering light to the eye, the Light Delivery Device (LDD), to adjust the lens post-surgery, as needed. Revenue is recognized from sales of products in the U.S. and Europe. Customers are primarily comprised of ambulatory surgery centers, hospitals, and physician private practices.

The Company recognizes revenue when promised goods or services are transferred to customers at a transaction price that reflects the consideration to which the Company expects to be entitled in exchange for those goods and services. Specifically, the Company applies the following five steps to recognize revenue: (i) identify the contract(s) with a customer; (ii) identify the performance obligations in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when, or as, the Company satisfies a performance obligation. The Company applies the five-step model to contracts when it is probable that it will collect the consideration to which it is entitled in exchange for the goods or services it transfers to the customer. At contract inception, the Company assesses the goods promised within each customer contract to determine the individual deliverables in its product offerings as separate performance obligations and assesses whether each promised good or service is distinct. The transaction price is determined based on the consideration expected to be received, based either on the stated value in contractual arrangements or the estimated cash to be collected in non-contracted arrangements. The Company recognizes revenue as the amount of the transaction price that is allocated to the respective performance obligation when, or as, the performance obligation is satisfied, considering whether or not this occurs at a point in time or over time. The Company elected to account for shipping costs as fulfillment costs rather than a promised service and excludes from revenue any taxes collected from customers that are remitted to government authorities.

The Company's LDD contracts contain multiple performance obligations bundled for one transaction price, with all obligations generally satisfied within one year. For these bundled arrangements, the Company accounts for individual products and services as separate performance obligations if they are distinct, that is, if a product or service is separately identifiable from other items in the bundled package, and if a customer can benefit from it on its own or with other resources that are readily available to the customer. The Company's LDD contracts include a combination of the following performance obligations: (1) LDD capital asset and related components, (2) training and (3) device service (initial year). Each of these three performance obligations are considered distinct. The LDD capital asset is distinct because the customer can benefit from it together with other resources that are readily available to the customer. Training on the use of the machine is offered as a distinct activity after installation of the LDD to enhance the customer's ability to utilize the machine by having an industry professional provide best practices and customize training to the specific needs of the customer. Each LDD comes with a twelve-month manufacturer's warranty (service-type) that includes preventative maintenance, unscheduled service (labor and parts) and software updates. After the first year, service contracts can be purchased separately on a standalone basis. The Company recognizes revenue as performance obligations are satisfied by transferring control of the product or service to a customer. Specifically, revenue for the LDD capital asset is recognized at a point in time at installation. Revenue for training is also recorded at a point in time, generally 30 days after installation. Revenue for the device service is recognized ratably over time after installation, generally 12 months. The Company has determined that the transaction price is the invoice price, net of adjustments, if any. The allocation to the separate performance obligations is based upon the relative standalone selling price. Standalone selling prices are based on observable prices at which the Company separately sells the products or services The Company estimates the standalone selling price using the market assessment approach considering market conditions and entity-specific factors including, but not limited to, features and functionality of the products and services, geographies, type of customer and market conditions. The Company regularly reviews and updates standalone selling prices as necessary.

RxLALs are held at customer sites on consignment. The single performance obligation is satisfied and revenue is recognized for RxLALs upon customer notification that the RxLALs have been implanted in a patient. For the three months ended March 31, 2021 and 2020, credits related to returns and rebates on list prices were not significant.

The Company has adopted the practical expedient permitting the direct expensing of costs incurred to obtain contracts where the amortization of such costs would occur over one year or less, and it applied to substantially all the Company's contracts.

As of March 31, 2021 and December 31, 2020, the Company recognized deferred revenue on its condensed consolidated balance sheets of $330,000 and $345,000, respectively, related to the service agreement performance obligation. Revenue for service agreements is recognized ratably over the term of each contract.
For the three months ended March 31, 2021 and 2020, revenue from contracts with customers consisted of the following (in thousands):

	Three months ended March 31,	
	2021	2020
LDD (including training)	$ 1,837	$ 2,159
LAL	1,529	671
Service warranty, service contracts, and accessories	118	58
	$ 3,484	$ 2,888

Recent accounting pronouncements

In August 2018, the FASB issued ASU 2018-15, *Intangibles – Goodwill and Other – Internal Use Software (Subtopic 350-40): Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract*, which changes the accounting for implementation costs incurred in a cloud computing arrangement that is a service contract. The update aligns the requirements for capitalizing implementation costs incurred in a hosting arrangement with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software. The implementation costs should be presented as a prepaid expense in the balance sheet and expensed over the term of the hosting arrangement. The Company adopted the standard on January 1, 2021, and adoption did not have a material impact on its condensed consolidated financial statements.

In June 2020, the FASB issued ASU No. 2020-06, *Accounting for Convertible Instruments and Contracts in an Entity's Own Equity*, which is intended to simplify the accounting for convertible instruments. This new guidance eliminates certain models that require separate accounting for embedded conversion features and eliminates certain of the conditions for equity classification for contracts in an entity's own equity. Accordingly, a convertible debt instrument will be accounted for as a single liability measured at its amortized cost, as long as no other features require bifurcation and recognition as derivatives. The new guidance can be adopted through either a modified retrospective method of transition or a fully retrospective method of transition. ASU 2020-06 is effective for public business entities for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years. Early adoption is permitted for fiscal years beginning after December 15, 2020, including interim periods within those fiscal years. The Company is in the process of determining the impact of the adoption of the standard on its condensed consolidated financial statements as well as whether to early adopt the new standard.

Emerging growth company status

The Company is an emerging growth company, as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act. Under the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies. The Company has irrevocably elected to not take this exemption and, as a result, will adopt new or revised accounting standards on the relevant effective dates on which adoption of such standards is required for other public companies that are not emerging growth companies.

Note 3 – Short-term investments

Short-term investments, principally U.S. Treasury bills, are available-for-sale and consisted of the following (in thousands):

			As of March 31, 2021
	Amortized cost	Unrealized gain, net	Estimated fair value
Government securities	$39,992	$ 5	$39,997

			As of December 31, 2020
	Amortized cost	Unrealized loss, net	Estimated fair value
Government securities	$54,983	$(2)	$54,981

All available-for-sale securities held as of March 31, 2021 and December 31, 2020 had a maturity of less than one year.

Note 4 – Inventories

Inventories consisted of the following (in thousands):

	March 31, 2021	December 31, 2020
Finished goods	$ 5,813	$ 5,092
Raw materials	2,073	1,827
Work-in-process	1,995	1,685
	9,881	8,604
Less: reserve for excess and obsolete inventory	(121)	(316)
	$ 9,760	$ 8,288

At March 31, 2021 and December 31, 2020, finished goods included $2.4 million and $2.7 million of inventory held on consignment at customer sites, respectively.

Note 5 – Fair value measurements

The table and disclosures below (in thousands) present the Company's assets and liabilities measured at fair value on a recurring basis and indicate the fair value hierarchy of the valuation techniques utilized by the Company to determine such fair value.

The carrying amounts of certain financial instruments such as cash and cash equivalents, accounts receivable, prepaid expenses, other current assets, accounts payable, accrued expenses and other current liabilities as of March 31, 2021 and December 31, 2020 approximate their related fair values due to the short-term maturities of these instruments.

				As of March 31, 2021
	Level I	Level II	Level III	Total
Assets:				
Money market securities	$22,778	$ —	$ —	$22,778
Government securities	—	39,997	—	39,997
Total assets at fair value	$22,778	$39,997	$ —	$62,775
Liability:				
Convertible preferred stock warrant liability	$ —	$ —	$ (3,828)	$ (3,828)

	As of December 31, 2020			
	Level I	Level II	Level III	Total
Assets:				
Money market securities	$11,822	$ —	$ —	$11,822
Government securities	—	54,981	—	54,981
Total assets at fair value	$11,822	$54,981	$ —	$66,803
Liabilities:				
Common stock warrant liability	$ —	$ —	$(5,018)	$ (5,018)
Redeemable convertible preferred stock warrant liability	—	—	(3,828)	(3,828)
Total liabilities at fair value	$ —	$ —	$(8,846)	$ (8,846)

The Series W warrant fair value was determined by management, with input and assistance from a third-party valuation specialist, upon issuance and is revalued as of each reporting date. The valuation specialist utilized a Monte Carlo Simulation (“MCS”) under the income method utilizing assumptions and financial data prepared by the Company. This valuation approach uses a discounted cash flow (“DCF”) method to calculate the starting equity value of the Company based upon future cash flow generation. The starting equity value of the Company is determined utilizing significant unobservable inputs, including (1) forecasted financial projections for the next five years developed by management, (2) a terminal value assigned using an exit multiple method, and (3) a discount rate based on the weighted average cost of capital. Then a simulated equity value of the Company as of the expected exercise date is determined using the MCS method. The MCS inputs include: (1) the assumed amount of time until the exercise of the warrant, (2) the risk-free interest rate over the period until the assumed warrant exercise, (3) the assumed volatility in the value of the equity of the company, and (4) the starting equity value of the Company as determined from the discounted cash flow method. In order to determine the overall value of the warrant, the valuation specialists also simulate the payments for sales-based, operating and regulatory milestones based upon similar inputs to determine the expected overall purchase price of the Company. The net difference between the expected purchase price and the average simulated equity value determines the “option payoff”. Finally, management assigns a probability that the warrant will be exercised, which is applied to the present value of the “option payoff” to arrive at the recorded value reflected in the accompanying condensed consolidated financial statements.

The estimated fair value of the preferred stock warrants was determined by management, with input and assistance from a third-party valuation specialist, using a probability weighted expected return model/option pricing model (“PWERM/OPM”) hybrid valuation model. This method essentially utilizes a combination of market and income method approaches for each part of the calculation of enterprise value using assumptions and financial data prepared by the Company and combines them in a probabilistic manner. The valuation considers several future scenarios for the Company, each of which assumes a shareholder exit either through initial public offering (“IPO”), sale (“M&A”) or dissolution. Based upon the current IPO market, M&A values for private companies and the historical likelihood of dissolution or no exit, the Company concluded that the probabilities and time frames are reasonable. Implicit in the timing used in the application of the PWERM/OPM Hybrid Method is also the possibility of no exit. The option pricing model’s significant unobservable inputs included: (1) the assumed time until a liquidity event, (2) the risk-free interest rate over the period until the assumed liquidity event, (3) the assumed volatility in the value of the equity of the company (which corresponds to the model’s underlying asset volatility), (4) the enterprise value and preferred investment amount and (5) the key price points in the Company’s capital structure in terms of exit levels on the assumed liquidation date. A significant increase (decrease) in any of these inputs in isolation, particularly the estimated price of the Company’s preferred stock, would have resulted in a significantly higher (lower) fair value measurement.

The following table sets forth changes in the estimated fair values for the Company's warrant liabilities measured using significant unobservable inputs (in thousands):

	Three months ended March 31, 2021	Year ended December 31, 2020
Beginning of period	$ 8,846	$ 71,881
Exercise of preferred stock warrants	—	(24)
Expiration of common stock warrant	(5,018)	—
Change in fair value of common stock warrant	—	(64,628)
Change in fair value of preferred stock warrants	—	1,617
End of year	$ 3,828	$ 8,846

The carrying amount of the term loan approximated its fair value at March 31, 2021 and December 31, 2020.

Note 6 – Term loan

In October 2020, the Company entered into a loan facility ("Term Loan") with an initial draw of $25 million. Proceeds were used to help fund the Company's ongoing operations. As part of the Term Loan, the lender committed to providing further loans of up to $35 million to the Company at its election (or for one specific draw, upon occurrence of a revenue milestone) during various draw periods in the future, provided the Company is not in default at the time of the additional loan draws. In March 2021, the Company drew an additional $5 million from the facility for the purpose of funding ongoing operations.

As of March 31, 2021 and December 31, 2020, the Company was in compliance with all covenants.

For the three months ended March 31, 2021, cash interest paid for all borrowings under the Term Loan was 9.25%. The effective interest rate during the same period was 11.29%.

As of March 31, 2021 annual principal payments due under the Term Loan were as follows (in thousands):

Year Ended December 31,	
2021	$ —
2022	—
2023	1.304
2024	15,652
2025	13,044
Total	30,000
Less: unamortized issuance costs and exit fee	(528)
Term loan net	$ 29.472

Note 7 – Common stock warrant liability

Warrant agreement and share purchase agreement

On October 12, 2017, the Company issued to a "Strategic Partner" a warrant to purchase Series W common stock (the "Warrant Agreement") for a non-refundable payment of $60 million. This Series W common stock warrant (the "Series W Warrant") had an initial expiration date of December 31, 2018 unless extended as provided for in the Warrant Agreement. On December 27, 2018, the Strategic Partner chose to extend the expiration date of the Series W Warrant, by making an additional non-refundable payment of $40 million, until

the sooner of the achievement of performance milestones (as defined in the Warrant Agreement) or November 22, 2021. On March 18, 2020, the Company and the Strategic Partner signed an amendment to the Warrant Agreement that removed the milestone triggers for early exercise and changed the expiration date to March 31, 2021.

Concurrent with the Warrant Agreement, the Strategic Partner and the Company entered into a Share Purchase Agreement (the "Purchase Agreement"). Under the Purchase Agreement, the Strategic Partner purchased one share of the Company's non-voting $0.001 par value per share Series G common stock for $0.01. Upon exercise of the Series W Warrant, the Strategic Partner would have received one share of voting, $0.001 par value, Series W common stock. Per the Warrant Agreement, the exercise price of the Series W Warrant was $630.0 million plus adjustments for the Company's cash, working capital, indebtedness and transaction expenses, subject to an escrow holdback of $92.0 million and a shareholder representative holdback of $500,000. The Warrant Agreement also provided for potential aggregate milestone payments of up to $827 million for various sales-based and operating milestones and $185 million for certain regulatory milestones, either at the time of the Series W Warrant's exercise or at dates subsequent, as defined in the Warrant Agreement. Upon notice of exercise of the Series W Warrant by the Strategic Partner and receipt of the required funds, a Special Redemption, as defined in the Company's Articles of Incorporation, would have triggered automatic redemption of all the Company's outstanding capital instruments, except for the Series G common stock and Series W common stock, and the Strategic Partner would have acquired the Company.

Special redemption

On October 25, 2017, the Company adopted the 12th Amended and Restated Articles of Incorporation (the "Amendment"). Under Article IV of the Amendment, if the Strategic Partner had exercised the Series W Warrant, an automatic redemption, conversion, termination and cancellation of all then outstanding shares of the Company's capital stock, options and warrants would have occurred without any further action required. Immediately prior to the automatic redemption, all outstanding preferred shares would have converted to common shares, unvested stock options would have accelerated and became fully vested and all stock options would have terminated along with any preferred stock warrants outstanding. Shareholders, option holders and warrant holders would have had the right to receive the initial per share price less the strike price as defined in the Warrant Agreement. The Strategic Partner would have advanced (through an exchange agent) the funds to the Company, which would then have disbursed the funds to all shareholders, option holders and warrant holders. If the Series W Warrant was terminated or expired unexercised, Article IV of the Amendment would terminate and would be of no further force and effect.

In December 2020, management determined that exercise of the Series W Warrant was no longer probable, at which point further accretion to redemption value of common stock, preferred stock and stock options ceased.

On March 31, 2021, the Series W Warrant terminated as the Strategic Partner did not provide notice of exercise. A gain of $5.0 million was recorded on the expiration of the Series W Warrant in the accompanying condensed consolidated statements of operations and comprehensive loss for the three months ended March 31, 2021. Upon termination, amounts recorded in temporary equity for common stock and stock options were reclassified to common stock and additional paid-in capital within permanent equity as these instruments were no longer redeemable.

Note 8—Convertible preferred stock and stockholders' deficit

Convertible preferred stock

The Amendment authorized eight classes of preferred stock, Series A through F, the "Prior Preferred Stock" and Series G and H, the "Senior Preferred Stock". All of the Company's convertible preferred stock has been classified as temporary equity on the accompanying condensed consolidated balance sheets, as all such preferred stock is

redeemable either at the option of the holder or upon an event outside the control of the Company (i.e., a change in control). The redeemable convertible preferred stock was previously redeemable per the Special Redemption (see Note 7) or upon certain change in control events (including liquidation, sale or transfer of control of the Company); however, all change in control events are outside of the Company's control. In the event of the Special Redemption, the holders would have received redemption proceeds as defined in the Warrant Agreement. In the event of liquidation, holders of the convertible preferred stock may have the right to receive its liquidation preference under the terms of the Company's Amendment.

As a result of management's determination that the Special Redemption was probable, but not certain, the Company began accreting to the expected redemption value of the redeemable convertible preferred stock in October 2017. In December 2020, management determined that the Special Redemption was no longer probable, at which point accretion to redemption value ceased. As of March 31, 2021, the Series W Warrant expired unexercised and all redemption provisions of the Special Redemption lapsed.

The following table summarizes information related to issuance of the Company's preferred stock (in thousands, except number of shares and per share amounts):

					As of March 31, 2021 and December 31, 2020		
	Par value	Date of issuance	Share price at issuance	Shares authorized(1)	Shares issued and outstanding(1)	Liquidation preference	Carrying value(2) share capital
Series A	$0.001	Feb-2000	$ 3.950	3,676,668	3,676,668	$ 14,523	$ 13,535
Series B	$0.001	May-2003	$ 0.878	17,989,209	17,989,209	15,795	39,715
Series C	$0.001	Feb-2007	$ 1.250	12,069,000	12,069,000	15,086	28,136
Series D	$0.001	Aug-2009	$ 1.750	6,857,143	6,857,143	12,000	18,503
Series E	$0.001	Oct-2011	$ 2.000	3,650,000	3,650,000	7,300	10,350
Series F	$0.001	May-2012	$ 2.500	5,245,000	5,156,500	12,891	18,305
Series G	$0.001	Jun-2015	$ 1.200	60,251,641	59,799,409	71,759	135,682
Series H	$0.001	Feb-2017	$ 1.200	61,458,333	39,311,920	47,174	89,074
				171,196,994	148,509,849	$ 196,528	$ 353,300

(1) The shares authorized, issued and outstanding do not reflect any anti-dilution provisions of Series C, Series D, Series E and Series F as a result of the Series G financing.

(2) The carrying value reflects the gross proceeds received from the sale of the preferred stock less issuance costs and the fair value at issuance of preferred stock warrants classified as a liability, plus accretion of redemption value.

Common stock

Each share of common stock is entitled to one vote. Common stock reserved for future issuance consisted of the following:

	March 31, 2021	December 31, 2020
Conversion of preferred stock	153,415,871	153,415,871
Preferred stock warrants	2,334,082	2,334,082
Common stock warrant	0	1
Stock options issued and outstanding under the 2006 and 2015 plans	47,866,502	43,501,180
Total shares of common stock reserved	203,616,455	199,251,134

Note 9—Stock-based compensation expense

As of March 31, 2021 and December 31, 2020, the Company had two stock-based incentive compensation plans, the Calhoun Vision, Inc. 2015 Equity Incentive Plan and the Calhoun Vision, Inc. 2006 Stock Plan (collectively the "Plans").

Option awards are generally granted with an exercise price of no less than 100% of estimated fair market value on the date of grant. Time based awards generally vest over four years as follows: one fourth of the total number of shares vest and become exercisable on the one-year anniversary; 1/48th of the total number of shares subject to the option vest and become exercisable on each monthly anniversary thereafter for the remaining 3 years. The purpose of the Plans is to provide a means by which eligible recipients of stock awards may be given an opportunity to benefit from increases in the value of the common stock in order to retain or procure the services of the employees, members of the Board and consultants.

In determining the fair value of the stock options granted, the Company uses the Black-Scholes option-pricing model and assumptions discussed below. Each of these inputs is subjective and generally requires significant judgment.

Fair value of common stock—Given the absence of a public trading market, the Company's board of directors with input from management considered numerous objective and subjective factors to determine the fair value of common stock. The factors included, but were not limited to: (i) third-party valuations of the Company's common stock; (ii) the Company's stage of development; (iii) the status of research and development efforts; (iv) the rights, preferences and privileges of the Company's convertible preferred stock relative to those of the Company's common stock; (v) the Company's operating results and financial condition, including the Company's levels of available capital resources; (vi) equity market conditions affecting comparable public companies; (vii) general U.S. market conditions and (viii) the lack of marketability of the Company's common stock.

Expected term—The Company's expected term represents the period that the Company's stock-based awards are expected to be outstanding. The Company used the simplified method (based on the mid-point between the vesting date and the end of the contractual term) to determine the expected term.

Expected volatility—Since the Company is privately held and does not have any trading history for its common stock, the expected volatility was estimated based on the average historical volatilities for comparable publicly traded medical device companies over a period equal to the expected term of the stock option grants. The comparable companies were chosen based on their similar size, stage in the life cycle and area of specialty. The Company will continue to apply this process until a sufficient amount of historical information regarding the volatility of its own stock price becomes available.

Risk-free interest rate—The risk-free interest rate is based on the U.S. Treasury zero coupon issues in effect at the time of grant for periods corresponding with the expected term of option.

Dividend yield—The Company has never paid dividends on its common stock and has no plans to pay dividends on its common stock. Therefore, the Company used an expected dividend yield of zero.

A summary of stock option activities for the three months ended March 31, 2021 is as follows:

	Shares available for grant	Number of options	Weighted average exercise price	Weighted average grant date fair value	Weighted avg remaining contractual life (years)
Options outstanding as of December 31, 2020	2,560,318	43,501,180	$ 0.93		6.46
Issued	6,000,000				
Granted	(7,415,000)	7,415,000	$ 1.51	$ 0.87	
Exercised		(2,898,092)	$ 0.42	$ 0.20	
Forfeited	151,586	(151,586)	$ 1.53	$ 0.82	
Options outstanding as of March 31, 2021	1,296,904	47,866,502	$ 1.05		6.88
Exercisable as of March 31, 2021		29,861,029	$ 0.76		5.44

At March 31, 2021 and December 31, 2020 the intrinsic value of options vested was $24.6 million and $26.2 million, respectively, and of all options outstanding was $25.1 million and $26.4 million, respectively. During the three months ended March 31, 2021 and 2020, the total cash received from the exercise of stock options was $1.2 million and $46,000, respectively. The total fair value less strike price of these options was $3.1 million and $132,000, respectively.

Stock-based compensation expense was classified in the accompanying consolidated statements of operations and comprehensive loss as follows (in thousands):

	Three months ended March 31,	
	2021	2020
Research and development	$ 597	$ 105
Selling, general and administrative	463	358
Cost of goods sold	179	160
	$ 1,239	$ 623

As of March 31, 2021 and December 31, 2020, there were 18,005,473 and 12,202,334 unvested options, respectively. Total unrecognized expense related to unvested stock options was approximately $14.9 million and $9.8 million as of March 31, 2021 and December 31, 2020, respectively. Amounts are expected to be recognized over a weighted average period of approximately 3.0 and 2.9 years, respectively.
The following table presents the range and weighted-average assumptions, used in the Black-Scholes option pricing model to determine the fair value of stock options:

	Three months ended March 31, 2021	
	Range	Weighted average
Expected volatility	62.3% to 63.6%	63.6%
Risk-free interest rate	0.6% to 1.1%	1.1%
Expected life (in years)	5.52 to 10.00 years	6.03 years
Expected dividend yield	0.0%	0.0%
Grant date fair value	$1.51	$1.51

Note 10—Income taxes

The Company maintains a full valuation allowance against its net deferred tax assets as of March 31, 2021 and December 31, 2020 based on the current assessment that it is not more likely than not these future benefits will be realized before expiration. No material income tax expense or benefit has been recorded given the valuation allowance position and projected taxable losses in the jurisdictions where the Company files income tax returns.

The Company has not experienced any significant increases or decreases to its unrecognized tax benefits since December 31, 2020 and does not expect any within the next 12 months.

The Company is subject to U.S. federal and various states income taxes. The federal returns for tax years 2017 through 2019 remain open to examination and the state returns remain subject to examination for tax years 2016 through 2020. Carryforward attributes that were generated in years where the statute of limitations is closed may still be adjusted upon examination by the Internal Revenue Service or other respective tax authorities. All other state jurisdictions remain open to examination.

Note 11—Leases

The Company has operating and finance leases for facilities and certain equipment. Leases with an initial term of 12 months or less are not recorded on the consolidated balance sheets. Lease expense for operating leases is recognized on a straight-line basis over the lease term. The Company does not combine lease and non-lease components in the recognition of lease expense.

As of March 31, 2021 and December 31, 2020 the Company held three leases for office, manufacturing and warehouse facilities in Aliso Viejo, California. The three leases are for 19,680, 42,106 and 48,036 square feet and expire on March 31, 2023, September 30, 2024 and January 31, 2026, respectively. For one of the facilities operating leases, the lessor provided $900,000 in tenant allowances.
The following table presents the lease balances within the condensed consolidated balance sheets (in thousands):

Leases	Classification	March 31, 2021	December 31, 2020
Assets			
Operating	Operating leases right-of-use assets	$ 5,038	$ 5,319
Finance	Property and equipment, net	50	58
Total lease assets		5,088	5,377
Liabilities			
Current			
Operating	Lease liabilities	1,294	1,247
Finance	Lease liabilities	23	27
Noncurrent			
Operating	Long-term lease liabilities	4,702	5,042
Finance	Long-term lease liabilities	32	37
Total lease liabilities		$ 6,051	$ 6,353

For the three months ended March 31, 2021 and 2020, the components of operating and finance lease expenses were as follows (in thousands):

Lease cost	Classification	March 31, 2021	March 31, 2020
Operating lease cost	Cost of goods sold	$ 3	$ 4
	Research and development	79	29
	Selling, general and administrative expenses	402	307
Finance lease cost	Amortization of right-of-use asset included in Research and development expenses	—	41
	Amortization of right-of-use asset included in Selling, general and administrative expenses	8	12
Finance lease cost	Interest expense	2	5

Maturities of the Company's operating and finance lease liabilities as of March 31, 2021 were as follows (in thousands):

Year ending December 31,	Operating leases	Finance leases
2021 (remainder)	$ 1,392	$ 21
2022	1,881	23
2023	1,682	18
2024	1,456	—
2025	951	—
2026	79	—
Total lease payments	7,441	62
Less: imputed interest	1,445	7
Total lease liabilities	$ 5,996	$ 55

The weighted average remaining lease term and weighted average discount rate used to determine lease liabilities related to the Company's operating and finance leases as of March 31, 2021 and December 31, 2020 were:

Lease term and discount rate	March 31, 2021	December 31, 2020
Weighted average remaining lease term (years)		
Operating leases	4.00	4.21
Finance leases	2.31	2.42
Weighted average discount rate		
Operating leases	10.5%	10.5%
Finance leases	10.5%	10.5%

Note 12—Commitments and contingencies

Legal matters

From time-to-time, the Company may be involved in certain legal proceedings or regulatory matters arising in the ordinary course of business, including without limitation, actions with respect to intellectual property, employment, regulatory, product liability and contractual matters. In connection with these proceedings or

matters, the Company regularly assesses the probability and amount (or range) of possible issues based on the developments in these proceedings or matters. A liability is recorded in the consolidated financial statements if it is determined that it is probable that a loss has been incurred, and that the amount (or range) of the loss can be reasonably estimated. Because of the uncertainties related to any pending proceedings or matters, the Company is currently unable to predict their ultimate outcome and, with respect to any legal proceeding or regulatory matter where no liability has been accrued, to make a reasonable estimate of the possible loss (or range of loss) that could result from an adverse outcome. At March 31, 2021 and December 31, 2020, there were no legal proceedings, regulatory matters, or other disputes or claims for which a material loss was considered probable or for which the amount (or range) of loss was reasonably estimable. However, regardless of the outcome, legal proceedings, regulatory matters, and other disputes and claims can have an adverse impact on the Company because of legal costs, diversion of management time and resources, and other factors.

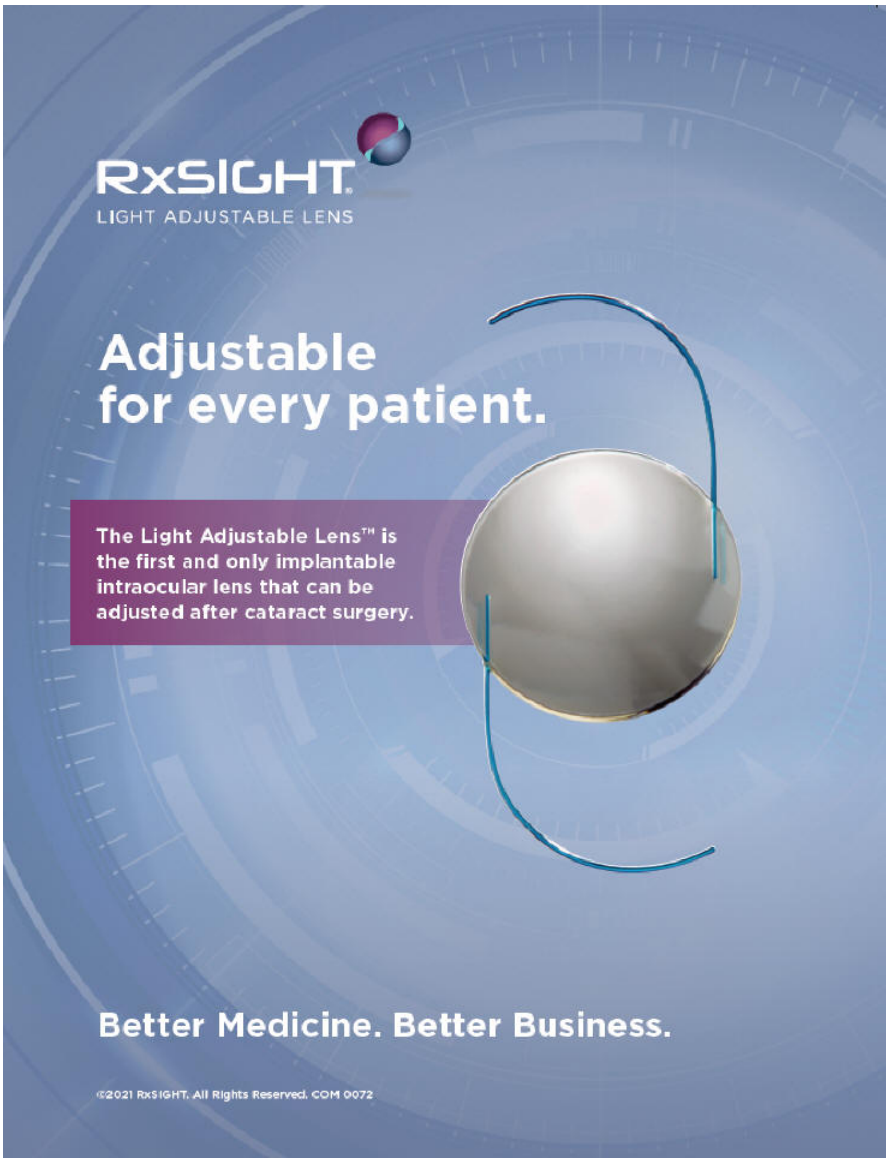
Note 13—Subsequent events

For purposes of the condensed consolidated financial statements as of March 31, 2021 and the three months then ended, the Company evaluated subsequent events for recognition and measurement purposes through May 14, 2021, the date the condensed consolidated financial statements were available to be issued.

The Company has also evaluated subsequent events through July 9, 2021, and determined that there have been no events for disclosure in the condensed consolidated financial statements except for the following.

On June 28, 2021, the Company made a $10 million additional draw on its Term Loan for general corporate purposes.

On July 6, 2021, the Company re-incorporated in Delaware. This jurisdictional change had no impact to the capital structure, stockholder rights, assets, or liabilities of the Company.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Shares

Common stock

J.P. Morgan **BofA Securities** **SVB Leerink**

Wells Fargo Securities **BTIG**

_____, 2021

Part II

Information not required in the prospectus

Item 13. Other expenses of issuance and distribution

The following table sets forth the expenses to be incurred in connection with the offering described in this Registration Statement, other than underwriting discounts and commissions, all of which will be paid by us. All amounts are estimates except the Securities and Exchange Commission's registration fee, the Financial Industry Regulatory Authority, Inc.'s filing fee and the Nasdaq listing fee.

	Amount to be paid
SEC Registration Fee	$ 10,910.00
FINRA filing fee	$ 13,500.00
Nasdaq listing fee	*
Printing and engraving expenses	*
Legal fees and expenses	*
Accounting fees and expenses	*
Transfer agent and registrar fees	*
Miscellaneous expenses	*
Total	$ *

* To be provided by amendment.

Item 14. Indemnification of directors and officers

Section 145 of the Delaware General Corporation Law empowers a corporation to indemnify its directors and officers and to purchase insurance with respect to liability arising out of their capacity or status as directors and officers, provided that the person acted in good faith and in a manner the person reasonably believed to be in our best interests, and, with respect to any criminal action, had no reasonable cause to believe the person's actions were unlawful. The Delaware General Corporation Law further provides that the indemnification permitted thereunder shall not be deemed exclusive of any other rights to which the directors and officers may be entitled under the corporation's bylaws, any agreement, a vote of stockholders or otherwise. The certificate of incorporation of the registrant to be in effect upon the completion of this offering provides for the indemnification of the registrant's directors and officers to the fullest extent permitted under the Delaware General Corporation Law. In addition, the bylaws of the registrant to be in effect upon the completion of this offering require the registrant to fully indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding (whether civil, criminal, administrative or investigative) by reason of the fact that such person is or was a director or officer of the registrant, or is or was a director or officer of the registrant serving at the registrant's request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, to the fullest extent permitted by applicable law.

Section 102(b)(7) of the Delaware General Corporation Law permits a corporation to provide in its certificate of incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except (1) for any breach of the director's duty of loyalty to the corporation or its stockholders, (2) for acts or omissions not in good faith or

which involve intentional misconduct or a knowing violation of law, (3) for payments of unlawful dividends or unlawful stock repurchases or redemptions or (4) for any transaction from which the director derived an improper personal benefit. The registrant's certificate of incorporation to be in effect upon the completion of this offering provides that the registrant's directors shall not be personally liable to it or its stockholders for monetary damages for breach of fiduciary duty as a director and that if the Delaware General Corporation Law is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of the registrant's directors shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

Section 174 of the Delaware General Corporation Law provides, among other things, that a director who willfully or negligently approves of an unlawful payment of dividends or an unlawful stock purchase or redemption may be held liable for such actions. A director who was either absent when the unlawful actions were approved, or dissented at the time, may avoid liability by causing his or her dissent to such actions to be entered in the books containing minutes of the meetings of the board of directors at the time such action occurred or immediately after such absent director receives notice of the unlawful acts.

As permitted by the Delaware General Corporation Law, the registrant intends to enter into separate indemnification agreements with each of the registrant's directors and certain of the registrant's officers which would require the registrant, among other things, to indemnify them against certain liabilities which may arise by reason of their status as directors, officers or certain other employees.

The registrant expects to obtain and maintain insurance policies under which its directors and officers are insured, within the limits and subject to the limitations of those policies, against certain expenses in connection with the defense of, and certain liabilities which might be imposed as a result of, actions, suits or proceedings to which they are parties by reason of being or having been directors or officers. The coverage provided by these policies may apply whether or not the registrant would have the power to indemnify such person against such liability under the provisions of the Delaware General Corporation Law.

These indemnification provisions and the indemnification agreements intended to be entered into between the registrant and the registrant's officers and directors may be sufficiently broad to permit indemnification of the registrant's officers and directors for liabilities (including reimbursement of expenses incurred) arising under the Securities Act of 1933, as amended.

The underwriting agreement between the registrant and the underwriters to be filed as Exhibit 1.1 to this registration statement provides for the indemnification by the underwriters of the registrant's directors and officers and certain controlling persons against specified liabilities, including liabilities under the Securities Act with respect to information provided by the underwriters specifically for inclusion in the registration statement.

Item 15. Recent Sales of Unregistered Securities

The following list sets forth information regarding all unregistered securities sold by us since January 1, 2018. No underwriters were involved in the sales and the certificates representing the securities sold and issued contain legends restricting transfer of the securities without registration under the Securities Act or an applicable exemption from registration.

(a) From January 1, 2018 through the date of this prospectus, we granted stock options to purchase an aggregate of 29,360,850 shares of common stock under our 2015 Plan at exercise prices per share ranging from $1.20 to $2.23, and have issued 7,636,975 shares of common stock upon exercise of stock options under our 2015 Plan for a weighted average exercise price of approximately $0.3985.

(b) From January 1, 2018 through the date of this prospectus, we issued and sold to certain service providers of ours an aggregate of 1,098,487 shares of common stock upon the exercise of options under our 2006 Plan for a weighted average exercise price of approximately $0.40.

(c) From January 1, 2018 through the date of this prospectus, we issued and sold an aggregate of 583,170 shares of Series G preferred stock upon the exercise of warrants to purchase shares of Series G preferred stock at an exercise price per share of $1.20.

(d) From January 1, 2018 through the date of this prospectus, we issued and sold an aggregate of 118,800 shares of Series H preferred stock upon the exercise of warrants to purchase shares of Series H preferred stock at an exercise price per share of $1.20.

The offers, sales and issuances of the securities described in Items 15(a) and 15(b) were exempt from registration under the Securities Act under either (1) Rule 701 in that the transactions were under compensatory benefit plans and contracts relating to compensation as provided under Rule 701 or (2) Section 4(a)(2) of the Securities Act as transactions by an issuer not involving any public offering. The recipients of such securities were the registrant's employees, consultants or directors and received the securities under our 2006 Plan or 2015 Plan. The recipients of securities in each of these transactions represented their intention to acquire the securities for investment only and not with view to or for sale in connection with any distribution thereof and appropriate legends were affixed to the securities issued in these transactions

The offers, sales and issuances of the securities described in Items 15(c) and 15(d) were exempt from registration under the Securities Act under Section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder as transactions by an issuer not involving a public offering. The recipients of securities in each of these transactions acquired the securities for investment only and not with a view to or for sale in connection with any distribution thereof and appropriate legends were affixed to the securities issued in these transactions. Each of the recipients of securities in these transactions was an accredited person and had adequate access, through employment, business, or other relationships, to information about the registrant.

Item 16. Exhibit and financial statement schedules

(a) Exhibits.

See the Exhibit Index immediately preceding the signature page hereto for a list of exhibits filed as part of this registration statement on Form S-1, which Exhibit Index is incorporated herein by reference.

(b) Financial statement schedules.

Schedules have been omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or notes thereto.

Item 17. Undertakings

The undersigned registrant hereby undertakes to provide to the underwriters at the completion 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.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has 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 the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant 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, the registrant will, unless in the opinion of its 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 hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act of 1933 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.

Exhibit index

Exhibit Number	Description
1.1*	Form of Underwriting Agreement, including Form of Lock-up Agreement.
3.1	Amended and Restated Certificate of Incorporation of the Registrant, as currently in effect.
3.2	Form of Amended and Restated Certificate of Incorporation of the Registrant, to be in effect upon the completion of this offering.
3.3	Amended and Restated Bylaws of the Registrant, as currently in effect.
3.4	Form of Amended and Restated Bylaws of the Registrant, to be in effect upon the completion of this offering.
4.1	Amended and Restated Investor Rights Agreement among the Registrant and certain of its stockholders, dated February 24, 2017.
4.2*	Specimen common stock certificate of the Registrant.
5.1*	Opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation.
10.1+	Form of Indemnification Agreement between the Registrant and each of its directors and executive officers.
10.2+*	2015 Equity Incentive Plan, as amended, and forms of agreement thereunder.
10.3+*	2021 Equity Incentive Plan and forms of agreements thereunder, to be in effect upon the completion of this offering.
10.4+*	2021 Employee Stock Purchase Plan, to be in effect upon the completion of this offering.
10.5	Loan and Security Agreement, by and among the Registrant, Oxford Finance LLC, the lenders listed on Schedule 1.1 thereto, dated as of October 29, 2020.
10.6#	License Agreement by and between the Registrant and the California Institute of Technology dated July 28, 2015.
10.7#	Exclusive License Agreement between the Regents of the University of California and the Registrant dated March 1, 2000 as amended May 29, 2008, December 5, 2013, November 10, 2016, April 4, 2017, June 21, 2017, and May 21, 2019.
10.8	License and Maintenance Agreement between QAD, Inc. and its subsidiaries and the Registrant dated October 29, 2015.
10.9	QAD Hosted On Premise Project Proposal between Strategic Information Group ("SIG") and the Registrant October 29, 2015.
10.10	Cloud Services Agreement between QAD, Inc. and its subsidiaries and the Registrant, dated May 28, 2021.
10.11	Lease dated October 27, 2015, by and between the Registrant and Accuride International Inc., as amended by that certain First Amendment to Lease dated November 23, 2015, that certain Second Amendment to Lease dated December 22, 2015, that certain Third Amendment to Lease dated January 18, 2016 and that certain Fourth Amendment to Lease dated November 12, 2016 for premises located at 100-150 Columbia, Suites 100 and 200, Aliso Viejo, California 92656.
10.12	Lease dated March 27, 2020, by and between Pacific Park Investments, Inc., and the Registrant for premises located at 75 Columbia, Aliso Viejo, CA 92656.
10.13	Lease dated January 10, 2018, by and between the Registrant and Clifford D. Downs, as amended by that certain Commencement Date Memorandum dated February 22, 2018, for premises located at 5 Columbia, Aliso Viejo, California 92656.
10.14+	Confirmatory Employment Letter by and between the Registrant and Ron Kurtz, dated as of July 8, 2021.
10.15+	Confirmatory Employment Letter by and between the Registrant and Shelley Thunen, dated as of July 8, 2021.

Exhibit Number	Description
10.16+	Confirmatory Employment Letter by and between the Registrant and Eric Weinberg, dated as of July 8, 2021.
10.17+	Confirmatory Employment Letter by and between the Registrant and Ilya Goldshleger, dated as of July 8, 2021.
10.18+	Change in Control Severance Agreement by and between the Registrant and Ron Kurtz, dated as of July 8, 2021.
10.19+	Change in Control Severance Agreement by and between the Registrant and Shelley Thunen, dated as of July 8, 2021.
10.20+	Change in Control Severance Agreement by and between the Registrant and Eric Weinberg, dated as of July 8, 2021.
10.21+	Change in Control Severance Agreement by and between the Registrant and Ilya Goldshleger, dated as of July 8, 2021.
10.22	Consulting Agreement by and between the Company and Yelroc Consulting, Inc., dated as of January 1, 2019, as amended by Amendment No. 1 dated as of December 16, 2020.
10.23	Consulting Agreement by and between the Company and Daniel Schwartz, MD, dated as of January 1, 2019, as amended by Amendment No. 1 dated as of December 16, 2020.
10.24	Amended and Restated Secured Full Recourse Promissory Note by and between Daniel Schwartz and the Company, dated as of April 18, 2019.
23.1	Consent of Independent Registered Public Accounting Firm.
23.2*	Consent of Wilson Sonsini Goodrich & Rosati, Professional Corporation (included in Exhibit 5.1).
24.1	Power of Attorney (see page II-7 to this Form S-1).

* To be filed by amendment.
\+ Indicated management contract or compensatory plan.
\# Portions of the exhibit have been omitted as the Registrant has determined that: (i) the omitted information is not material; and (ii) the omitted information would likely cause competitive harm to the Registrant if publicly disclosed.

Signatures

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Aliso Viejo, California, on July 9, 2021.

RXSIGHT, INC.

By: /s/ Ron Kurtz, M.D.
Ron Kurtz, M.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 Ron Kurtz, M.D. and Shelley Thunen as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and substitution, for him or her and in his or her name, place and stead, in any and all capacities (including his capacity as a director and/or officer of RxSight, Inc.) to sign any or all amendments (including post-effective amendments) to this registration statement and any and all additional registration statements pursuant to Rule 462(b) of the Securities Act of 1933, as amended, and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, 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 and about the premises, as fully to all intents and purposes as they, he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agents or any of them, or their, his or her 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/ Ron Kurtz, M.D. Ron Kurtz, M.D.	President, Chief Executive Officer and Director *(Principal Executive Officer)*	July 9, 2021
/s/ Shelley Thunen Shelley Thunen	Chief Financial Officer *(Principal Financial and Accounting Officer)*	July 9, 2021
/s/ J. Andy Corley J. Andy Corley	Chair of the Board	July 9, 2021
/s/ Bruce Robertson, Ph.D. Bruce Robertson, Ph.D.	Director	July 9, 2021
/s/ William J. Link, Ph.D. William J. Link, Ph.D.	Director	July 9, 2021
/s/ Daniel Schwartz, M.D. Daniel Schwartz, M.D.	Director	July 9, 2021
/s/ Christopher Cox Christopher Cox	Director	July 9, 2021
/s/ Rick Wolfen Rick Wolfen	Director	July 9, 2021
/s/ Juliet Tammenoms Bakker Juliet Tammenoms Bakker	Director	July 9, 2021

Delaware
The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "RXSIGHT, INC.", FILED IN THIS OFFICE ON THE FIRST DAY OF JULY, A.D. 2021, AT 2:55 O` CLOCK P.M.

/s/ Jeffrey W. Bullock
Jeffrey W. Bullock, Secretary of State

5865416 8100
SR# 20212608507

Authentication: 203589464
Date: 07-02-21

You may verify this certificate online at corp.delaware.gov/authver.shtml

CERTIFICATE OF INCORPORATION
OF
RXSIGHT, INC.

RxSight, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "**General Corporation Law**"),

ARTICLE I

The name of this corporation is RxSight, Inc. (the "**Company**").

ARTICLE II

The address of the Company's registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, 19801. The name of the registered agent at such address is The Corporation Trust Company.

ARTICLE III

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

ARTICLE IV

A. The Company is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock," The total number of shares which the Company is authorized to issue is 424,756,825 shares, 253,559,831 shares of which shall be Common Stock (the "**Common Stock**") and 171,196,994 shares of which shall be Preferred Stock (the "**Preferred Stock**"). The Common Stock shall have a par value of $0.001 per share.

B. 3,676,668 of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" (the "**Series A Preferred**"), and shall have a par value of $0.001 per share. 17,989,209 of the authorized shares of Preferred Stock are hereby designated "Series B Preferred Stock" (the "**Series B Preferred**"), and shall have a par value of $0.001 per share. 12,069,000 of the authorized shares of Preferred Stock are hereby designated "Series C Preferred Stock" (the "**Series C Preferred**"), and shall have a par value of $0.001 per share. 6,857,143 of the authorized shares of Preferred Stock are hereby designated "Series D Preferred Stock" (the "**Series D Preferred**"), and shall have a par value of $0.001 per share. 3,650,000 of the authorized shares of Preferred Stock are hereby designated "Series E Preferred Stock" (the "**Series E Preferred**"), and shall have a par value of $0.001 per share. 5,245,000 of the authorized shares of Preferred Stock are hereby designated "Series F Preferred Stock" (the "**Series F Preferred**"), and shall have a par value of $0.001 per share. 60,251,641 of the authorized shares of Preferred Stock are hereby designated "Series G Preferred Stock" (the "**Series G Preferred**"), and shall have a par value of $0.001 per share. 61,458,333 of the authorized shares of Preferred Stock are hereby designated "Series H Preferred Stock" (the "**Series H Preferred**," and together with the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series D Preferred, the Series E Preferred, the Series F Preferred, and the Series G Preferred, the "**Series Preferred**"), and shall have a par value of $0.001 per share

C. The rights, preferences, privileges, restrictions and other matters relating to the Series Preferred are as follows. Unless otherwise indicated, references to "sections" or "subsections" in this Section C of this Article ARTICLE IV refer to sections and subsections of Section C of this Article IV.

1. DIVIDEND RIGHTS

(a) **Senior Preferred.** The holders of shares of Series H Preferred and Series G Preferred (together, the "**Senior Preferred**"), on a *pari passu* basis, shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend on the Prior Preferred (as defined below) or the Common Stock of the Company, at the rate of $0.096 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Senior Preferred. Such dividends shall be payable when, as and if declared by the Board of Directors of the Company (the "**Board of Directors**"). Such dividends shall not be cumulative.

(b) **Prior Preferred.** After dividends in the full preferential amounts specified in Section 1(a) above for the Senior Preferred have been paid or declared and set apart in any calendar year of the Company, the holders of shares of Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred, Series E Preferred and Series F Preferred (collectively, the "**Prior Preferred**"**),** on a *pari passu* basis, shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend on the Common Stock of the Company, at the rate of (i) in the case of the Series A Preferred, $0.31600 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series A Preferred, (ii) in the case of the Series B Preferred, $0.07024 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series B Preferred, (iii) in the case of the Series C Preferred, $0.10 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series C Preferred, (iv) in the case of the Series D Preferred, $0.14 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series D Preferred, (v) in the case of the Series E Preferred, $0.16 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series E Preferred, and (vi) in the case of the Series F Preferred, $0.20 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series F Preferred. Such dividends shall be payable when, as and if declared by the Board of Directors. Such dividends shall not be cumulative.

(c) Participation. If, after dividends in the full preferential amounts specified in Section 1(a) and Section 1(b) above for the Series Preferred have been paid or declared and set apart in any calendar year of the Company, the Company's Board of Directors shall declare additional dividends out of funds legally available therefor in that calendar year, then such additional dividends shall be declared pro rata on the Common Stock and the Series Preferred on a *pari passu* basis according to the number of shares of Common Stock held by such holders, where each holder of shares of Series Preferred is to be treated for this purpose as holding the greatest whole number of shares of Common Stock then issuable upon conversion of all shares of Series Preferred held by such holder pursuant to Section 4 below.

(d) Exceptions. The provisions of clauses (a) and (b) of this Section 1 shall not, however, apply to a dividend payable in Common Stock for which adjustment is made pursuant to Section 4(k) or Section 4(m) below.

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 Company, and not as a separate class, at any annual or special meeting of stockholder of the Company, 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 the 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 the Series Preferred are convertible (pursuit to Section 4) 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 the Series Preferred.** For so long as 8,000,000 shares of the Series Preferred remain outstanding (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares), in addition to any other vote or consent required herein or by law, the Company shall not (by amendment, merger, reorganization, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of (i) the holder of at least fifty-one percent (51 %) of the outstanding shares of Senior Preferred (voting together as a single class), which shall in all cases include at least two of the following: RxSight I, LLC, Longitude Venture Partners II, L.P. and H.I.G BioVentures-Calhoun, LLC, or their respective affiliates (the "**Requisite Senior Preferred Vote**"), and (ii) at least a majority of the outstanding shares of Prior Preferred (voting together as a single class):

(i) amend, alter, waive or repeal of any provision of either (A) the Certificate of Incorporation of the Comply (including any filing of a Certificate of Determination) or (B) the Bylaws of the Company, in each case in a manner that adversely changes the powers, preferences, or other special rights or privileges, or restrictions of the Series Preferred (or any series thereof); provided, however, that (without prejudice and subject to the provisions of Section 2(b)(ii) and Section 2(c)(ii) below) the authorization, creation (by reclassification or otherwise) or issuance of any equity security (or any security that is or by its terms may become exercisable or convertible into such equity security) having rights, preferences or privileges which are senior to, or *pari passu* with, the rights of the Series Preferred (or any series thereof) shall not be treated as an adverse change to the powers, preferences or other special rights or privileges, or restrictions of the Series Preferred (or any series thereof); provided, further, that if such adverse change is only to the powers, preferences, or other special rights or privileges, or restrictions of the Senior Preferred (or any series thereof), then a vote of a majority of the outstanding shares of Prior Preferred shall not be required;

(ii) authorize, create (by reclassification or otherwise) or issue any equity security having rights, preferences or privileges which are senior to, or *pari passu* with, the rights of the Series Preferred (or any series thereof) or any security that is or by its terms may become exercisable or convertible into such a class or series of stock; provided, however, that if such class or series of stock is senior to, or *pari passu* with, the rights of the Senior Preferred (or any series thereof), then a vote of a majority of the outstanding shares of Prior Preferred shall not be required;

(iii) increase or decrease the number of authorized shares of the Preferred Stock;

(iv) execute any action that reclassifies any outstanding shares of the Preferred Stock;

(v) consummate any liquidation, dissolution, winding up, merger or reorganization of the Company that would result in the holders of the Senior Preferred being distributed consideration per share of Senior Preferred held by such holders of less than three times the Original Issue

Price (as defined below) (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for any series of the Senior Preferred;

(vi) increase the shares of Common Stock reserved for issuance pursuant to an equity incentive plan, or adopt any new equity incentive plan or similar arrangement, unless such increase or adoption is approved by a majority of the Company's Board of Directors, including at least one of the Prior Preferred Director, and at least two of the Senior Preferred Directors (as defined below);

(vii) declare or pay a dividend on any shares of capital stock of the Company, unless otherwise approved by a majority of the Company's Board of Directors, including at least one of the Prior Preferred Directors, and at least two of the Senior Preferred Directors (as defined below);

(viii) redeem or repurchase capital stock of the Company (except for acquisitions of Common Stock by the Company pursuant to the Bylaws of the Company or written agreements which in each case permit the Company to repurchase such shares upon termination of employment, consulting or director services to the Company at the lesser of cost and fair market value or exercise the Company's first refusal rights upon a proposed transfer), unless otherwise approved by a majority of the Company's Board of Directors, including at least one of the Prior Preferred Directors, and at least two of the Senior Preferred Directors (as defined below);

(ix) acquire all of the equity securities of another entity, or all or substantially all of the assets of another entity, in exchange for equity securities of the Company, unless otherwise approved by a majority of the Company's Board of Directors, including at least one of the Prior Preferred Directors, and at least two of the Senior Preferred Directors (as defined below);

(x) elect, appoint or remove the Chairman or Chief Executive Officer of the Company, unless otherwise approved by a majority of the Company's Board of Directors, including at least one of the Prior Preferred Directors, and at least two of the Senior Preferred Directors (as defined below);

(xi) change the authorized number of directors of the Company, unless otherwise approved by a majority of the Company's Board of Directors, including at least one of the Prior Preferred Directors, and at least two of the Senior Preferred Directors (as defined below); or

(xii) enter into any agreement to do any of the foregoing.

(c) **Separate Vote of the Prior Preferred.** For so long as 4,000,000 shares of the Prior Preferred remain outstanding (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares), in addition to any other vote or consent required herein or by law, the Company shall not (by amendment, merger, reorganization, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the outstanding shares of the Prior Preferred voting together as a single class:

(i) amend, alter, or repeal of any provision of either (A) the Certificate of Incorporation or (B) the Bylaws of the Company, in each case in a manner that adversely changes the powers, preferences, or other special rights or privileges, or restrictions of the Prior Preferred (or any series thereof); provided, however, that (without prejudice and subject to the provisions of Section 2(c)(ii) below) the authorization, creation (by reclassification or otherwise) or issuance of any equity security (or any security that is or by its terms may become exercisable or convertible into such equity security) having rights, preferences or privileges which are senior to, or *pari passu* with, the rights of the

Prior Preferred (or any series thereof) shall not be treated as an adverse change to the powers, preferences or other special rights or privileges, or restrictions of the Prior Preferred (or any series thereof);

(ii) authorize, create (by reclassification or otherwise) or issue any equity security having rights, preferences or privileges which are senior to, or *pari passu* with, the rights of the Prior Preferred (or any series thereof) or any security that is or by its terms may become exercisable or convertible into such a class or series of stock, unless such class or series of stock is also senior to, or *pari passu* with, the rights of the Senior Preferred; or

(iii) enter into any agreement to do any of the foregoing.

(d) **Separate Vote of the Senior Preferred.** For so long as 8,000,000 shares of the Senior Preferred remain outstanding (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares), in addition to any other vote or consent required herein or by law, the Company shall not (by amendment, merger, reorganization, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the Requisite Senior Preferred Vote:

(i) amend, alter, or repeal of any provision of either (A) the Certificate of Incorporation of the Company or (B) the Bylaws of the Company, in each case in a manner that adversely changes the powers, preferences, or other special rights or privileges, or restrictions of the Senior Preferred (or any series thereof);

(ii) authorize, create (by reclassification or otherwise) or issue any equity security having rights, preferences or privileges which are senior to, or *pari passu* with, the rights of the Senior Preferred (or any series thereof) or any security that is or by its terms may become exercisable or convertible into such a class or series of stock; or

(iii) enter into any agreement to do any of the foregoing.

(e) **Election of Board of Directors.**

(i) For so long as at least 4,000,000 shares of the Series H Preferred remain outstanding (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares), the holders of at least a majority of the Series H Preferred, voting as a seperate class, shall be entitled to elect one (1) member of the Company's Board of Director (the **"Series H Director")** at each meeting or pursuant to each consent of the Company's stockholders for the election of director, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such directors;

(ii) for so long as at least 4,000,000 shares of the Series G Preferred remain outstanding (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares), the holders of at least fifty-five percent (55%) of the Series G Preferred, voting as a separate class, shall be entitled to elect two (2) members of the Company's Board of Directors (the **"Series G Directors"** and together with the Series H Director, the **"Senior Preferred Directors")** at each meeting or pursuant to each consent of the Company's stockholders 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 directors;

(iii) for so long as 4,000,000 shares of the Prior Preferred remain outstanding (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with

respect to such shares), the holders of a majority of the Prior Preferred, voting together as a single class, shall be entitled to elect two (2) member of the Company's Board of Director (the **"Prior Preferred Directors")** at each meeting or pursuant to each consent of the Company's stockholders 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;

(iv) the holders of at least a majority of the Series Preferred, voting together as a single class, shall be entitled to elect two (2) members of the Company's Board of Director (the **"At Large Preferred Directors")** at each meeting or pursuant to each consent of the Company's stockholders 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 director;

(v) the holders of a majority of the Common Stock, voting as a separate class, shall be entitled to elect one (1) member of the Company's Board of Directors at each meeting or pursuant to each consent of the Company's stockholders 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; and

(vi) the holders of a majority of the Series Preferred, voting together as a single class on an as-if-converted basis, shall be entitled to elect all remaining members of the Board of Directors at each meeting or pursuant to each consent of the Company's stockholder for the election of director, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such director.

3. LIQUIDATION RIGHTS.

(a) Senior **Preferred.** Upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary, before any distribution or payment shall be made to the holders of any Prior Preferred or any Common Stock by reason of their ownership thereof, the holders of the Senior Preferred, on a *pari passu* basis, shall be entitled to be paid out of the assets of the Company an amount per share of the Senior Preferred equal to the greater of (i) one times the Original Issue Price (as defined below) (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for the applicable series of Senior Preferred plus all declared and unpaid dividends on such shares of the Senior Preferred for each share of the Senior Preferred held by them, or (ii) such amount per share as would have been payable had each such share been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution or winding up (the **"Senior Preferred Liquidation Amount").** If, upon any such liquidation, distribution, or winding up, the assets of the Company shall be insufficient to make payment in full to all holders of the Senior Preferred of the liquidation preference set forth in this Section 3(a), then such assets legally available for distribution shall be distributed among the holders of the Senior Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(b) **Prior Preferred.** After the payment of the full liquidation preference of the Senior Preferred as set forth in Section 3(a), but prior to any distribution or payment made to the holder of any Series A Preferred or any Common Stock by reason of their ownership thereof: (i) the holders of the Series B Preferred shall be entitled to be paid out of the assets of the Company an amount per share of the Series B Preferred equal to the greater of (A) one times the Original Issue Price (as defined below) (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for the Series B Preferred plus all declared and unpaid dividends on such shares of the Series B Preferred for each share of the Series B Preferred held by them, or (B) such amount per share as would have been payable had each such share been converted into Common Stock pursuant to Section 4

immediately prior to such liquidation, dissolution or winding up (the **"Series B Preferred Liquidation Amount");** (ii) the holders of the Series C Preferred shall be entitled to be paid out of the assets of the Company an amount per share of the Series C Preferred equal to the greater of (A) one times the Original Issue Price (as defined below) (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for the Series C Preferred plus all declared and unpaid dividends on such shares of the Series C Preferred for each share of the Series C Preferred held by them, or (B) such amount per share as would have been payable had each such share been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution or winding up (the **"Series C Preferred Liquidation Amount");** (iii) the holders of the Series D Preferred shall be entitled to be paid out of the assets of the Company an amount per share of the Series D Preferred equal to the greater of (A) one times the Original Issue Price (as defined below) (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for the Series D Preferred plus all declared and unpaid dividends on such shares of the Series D Preferred for each share of the Series D Preferred held by them, or (B) such amount per share as would have been payable had each such share been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution or winding up (the **"Series D Preferred Liquidation Amount');** (iv) the holders of the Series E Preferred shall be entitled to be paid out of the assets of the Company an amount per share of the Series E Preferred equal to the greater of (A) one times the Original Issue Price (as defined below) (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for the Series E Preferred plus all declared and unpaid dividends on such shares of the Series E Preferred for each share of the Series E Preferred held by them, or (B) such amount per share as would have been payable had each such share been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution or winding up (the **"Series E Preferred Liquidation Amount");** and (v) the holders of the Series F Preferred shall be entitled to be paid out of the assets of the Company an amount per share of the Series F Preferred equal to the greater of (A) one times the Original Issue Price (as defined below) (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for the Series F Preferred plus all declared and unpaid dividends on such shares of the Series F Preferred for each share of the Series F Preferred held by them, or (B) such amount per share as would have been payable had each such share been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution or winding up (the **"Series F Preferred Liquidation Amount").** If, upon any such liquidation, distribution, or winding up, the assets of the Company (after the payment of all preferential amounts required to be paid to the holders of the Senior Preferred) shall be insufficient to make payment in full to all holder of the Series B Preferred, the Series C Preferred, the Series D Preferred, the Series E Preferred and the Series F Preferred of the liquidation preference set forth in this Section 3(b), then such assets legally available for distribution shall be distributed among the holders of the Series B Preferred, the Series C Preferred, the Series D Preferred, the Series E Preferred and the Series F Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(c) **Series A Preferred.** After the payment of the full liquidation preference of the Senior Preferred, the Series B Preferred, the Series C Preferred, the Series D Preferred, the Series E Preferred, and the Series F Preferred as set forth in Section 3(a) and Section 3(b), but prior to any distribution or payment made to the holder of any Common Stock, the holders of the Series A Preferred shall be entitled to be paid out of the assets of the Company an amount per share of the Series A Preferred equal to the greater of (A) one times the Original Issue Price (as defined below) (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for the Series A Preferred plus all declared and unpaid dividends on such shares of the Series A Preferred for each share of the Series A Preferred held by them, or (B) such amount per share as would have been payable had each such share been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution or winding up (the **"Series A Preferred Liquidation Amount").** If, upon any such liquidation, distribution, or winding up, the assets of the Company (after the payment of all preferential amounts

required to be paid to the holder of the of the Senior Preferred, the Series B Preferred, the Series C Preferred, the Series D Preferred, the Series E Preferred, and the Series F Preferred) shall be insufficient to make payment in full to all holders of the Series A Preferred of the liquidation preference set forth in this Section 3(c), then such assets legally available for distribution shall be distributed among the holder of the Series A Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(d) **Original Issue Price. "Original Issue Price"** means: (a) $3.95 for each share of the Series A Preferred; (b) $0.878 for each share of the Series B Preferred; (c) $ 1.25 for each share of the Series C Preferred; (d) $1.75 for each share of the Series D Preferred; (e) $2.00 for each share of the Series E Preferred; (f) $2.50 for each share of the Series F Preferred; (g) $1.20 for each share of Series G Preferred; and (h) $ 1.20 for each share of Series H Preferred (in each case, as adjusted for stock splits, stock dividends, reclassification and the like).

(e) **Remaining Assets.** After the payment of the full liquidation preference of the Series Preferred as set forth in Section 3(a), Section 3(b), and Section 3(c) above, the remaining assets of the Company legally available for distribution, if any, shall be distributed ratably to the holders of the Common Stock.

(f) **Deemed Liquidation.** The following events shall be considered a liquidation under this Section 3 (each a **"Deemed Liquidation"):**

(i) (A) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, in which the stockholders of the Company immediately prior to such consolidation, merger or reorganization, own less than fifty percent (50%) of the voting power of the corporation or other entity surviving such consolidation, merger or reorganization, or (B) any transaction or series of related transactions to which the Company is a party in which in excess of fifty percent (50%) of the Company's voting power is transferred, excluding any consolidation or merger effected exclusively to change the domicile of the Comply (an "**Acquisition**");

(ii) a sale, lease or other disposition of all or substantially all of the assets of the Company or a license of substantially all of the Company's intellectual property (an **"Asset Transfer**"); or

(iii) the Special Redemption.

(g) In any of such events, if the consideration received by this Company is other than cash, its value will be determined as follows:

(A) For securities not subject to investment letter or other similar restrictions on free marketability covered by (B) below:

(1) if traded on a national securities exchange, 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;

(2) 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

(3) if there is no active public market, the value shall be the fair market value thereof, as determined by the Board of Directors.

(B) 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 stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in ARTICLE IVC.3(g)(A)(l) or ARTICLE IVC,3(g)(A)(3)to reflect the approximate fair market value thereof, as determined by the Board of Directors.

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 (the **"Conversion Rights"**):

(a) **Right to Convert.** The shares of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Company or any transfer agent for the Preferred Stock, into that number of fully-paid, nonassessable shares of Common Stock determined by multiplying the number of shares of each series of Preferred Stock being converted by such holder by the Conversion Rate of such series of Preferred Stock. Upon any decrease or increase in the Conversion Price for *any* series of Preferred Stock, as described in this Section 4, the Conversion Rate for such series shall be appropriately increased or decreased.

(b) **"Conversion Price"** shall mean $0.8780 per share for the Series A Preferred, $0.8780 for the Series B Preferred, $1.2193 for the Series C Preferred, $1.5025 for the Series D Preferred, $1.6441 for the Series E Preferred, $1.6441 for the Series F Preferred, $1.2000 for the Series G Preferred, and $1.2000 for the Series H Preferred (in each case, as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares).

(c) **"Conversion Rate"** shall mean (i) for each share of Series A Preferred, the quotient obtained by dividing the Original Issue Price of the Series B Preferred by the Conversion Price of the Series A Preferred, (ii) for each share of Series B Preferred, the quotient obtained by dividing the Original Issue Price of the Series B Preferred by the Conversion Price of the Series B Preferred, (iii) for each share of Series C Preferred, the quotient obtained by dividing the Original Issue Price of the Series C Preferred by the Conversion Price of the Series C Preferred, (iv) for each share of Series D Preferred, the quotient obtained by dividing the Original Issue Price of the Series D Preferred by the Conversion Price of the Series D Preferred, (v) for each share of Series E Preferred, the quotient obtained by dividing the Original Issue Price of the Series E Preferred by the Conversion Price of the Series E Preferred, (vi) for each share of Series F Preferred, the quotient obtained by dividing the Original Issue Price of the Series F Preferred by the Conversion Price of the Series F Preferred, (vii) for each share of Series G Preferred, the quotient obtained by dividing the Original Issue Price of the Series G Preferred by the Conversion Price of the Series G Preferred, and (viii) for each share of Series H Preferred, the quotient obtained by dividing the Original Issue Price of the Series H Preferred by the Conversion Price of the Series H Preferred.

(d) **Automatic Conversion.** Each share of Preferred Stock shall automatically be converted into fully-paid, non-assessable shares of Common Stock at the then effective Conversion Rate for such share (i) immediately prior to the closing of a firm commitment underwritten initial public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the **"Securities Act'),** covering the offer and sale of the Company's Common Stock; provided, that the offering price per share is not less than $2.40 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares), the aggregate gross proceeds to the Company are not less than $40,000,000, and the Common Stock is listed on the New York Stock Exchange,

the American Stock Exchange or the NASDAQ Stock Market, or (ii) upon the vote or receipt by the Company of a written consent for such conversion from the holders of (x) at least a majority of the Prior Preferred and (y) the Requisite Senior Preferred Vote; or, if later, the effective date for conversion specified in such requests (each of the events referred to in (i) and (ii) are referred to herein as an **"Automatic Conversion Event**").

(e) **Mechanics of Conversion.** No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Company shall pay cash equal to such fraction multiplied by the then fair market value of a share of Common Stock as determined by the Board of Directors. For such purpose, all shares of Preferred Stock a holder of Preferred Stock is at the time converting into Common Stock shall be aggregated, and any resulting fractional share of Common Stock shall be paid in cash. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock, and to receive certificates therefor, the holder shall either (A) surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or of any transfer agent for the Preferred Stock or (B) notify the Company or its transfer agent that such certificates have been lost, stolen or destroyed and execute an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates, and shall give written notice to the Company at such office that the holder elects to convert the same, which notices shall state the numbers of shares of the Preferred Stock being converted. Upon such event, the Company shall promptly issue and deliver to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled. 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 the Preferred Stock 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. Notwithstanding the foregoing, on the date of an Automatic Conversion Event, the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holder of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; provided, however, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such Automatic Conversion Event unless either the certificates evidencing such shares of Preferred Stock are delivered to the Company or its transfer agent as provided above, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. On the date of the occurrence of an Automatic Conversion Event, each holder of record of shares of Preferred Stock shall be deemed to be the holder of record of the Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of Preferred Stock shall not have been surrendered at the office of the Company, that notice from the Company shall not have been received by any holder of record of shares of Preferred Stock, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

(f) Adjustments to Conversion Price for Diluting Issues.

(i) **Special Definition.** For purposes of this Section 4(f), **"Additional Shares of Common"** shall mean all shares of Common Stock issued (or, pursuant to Section 4(f)(iii), deemed to be issued) by the Company after the date hereof (the **"Filing Date"),** other than issuances or deemed issuances of:

(A) shares of Common Stock issued upon conversion of the Preferred Stock;

(B) shares of Common Stock issued pursuant to any event for which adjustment is made pursuant to Section 4(i) through Section 4(m):

(C) up to 47,976,338 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) shares of Common Stock (or options, warrants or other purchase rights with respect thereto) issued or issuable to employees, officer or directors of, or consultants or advisors to the Company or any subsidiary for bona fide employment or consulting services pursuant to the Company's 2015 Equity Incentive Plan;

(D) shares of Common Stock issued or options, warrants or other Common Stock purchase rights, and the Common Stock issued pursuant to such options, warrants or other rights for consideration other than cash pursuant to a merger, consolidation, acquisition or similar business combination; provided, that such issuances are approved by the Board of Directors;

(E) shares of Common Stock issued pursuant to any equipment or facilities leasing or loan arrangement from a bank or similar financial or lending institution; provided, that such issuances are for other than primarily equity financing purposes and such issuances are approved by the Board of Directors;

(F) shares of Common Stock issued in connection with technology licensing arrangements involving the Company and other entities; provided, that such issuances are approved by the Board of Directors; and

(G) shares of Common Stock issued or issuable and agreed by holders of (i) at least a majority of the Prior Preferred and (ii) the Requisite Senior Preferred Vote to not be treated as Additional Shares of Common.

(ii) **No Adjustment of Conversion Price.** No adjustment in the Conversion Price of a particular series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common unless the consideration per share (as determined pursuant to Section 4(h)) for an Additional Share of Common issued or deemed to be issued by the Company is less than the Conversion Price in effect on the date of, and immediately prior to such issue, for the Series H Preferred.

(iii) **Deemed Issue of Additional Shares of Common.** In the event the Company at any time or from time to time after the Filing Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities, the conversion or exchange of such Convertible Securities or, in the case of Options for Convertible Securities, the exercise of such Options and the conversion or exchange of the underlying securities, shall be deemed to have been issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date; provided, that in any such case in which shares are deemed to be issued:

(A) no further adjustment in the Conversion Price of any series of Preferred Stock shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock in connection with the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Company or in the number of shares of Common Stock issuable upon the exercise, conversion or exchange thereof (other than a change pursuant to the anti-dilution provisions of such Options or Convertible Securities such as this Section 4(f) or pursuant to any stock dividends, combinations, splits, recapitalizations and the like, such as pursuant to Section 4(i) through Section 4(m) hereof), the Conversion Price of each series of Preferred Stock and any subsequent adjustments based thereon shall be recomputed to reflect such change as if such change had been in effect as of the original issue thereof (or upon the occurrence of the record date with respect thereto);

(C) no readjustment pursuant to clause (B) above shall have the effect of increasing the Conversion Price of a series of Preferred Stock to an amount above the lower of (1) the Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (2) the Conversion Price that would have resulted from any other issuances of Additional Shares of Common and any other adjustments provided for herein between the original adjustment date and such readjustment date;

(D) upon the expiration or termination of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price of each Series of Preferred Stock computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon shall, upon such expiration or termination, be recomputed as if:

(1) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Company for the issue of such exercised Options plus the consideration actually received by the Company upon such exercise or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Company upon such conversion or exchange, and

(2) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Company for the Additional Shares of Common deemed to have been then issued was the consideration actually received by the Company for the issue of such exercised Options, plus the consideration deemed to have been received by the Company (determined pursuant to Section 4(h)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised; and

(E) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be cancelled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this Section 4(f)(iii) as of the actual date of their issuance.

For purposes of this Section 4, **"Convertible Securities"** shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock and **"Options"** shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(g) **Adjustment of Conversion Price Upon Issuance of Additional Shares of Common.** In the event this Company shall at any time after the Filing Date issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to Section 4(f)(iii)) without consideration or for a consideration per share less than the Conversion Price of the Series H Preferred in effect on the date of and immediately prior to such issue, then the Conversion Price of each affected series of Preferred Stock shall be reduced, as of the opening of business on the date of such issue or sale, to a price (calculated to the nearest tenth of one cent) determined by multiplying such Conversion Price by a fraction, (x) the numerator of which shall be (A) the number of shares of Common Stock deemed outstanding immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the aggregate consideration received by the Company for the total number of Additional Shares of Common so issued would purchase at such Conversion Price, and (y) the denominator of which shall be the number of shares of Common Stock deemed outstanding immediately prior to such issue or sale plus the total number of Additional Shares of Common so issued. For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock actually outstanding, (B) the number of shares of Common Stock into which the then outstanding shares of the Preferred Stock could be converted if fully converted on the day immediately preceding the given date, and (C) the number of shares of Common Stock which could be obtained through the exercise or conversion of all other rights, options and convertible securities outstanding on the day immediately preceding the given date. Notwithstanding the foregoing, the Conversion Price shall not be reduced at such time if the amount of such reduction would be less than $0.0001, but any such amount shall be carried forward, and a reduction will be made with respect to such amount at the time of, and together with, any subsequent reduction which, together with such amount and any other amounts so carried forward, equal $0.0001 or more in the aggregate.

(h) **Determination of Consideration.** For purposes of this Section 4(h), the consideration received by the Company for the issue (or deemed issue) of any Additional Shares of Common shall be computed as follows:

(i) **Cash and Property.** Such consideration shall:

(A) to the extent it consists of cash, be computed at the net amount of cash received by the Company after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale but without deduction of any expenses payable by the Company;

(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, Convertible Securities or rights or options to purchase either Additional Shares of Common or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company 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, Convertible Securities or rights or options.

(ii) **Options and Convertible Securities.** The consideration per share received by the Company for Additional Shares of Common deemed to have been issued pursuant to Section 4(f)(iii) shall be determined by dividing:

(x) the total amount, if any, received or receivable by the Company as consideration for the issue of such Options or Convertible Securities, plus the minimum

aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Company upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

(y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

(i) **Adjustments for Subdivisions or Combinations of Common Stock.** In the event the outstanding shares of Common Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shades of Common Stock, the Conversion Price of each series of Preferred Stock in effect immediately prior to such subdivision shall, at the close of business on the date of the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Common Stock, the Conversion Prices in effect immediately prior to such combination shall, at the close of business on the date of the effectiveness of such combination, be proportionately increased.

(j) **Adjustments for Subdivisions or Combinations of Preferred Stock.** In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Preferred Stock, the dividend rate, Original Issue Price and liquidation preference of the affected series of Preferred Stock in effect immediately prior to such subdivision shall, at the close of business on the date of the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Preferred Stock, the dividend rate, Original Issue Price and liquidation preference of the affected series of Preferred Stock in effect immediately prior to such combination shall, at the close of business on the date of the effectiveness of such combination, be proportionately increased.

(k) **Adjustments for Reclassification, Exchange and Substitution.** Subject to Section 3, if the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by recapitalization, reclassification or otherwise (other than an Acquisition or Asset Transfer as defined in Section 3(f) resulting in a deemed liquidation under Section 3 hereof, or a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 4). then, in any such event, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive each holder of such Preferred Stock shall have the right thereafter to convert such shares of Preferred Stock into a number of shares of such other class or classes of stock which a holder of the number of shares of Common Stock deliverable upon conversion of such series of Preferred Stock immediately before that change would have been entitled to receive in such reorganization or reclassification, all subject to further adjustment as provided herein with respect to such other shares.

(l) **Adjustments for Reorganizations, Mergers or Consolidations.** If at any time or from time to time, there is a capital reorganization of the Common Stock or the merger or consolidation of the Company with or into another corporation or another entity or person (other than an Acquisition or Asset Transfer as defined in Section 3(f) resulting in a deemed liquidation under Section 3 hereof, or a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares

provided for elsewhere in this Section 4), as a part of such transaction, provision shall be made so that each share of Preferred Stock shall be convertible into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock issuable upon conversion of one share of the Preferred Stock, immediately prior to such transaction would have been entitled pursuant to such transaction. 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 the Preferred Stock after such transaction to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares issuable upon conversion of the Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable. For the avoidance of doubt, nothing in this Section ARTICLE IVC.4(1) shall be construed as preventing the holders of Preferred Stock from seeking any dissenters' rights to which they are otherwise entitled under the Code in connection with a merger triggering an adjustment hereunder, nor shall this Section 4(1) be deemed conclusive evidence of the fair value of the shares of Preferred Stock in any such dissenters' rights proceeding.

(m) **Adjustments for Dividends and Distributions.** If the Company at any time or from time to time, makes, or fixes a record date for the determination of holder of Common Stock entitled to receive a dividend or other distribution payable in Additional Shares of Common, in each such event the Conversion Price then in effect of each affected series of Preferred Stock 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 applicable Conversion Price for such series then in effect by a fraction (i) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (ii) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or 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 Conversion Price for each series of Preferred Stock shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price for each affected series of Preferred Stock shall be adjusted pursuant to this Section 4(m) to reflect the actual payment of such dividend or distribution.

(n) **Certificate as to Adjustments.** Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Section 4, the Company at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The certificate shall include a statement of (i) the consideration received or deemed to be received by the Company for any Additional Shares of Common issued or sold or deemed to have been issued or sold, (ii) the Conversion Price of such series, as applicable, at the time in effect, (iii) the number of Additional Shares of Common and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the Preferred Stock.

(o) **Waiver of Adjustment of Conversion Price.** Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived by the consent or vote of the holder of the majority of the outstanding shares of such affected series either before or after the issuance causing the adjustment. Any such waiver shall bind all future holders of shares of such series of Preferred Stock.

(p) **Notices of Record Date.** Upon:

(i) 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; or

(ii) any Acquisition (as defined in Section 3(f)) or other capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer (as defined in Section 3(f)), or any voluntary or involuntary dissolution, liquidation or winding up of the Company;

then, in connection with each such event, this Company shall send to the holders of the Preferred Stock at least ten (10) business days prior to the record date specified therein (or such shorter period approved by the Requisite Senior Preferred Vote, 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.

Such written notice shall be given by first class mail (or express courier), postage prepaid, addressed to the holder of Preferred Stock at the address for each such holder as shown on the books of the Company, by electronic transmission in a manner permitted by Section 20 of the Code, or by some other manner then permitted by the Code.

(q) **Reservation of Stock Issuable Upon Conversion.** The Company 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 Company 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, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate of Incorporation.

(r) **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, facsimile or electronic mail if sent during normal business hours of the recipient; if not, then on the next business day (provided, that the Company complies with Section 20 of the Code and 15 U.S.C. § 7001(c)(1) prior to sending the telex, facsimile or electronic mail), (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 Company.

(s) **Payment of Taxes.** The Company 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 the 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 the Series Preferred so converted were registered.

(t) **No Dilution or Impairment**. Without the consent of the holders of the then outstanding Series Preferred (voting together as a single class), the Company shall not amend this A Certificate of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or take any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, and shall at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Series Preferred against dilution or other impairment.

5. NO REISSUANCE OF SERIES PREFERRED. No share or shares of the Series Preferred acquired by the Company by reason of purchase, conversion or otherwise shall be reissued; and in addition, the Certificate of Incorporation of the Company shall be appropriately amended to effect the corresponding reduction in the Company's authorized stock.

A. 1 of the authorized shares of Common Stock is hereby designated "Series G Common Stock," which share shall be non-voting and have a par value of $0.001 per share.

B. 1 of the authorized shares of Common Stock is hereby designated "Series W Common Stock," which share shall be voting and have a par value of $0.001 per share.

ARTICLE V

Notwithstanding anything to the contrary set forth in this Certificate of Incorporation, the following shall apply; provided, however, that in the event that the Warrant (as defined below) is terminated in accordance with Article 11 thereof, this ARTICLE V shall terminate and be of no further force and effect *ab initio:*

A. All shares of Common Stock and Preferred Stock, other than the Series G Common Stock and the Series W Common Stock, shall be subject to redemption upon and in accordance with this ARTICLE V any such redemption, a **"Special Redemptions").**

B. Definitions. Capitalized terms used but not defined in this ARTICLE V have the respective meanings ascribed to them in the Warrant The following capitalized terms have the following meanings for purposes of this ARTICLE V:

1. **"Aggregate Closing In-the-Money Option Exercise Price"** means the aggregate exercise price of all Closing In-the-Money Options.

2. **"Aggregate Closing In-the-Money Warrant Exercise Price"** means the aggregate exercise price of all Closing In-the-Money Warrants.

3. **"Common Stock Equivalents"** means, without duplication: (a) with respect to the Initial Redemption Payment: (i) the shares of Company Common Stock issued and outstanding immediately prior to the Redemption Time; (ii) the shares of Company Common Stock into which each issued and outstanding share of Company Capital Stock is convertible immediately prior to the Redemption Time; (iii) the shares of Company Common Stock issuable upon the exercise in full of all unexercised Closing In-the-Money Options outstanding immediately prior to the Redemption Time; and (iv) the shares of Company Capital Stock issuable upon the exercise in full of all unexercised Closing In-the-Money Warrants

outstanding immediately prior to the Redemption Time; and (b) with respect to each Future Payment: (i) the shares of Company Common Stock issued and outstanding immediately prior to the Redemption Time; (ii) the shares of Company Common Stock into which each issued and outstanding share of Company Capital Stock is convertible immediately prior to the Redemption Time; (iii) the shares of Company Common Stock issuable upon the exercise in full of all unexercised Closing In-the-Money Options and then Future Payment In-the-Money Options, in each case, outstanding immediately prior to the Redemption Time; and (iv) the shares of Company Capital Stock issuable upon the exercise in full of all unexercised Closing In-the-Money Warrants and then Future Payment In-the-Money Warrants, in each case, outstanding immediately prior to the Redemption Time.

4. **"Future Payment Aggregate Option Exercise Price"** means, with respect to any Future Payment, the aggregate exercise price of all Future Payment In-the-Money Options, if any.

5. **"Future Payment Aggregate Warrant Exercise Price"** means, with respect to any Future Payment, the aggregate exercise price of all Future Payment In-the-Money Warrants, if any.

6. **"Future Payment Per Share Redemption Payment"** means, with respect to any Future Payment, the quotient obtained by dividing (a) the sum of (i) the amount of such Future Payment, plus (ii) any Future Payment Aggregate Option Exercise Price and/or any Future Payment Aggregate Warrant Exercise Price, in either case, applicable to such Future Payment, by (b) the Common Stock Equivalents calculated as of the time of such Future Payment.

7. **"Initial Per Share Redemption Payment"** means with respect to the Initial Redemption Payment, the quotient obtained by dividing (a) the sum of (i) the amount of the Initial Redemption Payment, plus (ii) the Aggregate Closing In-the-Money Option Exercise Price, plus (iii) the Aggregate Closing In-the-Money Warrant Exercise Price, by (b) the Common Stock Equivalents with respect to the Initial Redemption Payment.

8. **"Majority of Holders"** means, as of the applicable measurement date. Company Equityholders holding at least a majority of the Common Stock Equivalents existing as of such applicable measurement date.

9. **"Per Share Redemption Payments**" means, collectively, (a) the Initial Per Share Redemption Payment, and (b) the Future Payment Per Share Redemption Payments, if any.

10. **"Redemption Payments"** means, collectively, (a) the Initial Redemption Payment, and (b) the Future Payments, if any.

11. **"Warrant"** means that certain Warrant to Purchase Series W Common Stock, dated October 12, 2017, as amended.

12. **"Warrant Holder"** means the holder of the Warrant, or its successors or permitted assigns.

C. Automatic Redemption. In connection with the Closing and the Special Redemption, all then-outstanding (i) shares of Company Capital Stock (other than the Series G Common Stock and Series W Common Stock), (ii) Company Options, and (iii) Company Warrants, in each case shall be redeemed, converted, terminated and cancelled, as applicable, in accordance with the terms of this Section C. Unless otherwise indicated, references to "sections" or "subsections" in this Section C of this ARTICLE V refer to sections and subsections of Section C of this ARTICLE V.

1. Redemption of Capital Stock. Automatically as a result of, and immediately following, the Closing (the "**Redemption Time**"), and without the requirement for any action on the part of any Company Equityholder, each share of Company Capital Stock (other than, for the avoidance of doubt, the Series G Common Stock and Series W Common Stock) outstanding as of immediately prior to the Redemption Time shall (a) be mandatorily redeemed, cancelled, retired and shall cease to exist, and (b) be converted into the right to receive the Per Share Redemption Payments in cash with respect to each such share of Company Capital Stock. Each certificate that immediately prior to the Redemption Time represented any such shares of Company Capital Stock shall cease to create any rights with respect thereto, except the right to receive the applicable Redemption Payments, without interest.

2. Conversion and Cancellation of Company Options and Company Warrants.

(a) Each Closing In-the-Money Option outstanding as of immediately prior to the Redemption Time shall be cancelled at the Redemption Time and shall be converted automatically into the right to receive, with respect to each share of Company Capital Stock subject thereto, an amount in cash equal to (i) the Initial Per Share Redemption Payment, less the applicable exercise price of such Closing In-the-Money Option, and (ii) any and all Future Payment Per Share Redemption Payments.

(b) Each Future Payment In-the-Money Option outstanding as of immediately prior to the Redemption Time shall be cancelled at the Redemption Time and shall be converted automatically into the right to receive, with respect to each share of Company Capital Stock subject thereto, an amount in cash equal to (i) the applicable Future Payment Per Share Redemption Payment pursuant to which such Future Payment In-the-Money Option became a Future Payment-In-the-Money Option, plus any Per Share Redemption Payments) prior to such applicable Future Payment, less the applicable exercise price of such Future Payment In-the-Money Option, and (ii) any and all additional Future Payment Per Share Redemption Payments.

(c) Each Closing In-the-Money Warrant outstanding as of immediately prior to the Redemption Time shall be cancelled at the Redemption Time and shall be converted automatically into the right to receive, with respect to each share of Company Capital Stock subject thereto, an amount in cash equal to (i) the Initial Per Share Redemption Payment, less the applicable exercise price of such Closing In-the-Money Warrant, and (ii) any and all Future Payment Per Share Redemption Payments.

(d) Each Future Payment In-the-Money Warrant outstanding as of immediately prior to the Redemption Time shall be cancelled at the Redemption Time and shall be converted automatically into the right, with respect to each share of Company Capital Stock subject thereto, to receive an amount in cash equal to (i) the applicable Future Payment Per Share Redemption Payment pursuant to which such Future Payment In-the-Money Warrant became a Future Payment-In-the-Money Warrant, plus any Per Share Redemption Payment(s) prior to such applicable Future Payment, less the applicable exercise price of such Future Payment In-the-Money Warrant, and (ii) any and all additional Future Payment Per Share Redemption Payments.

(e) Any payments of any Future Payment Per Share Redemption Payments with respect to Company Options will be treated and reported for all tax purposes as being subject to a substantial risk of forfeiture within the meaning of Treasury Regulation Section 1.409A-1(b)(4) until such amounts become due and payable hereunder and shall be paid to the holders of Company Options entitled to such payments under Section 2(a) and Section 2(b) within the short-term deferral period within the meaning of Treasury Regulation Section 1.409A-1 (b)(4)(b)(4).

(f) Notwithstanding anything contained herein or in any other document, all Company Options that are outstanding and unvested immediately prior to the Closing shall accelerate and

become fully vested as of immediately prior to the Closing, without any further action required to be taken by any party.

3. Notifications Regarding Warrant and Redemption.

(a) Within two (2) Business Days following the Company's receipt of a Notice of Exercise, the Company shall send a copy of such Notice of Exercise to the Holder Representative.

(b) At least three (3) Business Days prior to the Redemption Time, the Company shall send written notice of the Closing and the Special Redemption (the "**Redemption Notice**") to the Holder Representative, which notice shall specify the Redemption Time.

4. Holder Representative; Company Equityholder Register.

(a) Holder Representative. The Company Equityholders that represent a Majority of Holders have appointed Andy Corley as the initial sole, exclusive, true and lawful agent, representative and attorney-in-fact of the Company Equityholders (the "**Holder Representative**") with respect to any and all matters relating to, arising out of, or in connection with, the Special Redemption, the Warrant and the Escrow Agreement from and after the Closing until the date when all obligations under the Warrant and the Escrow Agreement have been discharged (including all indemnification obligations thereto). The Majority of Holders may, from time to time upon written notice to the Holder Representative and prior written consent of the Company, (i) remove any Holder Representative (including any appointed by the Company as provided below) or (ii) appoint a new Holder Representative to fill any vacancy created by the death, incapacitation, resignation or removal of any Holder Representative. If the Majority of Holders is required to but has not appointed a successor Holder Representative to fill any vacancy within thirty (30) calendar days from written notice from the Company to a Majority of Holders and a request by the Company to appoint a successor Holder Representative, the Company shall have the right to appoint a Holder Representative to fill any such vacancy; provided, however, that a Majority of Holders shall thereafter retain the right to remove the Holder Representative or appoint a new Holder Representative pursuant to this Section 4(a). A copy of any appointment by the Majority of Holders of any successor Holder Representative shall be provided to the Company promptly after it shall have been effected. Each successor Holder Representative shall have all of the power, authority, rights and privileges conferred by this Section 4 upon the original Holder Representative, and the term "Holder Representative" as used herein shall be deemed to include any successor Holder Representative.

(b) Authority. The Holder Representative shall be authorized, on behalf of the Company Equityholders, (i) to acknowledge and consent to the occurrence of any Milestone, (ii) to resolve any disputes related to the occurrence of any Milestone or the payment of any Future Payment and to comply with Court Orders and awards of arbitrators related thereto, (iii) to discuss, negotiate, resolve and fully and finally settle on behalf of the Company Equityholders any claims for indemnification under the Warrant, including the authorization to comply with Court Orders with respect to any such claim for indemnification, (iv) to take any action, including litigating, defending or enforcing any actions, and to make, deliver and sign any certificate, notice, consent or instrument required or permitted to be made or delivered under the Warrant or the Escrow Agreement (each, an "**Instrument**") or under the documents referred to in the Warrant or the Escrow Agreement which the Holder Representative determines in such Holder Representative's discretion to be necessary, appropriate or desirable in connection therewith (provided, that if any individual Company Equityholder is named in such litigation, such Company Equityholder shall have the right to tender defense), (v)to hire or retain, at the sole expense of the Company Equityholders (including through use of the Representative Set-Aside or offset against, or recovery of, Future Payments), such counsel, investment bankers, accountants, representatives and other professional advisors as it determines in its sole and absolute discretion to be necessary, advisable or appropriate in order

to carry out and perform its rights and obligations hereunder, (vi) to receive all documents, certificates and notices and make all determinations on behalf of the Company Equityholders required under the Warrant and the Escrow Agreement, (vii) to review the Closing Statement and to resolve any disputes related to such Closing Statement as specified in Section 4.5 of the Warrant, and (viii) to take all other actions to be taken by or on behalf of any Company Equityholder in connection herewith, and to do each and every act and exercise any and all rights which a Company Equityholder is, or the Company Equityholders collectively are, permitted or required to do or exercise under the Warrant or the Escrow Agreement. A decision, act, consent or instruction of the Holder Representative shall be final, binding and conclusive upon the Company Equityholders. Any party receiving an Instrument from the Holder Representative shall have the right to rely in good faith upon such Instrument, and to act in accordance with the Instrument without independent investigation.

(c) No Liability of Holder Representative, the Warrant Holder or the Company. Neither the Holder Representative (nor any of the directors, officers, agents or employees of Holder Representative, if applicable) shall be liable to any Company Equityholder for any error of judgment, or any action taken, suffered or omitted to be taken in connection with the Holder Representative's services pursuant to the Warrant and the Escrow Agreement, except in the case of liability directly arising from the Holder Representative's fraud, gross negligence or willful misconduct. The Holder Representative may consult with legal counsel, independent public accountants and other experts selected by the Holder Representative and shall not be liable to any Company Equityholder for any action taken or omitted to be taken in good faith in accordance with the advice of such counsel, accountants or experts. As to any matters not expressly provided for in this Section 4, the Holder Representative shall not be required to exercise any discretion or take any action. Neither the Company nor the Warrant Holder nor any of their Affiliates shall have any liability to any of the Company Equityholders or otherwise arising out of the acts or omissions of the Holder Representative or any disputes among the Company Equityholders or between the Company Equityholders and the Holder Representative. Each of the Warrant Holder and the Company may rely entirely on its dealings with, and notices to and from, the Holder Representative to satisfy any obligations it may have under the Warrant or otherwise to the Company or the Company Equityholders, as applicable.

(d) Register; Transfers.

(i) The Company will maintain, and make available to the Holder Representative a register containing the name and address of all of the Company Equityholders who held Company Capital Stock, Company Options or Company Warrants as of immediately prior to the Redemption Time and whose shares of Company Capital Stock were redeemed in accordance with Section 1, Company Options that were converted, terminated and cancelled in accordance with Section 2(a) or Section 2(b), or Company Warrants that were converted, terminated and cancelled in accordance with Section 2(c) or Section 2(d), (collectively, the **"Redeemed Equityholders").** Each Redeemed Equityholder may change its address as shown on such register by written notice to the Holder Representative requesting such change. Subject to the other provisions of this Section 4(d), the Redeemed Equityholder's rights to payment upon a Special Redemption shall be transferable, in whole or in part, upon providing to the Holder Representative a properly executed assignment in form and substance reasonably acceptable to the Holder Representative, in consultation with the Company. Upon any such address change or assignment, the Holder Representative shall promptly (i) update (or cause to be updated) the Distribution Schedule and (ii) to the extent applicable, take all actions with respect to the Paying Agent and Escrow Agent as are necessary to reflect such address change or assignment.

(ii) Notwithstanding the foregoing, after the Redemption Time, no Redeemed Equityholder may sell, exchange, transfer or otherwise dispose of his, her or its right to receive any portion of any Redemption Payments that becomes due and payable in accordance with Section 2(b or

Section 2, as applicable, other than (A) if such Redeemed Equityholder is an individual, (1) by the Applicable Laws of descent and distribution or succession, (2) such individual's spouse, descendants and siblings and descendants of such individual's siblings, (3) to one or more trusts where all of the beneficiaries of which are such individual and/or such individual's spouse, descendants and siblings and descendants of such individual's siblings, (4) to one or more family limited partnerships or family limited liability companies where all of the equity interests of which are and in the future shall be owned by such individual and/or such individual's spouse, descendants and siblings and descendants of such individual's siblings, or (5) to a Person whose primary business is the monetization of future payment streams, such as royalties, or (B) if such Redeemed Equityholder is an entity, (1) to an affiliate of such Redeemed Equityholder, (2) to a non-affiliate of such Redeemed Equityholder in connection with the sale of all or substantially all of the portfolio assets of such Redeemed Equityholder, a transfer or sale of its right to receive any portion of the Redemption Payments, if any, in connection with the winding up or dissolution of such Redeemed Equityholder or a distribution to partners or other equity holders of such Redeemed Equityholder, or (3) to a Person whose primary business is the monetization of future payment streams, such as royalties. Any transfer in violation of this Section 4(d) shall be null and void and shall not be recognized by the Company, the Holder Representative and/or the Paying Agent.

(e) Indemnity; Costs and Expenses.

(i) The Holder Representative (and its directors, officers, employees, stockholders, agents and representatives, if applicable) shall be indemnified and held harmless by the Company Equityholders on a several basis (in accordance with each such Company Equityholder's respective Pro Rata Portion), and not on a joint and several basis, against any loss, damage, cost. Liability, claim, penalty, fine, forfeiture, action, fee, cost or expense (including the reasonable fees and expenses of counsel and experts and their staffs and all expense of document location, duplication and shipment) (collectively, **"Representative Losses")** arising out of or in connection with the acceptance, performance or administration of the Holder Representative's duties hereunder, in each case as such Representative Loss is suffered or incurred. All Representative Losses shall be paid to the Holder Representative as follows:

(A) *first*, by recourse from the Representative Set-Aside; and

(B) *then*, if such amounts held in the Representative Set-Aside are insufficient to satisfy such Representative Losses, then, in the Holder Representative's reasonable discretion, either (1) by recourse from any Future Payments distributable to the Company Equityholders at such time as such amounts would otherwise be distributable to the Company Equityholders or (2) by recourse directly from the Company Equityholders.

(ii) Notwithstanding anything in this Section 4(e), in the event that any Representative Loss is finally adjudicated to have been primarily caused by the fraud, gross negligence or willful misconduct of the Holder Representative, any amounts paid to the Holder Representative (whether from the Representative Set-Aside, withholding of Future Payments or otherwise) with respect to such Representative Loss attributable to such fraud, gross negligence or willful conduct shall be deposited in the Representative Set-Aside Account for distribution to the Company Equityholders upon release of the Representative Set-Aside Account in accordance with the terms hereunder.

5. Escheat. None of the Company, the Warrant Holder or Holder Representative shall be liable to any Company Equityholder for any portion of the Redemption Payment delivered to a public official pursuant to any applicable abandoned property escheat or similar law.

6. Close of Stock Transfer Books. At the Redemption Time, the stock transfer books of the Company shall be closed and thereafter there shall be no further registration of transfers of shares of

Company Capital Stock on the records of the Company, other than the Warrant Share. From and after the Redemption Time, all of the shares of Company Capital Stock shall be redeemed, and no shares of Company Capital Stock shall be deemed to be outstanding other than the Warrant Share, and the holders of shares of Company Capital Stock immediately prior to the Redemption Time shall cease to have any rights with respect to such shares, except for the rights expressly provided herein (including the right to any Future Payments) or by Applicable Law.

7. Withholding. The Company and the Paying Agent (acting on behalf of the Holder Representative), as applicable, shall be entitled to deduct and withhold from any payments, made pursuant to the Certificate of Incorporation or otherwise, any withholding Taxes or other amounts determined by the Company in its discretion to be required under the Internal Revenue Code of 1986, as amended, or any Applicable Law to be deducted and withheld. To the extent that any such amounts are so deducted or withheld, such amounts will be treated for all purposes of the Certificate of Incorporation as having been paid to the Person in respect of which such deduction and withholding was made.

ARTICLE VI

The Board of Directors of the Company is expressly authorized to make, alter or repeal Bylaws of the Company except as required by applicable law.

ARTICLE VII

Election of directors need not be by written ballot unless a stockholder demands election by ballot at a meeting and before the voting begins, or unless otherwise provided in the Bylaws of the Company.

ARTICLE VIII

A. To the fullest extent permitted by law, a director of the Company shall not be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this ARTICLE VIII to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Company shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

B. Any repeal or modification of the foregoing provisions of this ARTICLE VIII by the stockholders of the Company shall not adversely affect any right or protection of a director of the Company existing at the time of, or increase the liability of any director of the Company with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

ARTICLE IX

A. To the fullest extent permitted by applicable law, the Company is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Company (and any other persons to which General Corporation Law permits the Company to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law.

B. Any amendment, repeal or modification of the foregoing provisions of this Article IX shall not (a) adversely affect any right or protection of any director, officer or other agent of the Company existing at the time of such amendment, repeal or modification or (b) increase the liability of any director

of the Company with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal or modification.

ARTICLE X

The name and mailing address of the incorporator are as follows:

Ron Kurtz
100 Columbia Ste 120
Aliso Viejo, CA 92656

* * *

IN WITNESS WHEREOF, this Certificate of Incorporation has been executed by the incorporator of this corporation on this 1st day of July, 2021.

/s/ Ron Kurtz
Ron Kurtz
Incorporator

Exhibit 3.2

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF

RXSIGHT, INC.

a Delaware corporation

RxSight, Inc., a corporation organized and existing under the laws of the State of Delaware (the "**Company**"), does hereby certify as follows:

A. The original Certificate of Incorporation of the Company was filed with the Secretary of State of the State of Delaware on July 1, 2021.

B. This Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware (the "**DGCL**") by the Board of Directors of the Company (the "**Board of Directors**") and has been duly approved by the written consent of the stockholders of the Company in accordance with Section 228 of the DGCL.

C. The text of the Amended and Restated Certificate of Incorporation is hereby amended and restated in its entirety to read as follows:

ARTICLE I

The name of the Company is RxSight, Inc.

ARTICLE II

The address of the Company's registered office in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE III

The nature of the business or purposes to be conducted or promoted by the Company is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

ARTICLE IV

Section 1. This Company is authorized to issue two classes of stock, to be designated, respectively, Common Stock and Preferred Stock. The total number of shares of stock that the Company shall have authority to issue is 1,000,000,000 shares, of which 900,000,000 shares are Common Stock, $0.001 par value per share, and 100,000,000 shares are Preferred Stock, $0.001 par value per share.

Section 2. Each share of Common Stock outstanding as of the applicable record date shall entitle the holder thereof to one (1) vote on any matter submitted to a vote at a meeting of stockholders.

Section 3. The Preferred Stock may be issued from time to time in one or more series pursuant to a resolution or resolutions providing for such issue duly adopted by the Board of Directors (authority to do so being hereby expressly vested in the Board of Directors). The Board of Directors is further authorized, subject to limitations prescribed by law, to fix by resolution or resolutions the designations, powers, preferences and rights, and the qualifications, limitations or restrictions thereof, of any series of Preferred Stock, including, without limitation, authority to fix by resolution or resolutions the dividend rights,

dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), redemption price or prices, and liquidation preferences of any such series, and the number of shares constituting any such series and the designation thereof, or any of the foregoing. The Board of Directors is further authorized to increase (but not above the total number of authorized shares of the class) or decrease (but not below the number of shares of any such series then outstanding) the number of shares of any series, subject to the powers, preferences and rights, and the qualifications, limitations and restrictions thereof stated in this Amended and Restated Certificate of Incorporation or the resolution of the Board of Directors originally fixing the number of shares of such series. Except as may be otherwise specified by the terms of any series of Preferred Stock, if the number of shares of any series of Preferred Stock is so decreased, then the Company shall take all such steps as are necessary to cause the shares constituting such decrease to resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

Section 4. Except as otherwise required by law or provided in this Amended and Restated Certificate of Incorporation, holders of Common Stock shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation (including any certificate of designation filed with respect to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon by law or pursuant to this Amended and Restated Certificate of Incorporation (including any certificate of designation filed with respect to any series of Preferred Stock).

Section 5. The number of authorized shares of Preferred Stock or Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of all the then-outstanding shares of capital stock of the Company entitled to vote thereon, without a separate vote of the holders of the class or classes the number of authorized shares of which are being increased or decreased, unless a vote of any holders of one or more series of Preferred Stock is required pursuant to the terms of any certificate of designation relating to any series of Preferred Stock, irrespective of the provisions of Section 242(b)(2) of the DGCL.

ARTICLE V

Section 1. Subject to the rights of holders of Preferred Stock, the number of directors that constitutes the entire Board of Directors of the Company shall be fixed only by resolution of the Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board. For the purposes of this Amended and Restated Certificate of Incorporation, the term "**Whole Board**" shall mean the total number of authorized directorships whether or not there exist any vacancies or other unfilled seats in previously authorized directorships. At each annual meeting of stockholders, directors of the Company shall be elected to hold office until the expiration of the term for which they are elected and until their successors have been duly elected and qualified or until their earlier resignation or removal; except that if any such meeting shall not be so held, such election shall take place at a stockholders' meeting called and held in accordance with the DGCL.

Section 2. From and after the effectiveness of this Amended and Restated Certificate of Incorporation, the directors of the Company (other than any who may be elected by holders of Preferred Stock under specified circumstances) shall be divided into three classes as nearly equal in size as is practicable, hereby designated Class I, Class II and Class III. Directors already in office shall be assigned to each class at the time such classification becomes effective in accordance with a resolution or resolutions adopted by the Board of Directors. At the first annual meeting of stockholders following the date hereof, the term of office of the Class I directors shall expire and Class I directors shall be elected for a full term of three years. At the second annual meeting of stockholders following the date hereof, the term of office

of the Class II directors shall expire and Class II directors shall be elected for a full term of three years. At the third annual meeting of stockholders following the date hereof, the term of office of the Class III directors shall expire and Class III directors shall be elected for a full term of three years. At each succeeding annual meeting of stockholders, directors shall be elected for a full term of three years to succeed the directors of the class whose terms expire at such annual meeting. If the number of directors is changed, any newly created directorships or decrease in directorships shall be so apportioned hereafter among the classes as to make all classes as nearly equal in number as is practicable, *provided that* no decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

ARTICLE VI

Section 1. From and after the effectiveness of this Amended and Restated Certificate of Incorporation, only for so long as the Board of Directors is classified and subject to the rights of holders of Preferred Stock, any director or the entire Board of Directors may be removed from office at any time, but only for cause, and only by the affirmative vote of the holders of at least a majority of the voting power of the issued and outstanding capital stock of the Company entitled to vote in the election of directors.

Section 2. Except as otherwise provided for or fixed by or pursuant to the provisions of ARTICLE IV hereof in relation to the rights of the holders of Preferred Stock to elect directors under specified circumstances or except as otherwise provided by resolution of a majority of the Whole Board, newly created directorships resulting from any increase in the number of directors, created in accordance with the Bylaws of the Company, and any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other cause shall be filled only by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining director, and not by the stockholders. A person so elected by the Board of Directors to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen until his or her successor shall have been duly elected and qualified, or until such director's earlier death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

ARTICLE VII

Section 1. The Company is to have perpetual existence.

Section 2. The business and affairs of the Company shall be managed by or under the direction of the Board of Directors. In addition to the powers and authority expressly conferred upon them by statute or by this Amended and Restated Certificate of Incorporation or the Bylaws of the Company, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Company.

Section 3. In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to adopt, alter, amend or repeal the Bylaws of the Company. The affirmative vote of at least a majority of the Whole Board shall be required in order for the Board of Directors to adopt, amend, alter or repeal the Company's Bylaws. The Company's Bylaws may also be adopted, amended, altered or repealed by the stockholders of the Company. Notwithstanding the above or any other provision of this Amended and Restated Certificate of Incorporation, the Bylaws of the Company may not be amended, altered or repealed except in accordance with the provisions of the Bylaws relating to amendments to the Bylaws. No Bylaw hereafter legally adopted, amended, altered or repealed shall invalidate any prior act of the directors or officers of the Company that would have been valid if such Bylaw had not been adopted, amended, altered or repealed.

Section 4. The election of directors need not be by written ballot unless the Bylaws of the Company shall so provide.

Section 5. No stockholder will be permitted to cumulate votes at any election of directors.

ARTICLE VIII

Section 1. From and after the closing of a firm commitment underwritten initial public offering of securities of the Company pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, and subject to the rights of holders of Preferred Stock, any action required or permitted to be taken by the stockholders of the Company must be effected at a duly called annual or special meeting of stockholders of the Company and may not be effected by any consent in writing by such stockholders.

Section 2. Subject to the terms of any series of Preferred Stock, special meetings of stockholders of the Company may be called only by the Chairperson of the Board of Directors, the Chief Executive Officer, the President or the Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board, but a special meeting may not be called by any other person or persons and any power of stockholders to call a special meeting of stockholders is specifically denied. Only such business shall be considered at a special meeting of stockholders as shall have been stated in the notice for such meeting.

Section 3. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Company shall be given in the manner and to the extent provided in the Bylaws of the Company.

ARTICLE IX

Section 1. To the fullest extent permitted by the DGCL as the same exists or as may hereafter be amended from time to time, a director of the Company shall not be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Company shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

Section 2. Subject to any provisions in the Bylaws of the Company related to indemnification of directors of the Company, the Company shall indemnify, to the fullest extent permitted by applicable law, any director of the Company who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**Proceeding**") by reason of the fact that he or she is or was a director of the Company or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any such Proceeding. The Company shall be required to indemnify a person in connection with a Proceeding (or part thereof) initiated by such person only if the Proceeding (or part thereof) was authorized by the Board of Directors.

Section 3. The Company shall have the power to indemnify, to the extent permitted by applicable law, any officer, employee or agent of the Company who was or is a party or is threatened to be made a party to any Proceeding by reason of the fact that he or she is or was a director, officer, employee or agent of the Company or is or was serving at the request of the Company as a director, officer, employee

or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any such Proceeding.

Section 4. Neither any amendment, nor repeal, nor elimination of any Section of this ARTICLE IX, nor the adoption of any provision of this Amended and Restated Certificate of Incorporation or the Bylaws of the Company inconsistent with this ARTICLE IX, shall eliminate or reduce the effect of this ARTICLE IX in respect of any matter occurring, or any Proceeding accruing or arising or that, but for this ARTICLE IX, would accrue or arise, prior to such amendment, repeal, elimination or adoption of an inconsistent provision.

ARTICLE X

Meetings of stockholders may be held within or outside of the State of Delaware, as the Bylaws may provide. The books of the Company may be kept (subject to any provision of applicable law) outside of the State of Delaware at such place or places or in such manner or manners as may be designated from time to time by the Board of Directors or in the Bylaws of the Company.

ARTICLE XI

The Company reserves the right to amend or repeal any provision contained in this Amended and Restated Certificate of Incorporation in the manner prescribed by the laws of the State of Delaware and all rights conferred upon stockholders are granted subject to this reservation; *provided, however*, that notwithstanding any other provision of this Amended and Restated Certificate of Incorporation or any provision of law that might otherwise permit a lesser vote, the Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board and the affirmative vote of 66 2/3% of the voting power of the then outstanding voting securities of the Company, voting together as a single class, shall be required for the amendment, repeal or modification of the provisions of Section 3 of ARTICLE IV, Section 2 of ARTICLE V, Section 1 of ARTICLE VI, Section 2 of ARTICLE VI, Section 5 of ARTICLE VII, Section 1 of ARTICLE VIII, Section 2 of ARTICLE VIII, Section 3 of ARTICLE VIII or this ARTICLE XI of this Amended and Restated Certificate of Incorporation.

IN WITNESS WHEREOF, RxSight, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by the President and Chief Executive Officer of the Company on this day of 2021.

By: _____
Ron Kurtz
Chief Executive Officer

Exhibit 3.3

BYLAWS OF

RXSIGHT, INC.

Adopted July 1, 2021

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BYLAWS

ARTICLE I — MEETINGS OF STOCKHOLDERS

1.1 ***Place of Meetings***. Meetings of stockholders of RxSight, Inc. (the "***Company***") shall be held at any place, within or outside the State of Delaware, determined by the Company's board of directors (the "***Board***"). The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the Delaware General Corporation Law (the "***DGCL***"). In the absence of any such designation or determination, stockholders' meetings shall be held at the Company's principal executive office. The Board may cancel, postpone, or reschedule any previously scheduled meeting of stockholders at any time, before or after the notice for such meeting has been given to the stockholders.

1.2 ***Annual Meeting***. Unless directors are elected by written consent in lieu of an annual meeting as permitted by Section 211(b) of the DGCL, an annual meeting of stockholders shall be held for the election of directors at such date and time as may be designated by resolution of the Board from time to time. Stockholders may, unless the certificate of incorporation otherwise provides, act by written consent to elect directors; *provided, however,* that, if such consent is less than unanimous, such action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action. Any other proper business may be transacted at the annual meeting.

1.3 ***Special Meeting***. A special meeting of the stockholders may be called at any time by the Board, Chairperson of the Board, Chief Executive Officer or President (in the absence of a Chief Executive Officer) or by one or more stockholders holding shares in the aggregate entitled to cast not less than ten percent (10%) of the votes at that meeting.If any person(s) other than the Board calls a special meeting, the request shall:

(ii) be in writing;

(iii) specify the time of such meeting and the general nature of the business proposed to be transacted; and

(iv) be delivered personally or sent by registered mail or by facsimile transmission to the Chairperson of the Board, the Chief Executive Officer, the President (in the absence of a Chief Executive Officer) or the Secretary of the Company.

The officer(s) receiving the request shall cause notice to be promptly given to the stockholders entitled to vote at such meeting, in accordance with these bylaws, that a meeting will be held at the time requested by the person or persons calling the meeting. No business may be transacted at such special meeting other than the business specified in such notice to stockholders. Nothing contained in this paragraph of this **section 1.11** shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board may be held.

1.4 ***Notice of Stockholders' Meetings***. Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for

determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Except as otherwise provided in the DGCL, the certificate of incorporation or these bylaws, the written notice of any meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting

1.5 ***Quorum***. Except as otherwise provided by law, the certificate of incorporation or these bylaws, at each meeting of stockholders the presence in person or by proxy of the holders of shares of stock having a majority of the votes which could be cast by the holders of all outstanding shares of stock entitled to vote at the meeting shall be necessary and sufficient to constitute a quorum. Where a separate vote by a class or series or classes or series is required, a majority of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter, except as otherwise provided by law, the certificate of incorporation or these bylaws. If, however, such quorum is not present or represented at any meeting of the stockholders, then either (i) the chairperson of the meeting, or (ii) the stockholders entitled to vote at the meeting, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time, in the manner provided in **section 1.6**, until a quorum is present or represented.

1.6 ***Adjourned Meeting; Notice***. Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Company may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix a new record date for notice of such adjourned meeting in accordance with Section 213(a) of the DGCL and **section 1.10** of these bylaws, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

1.7 ***Conduct of Business***. Meetings of stockholders shall be presided over by the Chairperson of the Board, if any, or in his or her absence by the Vice Chairperson of the Board, if any, or in the absence of the foregoing persons by the Chief Executive Officer, or in the absence of the foregoing persons by the President, or in the absence of the foregoing persons by a Vice President, or in the absence of the foregoing persons by a chairperson designated by the Board, or in the absence of such designation by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting. The chairperson of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of business, and shall have the power to adjourn the meeting to another place, if any, date or time, whether or not a quorum is present.

1.8 ***Voting***. The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of **section 1.10** of these bylaws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the DGCL. Except as may be otherwise provided in the

certificate of incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of capital stock held by such stockholder which has voting power upon the matter in question. Voting at meetings of stockholders need not be by written ballot and, unless otherwise required by law, need not be conducted by inspectors of election unless so determined by the holders of shares of stock having a majority of the votes which could be cast by the holders of all outstanding shares of stock entitled to vote thereon which are present in person or by proxy at such meeting. If authorized by the Board, such requirement of a written ballot shall be satisfied by a ballot submitted by electronic transmission (as defined in **section 7.2** of these bylaws), *provided* that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder or proxy holder.

Except as otherwise required by law, the certificate of incorporation or these bylaws, in all matters other than the election of directors, the affirmative vote of a majority of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders. Except as otherwise required by law, the certificate of incorporation or these bylaws, directors shall be elected by a plurality of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Where a separate vote by a class or series or classes or series is required, in all matters other than the election of directors, the affirmative vote of the majority of shares of such class or series or classes or series present in person or represented by proxy at the meeting shall be the act of such class or series or classes or series, except as otherwise provided by law, the certificate of incorporation or these bylaws.

1.9 ***Stockholder Action by Written Consent Without a Meeting***. Unless otherwise provided in the certificate of incorporation, any action required by the DGCL to be taken at any annual or special meeting of stockholders of a corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. No written consent shall be effective to take the corporate action referred to therein unless written consents signed by a sufficient number of holders to take action are delivered to the Company in the manner required by Section 228 of the DGCL within 60 days of the first date on which a written consent is so delivered to the Company. Any person executing a consent may provide, whether through instruction to an agent or otherwise, that such a consent will be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made, if evidence of such instruction or provision is provided to the Company. Unless otherwise provided, any such consent shall be revocable prior to its becoming effective.

An electronic transmission (as defined in **section 7.2**) consenting to an action to be taken and transmitted by a stockholder or proxy holder, or by a person or persons authorized to act for a stockholder or proxy holder, shall be deemed to be written and signed for purposes of this section, *provided* that any such electronic transmission sets forth or is delivered with information from which the Company can determine (i) that the electronic transmission was transmitted by the stockholder or proxy holder or by a person or persons authorized to act for the stockholder or proxy holder and (ii) the date on which such stockholder or proxy holder or authorized person or persons transmitted such electronic transmission.

In the event that the Board shall have instructed the officers of the Company to solicit the vote or written consent of the stockholders of the Company, an electronic transmission of a stockholder written consent given pursuant to such solicitation may be delivered to the Secretary or the President of the Company or to a person designated by the Secretary or the President. The Secretary or the President of

the Company or a designee of the Secretary or the President shall cause any such written consent by electronic transmission to be reproduced in paper form and inserted into the corporate records.

Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Company as provided in Section 228 of the DGCL. In the event that the action which is consented to is such as would have required the filing of a certificate under any provision of the DGCL, if such action had been voted on by stockholders at a meeting thereof, the certificate filed under such provision shall state, in lieu of any statement required by such provision concerning any vote of stockholders, that written consent has been given in accordance with Section 228 of the DGCL.

1.10 ***Record Dates***. In order that the Company may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided*, *however,* that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the provisions of Section 213 of the DGCL and this **section 1.10** at the adjourned meeting.

In order that the Company may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date has been fixed by the Board, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Company in accordance with applicable law. If no record date has been fixed by the Board and prior action by the Board is required by law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

In order that the Company may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to

such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

1.11 ***Proxies***. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL.

1.12 ***List of Stockholders Entitled to Vote***. The Company shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting; *provided, however,* if the record date for determining the stockholders entitled to vote is less than ten (10) days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Company shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting: (i) on a reasonably accessible electronic network, *provided* that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the Company's principal place of business. In the event that the Company determines to make the list available on an electronic network, the Company may take reasonable steps to ensure that such information is available only to stockholders of the Company. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then such list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

ARTICLE II — DIRECTORS

2.1 ***Powers***. The business and affairs of the Company shall be managed by or under the direction of the Board, except as may be otherwise provided in the DGCL or the certificate of incorporation.

2.2 ***Number of Directors***. The Board shall consist of one or more members, each of whom shall be a natural person. Unless the certificate of incorporation fixes the number of directors, the number of directors shall be determined from time to time by resolution of the Board. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

2.3 ***Election, Qualification and Term of Office of Directors***. Except as provided in **section 2.4** of these bylaws, and subject to **sections 1.8** and **1.9** of these bylaws, directors shall be elected at each annual meeting of stockholders. Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws. The certificate of incorporation or these bylaws may prescribe other qualifications for directors. Each director shall hold office until such director's successor is elected and qualified or until such director's earlier death, resignation or removal.

2.4 ***Resignation and Vacancies***. Any director may resign at any time upon notice given in writing or by electronic transmission to the Company. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation which is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. Unless otherwise provided in the certificate of incorporation or these bylaws, when one or more directors resign from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective.

Unless otherwise provided in the certificate of incorporation or these bylaws:

(i) Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

(ii) Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the certificate of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If at any time, by reason of death or resignation or other cause, the Company should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the certificate of incorporation or these bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the DGCL.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole Board (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least ten percent (10%) of the voting stock at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the DGCL as far as applicable.

A director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office and until such director's successor is elected and qualified, or until such director's earlier death, resignation or removal.

2.5 ***Place of Meetings; Meetings by Telephone***. The Board may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the Board, or any committee designated by the Board or any subcommittee, may participate in a meeting of the Board, or any such committee or subcommittee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

2.6 ***Conduct of Business***. Meetings of the Board shall be presided over by the Chairperson of the Board, if any, or in his or her absence by the Vice Chairperson of the Board, if any, or in the absence of the foregoing persons by a chairperson designated by the Board, or in the absence of such designation by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

2.7 ***Regular Meetings***. Regular meetings of the Board may be held without notice at such time and at such place as shall from time to time be determined by the Board.

2.8 ***Special Meetings; Notice***. Special meetings of the Board for any purpose or purposes may be called at any time by the Chairperson of the Board, the Chief Executive Officer, the President, the Secretary or any two (2) directors.

Notice of the time and place of special meetings shall be:

(i) delivered personally by hand, by courier or by telephone;

(ii) sent by United States first-class mail, postage prepaid;

(iii) sent by facsimile;

(iv) sent by electronic mail; or

(v) otherwise given by electronic transmission (as defined in **section 7.2**),

directed to each director at that director's address, telephone number, facsimile number, electronic mail address or other contact for notice by electronic transmission, as the case may be, as shown on the Company's records.

If the notice is (i) delivered personally by hand, by courier or by telephone, (ii) sent by facsimile, (iii) sent by electronic mail or (iv) otherwise given by electronic transmission, it shall be delivered, sent or otherwise directed to each director, as applicable, at least twenty-four (24) hours before the time of the holding of the meeting. If the notice is sent by United States mail, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. Any oral notice may be communicated to the director. The notice need not specify the place of the meeting (if the meeting is to be held at the Company's principal executive office) nor the purpose of the meeting.

2.9 ***Quorum; Voting***. At all meetings of the Board, a majority of the total authorized number of directors shall constitute a quorum for the transaction of business. If a quorum is not present at any meeting of the Board, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as may be otherwise specifically provided by statute, the certificate of incorporation or these bylaws.

If the certificate of incorporation provides that one or more directors shall have more or less than one vote per director on any matter, every reference in these bylaws to a majority or other proportion of the directors shall refer to a majority or other proportion of the votes of the directors.

2.10 ***Board Action by Written Consent Without a Meeting***. Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board, or of any committee or subcommittee thereof, may be taken without a meeting if all members of the Board or committee or subcommittee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee or subcommittee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. Any person (whether or not then a director) may provide, whether through instruction to an agent or otherwise, that a consent to action will be effective at a future time (including a time determined upon the happening of an event), no later than sixty (60) days after such instruction is given or such provision is made and such consent shall be deemed to have been given for purposes of this **section 2.10** at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective.

2.11 ***Fees and Compensation of Directors***. Unless otherwise restricted by the certificate of incorporation or these bylaws, the Board shall have the authority to fix the compensation of directors.

2.12 ***Removal of Directors***. Unless otherwise restricted by statute, the certificate of incorporation or these bylaws, any director or the entire Board may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors.

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.

ARTICLE III — COMMITTEES

3.1 ***Committees of Directors***. The Board may designate one or more committees, each committee to consist of one (1) or more of the directors of the Company. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board or in these bylaws, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Company, and may authorize the seal of the Company to be affixed to all papers that may require it; but no such committee shall have the power or authority to (i) approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopt, amend or repeal any bylaw of the Company.

3.2 ***Committee Minutes***. Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

3.3 ***Meetings and Actions of Committees***. A majority of the directors then serving on a committee or subcommittee shall constitute a quorum for the transaction of business by the committee or subcommittee, unless the certificate of incorporation, these bylaws, a resolution of the Board or a

resolution of a committee that created the subcommittee requires a greater or lesser number, *provided* that in no case shall a quorum be less than 1/3 of the directors then serving on the committee or subcommittee. The vote of the majority of the members of a committee or subcommittee present at a meeting at which a quorum is present shall be the act of the committee or subcommittee, unless the certificate of incorporation, these bylaws, a resolution of the Board or a resolution of a committee that created the subcommittee requires a greater number. Meetings and actions of committees and subcommittees shall otherwise be governed by, and held and taken in accordance with, the provisions of:

(i) **section 2.5** (Place of Meetings; Meetings by Telephone);

(ii) **section 2.7** (Regular Meetings);

(iii) **section 2.8** (Special Meetings; Notice);

(iv) **section 2.9** (Quorum; Voting);

(v) **section 2.10** (Board Action by Written Consent Without a Meeting); and

(vi) **section 7.5** (Waiver of Notice)

with such changes in the context of those bylaws as are necessary to substitute the committee or the subcommittee and its members for the Board and its members. *However*:

(i) the time and place of regular meetings of committees or subcommittees may be determined either by resolution of the Board or by resolution of the committee;

(ii) special meetings of committees and subcommittees may also be called by resolution of the Board or the committee or subcommittee; and

(iii) notice of special meetings of committees and subcommittees shall also be given to all alternate members, as applicable, who shall have the right to attend all meetings of the committee or subcommittee. The Board, or in absence of any such action by the Board, the committee or subcommittee, may adopt rules for the government of any committee or subcommittee not inconsistent with the provisions of these bylaws.

Any provision in the certificate of incorporation providing that one or more directors shall have more or less than one vote per director on any matter shall apply to voting in any committee or subcommittee, unless otherwise provided in the certificate of incorporation or these bylaws.

3.4 ***Subcommittees***. Unless otherwise provided in the certificate of incorporation, these bylaws or the resolutions of the Board designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

ARTICLE IV — OFFICERS

4.1 ***Officers***. The officers of the Company shall be a President and a Secretary. The Company may also have, at the discretion of the Board, a Chairperson of the Board, a Vice Chairperson of the Board, a Chief Executive Officer, one or more Vice Presidents, a Chief Financial Officer, a

Treasurer, one or more Assistant Treasurers, one or more Assistant Secretaries, and any such other officers as may be appointed in accordance with the provisions of these bylaws. Any number of offices may be held by the same person.

4.2 ***Appointment of Officers***. The Board shall appoint the officers of the Company, except such officers as may be appointed in accordance with the provisions of **section 4.3** of these bylaws.

4.3 ***Subordinate Officers***. The Board may appoint, or empower the Chief Executive Officer or, in the absence of a Chief Executive Officer, the President, to appoint, such other officers and agents as the business of the Company may require. Each of such officers and agents shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the Board may from time to time determine.

4.4 ***Removal and Resignation of Officers***. Any officer may be removed, either with or without cause, by an affirmative vote of the majority of the Board at any regular or special meeting of the Board or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the Company. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the officer is a party.

4.5 ***Vacancies in Offices***. Any vacancy occurring in any office of the Company shall be filled by the Board or as provided in **section 4.3**.

4.6 ***Representation of Shares of Other Corporations***. Unless otherwise directed by the Board, the President or any other person authorized by the Board or the President is authorized to vote, represent and exercise on behalf of the Company all rights incident to any and all shares of any other corporation or corporations standing in the name of the Company. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

4.7 ***Authority and Duties of Officers***. Except as otherwise provided in these bylaws, the officers of the Company shall have such powers and duties in the management of the Company as may be designated from time to time by the Board and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board.

ARTICLE V — INDEMNIFICATION

5.1 ***Indemnification of Directors and Officers in Third Party Proceedings***. Subject to the other provisions of this **Article V**, the Company shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "***Proceeding***") (other than an action by or in the right of the Company) by reason of the fact that such person is or was a director or officer of the Company, or is or was a director or officer of the Company serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses

(including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

5.2 ***Indemnification of Directors and Officers in Actions by or in the Right of the Company***. Subject to the other provisions of this **Article V**, the Company shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Company, or is or was a director or officer of the Company serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Company; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Company unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

5.3 ***Successful Defense***. To the extent that a present or former director or officer of the Company has been successful on the merits or otherwise in defense of any action, suit or proceeding described in **section 5.1** or **section 5.2**, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

5.4 ***Indemnification of Others***. Subject to the other provisions of this **Article V**, the Company shall have power to indemnify its employees and agents to the extent not prohibited by the DGCL or other applicable law. The Board shall have the power to delegate to such person or persons the determination of whether employees or agents shall be indemnified.

5.5 ***Advanced Payment of Expenses***. Expenses (including attorneys' fees) actually and reasonably incurred by an officer or director of the Company in defending any Proceeding shall be paid by the Company in advance of the final disposition of such Proceeding upon receipt of a written request therefor (together with documentation reasonably evidencing such expenses) and an undertaking by or on behalf of the person to repay such amounts if it shall ultimately be determined that the person is not entitled to be indemnified under this **Article V** or the DGCL. Such expenses (including attorneys' fees) actually and reasonably incurred by former directors and officers or other employees and agents of the Company or by persons serving at the request of the Company as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise may be so paid upon such terms and conditions, if any, as the Company deems appropriate. The right to advancement of expenses shall not apply to any Proceeding (or any part of any Proceeding) for which indemnity is excluded pursuant to these bylaws, but shall apply to any Proceeding (or any part of any Proceeding) referenced in

section 5.6(ii) or **5.6(iii)** prior to a determination that the person is not entitled to be indemnified by the Company.

Notwithstanding the foregoing, unless otherwise determined pursuant to **section** Error! Reference source not found., no advance shall be made by the Company to an officer of the Company (except by reason of the fact that such officer is or was a director of the Company, in which event this paragraph shall not apply) in any Proceeding if a determination is reasonably and promptly made (i) by a majority vote of the directors who are not parties to such Proceeding, even though less than a quorum, or (ii) by a committee or subcommittee of such directors designated by majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, that facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the Company

5.6 ***Limitation on Indemnification***. Subject to the requirements in **section 5.3** and the DGCL, the Company shall not be obligated to indemnify any person pursuant to this **Article V** in connection with any Proceeding (or any part of any Proceeding):

(i) for which payment has actually been made to or on behalf of such person under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid;

(ii) for an accounting or disgorgement of profits pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of federal, state or local statutory law or common law, if such person is held liable therefor (including pursuant to any settlement arrangements);

(iii) for any reimbursement of the Company by such person of any bonus or other incentive-based or equity-based compensation or of any profits realized by such person from the sale of securities of the Company, as required in each case under the Securities Exchange Act of 1934, as amended (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "***Sarbanes-Oxley Act***"), or the payment to the Company of profits arising from the purchase and sale by such person of securities in violation of Section 306 of the Sarbanes-Oxley Act), if such person is held liable therefor (including pursuant to any settlement arrangements);

(iv) initiated by such person, including any Proceeding (or any part of any Proceeding) initiated by such person against the Company or its directors, officers, employees, agents or other indemnitees, unless (a) the Board authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (b) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law, (c) otherwise required to be made under **section 5.7** or (d) otherwise required by applicable law; or

(v) if prohibited by applicable law.

5.7 ***Determination; Claim***. If a claim for indemnification or advancement of expenses under this **Article V** is not paid by the Company or on its behalf within 90 days after receipt by the Company of a written request therefor, the claimant shall be entitled to an adjudication by a court of competent jurisdiction of his or her entitlement to such indemnification or advancement of expenses. To the extent not prohibited by law, the Company shall indemnify such person against all expenses actually and reasonably incurred by such person in connection with any action for indemnification or advancement of

expenses from the Company under this **Article V**, to the extent such person is successful in such action, and, if requested by such person, shall advance such expenses to such person. In any such suit, the Company shall, to the fullest extent not prohibited by law, have the burden of proving that the claimant is not entitled to the requested indemnification or advancement of expenses.

5.8 ***Non-Exclusivity of Rights***. The indemnification and advancement of expenses provided by, or granted pursuant to, this **Article V** shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the certificate of incorporation or any statute, bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office. The Company is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advancement of expenses, to the fullest extent not prohibited by the DGCL or other applicable law.

5.9 ***Insurance***. The Company may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Company would have the power to indemnify such person against such liability under the provisions of the DGCL.

5.10 ***Survival***. The rights to indemnification and advancement of expenses conferred by this **Article V** shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

5.11 ***Effect of Repeal or Modification***. A right to indemnification or to advancement of expenses arising under a provision of the certificate of incorporation or a bylaw shall not be eliminated or impaired by an amendment to the certificate of incorporation or these bylaws after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such action or omission has occurred.

5.12 ***Certain Definitions***. For purposes of this **Article V**, references to the "***Company***" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this **Article V** with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. For purposes of this **Article V**, references to "***other enterprises***" shall include employee benefit plans; references to "***fines***" shall include any excise taxes assessed on a person 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 or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "***not opposed to the best interests of the Company***" as referred to in this **Article V**.

ARTICLE VI — STOCK

6.1 ***Stock Certificates; Partly Paid Shares***. The shares of the Company shall be represented by certificates, *provided* that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Company. Unless otherwise provided by resolution of the Board, every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name, of the Company by any two officers of the Company representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Company with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. The Company shall not have power to issue a certificate in bearer form.

The Company may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, or upon the books and records of the Company in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the Company shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

6.2 ***Special Designation on Certificates***. If the Company is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Company shall issue to represent such class or series of stock; *provided* that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Company shall issue to represent such class or series of stock, a statement that the Company will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the registered owner thereof shall be given a notice, in writing or by electronic transmission, containing the information required to be set forth or stated on certificates pursuant to this **section 6.2** or Sections 156, 202(a), 218(a) or 364 of the DGCL or with respect to this **section 6.2** a statement that the Company will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

6.3 ***Lost Certificates***. Except as provided in this **section 6.3**, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Company and cancelled at the same time. The Company may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Company may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Company a bond sufficient to indemnify it against any claim that may be made

against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

6.4 ***Dividends***. The Board, subject to any restrictions contained in the certificate of incorporation or applicable law, may declare and pay dividends upon the shares of the Company's capital stock. Dividends may be paid in cash, in property, or in shares of the Company's capital stock, subject to the provisions of the certificate of incorporation.

The Board may set apart out of any of the funds of the Company available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

6.5 ***Stock Transfer Agreements***. The Company shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the Company to restrict the transfer of shares of stock of the Company of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

6.6 ***Registered Stockholders***. The Company:

(i) shall be entitled to treat the person registered on its books as the owner of any share or shares as the person exclusively entitled to receive dividends, vote, receive notifications and otherwise exercise all the rights and powers of an owner of such share or shares; and

(ii) shall be entitled to hold liable for calls and assessments the person registered on its books as the owner of shares; and

(iii) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

6.7 ***Transfers***. Transfers of record of shares of stock of the Company shall be made only upon its books by the holders thereof, in person or by an attorney duly authorized, and, if such stock is certificated, upon the surrender of a certificate or certificates for a like number of shares, properly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer.

ARTICLE VII — MANNER OF GIVING NOTICE AND WAIVER

7.1 ***Notice of Stockholder Meetings***. Notice of any meeting of stockholders, if mailed, is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the Company's records. An affidavit of the Secretary or an Assistant Secretary of the Company or of the transfer agent or other agent of the Company that the notice has been given shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

7.2 ***Notice by Electronic Transmission***. Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the DGCL, the certificate of incorporation or these bylaws, any notice to stockholders given by the Company under any provision of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the Company. Any such consent shall be deemed revoked if:

(i) the Company is unable to deliver by electronic transmission two consecutive notices given by the Company in accordance with such consent; and

(ii) such inability becomes known to the Secretary or an Assistant Secretary of the Company or to the transfer agent, or other person responsible for the giving of notice.

However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

Any notice given pursuant to the preceding paragraph shall be deemed given:

(i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;

(ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice;

(iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and

(iv) if by any other form of electronic transmission, when directed to the stockholder.

An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Company that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

An "***electronic transmission***" means any form of communication, not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases), that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Notice by a form of electronic transmission shall not apply to Sections 164, 296, 311, 312 or 324 of the DGCL.

7.3 ***Notice to Stockholders Sharing an Address***. Except as otherwise prohibited under the DGCL, without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Company under the provisions of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the Company. Any stockholder who fails to object in writing to the Company, within 60 days of having been given written notice by the Company of its intention to send the single notice, shall be deemed to have consented to receiving such single written notice.

7.4 ***Notice to Person with Whom Communication is Unlawful***. Whenever notice is required to be given, under the DGCL, the certificate of incorporation or these bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to

such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Company is such as to require the filing of a certificate under the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

7.5 ***Waiver of Notice***. Whenever notice is required to be given under any provision of the DGCL, the certificate of incorporation or these bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the certificate of incorporation or these bylaws.

ARTICLE VIII — GENERAL MATTERS

8.1 ***Fiscal Year***. The fiscal year of the Company shall be fixed by resolution of the Board and may be changed by the Board.

8.2 ***Seal***. The Company may adopt a corporate seal, which shall be in such form as may be approved from time to time by the Board. The Company may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

8.3 ***Annual Report***. The Company shall cause an annual report to be sent to the stockholders of the Company to the extent required by applicable law. If and so long as there are fewer than 100 holders of record of the Company's shares, the requirement of sending an annual report to the stockholders of the Company is expressly waived (to the extent permitted under applicable law).

8.4 ***Construction; Definitions***. Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "***person***" includes both a corporation and a natural person.

ARTICLE IX — AMENDMENTS

These bylaws may be adopted, amended or repealed by the stockholders entitled to vote. However, the Company may, in its certificate of incorporation, confer the power to adopt, amend or repeal bylaws upon the directors. The fact that such power has been so conferred upon the directors shall not divest the stockholders of the power, nor limit their power to adopt, amend or repeal bylaws.

A bylaw amendment adopted by stockholders which specifies the votes that shall be necessary for the election of directors shall not be further amended or repealed by the Board.

Exhibit 3.4

AMENDED AND RESTATED BYLAWS OF

RXSIGHT, INC.

(initially adopted on [ ])

(as amended and restated on [ ], 2021)

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(continued)

BYLAWS OF RXSIGHT, INC.

ARTICLE I - CORPORATE OFFICES

1.1 REGISTERED OFFICE

The registered office of RxSight, Inc. (the "**Company**") shall be fixed in the Company's certificate of incorporation, as the same may be amended from time to time.

1.2 OTHER OFFICES

The Company may at any time establish other offices.

ARTICLE II - MEETINGS OF STOCKHOLDERS

2.1 PLACE OF MEETINGS

Meetings of stockholders shall be held at a place, if any, within or outside the State of Delaware, determined by the board of directors of the Company (the "**Board of Directors**"). The Board of Directors may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the Delaware General Corporation Law (the "**DGCL**"). In the absence of any such designation or determination, stockholders' meetings shall be held at the Company's principal executive office.

2.2 ANNUAL MEETING

The annual meeting of stockholders shall be held each year. The Board of Directors shall designate the date and time of the annual meeting. At the annual meeting, directors shall be elected and any other proper business, brought in accordance with Section 2.4 of these bylaws, may be transacted. The Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board may cancel, postpone or reschedule any previously scheduled annual meeting at any time, before or after the notice for such meeting has been sent to the stockholders. For the purposes of these bylaws, the term "**Whole Board**" shall mean the total number of authorized directorships whether or not there exist any vacancies or other unfilled seats in previously authorized directorships.

2.3 SPECIAL MEETING

(a) A special meeting of the stockholders, other than as required by statute, may be called at any time by (i) the Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board, (ii) the chairperson of the Board of Directors, (iii) the chief executive officer or (iv) the president, but a special meeting may not be called by any other person or persons and any power of stockholders to call a special meeting of stockholders is specifically denied. The Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board may cancel, postpone or reschedule any previously scheduled special meeting at any time, before or after the notice for such meeting has been sent to the stockholders.

(b) The notice of a special meeting shall include the purpose for which the meeting is called. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting by or at the direction of a majority of the Whole Board, the chairperson of the Board of Directors, the chief executive officer or the president. Nothing contained in this Section 2.3(b) shall be construed as limiting, fixing or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

2.4 ADVANCE NOTICE PROCEDURES

(a) *Annual Meetings of Stockholders.*

(i) Nominations of persons for election to the Board of Directors or the proposal of other business to be transacted by the stockholders at an annual meeting of stockholders may be made only (1) pursuant to the Company's notice of meeting (or any supplement thereto); (2) by or at the direction of the Board of Directors; (3) as may be provided in the certificate of designations for any class or series of preferred stock; or (4) by any stockholder of the Company who (A) is a stockholder of record at the time of giving of the notice contemplated by Section 2.4(a)(ii); (B) is a stockholder of record on the record date for the determination of stockholders entitled to notice of the annual meeting; (C) is a stockholder of record on the record date for the determination of stockholders entitled to vote at the annual meeting; (D) is a stockholder of record at the time of the annual meeting; and (E) complies with the procedures set forth in this Section 2.4(a).

(ii) For nominations or other business to be properly brought before an annual meeting of stockholders by a stockholder pursuant to clause (4) of Section 2.4(a)(i), the stockholder must have given timely notice in writing to the secretary and any such nomination or proposed business must constitute a proper matter for stockholder action. To be timely, a stockholder's notice must be received by the secretary at the principal executive offices of the Company no earlier than 8:00 a.m., local time, on the 120th day and no later than 5:00 p.m., local time, on the 90th day prior to the day of the first anniversary of the preceding year's annual meeting of stockholders. However, if no annual meeting of stockholders was held in the preceding year, or if the date of the applicable annual meeting has been changed by more than 25 days from the first anniversary of the preceding year's annual meeting, then to be timely such notice must be received by the secretary at the principal executive offices of the Company no earlier than 8:00 a.m., local time, on the 120th day prior to the day of the annual meeting and no later than 5:00 p.m., local time, on the 10th day following the day on which public announcement of the date of the annual meeting was first made by the Company. In no event will the adjournment, rescheduling or postponement of any annual meeting, or any announcement thereof, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. If the number of directors to be elected to the Board of Directors is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors at least 10 days before the last day that a stockholder may deliver a notice of nomination pursuant to the foregoing provisions, then a stockholder's notice required by this Section 2.4(a)(ii) will also be considered timely, but only with respect to nominees for any new positions created by such increase, if it is received by the secretary at the principal executive offices of the Company no later than 5:00 p.m., local time, on the 10th day following the day on which such public announcement is first made. "**Public announcement**" means disclosure in a press release reported by a national news service or in a document publicly filed by the Company with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Securities Exchange Act of 1934 (as amended and inclusive of rules and regulations thereunder, the "**1934 Act**").

(iii) A stockholder's notice to the secretary must set forth:

(1) as to each person whom the stockholder proposes to nominate for election as a director:

(A) such person's name, age, business address, residence address and principal occupation or employment; the class and number of shares of the Company that are held of record or are beneficially owned by such person and a description of any Derivative Instruments (defined below) held or beneficially owned thereby or of any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares), the effect or intent of which is to mitigate loss to, or to manage the risk or benefit of share price changes for, or to increase or decrease the voting power of such person; and all information relating to such person that is required to be disclosed in solicitations of proxies for the contested election of directors, or is otherwise required, in each case pursuant to the Section 14 of the 1934 Act;

(B) such person's written consent to being named in such stockholder's proxy statement as a nominee of such stockholder and to serving as a director of the Company if elected;

(C) a reasonably detailed description of any direct or indirect compensatory, payment, indemnification or other financial agreement, arrangement or understanding that such person has, or has had within the past three years, with any person or entity other than the Company (including the amount of any payment or payments received or receivable thereunder), in each case in connection with candidacy or service as a director of the Company (a "**Third-Party Compensation Arrangement**"); and

(D) a description of any other material relationships between such person and such person's respective affiliates and associates, or others acting in concert with them, on the one hand, and such stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made, and their respective affiliates and associates, or others acting in concert with them, on the other hand;

(2) as to any other business that the stockholder proposes to bring before the annual meeting:

(A) a brief description of the business desired to be brought before the annual meeting;

(B) the text of the proposal or business (including the text of any resolutions proposed for consideration and, if applicable, the text of any proposed amendment to these bylaws or the Company's certificate of incorporation);

(C) the reasons for conducting such business at the annual meeting;

(D) any material interest in such business of such stockholder giving the notice and the beneficial owner, if any, on whose behalf the proposal is made, and their respective affiliates and associates, or others acting in concert with them; and

(E) a description of all agreements, arrangements and understandings between such stockholder and the beneficial owner, if any, on whose behalf the proposal is made, and their respective affiliates or associates or others acting in concert with them, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder; and

(3) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made:

(A) the name and address of such stockholder (as they appear on the Company's books), of such beneficial owner and of their respective affiliates or associates or others acting in concert with them;

(B) for each class or series, the number of shares of stock of the Company that are, directly or indirectly, held of record or are beneficially owned by such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them;

(C) a description of any agreement, arrangement or understanding between such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them, and any other person or persons (including, in each case, their names) in connection with the proposal of such nomination or other business;

(D) a description of any agreement, arrangement or understanding (including, regardless of the form of settlement, any derivative, long or short positions, profit interests, forwards, futures, swaps, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions and borrowed or loaned shares) that has been entered into by or on behalf of such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them, with respect to the Company's securities (any of the foregoing, a "**Derivative Instrument**"), or any other agreement, arrangement or understanding that has been made the effect or intent of which is to create or mitigate loss to, manage risk or benefit of share price changes for or increase or decrease the voting power of such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them, with respect to the Company's securities;

(E) any rights to dividends on the Company's securities owned beneficially by such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them, that are separated or separable from the underlying security;

(F) any proportionate interest in the Company's securities or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them, is a general partner or, directly or indirectly, beneficially owns an interest in a general partner of such general or limited partnership;

(G) any performance-related fees (other than an asset-based fee) that such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them, is entitled to based on any increase or decrease in the value of the Company's securities or Derivative Instruments, including, without limitation, any such interests held by members of the immediate family of such persons sharing the same household;

(H) any significant equity interests or any Derivative Instruments in any principal competitor of the Company that are held by such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them;

(I) any direct or indirect interest of such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them, in any contract with the Company, any affiliate of the Company or any principal competitor of the Company (in each case, including any employment agreement, collective bargaining agreement or consulting agreement);

(J) a representation and undertaking that the stockholder is a holder of record of stock of the Company as of the date of submission of the stockholder's notice and intends to appear in person or by proxy at the meeting to bring such nomination or other business before the meeting;

(K) a representation and undertaking that such stockholder or any such beneficial owner intends, or is part of a group that intends, to (x) deliver a proxy statement or form of proxy to holders of at least the percentage of the voting power of the Company's then-outstanding stock required to approve or adopt the proposal or to elect each such nominee; or (y) otherwise solicit proxies from stockholders in support of such proposal or nomination;

(L) any other information relating to such stockholder, such beneficial owner, or their respective affiliates or associates or others acting in concert with them, or director nominee or proposed business that, in each case, would be required to be disclosed in a proxy statement or other filing required to be made in connection with the solicitation of proxies in support of such nominee (in a contested election of directors) or proposal pursuant to Section 14 of the 1934 Act; and

(M) such other information relating to any proposed item of business as the Company may reasonably require to determine whether such proposed item of business is a proper matter for stockholder action.

(iv) In addition to the requirements of this Section 2.4, to be timely, a stockholder's notice (and any additional information submitted to the Company in connection therewith) must further be updated and supplemented (1) if necessary, so that the information provided or required to be provided in such notice is true and correct as of the record date(s) for determining the stockholders entitled to notice of, and to vote at, the meeting and as of the date that is 10 business days prior to the meeting or any adjournment, rescheduling or postponement thereof and (2) to provide any additional information that the Company may reasonably request. Such update and supplement or additional information, if applicable, must be received by the secretary at the principal executive offices of the Company, in the case of a request for additional information, promptly following a request therefor, which response must be delivered not later than such reasonable time as is specified in any such request from the Company or, in the case of any other update or supplement of any information, not later than five business days after the record date(s) for the meeting (in the case of any update and supplement required to be made as of the record date(s)), and not later than eight business days prior to the date for the meeting or any adjournment, rescheduling or postponement thereof (in the case of the update and supplement required to be made as of 10 business days prior to the meeting or any adjournment, rescheduling or postponement thereof). The failure to timely provide such update, supplement or additional information shall result in the nomination or proposal no longer being eligible for consideration at the meeting.

(b) *Special Meetings of Stockholders.* Except to the extent required by the DGCL, and subject to Section 2.3(a), special meetings of stockholders may be called only in accordance with the Company's certificate of incorporation and these bylaws. Only such business will be conducted at a special meeting of stockholders as has been brought before the special meeting pursuant to the Company's notice of meeting. If the election of directors is included as business to be brought before a special meeting in the Company's notice of meeting, then nominations of persons for election to the Board of Directors at such special meeting may be made by any stockholder who (i) is a stockholder of record at the time of giving of the notice contemplated by this Section 2.4(b); (ii) is a stockholder of record on the record date for the determination of stockholders entitled to notice of the special meeting; (iii) is a stockholder of record on the record date for the determination of stockholders entitled to vote at the special meeting; (iv) is a stockholder of record at the time of the special meeting; and (v) complies with the procedures set forth in this Section 2.4(b). For nominations to be properly brought by a stockholder before a special meeting pursuant to this Section 2.4(b), the stockholder's notice must be received by the secretary at the principal executive offices of the Company no earlier than 8:00 a.m., local time, on the 120th day prior to the day of the special meeting and no later than 5:00 p.m., local time, on the 10th day following the day on which public announcement of the date of the special meeting was first made. In no event will any adjournment, rescheduling or postponement of a special meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice. A stockholder's notice to the Secretary must comply with the applicable notice requirements of Section 2.4(a)(iii).

(c) *Other Requirements.*

(i) To be eligible to be a nominee by any stockholder for election as a director of the Company, the proposed nominee must provide to the secretary, in accordance with the applicable time periods prescribed for delivery of notice under Section 2.4(a)(ii) or Section 2.4(b):

(1) a signed and completed written questionnaire (in the form provided by the secretary at the written request of the nominating stockholder, which form will be provided by the secretary within 10 days of receiving such request) containing information regarding such nominee's background and qualifications and such other information as may reasonably be required by the Company to determine the eligibility of such nominee to serve as a director of the Company or to serve as an independent director of the Company;

(2) a written representation and undertaking that, unless previously disclosed to the Company, such nominee is not, and will not become, a party to any voting agreement, arrangement, commitment, assurance or understanding with any person or entity as to how such nominee, if elected as a director, will vote on any issue;

(3) a written representation and undertaking that, unless previously disclosed to the Company, such nominee is not, and will not become, a party to any Third-Party Compensation Arrangement;

(4) a written representation and undertaking that, if elected as a director, such nominee would be in compliance, and will continue to comply, with the Company's corporate governance guidelines as disclosed on the Company's website, as amended from time to time; and

(5) a written representation and undertaking that such nominee, if elected, intends to serve a full term on the Board of Directors.

(ii) At the request of the Board of Directors, any person nominated by the Board of Directors for election as a director must furnish to the secretary the information that is required to be set forth in a stockholder's notice of nomination that pertains to such nominee.

(iii) No person will be eligible to be nominated by a stockholder for election as a director of the Company unless nominated in accordance with the procedures set forth in this Section 2.4. No business proposed by a stockholder will be conducted at a stockholder meeting except in accordance with this Section 2.4.

(iv) The chairperson of the applicable meeting of stockholders will, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the procedures prescribed by these bylaws or that business was not properly brought before the meeting. If the chairperson of the meeting should so determine, then the chairperson of the meeting will so declare to the meeting and the defective nomination will be disregarded or such business will not be transacted, as the case may be.

(v) Notwithstanding anything to the contrary in this Section 2.4, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear in person at the meeting to present a nomination or other proposed business, such nomination will be disregarded or such proposed business will not be transacted, as the case may be, notwithstanding that proxies in respect of such nomination or business may have been received by the Company and counted for purposes of determining a quorum. For purposes of this Section 2.4, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting, and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting.

(vi) Without limiting this Section 2.4, a stockholder must also comply with all applicable requirements of the 1934 Act with respect to the matters set forth in this Section 2.4, it being understood that (1) any references in these bylaws to the 1934 Act are not intended to, and will not, limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 2.4; and (2) compliance with clause (4) of Section 2.4(a)(i) and with Section 2.4(b) are the exclusive means for a stockholder to make nominations or submit other business (other than as provided in Section 2.4(c)(vii)).

(vii) Notwithstanding anything to the contrary in this Section 2.4, the notice requirements set forth in these bylaws with respect to the proposal of any business pursuant to this Section 2.4 will be deemed to be satisfied by a stockholder if (1) such stockholder has submitted a proposal to the Company in compliance with Rule 14a-8 under the 1934 Act; and (2) such stockholder's proposal has been included in a proxy statement that has been prepared by the Company to solicit proxies for the meeting of stockholders. Subject to Rule 14a-8 and other applicable rules and regulations under the 1934 Act, nothing in these bylaws will be construed to permit any stockholder, or give any stockholder the right, to include or have disseminated or described in the Company's proxy statement any nomination of a director or any other business proposal.

2.5 NOTICE OF STOCKHOLDERS' MEETINGS

Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Except as otherwise provided in the DGCL, the certificate of incorporation or these bylaws, the notice of any meeting of stockholders shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting.

2.6 QUORUM

The holders of a majority of the voting power of the capital stock of the Company issued and outstanding and entitled to vote, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders. Where a separate vote by a class or series or classes or series is required, a majority of the voting power of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter, except as otherwise provided by law, the certificate of incorporation or these bylaws.

If, however, such quorum is not present or represented at any meeting of the stockholders, then either (a) the chairperson of the meeting, or (b) the stockholders entitled to vote at the meeting, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the original meeting.

2.7 ADJOURNED MEETING; NOTICE

When a meeting is adjourned to another time or place, unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Company may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for notice of such adjourned meeting in accordance with Section 213(a) of the DGCL and Section 2.11 of these bylaws, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

2.8 CONDUCT OF BUSINESS

The chairperson of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of business

and discussion as seem to the chairperson in order. The chairperson of any meeting of stockholders shall be designated by the Board of Directors; in the absence of such designation, the chairperson of the Board of Directors, if any, or the chief executive officer (in the absence of the chairperson of the Board of Directors) or the president (in the absence of the chairperson of the Board of Directors and the chief executive officer), or in their absence any other executive officer of the Company, shall serve as chairperson of the stockholder meeting. The chairperson of any meeting of stockholders shall have the power to adjourn the meeting to another place, if any, date or time, whether or not a quorum is present.

2.9 VOTING

The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.11 of these bylaws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the DGCL.

Except as may be otherwise provided in the certificate of incorporation or these bylaws, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder.

Except as otherwise provided by law, the certificate of incorporation, these bylaws or the rules of the stock exchange on which the Company's securities are listed, in all matters other than the election of directors, the affirmative vote of a majority of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders. Except as otherwise required by law, the certificate of incorporation or these bylaws, directors shall be elected by a plurality of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Where a separate vote by a class or series or classes or series is required, in all matters other than the election of directors, the affirmative vote of the majority of the voting power of the outstanding shares of such class or series or classes or series present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of such class or series or classes or series, except as otherwise provided by law, the certificate of incorporation, these bylaws or the rules of the stock exchange on which the securities of the Company are listed.

2.10 STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Subject to the rights of holders of preferred stock of the Company, any action required or permitted to be taken by the stockholders of the Company must be effected at a duly called annual or special meeting of stockholders of the Company and may not be effected by any consent in writing by such stockholders.

2.11 RECORD DATES

In order that the Company may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination.

If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided*, *however*, that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the provisions of Section 213 of the DGCL and this Section 2.11 at the adjourned meeting.

In order that the Company may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

2.12 PROXIES

Each stockholder entitled to vote at a meeting of stockholders, or such stockholder's authorized officer, director, employee or agent, may authorize another person or persons to act for such stockholder by proxy authorized by a document or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL.

2.13 LIST OF STOCKHOLDERS ENTITLED TO VOTE

The Company shall prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting; *provided*, *however,* if the record date for determining the stockholders entitled to vote is less than 10 days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Company shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least 10 days prior to the meeting: (a) on a reasonably accessible electronic network, *provided* that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the Company's principal place of business. In the event that the Company determines to make the list available on an electronic network, the Company may take reasonable steps to ensure that such information is available only to stockholders of the Company. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then such list shall also be open to the examination of any stockholder during the whole

time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

2.14 INSPECTORS OF ELECTION

Before any meeting of stockholders, the Company shall appoint an inspector or inspectors of election to act at the meeting or its adjournment. The Company may designate one or more persons as alternate inspectors to replace any inspector who fails to act.

Such inspectors shall:

(a) ascertain the number of shares outstanding and the voting power of each;

(b) determine the shares represented at the meeting and the validity of proxies and ballots;

(c) count all votes and ballots;

(d) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and

(e) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots.

The inspectors of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical. If there are multiple inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all. Any report or certificate made by the inspectors of election is *prima facie* evidence of the facts stated therein.

ARTICLE III - DIRECTORS

3.1 POWERS

The business and affairs of the Company shall be managed by or under the direction of the Board of Directors, except as may be otherwise provided in the DGCL or the certificate of incorporation.

3.2 NUMBER OF DIRECTORS

The Board of Directors shall consist of one or more members, each of whom shall be a natural person. Unless the certificate of incorporation fixes the number of directors, the number of directors shall be determined from time to time by resolution of a majority of the Whole Board. No reduction of the authorized number of directors shall have the effect of removing any director before that director’s term of office expires.

3.3 ELECTION, QUALIFICATION AND TERM OF OFFICE OF DIRECTORS

Except as provided in Section 3.4 of these bylaws, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until such director’s

successor is elected and qualified or until such director's earlier death, resignation or removal. Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws. The certificate of incorporation or these bylaws may prescribe other qualifications for directors.

If so provided in the certificate of incorporation, the directors of the Company shall be divided into three classes.

3.4 RESIGNATION AND VACANCIES

Any director may resign at any time upon notice given in writing or by electronic transmission to the Company. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation which is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. Unless otherwise provided in the certificate of incorporation or these bylaws, when one or more directors resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective.

Unless otherwise provided in the certificate of incorporation or these bylaws or permitted in the specific case by resolution of the Board of Directors, and subject to the rights of holders of Preferred Stock, vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director, and not by stockholders. If the directors are divided into classes, a person so chosen to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall have been duly elected and qualified.

3.5 PLACE OF MEETINGS; MEETINGS BY TELEPHONE

The Board of Directors may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the Board of Directors may participate in a meeting of the Board of Directors by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

3.6 REGULAR MEETINGS

Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the Board of Directors.

3.7 SPECIAL MEETINGS; NOTICE

Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the chairperson of the Board of Directors, the chief executive officer, the president, the secretary or a majority of the Whole Board.

Notice of the time and place of special meetings shall be:

(a) delivered personally by hand, by courier or by telephone;

(b) sent by United States first-class mail, postage prepaid;

(c) sent by facsimile;

(d) sent by electronic mail; or

(e) otherwise given by electronic transmission (as defined in Section 232 of the DGCL),

directed to each director at that director's address, telephone number, facsimile number, electronic mail address or other contact for notice by electronic transmission, as the case may be, as shown on the Company's records.

If the notice is (i) delivered personally by hand, by courier or by telephone, (ii) sent by facsimile, (iii) sent by electronic mail or (iv) otherwise given by electronic transmission, it shall be delivered, sent or otherwise directed to each director, as applicable, at least 24 hours before the time of the holding of the meeting. If the notice is sent by United States mail, it shall be deposited in the United States mail at least four days before the time of the holding of the meeting. Any oral notice may be communicated to the director. The notice need not specify the place of the meeting (if the meeting is to be held at the Company's principal executive office) nor the purpose of the meeting, unless required by statute.

3.8 QUORUM; VOTING

At all meetings of the Board of Directors, a majority of the Whole Board shall constitute a quorum for the transaction of business. If a quorum is not present at any meeting of the Board of Directors, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

The affirmative vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute, the certificate of incorporation or these bylaws.

If the certificate of incorporation provides that one or more directors shall have more or less than one vote per director on any matter, except as may otherwise be expressly provided herein or therein and denoted with the phrase "notwithstanding the final paragraph of Section 3.8 of the bylaws" or language to similar effect, every reference in these bylaws to a majority or other proportion of the directors shall refer to a majority or other proportion of the votes of the directors.

3.9 BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Unless otherwise restricted by the certificate of incorporation or these bylaws, (i) any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission; and (ii) a consent may be documented, signed and delivered in any manner permitted by Section 116 of the DGCL. Any person (whether or not then a director)

may provide, whether through instruction to an agent or otherwise, that a consent to action will be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made and such consent shall be deemed to have been given for purposes of this Section 3.9 at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective. After an action is taken, the consent or consents relating thereto shall be filed with the minutes of proceedings of the Board of Directors, or the committee or subcommittee thereof, in the same paper or electronic form as the minutes are maintained.

3.10 FEES AND COMPENSATION OF DIRECTORS

Unless otherwise restricted by the certificate of incorporation or these bylaws, the Board of Directors shall have the authority to fix the compensation of directors.

3.11 REMOVAL OF DIRECTORS

Any director or the entire Board of Directors may be removed from office by stockholders of the Company in the manner specified in the certificate of incorporation and applicable law. 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.

ARTICLE IV - COMMITTEES

4.1 COMMITTEES OF DIRECTORS

The Board of Directors may, by resolution passed by a majority of the Whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Company. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors or in these bylaws, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Company, and may authorize the seal of the Company to be affixed to all papers that may require it; but no such committee shall have the power or authority to (a) approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (b) adopt, amend or repeal any bylaw of the Company.

4.2 COMMITTEE MINUTES

Each committee and subcommittee shall keep regular minutes of its meetings.

4.3 MEETINGS AND ACTION OF COMMITTEES

Meetings and actions of committees and subcommittees shall be governed by, and held and taken in accordance with, the provisions of:

(a) Section 3.5 (place of meetings and meetings by telephone);

(b) Section 3.6 (regular meetings);

(c) Section 3.7 (special meetings and notice);

(d) Section 3.8 (quorum; voting);

(e) Section 3.9 (action without a meeting); and

(f) Section 7.4 (waiver of notice)

with such changes in the context of those bylaws as are necessary to substitute the committee or subcommittee and its members for the Board of Directors and its members. *However*, (i) the time and place of regular meetings of committees or subcommittees may be determined either by resolution of the Board of Directors or by resolution of the committee or subcommittee; (ii) special meetings of committees or subcommittees may also be called by resolution of the Board of Directors or the committee or the subcommittee; and (iii) notice of special meetings of committees and subcommittees shall also be given to all alternate members who shall have the right to attend all meetings of the committee or subcommittee. The Board of Directors, or in the absence of any such action by the Board of Directors, the applicable committee or subcommittee, may adopt rules for the government of any committee or subcommittee not inconsistent with the provisions of these bylaws.

Any provision in the certificate of incorporation providing that one or more directors shall have more or less than one vote per director on any matter shall apply to voting in any committee or subcommittee, unless otherwise provided in the certificate of incorporation or these bylaws.

4.4 SUBCOMMITTEES

Unless otherwise provided in the certificate of incorporation, these bylaws or the resolutions of the Board of Directors designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

ARTICLE V - OFFICERS

5.1 OFFICERS

The officers of the Company shall be a president and a secretary. The Company may also have, at the discretion of the Board of Directors, a chairperson of the Board of Directors, a vice chairperson of the Board of Directors, a chief executive officer, a chief financial officer or treasurer, one or more vice presidents, one or more assistant vice presidents, one or more assistant treasurers, one or more assistant

secretaries and any such other officers as may be appointed in accordance with the provisions of these bylaws. Any number of offices may be held by the same person.

5.2 APPOINTMENT OF OFFICERS

The Board of Directors shall appoint the officers of the Company, except such officers as may be appointed in accordance with the provisions of Section 5.3 of these bylaws, subject to the rights, if any, of an officer under any contract of employment.

5.3 SUBORDINATE OFFICERS

The Board of Directors may appoint, or empower the chief executive officer or, in the absence of a chief executive officer, the president, to appoint, such other officers as the business of the Company may require. Each of such officers shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the Board of Directors may from time to time determine.

5.4 REMOVAL AND RESIGNATION OF OFFICERS

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by the Board of Directors or, for the avoidance of doubt, any duly authorized committee or subcommittee thereof or by any officer who has been conferred such power of removal.

Any officer may resign at any time by giving notice, in writing or by electronic transmission, to the Company. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the officer is a party.

5.5 VACANCIES IN OFFICES

Any vacancy occurring in any office of the Company shall be filled by the Board of Directors or as provided in Section 5.3.

5.6 REPRESENTATION OF SECURITIES OF OTHER ENTITIES

The chairperson of the Board of Directors, the chief executive officer, the president, any vice president, the treasurer, the secretary or assistant secretary of this Company or any other person authorized by the Board of Directors or the chief executive officer, the president or a vice president, is authorized to vote, represent and exercise on behalf of this Company all rights incident to any and all shares or other securities of any other entity or entities, and all rights incident to any management authority conferred on the Company in accordance with the governing documents of any entity or entities, standing in the name of this Company, including the right to act by written consent. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

5.7 AUTHORITY AND DUTIES OF OFFICERS

All officers of the Company shall respectively have such authority and perform such duties in the management of the business of the Company as may be designated from time to time by the Board of Directors and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board of Directors.

ARTICLE VI - STOCK

6.1 STOCK CERTIFICATES; PARTLY PAID SHARES

The shares of the Company shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Company. Unless otherwise provided by resolution of the Board of Directors, every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of, the Company by any two officers of the Company representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Company with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. The Company shall not have power to issue a certificate in bearer form.

The Company may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly-paid shares, or upon the books and records of the Company in the case of uncertificated partly-paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully-paid shares, the Company shall declare a dividend upon partly-paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

6.2 SPECIAL DESIGNATION ON CERTIFICATES

If the Company is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Company shall issue to represent such class or series of stock; *provided*, *however*, that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate that the Company shall issue to represent such class or series of stock, a statement that the Company will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the registered owner thereof shall be given a notice, in writing or by electronic transmission, containing the information required to be set forth or stated on certificates pursuant to this Section 6.2 or Sections 156, 202(a), 218(a) or 364 of the DGCL or with respect to this Section 6.2 a statement that the Company will furnish without charge to each

stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

6.3 LOST CERTIFICATES

Except as provided in this Section 6.3, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Company and cancelled at the same time. The Company may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Company may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Company a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

6.4 DIVIDENDS

The Board of Directors, subject to any restrictions contained in the certificate of incorporation or applicable law, may declare and pay dividends upon the shares of the Company's capital stock. Dividends may be paid in cash, in property, or in shares of the Company's capital stock, subject to the provisions of the certificate of incorporation. The Board of Directors may set apart out of any of the funds of the Company available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

6.5 TRANSFER OF STOCK

Transfers of record of shares of stock of the Company shall be made only upon its books by the holders thereof, in person or by an attorney duly authorized, and, if such stock is certificated, upon the surrender of a certificate or certificates for a like number of shares, properly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer.

6.6 STOCK TRANSFER AGREEMENTS

The Company shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the Company to restrict the transfer of shares of stock of the Company of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

6.7 REGISTERED STOCKHOLDERS

The Company:

(a) shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and notices and to vote as such owner; and

(b) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VII - MANNER OF GIVING NOTICE AND WAIVER

7.1 NOTICE OF STOCKHOLDERS' MEETINGS

Notice of any meeting of stockholders shall be given in the manner set forth in the DGCL.

7.2 NOTICE TO STOCKHOLDERS SHARING AN ADDRESS

Except as otherwise prohibited under the DGCL, without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Company under the provisions of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the Company. Any stockholder who fails to object in writing to the Company, within 60 days of having been given written notice by the Company of its intention to send the single notice, shall be deemed to have consented to receiving such single written notice. This Section 7.2 shall not apply to Sections 164, 296, 311, 312 or 324 of the DGCL.

7.3 NOTICE TO PERSON WITH WHOM COMMUNICATION IS UNLAWFUL

Whenever notice is required to be given, under the DGCL, the certificate of incorporation or these bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Company is such as to require the filing of a certificate under the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

7.4 WAIVER OF NOTICE

Whenever notice is required to be given under any provision of the DGCL, the certificate of incorporation or these bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the certificate of incorporation or these bylaws.

ARTICLE VIII - INDEMNIFICATION

8.1 INDEMNIFICATION OF DIRECTORS AND OFFICERS IN THIRD PARTY PROCEEDINGS

Subject to the other provisions of this Article VIII, the Company shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**Proceeding**") (other than an action by or in the right of the Company) by reason of the fact that such person is or was a director or officer of the Company, or is or was a director or officer of the Company serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

8.2 INDEMNIFICATION OF DIRECTORS AND OFFICERS IN ACTIONS BY OR IN THE RIGHT OF THE COMPANY

Subject to the other provisions of this Article VIII, the Company shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed Proceeding by or in the right of the Company to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Company, or is or was a director or officer of the Company serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Company; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Company unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

8.3 SUCCESSFUL DEFENSE

To the extent that a present or former director or officer (for purposes of this Section 8.3 only, as such term is defined in Section 145(c)(1) of the DGCL) of the Company has been successful on the merits or otherwise in defense of any action, suit or proceeding described in Section 8.1 or Section 8.2, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith. The Company

may indemnify any other person who is not a present or former director or officer of the Company against expenses (including attorneys' fees) actually and reasonably incurred by such person to the extent he or she has been successful on the merits or otherwise in defense of any suit or proceeding described in Section 8.1 or Section 8.2, or in defense of any claim, issue or matter therein.

8.4 INDEMNIFICATION OF OTHERS

Subject to the other provisions of this Article VIII, the Company shall have power to indemnify its employees and agents, or any other persons, to the extent not prohibited by the DGCL or other applicable law. The Board of Directors shall have the power to delegate to any person or persons identified in subsections (1) through (4) of Section 145(d) of the DGCL the determination of whether employees or agents shall be indemnified.

8.5 ADVANCED PAYMENT OF EXPENSES

Expenses (including attorneys' fees) actually and reasonably incurred by an officer or director of the Company in defending any Proceeding shall be paid by the Company in advance of the final disposition of such Proceeding upon receipt of a written request therefor (together with documentation reasonably evidencing such expenses) and an undertaking by or on behalf of the person to repay such amounts if it shall ultimately be determined that the person is not entitled to be indemnified under this Article VIII or the DGCL. Such expenses (including attorneys' fees) actually and reasonably incurred by former directors and officers or other employees and agents of the Company or by persons serving at the request of the Company as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise may be so paid upon such terms and conditions, if any, as the Company deems appropriate. The right to advancement of expenses shall not apply to any Proceeding (or any part of any Proceeding) for which indemnity is excluded pursuant to these bylaws, but shall apply to any Proceeding (or any part of any Proceeding) referenced in Section 8.6(b) or 8.6(c) prior to a determination that the person is not entitled to be indemnified by the Company.

Notwithstanding the foregoing, unless otherwise determined pursuant to Section 8.8, no advance shall be made by the Company to an officer of the Company (except by reason of the fact that such officer is or was a director of the Company, in which event this paragraph shall not apply) in any Proceeding if a determination is reasonably and promptly made (a) by a vote of the directors who are not parties to such Proceeding, even though less than a quorum, or (b) by a committee of such directors designated by the vote of the majority of such directors, even though less than a quorum, or (c) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, that facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the Company.

8.6 LIMITATION ON INDEMNIFICATION

Subject to the requirements in Section 8.3 and the DGCL, the Company shall not be obligated to indemnify any person pursuant to this Article VIII in connection with any Proceeding (or any part of any Proceeding):

(a) for which payment has actually been made to or on behalf of such person under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid;

(b) for an accounting or disgorgement of profits pursuant to Section 16(b) of the 1934 Act, or similar provisions of federal, state or local statutory law or common law, if such person is held liable therefor (including pursuant to any settlement arrangements);

(c) for any reimbursement of the Company by such person of any bonus or other incentive-based or equity-based compensation or of any profits realized by such person from the sale of securities of the Company, as required in each case under the 1934 Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "**Sarbanes-Oxley Act**"), or the payment to the Company of profits arising from the purchase and sale by such person of securities in violation of Section 306 of the Sarbanes-Oxley Act), if such person is held liable therefor (including pursuant to any settlement arrangements);

(d) initiated by such person, including any Proceeding (or any part of any Proceeding) initiated by such person against the Company or its directors, officers, employees, agents or other indemnitees, unless (i) the Board of Directors authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law, (iii) otherwise required to be made under Section 8.7 or (iv) otherwise required by applicable law; or

(e) if prohibited by applicable law.

8.7 DETERMINATION; CLAIM

If a claim for indemnification or advancement of expenses under this Article VIII is not paid in full within 90 days after receipt by the Company of the written request therefor, the claimant shall be entitled to an adjudication by a court of competent jurisdiction of his or her entitlement to such indemnification or advancement of expenses. The Company shall indemnify such person against any and all expenses that are actually and reasonably incurred by such person in connection with any action for indemnification or advancement of expenses from the Company under this Article VIII, to the extent such person is successful in such action, and to the extent not prohibited by law. In any such suit, the Company shall, to the fullest extent not prohibited by law, have the burden of proving that the claimant is not entitled to the requested indemnification or advancement of expenses.

8.8 NON-EXCLUSIVITY OF RIGHTS

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the certificate of incorporation or any statute, bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's

official capacity and as to action in another capacity while holding such office. The Company is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advancement of expenses, to the fullest extent not prohibited by the DGCL or other applicable law.

8.9 INSURANCE

The Company may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Company would have the power to indemnify such person against such liability under the provisions of the DGCL.

8.10 SURVIVAL

The rights to indemnification and advancement of expenses conferred by this Article VIII shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

8.11 EFFECT OF REPEAL OR MODIFICATION

A right to indemnification or to advancement of expenses arising under a provision of the certificate of incorporation or a bylaw shall not be eliminated or impaired by an amendment to or repeal or elimination of the certificate of incorporation or these bylaws after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such action or omission has occurred.

8.12 CERTAIN DEFINITIONS

For purposes of this Article VIII, references to the "**Company**" shall include, in addition to the resulting company, any constituent company (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent company, or is or was serving at the request of such constituent company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article VIII with respect to the resulting or surviving company as such person would have with respect to such constituent company if its separate existence had continued. For purposes of this Article VIII, references to "**other enterprises**" shall include employee benefit plans; references to "**fines**" shall include any excise taxes assessed on a person 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 or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "**not opposed to the best interests of the Company**" as referred to in this Article VIII.

ARTICLE IX - GENERAL MATTERS

9.1 EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS

Except as otherwise provided by law, the certificate of incorporation or these bylaws, the Board of Directors may authorize any officer or officers, or agent or agents, to enter into any contract or execute any document or instrument in the name of and on behalf of the Company; such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Company by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

9.2 FISCAL YEAR

The fiscal year of the Company shall be fixed by resolution of the Board of Directors and may be changed by the Board of Directors.

9.3 SEAL

The Company may adopt a corporate seal, which shall be adopted and which may be altered by the Board of Directors. The Company may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

9.4 CONSTRUCTION; DEFINITIONS

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "**person**" includes a corporation, partnership, limited liability company, joint venture, trust or other enterprise, and a natural person. Any reference in these bylaws to a section of the DGCL shall be deemed to refer to such section as amended from time to time and any successor provisions thereto.

9.5 FORUM SELECTION

Unless the Company consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another State court in Delaware or the federal district court for the District of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Company, (b) any action asserting a claim of breach of a fiduciary duty owed by any director, stockholder, officer or other employee of the Company to the Company or the Company's stockholders, (c) any action arising pursuant to any provision of the DGCL or the certificate of incorporation or these bylaws (as either may be amended from time to time) or (d) any action asserting a claim governed by the internal affairs doctrine, except for, as to each of (a) through (d) above, any claim as to which such court determines that there is an indispensable party not subject to the jurisdiction of such court (and the indispensable party does not consent to the personal jurisdiction of such court within 10 days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than such court or for which such court does not have subject matter jurisdiction.

Unless the Company consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended, against any person in connection with any offering of the Company's securities, including, without limitation and for the avoidance of doubt, any auditor, underwriter, selling shareholder, expert, control person, or other defendant.

Any person or entity purchasing or otherwise acquiring any interest in any security of the Company shall be deemed to have notice of and consented to the provisions of this Section 9.5. This provision shall be enforceable by any party to a complaint covered by the provisions of this Section 9.5 For the avoidance of doubt, nothing contained in this Section 9.5 shall apply to any action brought to enforce a duty or liability created by the 1934 Act or any successor thereto.

ARTICLE X - AMENDMENTS

These bylaws may be adopted, amended or repealed by the stockholders entitled to vote; provided, however, that the affirmative vote of the holders of at least 66 2/3% of the total voting power of outstanding voting securities, voting together as a single class, shall be required for the stockholders of the Company to alter, amend or repeal, or adopt any bylaw inconsistent with, the following provisions of these bylaws: Article II, Sections 3.1, 3.2, 3.4 and 3.11 of Article III, Article VIII, Section 9.5 of Article IX or this Article X (including, without limitation, any such Article or Section as renumbered as a result of any amendment, alteration, change, repeal, or adoption of any other Bylaw). The Board of Directors shall also have the power to adopt, amend or repeal bylaws; provided, however, that a bylaw amendment adopted by stockholders which specifies the votes that shall be necessary for the election of directors shall not be further amended or repealed by the Board of Directors.

RXSIGHT, INC.

CERTIFICATE OF AMENDMENT OF BYLAWS

The undersigned hereby certifies that he or she is the duly elected, qualified and acting Secretary or Assistant Secretary of RxSight, Inc., a Delaware corporation, and that the foregoing bylaws were amended and restated on [ ], 2021 by the corporation's board of directors.

IN WITNESS WHEREOF, the undersigned has hereunto set his or her hand on [ ], 2021.

Secretary

Exhibit 4.1

RXSIGHT, INC.

NINTH AMENDED AND RESTATED

INVESTORS' RIGHTS AGREEMENT

FEBRUARY 24, 2017

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RXSIGHT, INC.

NINTH AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

This **NINTH AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT** (this "**Agreement**") is made and entered into as of February 24, 2017 (the "**Effective Date**"), by and among RxSight, Inc., a California corporation (the "**Company**"), those holders of the Company's Series A Preferred Stock, $0.001 par value per share ("**Series A Preferred**") and of the Company's Common Stock, $0.001 par value per share ("**Common Stock**") listed on **Exhibit A** hereto (the "**Series A Investors**"), those holders of the Company's Series B Preferred Stock, par value $0.001 per share ("**Series B Preferred**") listed on **Exhibit B** hereto (the "**Series B Investors**"), those holders of the Company's Series C Preferred Stock, par value $0.001 per share ("**Series C Preferred**") listed on **Exhibit C** hereto (the "**Series C Investors**"), those holders of the Company's Series D Preferred Stock, par value $0.001 per share ("**Series D Preferred**") listed on **Exhibit D** hereto (the "**Series D Investors**"), those holders of the Company's Series E Preferred Stock, par value $0.001 per share ("**Series E Preferred**") listed on **Exhibit E** hereto (the "**Series E Investors**"), those holders of the Company's Series F Preferred Stock, par value $0.001 per share ("**Series F Preferred**") listed on **Exhibit F** hereto (the "**Series F Investors**"), those holders of the Company's Series G Preferred Stock, par value $0.001 per share ("**Series G Preferred**") listed on **Exhibit G** hereto (the "**Series G Investors**"), and those holders of the Company's Series H Preferred Stock, par value $0.001 per share ("**Series H Preferred**") listed on **Exhibit H** hereto (the "**Series H Investors**" and, together with the Series A Investors, the Series B Investors, the Series C Investors, the Series D Investors, the Series E Investors, the Series F Investors, and the Series G Investors, the "**Investors**" and each individually, an "**Investor**").

RECITALS

WHEREAS, the Company, the Series A Investors, the Series B Investors, the Series C Investors, the Series D Investors, the Series E Investors, the Series F Investors, and the Series G Investors entered into that certain Eighth Amended and Restated Investors' Rights Agreement dated as of June 3, 2015 (as in effect on the date hereof and prior to giving effect to this Agreement, the "**Restated Investors' Rights Agreement**");

WHEREAS, pursuant to Section 5.6 of the Restated Investors' Rights Agreement, the terms of the Restated Investors' Rights Agreement may be amended by the written consent of the Company, the holders of at least a majority of the Prior Registrable Securities (as defined in the Restated Investors' Rights Agreement), and the holders of at least fifty-five percent (55%) of the Series G Registrable Securities (as defined in the Restated Investors' Rights Agreement);

WHEREAS, the undersigned who are signatories of this Agreement (the "**Amending Investors**") constitute the holders of at least a majority of the Prior Registrable Securities (as defined in the Restated Investors' Rights Agreement), and the holders of at least fifty-five percent (55%) of the Series G Registrable Securities (as defined in the Restated Investors' Rights Agreement);

WHEREAS, the Company and the Series H Investors have entered into a Series H Preferred Stock and Warrant Purchase Agreement of even date herewith (the "**Purchase Agreement**"), pursuant to which the Company desires to sell to the Series H Investors and the Series H Investors desire to purchase from the Company shares of Series H Preferred; and

WHEREAS, in order to induce the Company to approve the issuance of its Series H Preferred and to induce the Series H Investors to invest funds in the Company pursuant to the Purchase Agreement,

the Company and the Amending Investors have agreed to amend and restate in its entirety the Restated Investors' Rights Agreement as set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, representations, warranties, covenants and conditions set forth in this Agreement, the parties mutually agree as follows:

Section 1. GENERAL.

1.1 Amendment and Restatement. This Agreement amends and restates in its entirety the Restated Investors Rights Agreement, effective simultaneous with the "Initial Closing" under the Purchase Agreement.

1.2 Definitions. As used in this Agreement, the following terms shall have the following respective meanings:

"Co-Sale Agreement" means the Amended and Restated Co-Sale and Right of First Refusal Agreement of even date herewith, by and among the Company and the other parties thereto.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Form S-3" means such form under the Securities Act as in effect on the date hereof or any successor or similar registration form under the Securities Act subsequently adopted by the SEC which permits inclusion or incorporation of substantial information by reference to other documents filed by the Company with the SEC.

"H.I.G." means H.I.G. Bio Ventures – Calhoun, LLC.

"Holder" means any Series A Holder, Series B Holder, Series C Holder, Series D Holder, Series E Holder, Series F Holder, Series G Holder, or Series H Holder.

"Initial Offering" means the Company's first firm commitment underwritten public offering of its Common Stock registered under the Securities Act.

"Longitude" means Longitude Venture Partners II, L.P.

"Major Senior Preferred Holder" means each of RXSI, H.I.G., and Longitude, or their respective Affiliates.

"Person" means an individual, corporation, limited liability company, partnership, joint venture, trust, unincorporated organization, regulatory authority or any other entity or organization.

"Prior Registrable Securities" means the Series A Registrable Securities, the Series B Registrable Securities, the Series C Registrable Securities, the Series D Registrable Securities, the Series E Registrable Securities, and the Series F Registrable Securities.

"Qualified Public Offering" means a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act, covering the offer and sale of Common Stock for the account of the Company, at an offering price per share greater than or equal to $2.40 (adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to

the Common Stock) and in which the gross cash proceeds to the Company are at least $40,000,000 and after which the Common Stock is listed on the New York Stock Exchange, the American Stock Exchange or the NASDAQ stock market.

"**Register**," "**registered**," and "**registration**" refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of effectiveness of such registration statement or document.

"**Registrable Securities**" means the Series A Registrable Securities, the Series B Registrable Securities, the Series C Registrable Securities, the Series D Registrable Securities, the Series E Registrable Securities, the Series F Registrable Securities, the Series G Registrable Securities, and the Series H Registrable Securities.

"**Registrable Securities then outstanding**" shall be the number of shares determined by calculating the total number of shares of the Company's Common Stock that are Registrable Securities and either (a) are then issued and outstanding or (b) are issuable pursuant to then exercisable or convertible securities.

"**Registration Expenses**" shall mean all expenses incurred by the Company in complying with Sections 2.2, 2.3 and 2.4 hereof, including, without limitation, all registration and filing fees, printing expenses, fees and disbursements of counsel for the Company, reasonable fees and disbursements not to exceed fifty thousand dollars ($50,000) for the registration described in Section 2.2 hereof or twenty-five thousand dollars ($25,000) for the registration described in Section 2.4 hereof of a single special counsel for the Holders, blue sky fees and expenses and the expense of any special audits incident to or required by any such registration (but excluding the compensation of regular employees of the Company which shall be paid in any event by the Company).

"**RXSI**" means RxSight I, LLC.

"**Sale Transaction**" shall mean an Acquisition or Asset Transfer (in each case as such terms are defined in the Eleventh Amended and Restated Articles of Incorporation, as amended (the "**Restated Charter**")).

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

"**Securities Act**" shall mean the Securities Act of 1933, as amended.

"**Selling Expenses**" shall mean all underwriting discounts and selling commissions applicable to the sale.

"**Senior Preferred Director**" means each member of the Board of Directors designated by the Series G Holders or the Series H Holders.

"**Series A Holders**" means all Persons owning of record Series A Registrable Securities.

"**Series B Holders**" means all Persons owning of record Series B Registrable Securities.

"**Series C Holders**" means all Persons owning of record Series C Registrable Securities.

"**Series D Holders**" means all Persons owning of record Series D Registrable Securities.

"**Series E Holders**" means all Persons owning of record Series E Registrable Securities.

"**Series F Holders**" means all Persons owning of record Series F Registrable Securities.

"**Series G Director**" means each member of the Board of Directors designated by the Series G Holders.

"**Series G Holders**" means all Persons owning of record Series G Registrable Securities. ,

"**Series H Director**" means each member of the Board of Directors designated by the Series H Holders.

"**Series H Holders**" means all Persons owning of record Series H Registrable Securities.

"**Series A Registrable Securities**" means: (a) Common Stock of the Company issued or issuable upon conversion of the Series A Preferred; (b) the shares of Common Stock of the Company issued pursuant to (i) that certain Series A Preferred Stock and Common Stock Purchase Agreement dated as of February 29, 2000 by and between the Company and Cosmetic Laser Eye and Refractive Centers of America, LLC, (ii) that certain Series A Preferred Stock and Common Stock Purchase Agreement (Second Closing) dated as of February 29, 2000 by and between the Company and Cosmetic Laser Eye and Refractive Centers of America, LLC, (iii) that certain Series A Preferred and Common Stock Purchase Agreement dated June 30, 2001 and (iv) that certain Series A Preferred Stock and Common Stock Exchange Agreement, dated as of April 24, 2002, by and among the Company and each of the Holders _l)arty thereto; and (c) any Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, such above-described securities. Notwithstanding the foregoing, Series A Registrable Securities shall not include any securities sold by a Person to the public either pursuant to a registration statement or Rule 144 of the Securities Act or sold in a private transaction in which the transferor's rights under Section 2 of this Agreement are not assigned.

"**Series B Registrable Securities**" means: (a) Common Stock of the Company issued or issuable upon conversion of the Series B Preferred; and (b) any Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, such above-described securities. Notwithstanding the foregoing, Series B Registrable Securities shall not include any securities sold by a Person to the public either pursuant to a registration statement or Rule 144 of the Securities Act or sold in a private transaction in which the transferor's rights under Section 2 of this Agreement are not assigned.

"**Series C Registrable Securities**" means: (a) Common Stock of the Company issued or issuable upon conversion of the Series C Preferred; and (b) any Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, such above-described securities. Notwithstanding the foregoing, Series C Registrable Securities shall not include any securities sold by a Person to the public either pursuant to a registration statement or Rule 144 of the Securities Act or sold in a private transaction in which the transferor's rights under Section 2 of this Agreement are not assigned.

"**Series D Registrable Securities"** means: (a) Common Stock of the Company issued or issuable upon conversion of the Series D Preferred; and (b) any Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a

dividend or other distribution with respect to, or in exchange for or in replacement of, such above-described securities. Notwithstanding the foregoing, Series D Registrable Securities shall not include any securities sold by a Person to the public either pursuant to a registration statement or Rule 144 of the Securities Act or sold in a private transaction in which the transferor's rights under Section 2 of this Agreement are not assigned.

"**Series E Registrable Securities**" means: (a) Common Stock of the Company issued or issuable upon conversion of the Series E Preferred; and (b) any Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, such above-described securities. Notwithstanding the foregoing, Series E Registrable Securities shall not include any securities sold by a Person to the public either pursuant to a registration statement or Rule 144 of the Securities Act or sold in a private transaction in which the transferor's rights under Section 2 of this Agreement are not assigned.

"**Series F Registrable Securities**" means: (a) Common Stock of the Company issued or issuable upon conversion of the Series F Preferred; and (b) any Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, such above-described securities. Notwithstanding the foregoing, Series F Registrable Securities shall not include any securities sold by a Person to the public either pursuant to a registration statement or Rule 144 of the Securities Act or sold in a private transaction in which the transferor's rights under Section 2 of this Agreement are not assigned.

"**Series G Registrable Securities**" means: (a) Common Stock of the Company issued or issuable upon conversion of the Series G Preferred; and (b) any Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, such above-described securities. Notwithstanding the foregoing, Series G Registrable Securities shall not include any securities sold by a Person to the public either pursuant to a registration statement or Rule 144 of the Securities Act or sold in a private transaction in which the transferor's rights under Section 2 of this Agreement are not assigned.

"**Series H Registrable Securities**" means: (a) Common Stock of the Company issued or issuable upon conversion of the Series H Preferred; and (b) any Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, such above-described securities. Notwithstanding the foregoing, Series H Registrable Securities shall not include any securities sold by a Person to the public either pursuant to a registration statement or Rule 144 of the Securities Act or sold in a private transaction in which the transferor's rights under Section 2 of this Agreement are not assigned.

"**Senior Preferred Registrable Securities**" means the Series H Registrable Securities and the Series G Registrable Securities.

"**Shares**" shall mean the Company's Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred, Series E Preferred, Series F Preferred, Series G Preferred, and Series H Preferred held by the Series A Investors, the Series B Investors, the Series C Investors, the Series D Investors, the Series E Investors, the Series F Investors, the Series G Investors, and the Series H Investors, respectively.

"Special Registration Statement" shall mean a registration statement relating to any employee benefit plan or with respect to any corporate reorganization or other transaction under Rule 145 of the Securities Act.

Section 2. REGISTRATION; RESTRICTIONS ON TRANSFER

2.1 Restrictions on Transfer.

(a) Each Holder agrees not to make any disposition of all or any portion of the Shares or Registrable Securities except in compliance with the terms of the Co-Sale Agreement and unless and until:

(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) (a) The transferee has agreed in writing to be bound by the terms of this Agreement, (b) such Holder shall have notified the Company of the proposed disposition and shall have furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition, and (c) if reasonably requested by the Company, such Holder shall have furnished the Company with an opinion of counsel, reasonably satisfactory to the Company, that such disposition will not require registration of such shares under the Securities Act. It is agreed that the Company will not require opinions of counsel for transactions made pursuant to Rule 144 of the Securities Act except in unusual circumstances.

(iii) Notwithstanding the provisions of paragraphs (i) and (ii) above, no such registration statement or opinion of counsel shall be necessary for a transfer by a Holder which is (a) a partnership to its partners or former partners in accordance with partnership interests, (b) a corporation to its shareholders in accordance with their interest in the corporation, (c) a limited liability company to its members or former members in accordance with their interest in the limited liability company, (d) a transfer to such Holder's affiliate or affiliates (as defined in Rule 405 promulgated under the Securities Act) **("Affiliates")** or (e) a transfer of the type set forth in Section 5.1(c) of the Co-Sale Agreement; *provided that* in each case the transferee will be subject to the terms of this Agreement to the same extent as if he were an original Holder hereunder.

(b) Each certificate representing Shares or 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 (THE "ACT") AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT OR UNLESS THE COMPANY HAS RECENED AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY AND ITS COUNSEL THAT SUCH REGISTRATION IS NOT REQUIRED.

(c) The Company shall be obligated to reissue promptly unlegended certificates at the request of any holder thereof if the holder shall have obtained an opinion of counsel (which counsel

may be counsel to the Company) reasonably acceptable to the Company to the effect that the securities proposed to be disposed of may lawfully be so disposed of without registration, qualification or legend.

(d) Any legend endorsed on an instrument pursuant to applicable state securities laws and the stop-transfer instructions with respect to such securities shall be removed upon receipt by the Company of an order of the appropriate blue sky authority authorizing such removal.

2.2 S-1 Demand Registration.

(a) Subject to the conditions of this Section 2.2, if the Company shall receive at any time after the earlier of (i) the fifth anniversary of the Effective Date or (ii) one hundred eighty (180) days after the effective date of the registration statement pertaining to the Company's Initial Offering, a written request that the Company file a registration statement under the Securities Act covering the registration of Registrable Securities with an anticipated offering price of at least $10,000,000 from any of the following: (x) if the Company is already a reporting company under the Securities and Exchange Act of 1934, Series A Holders, Series B Holders, Series C Holders, Series D Holders, Series E Holders, or Series F Holders who hold at least fifty percent (50%) of the aggregate outstanding Series A Registrable Securities, Series B Registrable Securities, Series C Registrable Securities, Series D Registrable Securities, Series E Registrable Securities, and Series F Registrable Securities; (y) Series G Holders who hold at least fifty percent (50%) of the outstanding Series G Registrable Securities; or (z) Series H Holders who hold at least fifty percent (50%) of the outstanding Series H Registrable Securities (the Holders requesting registration from time to time pursuant to either (x), (y) or (z) of this Section 2.2(a), are referred to as the **"Initiating Holders"),** then the Company shall, within fifteen (15) days of the receipt thereof, give written notice of such request to all Holders, and subject to the limitations of this Section 2.2, use commercially reasonable efforts to effect, as expeditiously as possible, the registration under the Securities Act of all Registrable Securities that the Holders request to be registered in a written request received by the Company within twenty (20) days of the mailing of the Company's notice pursuant to this Section 2.2(a).

(b) 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 2.2 or any request pursuant to Section 2.4 and the Company shall include such information in the written notice referred to in Section 2.2(a) or Section 2.4(a), as applicable. In such event, the right of any Holder to include its Registrable Securities in such registration 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 enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by a majority in interest of the Initiating Holders (which underwriter or underwriters shall be reasonably acceptable to the Company). Notwithstanding any other provision of this Section 2.2 or Section 2.4, if the underwriter advises the Company that marketing factors require a limitation of the number of securities to be underwritten (including Registrable Securities) then the Company shall so advise all Holders of Registrable Securities which would otherwise be underwritten pursuant hereto, and the number of shares that may be included in the underwriting shall be allocated to the Holders of such Registrable Securities on a pro rata basis based on the number of Registrable Securities held by all such Holders (including the Initiating Holders); *provided*, *however,* that the number of Registrable Securities to be included in such underwriting shall not be reduced unless all securities other than Registrable Securities (including those to be sold for the Company's account) are first entirely excluded from the underwriting. Any Registrable Securities excluded or withdrawn from such underwriting shall be withdrawn from the registration.

(c) The Company shall not be required to effect a registration pursuant to this Section 2.2:

(i) prior to the earlier of (a) the fifth anniversary of the Effective Date or (b) one hundred eighty (180) days after the effective date of the registration statement pertaining to the Company's Initial Offering;

(ii) after the Company has effected two (2) registrations pursuant to a demand by the Series A Holders, Series B Holders, Series C Holders, Series D Holders, Series E Holders, Series, and Series F Holders in accordance with Section 2.2(a)(x), two (2) registrations pursuant to a demand by the Series G Holders in accordance with Section 2.2(a)(y), and two (2) registrations pursuant to a demand by the Series H Holders in accordance with Section 2.2(a)(z), and such registrations have been declared and ordered effective;

(iii) during the period starting with the date of filing of, and ending on the date one hundred eighty (180) days following the effective date of the registration statement pertaining to a public offering, other than pursuant to a Special Registration Statement; *provided that* the Company makes commercially reasonable efforts to cause such registration statement to become effective;

(iv) if within fifteen (15) days of receipt of a written request from Initiating Holders pursuant to Section 2.2(a), the Company gives notice to the Holders of the Company's intention to make a public offering within ninety (90) days, other than pursuant to a Special Registration Statement within ninety (90) days, *provided that* the Company shall be entitled to postpone the filing for a reasonable period of time (not to exceed the shorter of ninety (90) days or the Company's termination of consideration of a public offering);

(v) if within fifteen (15) days of receipt of a written request from Initiating Holders pursuant to Section 2.2(a), the Company shall furnish to Holders requesting a registration statement pursuant to this Section 2.2, a certificate signed by the Chairman of the Company's Board of Directors (the **"Board of Directors")** stating that in the good faith judgment of the Board of Directors, it would either (a) interfere with or adversely affect the negotiations or completion of any transaction that is being contemplated by the Company at the time the right to defer is exercised or (b) if the Company is then a reporting company under the Securities and Exchange Act of 1934, such registration would require the Company to disclose an undisclosed material transaction or fact prior to the time such transaction or fact would otherwise be required to be disclosed and the Company has a bona fide business reason for keeping confidential the existence thereof, in which event the Company shall have the right to defer such filing for a period of not more than ninety (90) days after receipt of the request of the Initiating Holders; *provided that* such right to delay a request shall be exercised by the Company not more than once in any twelve (12) month period; or

(vi) if the Initiating Holders propose to dispose of shares of Registrable Securities that may be immediately registered on Form S-3 pursuant to a request made pursuant to Section 2.4 below.

2.3 Piggyback Registrations. The Company shall notify all Holders of Registrable Securities in writing at least fifteen (15) days prior to the filing of any registration statement under the Securities Act for purposes of a public offering of stock of the Company (including, but not limited to, registration statements relating to the Initial Offering and secondary offerings of securities of the Company, but excluding Special Registration Statements) and will afford each such Holder an opportunity to include in such registration statement all or part of such Registrable Securities held by such Holder. Each Holder desiring to include in any such registration statement all or any part of the

Registrable Securities held by it shall, within fifteen (15) days after the above-described notice from the Company, so notify the Company in writing. Such notice shall state the intended method of disposition of the Registrable Securities by such Holder. If a Holder decides not to include all of its Registrable Securities in any registration statement thereafter filed by the Company, such Holder shall nevertheless continue to have the right to include any Registrable Securities in any subsequent registration statement or registration statements as may be filed by the Company with respect to offerings of its securities, all upon the terms and conditions set forth herein.

(a) **Underwriting.** If the registration statement under which the Company gives notice under this Section 2.3 is for an underwritten offering, the Company shall so advise the Holders of Registrable Securities. In such event, the right of any such Holder to be included in a registration pursuant to this Section 2.3 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 Registrable Securities through such underwriting shall enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by the Company. Notwithstanding any other provision of this Agreement, if the underwriter determines in good faith that marketing factors require a limitation of the number of shares to be underwritten, the number of shares that may be included in the underwriting shall be allocated: first, to the Company; second, to the Holders on a pro rata basis based on the total number of Registrable Securities held by the Holders; and third, to any shareholder of the Company (other than a Holder) on a pro rata basis. In no event will shares of any other selling shareholder be included in such registration which would reduce the number of shares which may be included by the Holders without the written consent of Holders of at least a majority of the Registrable Securities proposed to be sold in the offering. If any Holder disapproves of the terms of any such underwriting, such Holder may elect to withdraw therefrom by written notice to the Company and the underwriter, delivered at least five (5) business days prior to the effective date of the registration statement. Any Registrable Securities excluded or withdrawn from such underwriting shall be excluded and withdrawn from the registration.

(b) **Right to Terminate Registration.** The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 2.3 prior to the effectiveness of such registration whether or not any Holder has elected to include securities in such registration. The Registration Expenses of such withdrawn registration shall be borne by the Company in accordance with Section 2.5 hereof.

2.4 Form S-3 Registration. In case the Company shall receive from the Holders of at least ten percent (10%) of the Registrable Securities then outstanding or holders of the majority of the Series G Registrable Securities or holders of the majority of the Series H Registrable Securities a written request or requests that the Company effect a registration on Form S-3 or any similar short-form registration statement and any related qualification or compliance with respect to all or a part of the Registrable Securities owned by such Holder or Holders, the Company will:

(a) promptly give written notice of the proposed registration, and any related qualification or compliance, to all other Holders of Registrable Securities; and

(b) use commercially reasonable efforts to effect, as soon as practicable, such registration and all such qualifications and compliances as may be so requested and as would permit or facilitate the sale and distribution of all or such portion of such Holder's or Holders' Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any other Holder or Holders joining in such request as are specified in a written request given within fifteen (15) days after receipt of such written notice from the Company; *provided, however,* that the

Company shall not be obligated to effect any such registration, qualification or compliance pursuant to this Section 2.4:

(i) if Form S-3 is not available for such offering by the Holders;

(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) at an aggregate price to the public of less than one million dollars ($1,000,000);

(iii) if within fifteen (15) days of receipt of a written request from any Holder or Holders pursuant to this Section 2.4, the Company gives notice to such Holder or Holders of the Company's intention to make a public offering within ninety (90) days, other than pursuant to a Special Registration Statement, *provided that* the Company shall be entitled to postpone the filing only for a reasonable period of time (not to exceed the shorter of ninety (90) days or the Company's termination of consideration of a public offering);

(iv) if within fifteen (15) days of receipt of a written request from any Holder or Holders pursuant to Section 2.4, if the Company shall furnish to the Holders a certificate signed by the Chairman of the Board of Directors stating that in the good faith judgment of the Board of Directors, it would either (a) interfere with or adversely affect the negotiations or completion of any transaction that is being contemplated by the Company at the time the right to defer is exercised or (b) if the Company is then a reporting company under the Securities and Exchange Act of 1934, such registration would require the Company to disclose an undisclosed material transaction or fact prior to the time such transaction or fact would otherwise be required: to be disclosed and the Company has a bona fide business reason for keeping confidential the existence thereof, in which event the Company shall have the right to defer the filing of the Form S-3 registration statement for a period of not more than ninety (90) days after receipt of the request of the Holder or Holders under this Section 2.4; *provided that* such right to delay a request shall be exercised by the Company not more than once in any twelve (12) month period;

(v) if the Company has already effected two (2) registrations on Form S-3 for the Holders pursuant to this Section 2.4 during the prior twelve month rolling period; or

(vi) in any particular jurisdiction in which the Company would be required to qualify to do business or to execute a general consent to service of process in effecting such registration, qualification or compliance.

(c) Subject to the foregoing, the Company shall use commercially reasonable efforts to file a Form S-3 registration statement covering the Registrable Securities and other securities so requested to be registered as soon as practicable after receipt of the request or requests of the Holders. Registrations effected pursuant to this Section 2.4 shall not be counted as demands for registration or registrations effected pursuant to Sections 2.2 or 2.3, respectively.

2.5 Expenses of Registration. Except as specifically provided herein, all Registration Expenses incurred in connection with any registration, qualification or compliance pursuant to Section 2.2 or any registration under Section 2.3 or Section 2.4 herein shall be borne by the Company. All Selling Expenses incurred in connection with any registrations hereunder, shall be borne by the holders of the securities so registered pro rata on the basis of the number of shares so registered. The Company shall not, however, be required to pay for expenses of any registration proceeding begun pursuant to Section 2.2 or 2.4, the request of which has been subsequently withdrawn by the Initiating Holders unless(a) the withdrawal is based upon material adverse information concerning the Company of which the Initiating Holders were not aware at the time of such request, (b) the underwriter(s) in connection with such

offering requires Holder to substantially cut back the number of securities to be offered by Holder and Holder elects not to sell any securities in the offering, or (c) the Holders of a majority of Registrable Securities agree to forfeit their right to one requested registration pursuant to Section 2.2 or Section 2.4, as applicable, in which event such right shall be forfeited by all Holders). If the Holders are required to pay the Registration Expenses, such expenses shall be borne by the holders of securities (including Registrable Securities) requesting such registration in proportion to the number of shares for which registration was requested. If the Company is required to pay the Registration Expenses of a withdrawn offering pursuant to clause (a) or (b) above, then the Holders shall not forfeit their rights pursuant to Section 2.2 or Section 2.4 to a demand registration.

2.6 Obligations of the Company. Whenever required to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) Prepare and file with the SEC a registration statement with respect to such Registrable Securities and use all commercially reasonable efforts to cause such registration statement to become effective, and, upon the request of the Holders of a majority of the Registrable Securities registered thereunder, keep such registration statement effective for up to one hundred eighty (180) days or, if earlier, until the Holder or Holders have completed the distribution related thereto.

(b) Prepare and file with the SEC 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 paragraph (a) above.

(c) Furnish to the Holders such number of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned by them.

(d) Use commercially reasonable efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdictions 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) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in customary form, with the managing underwriter(s) of such offering. Each Holder participating in such underwriting shall also enter into and perform its obligations under such an agreement.

(f) Notify each Holder 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 in the light of the circumstances then existing. The Company will use commercially reasonable efforts to amend or supplement, as soon as practicable, such prospectus in order to cause such prospectus not to include any 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 in the light of the circumstances then existing.

(g) Use commercially reasonable efforts to furnish, on the date that such Registrable Securities are delivered to the underwriters for sale, if such securities are being sold through underwriters, (i) an opinion, dated as of such date, of the counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and (ii) a letter dated as of such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering addressed to the underwriters.

(h) Cause all such Registrable Securities registered pursuant hereunder to be listed on each securities exchange or nationally recognized automated quotation system on which similar securities issued by the Company are then listed.

2.7 Termination of Registration Rights. All registration rights granted and restrictions imposed by this Section 2 shall terminate and be of no further force and effect upon the earlier of (a) three (3) years after the date of a Qualified Public Offering, or (b) a Sale Transaction. In addition, a Holder's registration rights shall expire at such time as the Holder is free to sell all Registrable Securities held by and issuable to such Holder (and its Affiliates, partners, former partners, members and former members) under Rule 144 of the Securities Act during a single three-month period without registration.

2.8 Delay of Registration; Furnishing Information.

(a) No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any such registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 2.

(b) It shall be a condition precedent to the obligations of the Company to take any action pursuant to Section 2.2, 2.3 or 2.4 that the selling Holders shall furnish to the Company such information regarding themselves, the Registrable Securities held by them and the intended method of disposition of such securities as shall be required to effect the registration of their Registrable Securities.

(c) The Company shall have no obligation with respect to any registration requested pursuant to Section 2.2 or Section 2.4 if, due to the operation of Section 2.2(b), the number of shares or the anticipated aggregate offering price of the Registrable Securities to be included in the registration does not equal or exceed the number of shares or the anticipated aggregate offering price required to originally trigger the Company's obligation to initiate such registration as specified in Section 2.2 or Section 2.4, whichever is applicable; *provided, however,* (i) Registration Expenses associated with any such registration request shall be borne by the Company, and (ii) the Holders shall not forfeit their rights pursuant to Section 2.2 or Section 2.4 to a registration.

(d) In case of each registration, qualification or compliance effected by the Company during the demand registration period described in Section 2.2 or the piggyback registration period described in Section 2.3 that the Holders elect to participate in, the Company shall keep the Holders advised in writing as to the initiation, status and completion of such registration, qualification and compliance.

2.9 Indemnification. In the event any Registrable Securities are included in a registration statement under Sections 2.2, 2.3 or 2.4:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Holder, the partners, officers and directors of each Holder, any underwriter (as defined in the

Securities Act) for such Holder and each Person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or the Exchange Act, against any losses, claims, damages, or liabilities (joint or several) to which they may become subject under the Securities Act, the Exchange Act or other federal or state law, to the extent that such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (collectively a **"Violation")** by the Company: (i) any untrue statement or alleged untrue statement of a material fact contained in such registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto; (ii) the 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, the Exchange Act, any state securities law or any rule or regulation promulgated under the Securities Act, the Exchange Act or any state securities law in connection with the offering covered by such registration statement; and the Company will pay as incurred to each such Holder, partner, officer, director, underwriter or controlling person for any reasonable, out of pocket legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; *provided however,* that the indemnity agreement contained in this Section 2.9(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, nor shall the Company be liable in any such case for any such loss, claim, damage, liability or action to the extent that it arises out of or is based upon a Violation which occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by such Holder, partner, officer, director, underwriter or controlling person of such Holder.

(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 qualifications or compliance is being effected, indemnify and hold harmless the Company, each of its directors, its officers and each Person, if any, who controls the Company within the meaning of the Securities Act, any underwriter and any other Holder selling securities under such registration statement or any of such other Holder's partners, directors or officers or any person who controls such Holder, against any losses, claims, damages or liabilities (joint or several) to which the Company or any such director, officer, controlling person, underwriter or other such Holder, or partner, director, officer or controlling person of such other Holder' may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished by such Holder under an instrument duly executed by such Holder and stated to be specifically for use in connection with such registration; and each such Holder will pay as incurred any reasonable, out of pocket legal or other expenses reasonably incurred by the Company or any such director, officer, controlling person, underwriter or other Holder, or partner, officer, director or controlling person of such other Holder in connection with investigating or defending any such loss, claim, damage, liability or action if it is judicially determined that there was such a Violation; *provided, however,* that the indemnity agreement contained in this Section 2.9(b) 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 Holder, which consent shall not be unreasonably withheld; *provided further,* that in no event shall any indemnity under this Section 2.9 exceed the net proceeds from the offering received by such Holder.

(c) Promptly after receipt by an indemnified party under this Section 2.9 of notice of the commencement of any action (including any governmental action), such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 2.9, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other

indemnifying party similarly noticed, to assume the defense thereof with counsel mutually satisfactory to the parties; *provided*, *however*, that an indemnified party shall have the right to retain its own counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, if materially prejudicial to its ability to defend such action, shall relieve such indemnifying party of any liability to the indemnified party under this Section 2.9, but the omission so to deliver written notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 2.9.

(d) If the indemnification provided for in this Section 2.9 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any losses, claims, damages or liabilities referred to herein, the indemnifying party, in lieu of indemnifying such indemnified party thereunder, shall to the extent permitted by applicable law contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability 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 Violation(s) that resulted in such loss, claim, damage or liability, as well as any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by a court of law 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; *provided that* in no event shall any contribution by a Holder hereunder exceed the net proceeds from the offering received by such Holder. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of fraudulent misrepresentation.

(e) The obligations of the Company and Holders under this Section 2.9 shall survive completion of any offering of Registrable Securities in a registration statement, the termination of this agreement and the transfer of the Registrable Securities by the Holder. No indemnifying party, in the defense of any such claim or litigation, shall, except with the consent of each indemnified party, consent to entry of any judgment or enter into any settlement which 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.

2.10 Assignment of Registration Rights. The rights to cause the Company to register Registrable Securities pursuant to this Section 2 may be assigned by a Holder to a transferee or assignee of Registrable Securities which (a) is an Affiliate, subsidiary, parent, shareholder, general partner, limited partner, retired partner, member or retired member of a Holder, (b) is a transferee of the type set forth in Section 5.1(c) of the Co-Sale Agreement, (c) acquires at least twenty-five percent (25%) of the Registrable Securities held by the transferor; *provided*, *however*, (i) the transferor shall promptly furnish to the Company written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being assigned and (ii) such transferee shall agree to be subject to all restrictions set forth in this Agreement.

2.11 Amendment of Registration Rights. Any provision of this Section 2 may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the .written consent of the Company, (i) the Holders of at least a majority of the Prior Registrable Securities then outstanding, and (ii) the Holders of at least fifty-one percent (51%) of the Senior Preferred Registrable Securities then outstanding, which in all cases must

include at least two of the Major Senior Preferred Holders; *provided that* if such amendment has the effect of materially and adversely affecting the Holders of a class or series of the Company's equity securities differently from the Holders of another class or series of the Company's equity securities, then such amendment shall require the written consent of the Holders of at least a majority in interest of such materially and adversely affected class or series. Any amendment or waiver effected in accordance with this Section 2.11 shall be binding upon each Holder and the Company. By acceptance of any benefits under this Section 2, Holders of Registrable Securities hereby agree to be bound by the provisions hereunder.

2.12 "Market Stand-Off" Agreement; Agreement to Furnish Information.

(a) Each Holder hereby agrees that such Holder shall not sell, 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, any Common Stock (or other securities) of the Company held by such Holder (other than those included in the registration) for a period specified by the representative of the underwriters of Common Stock (or other securities) in the Qualified Public Offering of the Company not to exceed one hundred eighty (180) days, but subject to such extension or extensions as may be required by the underwriter in order to publish research reports while complying with Rule 2711 of the FINRA and Rule 472(f)(4) of the New York Stock Exchange, following the effective date of the registration statement of the Company filed under the Securities Act with respect to such Initial Offering; *provided that* all officers, directors and holders of more than 2.5% of the outstanding capital stock (on an as-if-converted to Common Stock basis) of the Company enter into similar agreements.

(b) Each Holder agrees to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriter which are consistent with the foregoing or which are necessary to give further effect thereto. In addition, if requested by the Company or the representative of the underwriters of Common Stock (or other securities) in the Initial Offering, each Holder shall provide, within ten (1 0) days of such request, such information as may be required by the Company or such representative in connection with the completion of any public offering of the Company's securities pursuant to a registration statement filed under the Securities Act. The obligations described in this Section 2.12 shall not apply to a registration relating solely to employee benefit plans on Form S-1 or Form S-8 or similar forms that may be promulgated in the future, or a registration relating solely to a Rule 145 transaction on Form S-4 or similar forms that may be promulgated in the future. The Company may impose stop-transfer instructions with respect to the shares of Common Stock (or other securities) subject to the foregoing restriction until the end of said one hundred eighty (180) day period after the Initial Offering. Each Holder agrees that any transferee of any shares of Registrable Securities shall be bound by this Section 2.12.

2.13 Rule 144 Reporting. With a view to making available to the Holders the benefits of certain rules and regulations of the SEC which may permit the sale of the Registrable Securities to the public without registration, the Company agrees to use its best efforts to:

(a) Make and keep public information available, as those terms are understood and defined in Rule 144 of the Securities Act or any similar or analogous rule promulgated under the Securities Act, at all times after the effective date of the first registration filed by the Company for an offering of its securities to the general public;

(b) File with the SEC, in a timely manner, all reports and other documents required of the Company under the Exchange Act; and

(c) So long as a Holder owns any Registrable Securities, furnish to such Holder forthwith upon request: a written statement by the Company as to its compliance with the reporting requirements of Rule 144 of the Securities Act, and of 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 as a Holder may reasonably request in availing itself of any rule or regulation of the SEC allowing it to sell any such securities without registration.

2.14 Limitation on Subsequent Registration Rights. After the date of this Agreement, the Company shall not, without the prior written consent of **(i)** the Holders of at least a majority of the Prior Registrable Securities then outstanding, and (ii) the Holders of at least fifty-one percent (51%) of the Senior Preferred Registrable Securities then outstanding, which in all cases shall include at least two of the Major Senior Preferred Holders, enter into any agreement with any holder or prospective holder of any securities of the Company that would grant such holder registration rights senior to or *pari passu* with those granted to the Holders hereunder.

Section 3. COVENANTS OF THE COMPANY.

3.1 Basic Financial Information and Reporting.

(a) The Company will maintain true books and records of account in which full and correct entries will be made of all its business transactions pursuant to a system of accounting established and administered in accordance with generally accepted accounting principles consistently applied, and will set aside on its books all such proper accruals and reserves as shall be required under generally accepted accounting principles consistently applied.

(b) As soon as practicable, but in any event within one hundred and twenty (120) calendar days after the end of each fiscal year of the Company, the Company will furnish to (i) each Investor holding at least twenty-five percent (25%) of the outstanding shares of Series **H** Preferred, (ii) each Investor holding at least 6,948,627 shares of the Senior Registrable Securities issued under the Series H Purchase Agreement and/or the Series G Purchase Agreement, as applicable, (iii) at least twenty percent (20%) of the total outstanding number of the Prior Registrable Securities, determined in accordance with the aggregation principles in Section 5.7 of this Agreement, and (iv) the Perez-Sala Investors, as such term is defined in the Co-Sale Agreement, so long as the Perez-Sala Investors own in the aggregate at least 2,000,000 shares of Series C Preferred (any such Investor described in clauses (i)-(iv), a **"Significant Investor"),** a balance sheet of the Company, as at the end of such fiscal year, and a statement of income and a statement of cash flows of the Company, for such year, all 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. Such financial statements shall be audited and accompanied by a report and opinion thereon by independent public accountants selected by the Board of Directors.

(c) The Company will furnish each Significant Investor, as soon as practicable, but in any event within 45 calendar days after the end of the first, second and third quarterly accounting periods in each fiscal year of the Company, a balance sheet of the Company as of the end of each such quarterly period, and a statement of income and a statement of cash flows of the Company for such period and for the current fiscal year to date, prepared in accordance with generally accepted accounting principles consistently applied and setting forth in each case in comparative form the figures for the corresponding prior year period, all in reasonable detail, with the exception that no notes need be attached to such statements and year-end audit adjustments may not have been made.

(d) The Company will furnish each Significant Investor as soon as it is available, but in any event not later than 30 days prior to the beginning of each fiscal year, an annual budget for such fiscal year (and as soon as available, any subsequent revisions thereto).

3.2 Inspection Rights. Each Significant Investor (including such Significant Investor's representative(s)) shall have the right to visit and inspect any of the properties of the Company or any of its subsidiaries, and to discuss the affairs, finances and accounts of the Company or any of its subsidiaries with its officers, and to review such information as is reasonably requested all at such reasonable times and as often as may be reasonably requested; *provided*, *however,* that the Company shall not be obligated under this Section 3 .2 with respect to a competitor of the Company.

3.3 Confidentiality of Records. Each Investor agrees to use, and to use its best efforts to insure that its authorized representatives use, the same degree of care as such Investor uses to protect its own confidential information to keep confidential any information furnished to it which the Company identifies as being confidential or proprietary (so long as such information is not in the public domain), except that such Investor may disclose such proprietary or confidential information to any partner, subsidiary or parent of such Investor for the purpose of evaluating its investment in the Company as long as such partner, subsidiary or parent is advised of the confidentiality provisions of this Section 3.3.

3.4 Reservation of Common Stock. The Company will at all times reserve and keep available, solely for issuance and delivery upon the conversion of the Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred, Series E Preferred, Series F Preferred, Series G Preferred, and Series H Preferred, all Common Stock issuable from time to time upon such conversion.

3.5 Stock Vesting. Unless otherwise approved by the Board of Directors, all stock options and other stock equivalents issued after the date of this Agreement to employees shall be subject to vesting as follows: (a) twenty-five percent (25%) of such stock shall vest at the end of the first year following the earlier of the date of issuance or such person's services commencement date with the Company and (b) seventy-five percent (75%) of such stock shall vest monthly over the remaining thirty-six (36) months.

3.6 Proprietary Information and Inventions Agreement. With the exception of members of the Company's Medical Advisory Board, the Company shall require all employees and consultants to execute and deliver a Proprietary Information and Inventions Agreement in a form reasonably acceptable to the Board of Directors (which approval shall include at least two of the Senior Preferred Directors).

3.7 Directors' and Officers' Insurance. Within ninety (90) days from the date of this Agreement, to the extent not already in place, the Company shall maintain with financially sound and reputable insurers directors' and officers' insurance with respect to the breach of the directors' and officers' of the Company's fiduciary duties with respect to its shareholders and with respect to such other matters customarily insured by such policies in amounts reasonably acceptable to the Board of Directors (which approval shall include at least two of the Senior Preferred Directors).

3.8 Committees; Observers.

(a) The Company shall maintain (i) an audit committee of the Board of Directors (the **"Audit Committee"**) and a compensation committee of the Board of Directors (the **"Compensation Committee"**), such committees to include the Series G Directors designated by Longitude and H.I.G., and the Series H Director designated by RXSI. The Audit Committee will initially include Juliet Tammenoms Bakker, Daniel Schwartz, William J. Link, and Werner Wolfen. The Audit Committee shall be responsible for overseeing the audits of the Company's financial statements and any other matters set

forth in its charter from time to time. The Compensation Committee will initially include Juliet Tammenoms Bakker, Bruce Robertson, Christopher Cox, J. Andrew Corley, William J. Link, and Werner Wolfen. The Compensation Committee shall be responsible for overseeing the executive compensation of the Company and any other matters set forth in its charter from time to time.

(b) So long as the Perez-Sala Investors own in the aggregate at least 2,000,000 shares of Series C Preferred, Jan Bonel shall be entitled to attend meetings of the Board of Directors, subject to this Section 3.8(b), as a nonvoting observer (a **"Board Observer"**). The holders of at least a majority of the Prior Registrable Securities may appoint one Board Observer, who initially shall be James Adler. So long as BP Calhoun Associates LLC owns at least 2,000,000 shares of Series G Preferred Stock, it may appoint one Board Observer, who initially shall be Seth Alvord. So long as RA Capital Healthcare Fund, L.P. and Blackwell Partners LLC – Series A own in the aggregate at least 2,000,000 shares of Series G Preferred, they may appoint one Board Observer, who initially shall be Andrew Levin. A strategic investor, if any, who purchases at least $10,000,000 of shares of Series H Preferred in the Final Closing (as defined in the Purchase Agreement) pursuant to the Purchase Agreement (the **"Strategic Investor"**) shall be entitled to appoint one Board Observer. The Chairman of the Board of Directors may invite others to serve as Board Observers from time to time in his or her discretion. Board Observers shall be invited to attend Board meetings and receive materials provided to members of the Board of Directors in connection with such meetings, but may be excluded from executive sessions at the discretion of the Chairman of the Board of Directors. Board Observers shall have no right to vote on matters brought before the Board of Directors (or any committee). The presence of any Board Observer will not be necessary to establish a quorum at any meeting. Board Observers shall maintain confidentiality of corporate proceedings. The Company may require any Board Observer to execute an agreement satisfactory to the Company outlining the privileges and duties of a Board Observer. Failure to execute or comply with such an agreement shall result in the termination of Board Observer status.

3.9 Board Expenses. The Company will pay or reimburse all of the reasonable out-of-pocket costs and expenses incurred by the members of the Board of Directors and by any Board Observers in relation to attendance at meeting of the Board of Directors and committees of the Board of Directors.

3.10 Action Through Subsidiaries. The Company will not take any action indirectly through its subsidiaries that pursuant to the negative covenants in Article III, Section 2(b) of the Company's Restated Charter would require the consent of the holders of Preferred Stock as specified in the Restated Charter without such consent.

3.11 Termination of Covenants. All covenants of the Company contained in Section 3 of this Agreement shall expire and terminate as to each Holder upon the earlier of the closing of (i) a Qualified Public Offering or (ii) a Sale Transaction.

Section 4. RIGHTS OF PARTICIPATION IN FUTURE FINANCINGS.

4.1 Subsequent Offerings.

(a) In the event that the Company proposes to sell and issue Equity Securities (as hereinafter defined) from time to time after the date of this Agreement, each Significant Investor shall have the right to purchase its pro rata share of all Equity Securities (other than the Equity Securities excluded by Section 4.4 hereof). Each Significant Investor's pro rata share is equal to the ratio of (x) the number of shares of the Company's Common Stock (including all shares of Common Stock issued or issuable upon conversion of the Shares) which such Significant Investor, as applicable, is deemed to hold immediately prior to the issuance of such Equity Securities to (y) the total number of shares of the

Company's outstanding Common Stock (including all shares of Common Stock issued or issuable upon conversion of the Shares and any other convertible securities then outstanding as well as upon the exercise of any options then outstanding) immediately prior to the issuance of the Equity Securities.

(b) The term **"Equity Securities"** shall mean (i) any Common Stock, Shares or other security of the Company, (ii) any security convertible, with or without consideration, into any Common Stock, Shares or other security (including any option to purchase such a convertible security), (iii) any security carrying any warrant or right to subscribe to or purchase any Common Stock, Shares or other security or (iv) any such warrant or right.

4.2 Exercise of Rights.

(a) If the Company proposes to issue any Equity Securities, it shall give each Significant Investor written notice of its intention, describing the Equity Securities, the price and the terms and conditions upon which the Company proposes to issue the same. Each Significant Investor shall have fifteen (15) days from the giving of such notice to agree to purchase its pro rata share of the Equity Securities for the price and upon the terms and conditions specified in the notice by giving written notice to the Company and stating therein the quantity of Equity Securities to be purchased. Notwithstanding the foregoing, the Company shall not be required to offer or sell such Equity Securities to any Significant Investor who would cause the Company to be in violation of applicable federal securities laws by virtue of such offer or sale. Each Significant Investor electing to purchase its pro rata share of such Equity Securities (each, an **"Electing Investor")** shall have an over-allotment option such that to the extent any Significant Investor does not elect to purchase its pro rata share of such Equity Securities, Electing Investors shall have the right to purchase their pro-rata share of such unsubscribed shares based on the fully-diluted ownership of each Electing Investor as a percentage of the total fully-diluted ownership of all Electing Investors in the aggregate.

(b) If any Significant Investor fails to exercise in full its rights of participation, the Company shall have ninety (90) days thereafter to sell the Equity Securities in respect of which the Holder's rights were not exercised, at a price not less and upon general terms and conditions materially no more favorable to the purchasers thereof than specified in the Company's notice to the other Significant Investors pursuant to Section 4.2(a) hereof. If the Company has not sold such Equity Securities within such ninety (90) days, the Company shall not thereafter issue or sell any Equity Securities, without first offering such securities to the Significant Investors in the manner provided above.

(c) **Termination and Waiver of Rights of Participation.** The rights of participation established by this Section 4 shall not apply to, and shall terminate upon the earlier of, the closing of **(i)** a Qualified Public Offering or (ii) a Sale Transaction. The rights of participation established by this Section 4 may be amended, modified or waived upon the written consent of (i) the holders of at least a majority of the Prior Registrable Securities then outstanding, and (ii) at least fifty-one percent (51%) outstanding shares of Senior Preferred Registrable Securities then outstanding, which in all cases must include at least two of the Major Senior Preferred Holders, voting together as a single class (the **"Requisite Senior Preferred Vote"**).

4.3 Transfer of Rights of Participation. The rights of participation of each Holder under this Section 4 may be transferred to the same parties, subject to the same restrictions as any transfer of registration rights pursuant to Section 2.1 0.

4.4 Excluded Securities. Notwithstanding anything to the contrary, the rights of first participation established by this Section 4 shall have no application to any of the following Equity Securities:

(a) up to 47,976,338 shares of Common Stock (or options, warrants or other Common Stock purchase rights issued pursuant to such options, warrants or other rights, and the Common Stock issued upon the exercise or conversion thereof) issued prior to or after the Effective Date to employees, officers or directors of, or consultants or advisors to the Company or any subsidiary, pursuant to stock purchase or stock option plans or other like arrangements approved by the Board of Directors;

(b) stock issued pursuant to any rights or agreements outstanding as of the date of this Agreement (including, without limitation any shares of stock or rights or agreements that remain issuable in a Subsequent Closing (as defined in. the Purchase Agreement) pursuant to the Purchase Agreement, options and warrants outstanding as of the date of this Agreement; and stock issued pursuant to any such rights or agreements granted after the date of this Agreement; *provided that* the rights of participation established by this Section 4 applied with respect to the initial sale or grant by the Company of such rights or agreements;

(c) any Equity Securities issued for consideration other than cash pursuant to a merger, consolidation, acquisition or similar business combination approved by the Board of Directors;

(d) shares of Common Stock issued in connection with any stock split, stock dividend or recapitalization by the Company;

(e) shares of Common Stock issued upon conversion of the Shares;

(f) any Equity Securities issued pursuant to any equipment or facilities leasing or loan arrangement, financing from a bank or similar financial or lending institution, provided such issuances are for other than primarily equity financing purposes and are approved by the Board of Directors;

(g) any Equity Securities that are issued by the Company pursuant to a Qualified Public Offering; and

(h) any Equity Securities issued in connection with technology licensing arrangements involving the Company and other entities, provided such issuances are approved by the Board of Directors.

Section 5. MISCELLANEOUS.

5.1 Governing Law. This Agreement shall be governed by and construed under the laws of the State of California as applied to agreements among California residents entered into and to be performed entirely within California.

5.2 Survival. The representations, warranties, covenants, and agreements made herein shall survive any investigation made by any Holder and the closing of the transactions contemplated hereby. All statements as to factual matters contained in any certificate or other instrument delivered by or on behalf of the Company pursuant hereto in connection with the transactions contemplated hereby shall be deemed to be representations and warranties by the Company hereunder solely as of the date of such certificate or instrument.

5.3 Successors and Assigns. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors, and administrators of the parties hereto and shall inure to the benefit of and be enforceable by each Person

who shall be a Holder of Registrable Securities from time to time; *provided, however,* that prior to the receipt by the Company of adequate written notice of the transfer of any Registrable Securities specifying the full name and address of the transferee, the Company may deem and treat the Person listed as the holder of such shares in its records as the absolute owner and holder of such shares for all purposes, including the payment of dividends or any redemption price.

5.4 Entire Agreement. This Agreement and the exhibits hereto, along with the Series G Purchase Agreement and each of the exhibits, schedules and agreements referred to therein, constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof and no party shall be liable or bound to any other in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein and therein. This Agreement replaces and supersedes all prior written or oral agreements, statements, correspondence, negotiations and understandings by and among the parties with respect to the matters covered by it.

5.5 Severability. In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

5.6 Amendment and Waiver.

(a) Except as otherwise expressly provided, this Agreement may be amended or modified only upon the written consent of the Company, the holders of at least a majority of the Prior Registrable Securities, and the Requisite Senior Preferred Vote; *provided that* if such amendment ,has the effect of materially and adversely affecting the Holders of a class or series of the Company's equity securities differently from the Holders of another class or series of the Company's equity securities, then such amendment shall require the written consent of the Holders of at least a majority in interest of such materially and adversely affected class or series. Except as otherwise expressly provided, the obligations of the Company and the rights of the Holders under this Agreement may be waived only with the written consent of the holders of at least a majority of the Prior Registrable Securities, and the Requisite Senior Preferred Vote; *provided that* if the rights are only in favor of the Holders of a class or series of the Company's equity securities, but not Holders of another class or series of the Company's equity securities, then such waiver shall instead require the written consent of the Holders of at least a majority in interest of such class or series in whose favor are the rights. Notwithstanding the foregoing, Holders purchasing shares of Series H Preferred in a Closing after the Initial Closing (each as defined in the Purchase Agreement) may become parties to this Agreement, by executing a counterpart of this Agreement without any amendment of this Agreement pursuant to this paragraph or any consent or approval of any other Holder for the sole purpose of including each Additional Purchaser of Series H Preferred as a "Series H Holder."

(b) For the purposes of determining the number of Holders entitled to vote or exercise any rights hereunder, the Company shall be entitled to rely solely on the list of record holders of its stock as maintained by or on behalf of the Company.

5.7 Aggregation of Stock. All shares of Registrable Securities held or acquired by a Holder and its Affiliates (as defined in Rule 405 promulgated under the Securities Act) shall be aggregated together for the purpose of determining the availability of any rights under this Agreement. For purposes of the foregoing, the shares held by any Holder that (i) is a partnership, limited liability company or corporation, the partners, retired partners, members, retired members and shareholders of such Holder, or the estates and family members of any such partners, retired partners, members, retired members and any trusts for the benefit of any of the foregoing Persons shall be deemed to be a single "Holder," and (ii) is

an individual shall be deemed to include shares held by any members of the shareholder's family and any custodian or trustee for the benefit of any of such individual. With respect to the Capri Investors (as defined in the Co-Sale Agreement), the shares of Registrable Securities held or acquired by any Capri Investor shall be aggregated together for the purpose of determining the availability of any rights under this Agreement.

5.8 Delays or Omissions. It is agreed that no delay or omission to exercise any right, power, or remedy accruing to any Holder, upon any breach, default or noncompliance of the Company under this Agreement shall impair any such right, power, or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent, or approval of any kind or character on any Holder's part of any breach, default or noncompliance under this Agreement or any waiver on such Holder's part 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, by law, or otherwise afforded to Holders, shall be cumulative and not alternative.

5.9 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the party to be notified at the address as set forth on the signature pages hereof or at such other address as such party may designate by ten (10) days advance written notice to the other parties hereto.

5.10 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.

5.11 No Presumption. Any rule of law, including without limitation Section 1654 of the California Civil Code or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the party that drafted it, has no application and is expressly waived. If any claim is made by a party relating to any conflict, omission or ambiguity in the provisions of this Agreement, no presumption or burden of proof or persuasion will be implied because this Agreement was prepared by or at the request of any party or its counsel.

5.12 Titles and Subtitles. The titles of the Sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

5.13 Additional Investors. Notwithstanding anything to the contrary contained herein, but subject to Section 2.14 of this Agreement, if the Company shall issue Equity Securities in accordance with Section 4.4(c), (f) or (h) of this Agreement, any purchaser of such Equity Securities may become a party to this Agreement by executing and delivering an additional counterpart signature page to this Agreement and shall be deemed an "Investor" hereunder.

5.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

[THIS SPACE INTENTIONALLY LEFT BLANK]

The parties hereto have executed this **NINTH AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT** as of the date set forth in the first paragraph hereof.

COMPANY:

RXSIGHT, INC.

By: /s/ Ron Kurtz
Name: Ron Kurtz
Title: Chief Executive Officer

Address: 100 Columbia Street, Suite 120
Aliso Viejo, CA 92656

RXSIGHT, INC.
INDEMNIFICATION AGREEMENT

This Indemnification Agreement (this "Agreement") is dated as of and is between RxSight, Inc., a Delaware corporation (the "Company"), and [*insert name of indemnitee*] ("Indemnitee").

RECITALS

WHEREAS, indemnitee's service to the Company substantially benefits the Company.

WHEREAS, individuals are reluctant to serve as directors or officers of corporations or in certain other capacities unless they are provided with adequate protection through insurance or indemnification against the risks of claims and actions against them arising out of such service to and activities on behalf of the Company.

WHEREAS, indemnitee does not regard the protection currently provided by applicable law, the Company's governing documents and any insurance as adequate under the present circumstances, and Indemnitee may not be willing to serve as a director or officer without additional protection.

WHEREAS, in order to induce Indemnitee to continue to provide services to the Company, it is reasonable, prudent and necessary for the Company to contractually obligate itself to indemnify, and to advance expenses on behalf of, Indemnitee as permitted by applicable law.

WHEREAS, this Agreement shall supersede any prior indemnification agreement between the Company and the Indemnitee, which is hereby terminated.

WHEREAS, this Agreement is a supplement to and in furtherance of the indemnification provided in the Company's certificate of incorporation and bylaws, and any resolutions adopted pursuant thereto, and this Agreement shall not be deemed a substitute therefor, nor shall this Agreement be deemed to limit, diminish or abrogate any rights of Indemnitee thereunder.

WHEREAS, in light of the considerations referred to in the preceding recitals, it is the Company's intention and desire that the provisions of this Agreement be construed liberally, subject to their express terms, to maximize the protections to be provided to Indemnitee hereunder.

NOW, THEREFORE, in consideration of Indemnitee's agreement to serve as a director or officer of the Company after the date hereof, the parties hereto agree as follows:

1. **Definitions**.

(a) A "Change in Control" shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

(i) *Acquisition of Stock by Third Party*. Any Person (as defined below) is or becomes the Beneficial Owner (as defined below), directly or indirectly, of securities of the Company representing fifteen percent (15%) or more of the combined voting power of the Company's then outstanding securities;

(ii) *Change in Board Composition*. During any period of two consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such

period constitute the Company's board of directors, and any new directors (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in Sections 1(a)(i), 1(a)(iii) or 1(a)(iv) whose election by the board of directors 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 period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of the members of the Company's board of directors;

(iii) *Corporate Transactions*. The effective date of a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its ultimate parent, as applicable) more than 50% of the combined voting power of the voting securities of the surviving entity or its ultimate parent, as applicable, outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving entity or its ultimate parent, as applicable;

(iv) *Liquidation*. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets; and

(v) *Other Events*. Any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any similar schedule or form) promulgated under the Securities Exchange Act of 1934, as amended, whether or not the Company is then subject to such reporting requirement.

For purposes of this Section 1(a), the following terms shall have the following meanings:

(1) "Person" shall have the meaning as set forth in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended; provided, however, that "Person" shall exclude (i) the Company, (ii) any trustee or other fiduciary holding securities under an employee benefit plan of the Company, and (iii) any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(2) "Beneficial Owner" shall have the meaning given to such term in Rule 13d-3 under the Securities Exchange Act of 1934, as amended; provided, however, that "Beneficial Owner" shall exclude any Person otherwise becoming a Beneficial Owner by reason of (i) the stockholders of the Company approving a merger of the Company with another entity or (ii) the Company's board of directors approving a sale of securities by the Company to such Person.

(b) "Corporate Status" describes the status of a person who is or was a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of the Company or any other Enterprise, including as a deemed fiduciary thereto.

(c) "DGCL" means the General Corporation Law of the State of Delaware.

(d) "Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(e) "Enterprise" means the Company and any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary, including as a deemed fiduciary thereto.

(f) "Expenses" include all reasonable attorneys' fees, retainers, court costs, transcript costs, fees and costs of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also include (i) Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond or other appeal bond or their equivalent, and (ii) for purposes of Section 13(d), Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(g) "Independent Counsel" means a law firm, or a partner or member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (other than as Independent Counsel with respect to matters concerning Indemnitee under this Agreement, or other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

(h) "Proceeding" means any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative (whether formal or informal) nature, including any appeal therefrom and including without limitation any such Proceeding pending as of the date of this Agreement, in which Indemnitee was, is or will be involved as a party, a potential party, a non-party witness or otherwise by reason of (i) the fact that Indemnitee is or was a director or officer of the Company, (ii) any action taken by Indemnitee or any action or inaction on Indemnitee's part while acting as a director or officer of the Company, or (iii) the fact that he or she is or was serving at the request of the Company as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of the Company or any other Enterprise, in each case whether or not serving in such capacity at the time any liability or Expense is incurred for which indemnification or advancement of expenses can be provided under this Agreement.

(i) Reference to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; references to "serving at the request of the Company" shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, including as a deemed fiduciary thereto, its participants or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Company" as referred to in this Agreement.

2. **Indemnity in Third-Party Proceedings**. The Company shall indemnify Indemnitee in accordance with the provisions of this Section 2 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 2, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee or on his or her behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not *opposed to the best* interests of the Company and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

3. **Indemnity in Proceedings by or in the Right of the Company**. The Company shall indemnify Indemnitee in accordance with the provisions of this Section 3 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 3, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company. No indemnification for Expenses shall be made under this Section 3 in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged by a court of competent jurisdiction to be liable to the Company, unless and only to the extent that the Delaware Court of Chancery or any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification for such expenses as the Delaware Court of Chancery or such other court shall deem proper.

4. **Indemnification for Expenses of a Party Who is Wholly or Partly Successful**. To the extent that Indemnitee is a party to or a participant in and is successful (on the merits or otherwise) in defense of any Proceeding or any claim, issue or matter therein, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith. To the extent permitted by applicable law, if Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, in defense of one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with (a) each successfully resolved claim, issue or matter, and (b) any claim, issue or matter related to any such successfully resolved claim, issue or matter. For purposes of this section and without limitation Indemnitee will be deemed to have been "successful on the merits" in circumstances including but not limited to the termination of any Proceeding or of any claim, issue or matter therein, by the winning of a dismissal (with or without prejudice), and the winning of a motion for summary judgment, settlement (with or without court approval) that is approved by the Company (which approval shall not be unreasonably withheld).

5. **Partial Indemnification**. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

6. **Indemnification for Expenses of a Witness or Deponent**. To the extent that Indemnitee is, by reason of his or her Corporate Status, a witness or deponent in any Proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified to the extent permitted by applicable law against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith.

7. **Additional Indemnification**.

(a) Notwithstanding any limitation in Sections 2, 3 or 4, the Company shall indemnify Indemnitee to the fullest extent permitted by applicable law if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee or on his or her behalf in connection with the Proceeding or any claim, issue or matter therein.

(b) For purposes of Section 7(a), the meaning of the phrase "to the fullest extent permitted by applicable law" shall include, but not be limited to:

(i) the fullest extent permitted by the provision of the DGCL that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the DGCL; and

(ii) the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

8. **Exclusions**. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any Proceeding (or any part of any Proceeding):

(a) for which payment has actually been made to or on behalf of Indemnitee under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid and except as provided for in Section 16; provided, however, that payment made to Indemnitee pursuant to an insurance policy purchased and maintained by Indemnitee at his or her own expense of any amounts otherwise indemnifiable or obligated to be made pursuant to this Agreement shall not reduce the Company's obligations to Indemnitee pursuant to this Agreement;

(b) for an accounting or disgorgement of profits pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of federal, state or local statutory law or common law, if Indemnitee is held liable therefor;

(c) for any reimbursement of the Company by Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnitee from the sale of securities of the Company, as required in each case under the Securities Exchange Act of 1934, as amended (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act), if Indemnitee is held liable therefor;

(d) initiated by Indemnitee and not by way of defense, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees, agents or other indemnitees, unless (i) the Company's board of directors authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law, (iii) otherwise authorized in Section 13(d) or (iv) otherwise required by applicable law; or

(e) if prohibited by applicable law.

9. **Advances of Expenses**.

(a) The Company shall advance the Expenses incurred by Indemnitee in connection with any Proceeding prior to its final resolution, and such advancement shall be made as soon as reasonably practicable, but in any event no later than 45 days, after the receipt by the Company of a written statement or statements requesting such advances from time to time (which shall include invoices received by Indemnitee in connection with such Expenses but, in the case of invoices in connection with legal services, any references to legal work performed or to expenditure made that would cause Indemnitee to waive any privilege accorded by applicable law shall not be included with the invoice). Without limiting the generality or effect of the foregoing, within thirty days after any request by Indemnitee, the Company shall, in accordance with such request (but without duplication), (a) pay such Expenses on behalf of Indemnitee, (b) advance to Indemnitee funds in an amount sufficient to pay such Expenses, or (c) reimburse Indemnitee for such Expenses. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's (i) ability to repay such advances, (ii) ultimate entitlement to indemnification under the other provisions of this Agreement, and (iii) entitlement to and availability of insurance coverage, including advancement, payment or reimbursement of defense costs, expenses of covered loss under the provisions of any applicable insurance policy (including, without limitation, whether such advancement, payment or reimbursement is withheld, conditioned or delayed by the insurer(s)). The right to advances under this section shall in all events continue until final disposition of any Proceeding, including any appeal therein. Indemnitee hereby undertakes to repay any advance to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Company. No other undertaking shall be required.

10. **Procedures for Notification and Defense of Claim**.

(a) Indemnitee shall notify the Company in writing of any matter with respect to which Indemnitee intends to seek indemnification or advancement of Expenses as soon as reasonably practicable following the receipt by Indemnitee of notice thereof; *provided*, *however*, that notice will be deemed to have been given without any action on the part of Indemnitee in the event the Company is a party to the same Proceeding.. The failure or delay by Indemnitee to notify the Company will not relieve the Company from any liability which it may have to Indemnitee hereunder or otherwise than under this Agreement, except to the extent that such failure or delay materially prejudices the Company.

(b) If, at the time of the receipt of a notice of a Proceeding pursuant to the terms hereof, the Company has directors' and officers' liability insurance in effect, the Company shall give prompt notice of the commencement of the Proceeding to the insurers in accordance with the procedures set forth in the applicable policies. The Company shall thereafter take all commercially-reasonable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. Further, if requested by Indemnitee, within five business days of such request the Company will instruct the insurance carriers and the Company's insurance broker that they may communicate directly with Indemnitee regarding such claim.

(c) In the event the Company may be obligated to make any indemnity in connection with a Proceeding, the Company shall be entitled to assume the defense of such Proceeding with counsel approved by Indemnitee, which approval shall not be unreasonably withheld. After the retention of such counsel by the Company, the Company will not be liable to Indemnitee for any fees or expenses of counsel subsequently incurred by Indemnitee with respect to the same Proceeding. Notwithstanding the Company's assumption of the defense of any such Proceeding, the Company shall be obligated to pay the fees and expenses of Indemnitee's separate counsel to the extent (i) the employment of separate counsel by Indemnitee is authorized

by the Company, (ii) counsel for the Company or 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 such that Indemnitee needs to be separately represented, (iii) the Company is not financially or legally able to perform its indemnification obligations, (iv) the fees and expenses are non-duplicative and reasonably incurred in connection with Indemnitee's role in the Proceeding despite the Company's assumption of the defense, or (v) the Company shall not have retained, or shall not continue to retain, such counsel to defend such Proceeding. Regardless of any provision in this Agreement, Indemnitee shall have the right to employ counsel in any Proceeding at Indemnitee's personal expense. The Company shall not be entitled, without the consent of Indemnitee, to assume the defense of any claim brought by or in the right of the Company. Indemnitee agrees that any such separate counsel retained by indemnitee will be a member of any approved list of panel counsel under the Company's applicable directors' and officers' liability insurance policy, should the applicable policy provide for a panel of approved counsel and should such approved panel list comprise law firms with well-established reputations in the type of litigation at issue. (For clarity, the fact of a firm's being part of a panel shall not be evidence of a firm's having a well-established national reputation for the type of litigation at issue).

(d) Indemnitee shall give the Company such information and cooperation in connection with the Proceeding as may be reasonably appropriate; provided, however, that in no case shall Indemnitee be required to convey any information that would cause Indemnitee to waive any privilege accorded by applicable law.

(e) The Company shall not be liable to indemnify Indemnitee for any settlement of any Proceeding (or any part thereof) without the Company's prior written consent, which shall not be unreasonably withheld. The Company shall not, on its own behalf, settle any part of any Proceeding to which Indemnitee is party with respect to other parties (including the Company) if any portion of such settlement is to be funded from corporate insurance proceeds unless approved by (i) the written consent of Indemnitee or (ii) a majority of the independent directors of the board; provided, however, that the right to constrain the Company's use of corporate insurance as described in this section shall terminate at the time the Company concludes (per the terms of this Agreement) that (i) Indemnitee is not entitled to indemnification pursuant to this agreement, or (ii) such indemnification obligation to Indemnitee has been fully discharged by the Company.

(f) The Company shall not settle any Proceeding (or any part thereof) in a manner that imposes any penalty or liability on Indemnitee without Indemnitee's prior written consent, which shall not be unreasonably withheld.

11. **Procedures upon Application for Indemnification**.

(a) To obtain indemnification, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee *and as is reasonably* necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of the Proceeding. Any delay in providing the request will not relieve the Company from its obligations under this Agreement, except to the extent such delay is prejudicial.

(b) Upon written request by Indemnitee for indemnification pursuant to Section 11(a), a determination with respect to Indemnitee's entitlement thereto shall be made in the specific case (i) if a Change in Control shall have occurred, by Independent Counsel in a written opinion to the Company's board of directors, a copy of which shall be delivered to Indemnitee or (ii) if a Change in Control shall not have occurred, (A) by a majority vote of the Disinterested Directors, even though less than a quorum of the Company's board of directors, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Company's board of directors, (C) if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion

to the Company's board of directors, a copy of which shall be delivered to Indemnitee or (D) if so directed by the Company's board of directors, by the stockholders of the Company. If it is determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten days after such determination. Indemnitee shall cooperate with the person, persons or entity making the determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information that is not privileged or otherwise protected from disclosure and that is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including attorneys' fees and disbursements) reasonably incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company, to the extent permitted by applicable law.

(c) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 11(b), the Independent Counsel shall be selected as provided in this Section 11(c). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Company's board of directors, and the Company shall give written notice to Indemnitee advising him or her of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Company's board of directors, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within ten days after such written notice of selection shall have been given, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; *provided*, *however*, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within 20 days after the later of (i) submission by Indemnitee of a written request for indemnification pursuant to Section 11(a) hereof and (ii) the final disposition of the Proceeding, the parties have not agreed upon an Independent Counsel, either the Company or Indemnitee may petition a court of competent jurisdiction for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 11(b) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 13(a) of this Agreement, the Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing). The Company shall pay the reasonable fees and expenses of any Independent Counsel.

12. **Presumptions and Effect of Certain Proceedings**.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall, to the fullest extent not prohibited by law, presume that Indemnitee is entitled to indemnification under this Agreement, and the Company shall, to the fullest extent not prohibited by law, have the burden of proof to overcome that presumption.

(b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself create a presumption that Indemnitee did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of

the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his or her conduct was unlawful.

(c) Neither the knowledge, actions nor failure to act of any other director, officer, agent or employee of the Enterprise shall be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

13. **Remedies of Indemnitee**.

(a) Subject to Section 13(e), in the event that (i) a determination is made pursuant to Section 11 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 9 or 13(d) of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 11 of this Agreement within 90 days after the later of the receipt by the Company of the request for indemnification or the final disposition of the Proceeding, (iv) payment of indemnification pursuant to this Agreement is not made (A) within ten days after a determination has been made that Indemnitee is entitled to indemnification or (B) with respect to indemnification pursuant to Section 4 of this Agreement, within 30 days after receipt by the Company of a written request therefor, or (v) the Company or any other person or entity takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or proceeding designed to deny, or to recover from, Indemnitee the benefits provided or intended to be provided to Indemnitee hereunder, Indemnitee shall be entitled to an adjudication by a court of competent jurisdiction of his or her entitlement to such indemnification or advancement of Expenses. Alternatively, Indemnitee, at his or her option, may seek an award in arbitration with respect to his or her entitlement to such indemnification or advancement of Expenses, to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee shall commence such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 13(a). The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration in accordance with this Agreement.

(b) Neither (i) the failure of the Company, its board of directors, any committee or subgroup of the board of directors, Independent Counsel or stockholders to have made a determination that indemnification of Indemnitee is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor (ii) an actual determination by the Company, its board of directors, any committee or subgroup of the board of directors, Independent Counsel or stockholders that Indemnitee has not met the applicable standard of conduct, shall create a presumption that Indemnitee has or has not met the applicable standard of conduct. In the event that a determination shall have been made pursuant to Section 11 of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration *commenced pursuant* to this Section 13 shall be conducted in all respects as a *de novo* trial, or arbitration, on the merits, and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 13, the Company shall, to the fullest extent not prohibited by law, have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be.

(c) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 13 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement. If a determination shall have been made pursuant to Section 11 of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 13, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's

statements not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) The Company shall indemnify Indemnitee against all Expenses that are incurred by Indemnitee in connection with any action for indemnification or advancement of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company, unless the court (or arbitrator) finds that each material argument or defense advanced by Indemnitee in such action or arbitration was either frivolous or not made in good faith. Further, if requested by Indemnitee, the Company shall (as soon as reasonably practicable, but in any event no later than 60 days, after receipt by the Company of a written request therefor) advance such Expenses to Indemnitee, subject to the provisions of Section 8, subject to Indemnitee's agreement to repay the sums advanced if the court (or arbitrator) finds that each material argument or defense advanced by Indemnitee in such action or arbitration was either frivolous or not made in good faith.

(e) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification shall be made prior to the final disposition of the Proceeding.

(f) Monetary Damages Insufficient/Specific Performance. The Company and Indemnitee agree that a monetary remedy for breach of this Agreement may be inadequate, impracticable and difficult of proof, and further agree that such breach may cause Indemnitee irreparable harm. Accordingly, the parties hereto agree that Indemnitee may enforce this Agreement by seeking injunctive relief and/or specific performance hereof, without any necessity of showing actual damage or irreparable harm (having agreed that actual and irreparable harm will result in not forcing the Company to specifically perform its obligations pursuant to this Agreement) and that by seeking injunctive relief and/or specific performance, Indemnitee shall not be precluded from seeking or obtaining any other relief to which he may be entitled. The Company and Indemnitee further agree that Indemnitee shall be entitled to such specific performance and injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting bonds or other undertaking in connection therewith. The Company acknowledges that in the absence of a waiver, a bond or undertaking may be required of Indemnitee by the Court, and the Company hereby waives any such requirement of a bond or undertaking. If Indemnitee seeks mandatory injunctive relief, it shall not be a defense to enforcement of the Company's obligations set forth in this Agreement that Indemnitee has an adequate remedy at law for damages.

14. **Contribution**. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amounts incurred by Indemnitee, whether for Expenses, judgments, fines or amounts paid or to be paid in settlement, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the events and transactions giving rise to such Proceeding; and (ii) the relative fault of Indemnitee and the Company (and its other directors, officers, employees and agents) in connection with such events and transactions.

15. **Non-exclusivity**. The rights of indemnification and to receive advancement of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Company's certificate of incorporation or bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Company's certificate of incorporation and bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by

such change, subject to the restrictions expressly set forth herein or therein. Except as expressly set forth herein, no right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. Except as expressly set forth herein, the *assertion* or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

16. **Primary Responsibility**. The Company acknowledges that to the extent Indemnitee is serving as a director on the Company's board of directors at the request or direction of a venture capital fund or other entity and/or certain of its affiliates (collectively, the "Secondary Indemnitors"), Indemnitee may have certain rights to indemnification and advancement of expenses provided by such Secondary Indemnitors. The Company agrees that, as between the Company and the Secondary Indemnitors, the Company is primarily responsible for amounts required to be indemnified or advanced under the Company's certificate of incorporation or bylaws or this Agreement and any obligation of the Secondary Indemnitors to provide indemnification or advancement for the same amounts is secondary to those Company obligations. To the extent not in contravention of any insurance policy or policies providing liability or other insurance for the Company or any director, trustee, general partner, managing member, officer, employee, agent or fiduciary of the Company or any other Enterprise, the Company waives any right of contribution or subrogation against the Secondary Indemnitors with respect to the liabilities for which the Company is primarily responsible under this Section 16. In the event of any payment by the Secondary Indemnitors of amounts otherwise required to be indemnified or advanced by the Company under the Company's certificate of incorporation or bylaws or this Agreement, the Secondary Indemnitors shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee for indemnification or advancement of expenses under the Company's certificate of incorporation or bylaws or this Agreement or, to the extent such subrogation is unavailable and contribution is found to be the applicable remedy, shall have a right of contribution with respect to the amounts paid. The Secondary Indemnitors are express third-party beneficiaries of the terms of this Section 16.

17. **Insurance**. To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, trustees, general partners, managing members, officers, employees, agents or fiduciaries of the Company or any other Enterprise, Indemnitee shall be covered by such policy or policies to the same extent as the most favorably-insured persons under such policy or policies in a comparable position. In the event of a change of control or the Company's becoming insolvent, the Company shall maintain in force any and all insurance policies then maintained by the Company in providing insurance—directors' and officers' liability, fiduciary, employment practices or otherwise--in respect of the individual directors and officers of the Company, for a fixed period of six years thereafter (a "Tail Policy"). Such coverage shall be non-cancellable and shall be placed and serviced for the duration of its term by the Company's incumbent insurance broker. Such broker shall place the Tail policy with the incumbent insurance carriers using the policies that were in place at the time of the change of control event (unless the incumbent carriers will not offer such policies, in which case the Tail Policy placed by the Company's insurance broker shall be substantially comparable in scope and amount as the expiring policies, and the insurance carriers for the Tail Policy shall have an AM Best rating that is the same or better than the AM Best ratings of the expiring policies).

18. **Subrogation**. In the event of any 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 papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

19. **Services to the Company**. Indemnitee agrees to serve as a director or officer of the Company or, at the request of the Company, as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of another Enterprise, for so long as Indemnitee is duly elected or appointed or until

Indemnitee tenders his or her resignation or is removed from such position. Indemnitee may at any time and for any reason resign from such position (subject to any other contractual obligation or any obligation imposed by operation of law), in which event the Company shall have no obligation under this Agreement to continue Indemnitee in such position. This Agreement shall not be deemed an employment contract between the Company (or any of its subsidiaries or any Enterprise) and Indemnitee. Indemnitee specifically acknowledges that any employment with the Company (or any of its subsidiaries or any Enterprise) is at will, and Indemnitee may be discharged at any time for any reason, with or without cause, with or without notice, except as may be otherwise expressly provided in any executed, written employment contract between Indemnitee and the Company (or any of its subsidiaries or any Enterprise), any existing formal severance policies adopted by the Company's board of directors or, with respect to service as a director or officer of the Company, the Company's certificate of incorporation or bylaws or the DGCL. No such document shall be subject to any oral modification thereof.

20. **Duration**. All the rights and privileges afforded by this agreement, including the right to indemnification and the advancement of legal fees provided under this Agreement, shall continue as to Indemnitee for any action taken or not taken while serving in an indemnified capacity pertaining to an Indemnifiable Event even though Indemnitee may have ceased to serve in such capacity at the time of any Proceeding.

21. **Successors and Assigns**. This Agreement shall be binding upon the Company and its successors and assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company, and shall inure to the benefit of Indemnitee and Indemnitee's personal or legal representatives, heirs, executors, administrators, distributees, legatees and other successors. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company, by written agreement, expressly to assume and agree to perform this Agreement to the fullest extent permitted by law.

22. **Severability**. Nothing in this Agreement is intended to require or shall be construed as requiring the Company to do or fail to do any act in violation of applicable law. The Company's inability, pursuant to court order or other applicable law, to perform its obligations under this Agreement shall not constitute a breach of this Agreement. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions of this Agreement (including without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (ii) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (iii) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

23. **Enforcement**. The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director or officer of the Company.

24. **Entire Agreement**. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral,

written and implied, between the parties hereto with respect to the subject matter hereof; *provided*, *however*, that this Agreement is a supplement to and in furtherance of the Company's certificate of incorporation and bylaws and applicable law.

25. **Modification and Waiver**. No supplement, modification or amendment to this Agreement shall be binding unless executed in writing by the parties hereto. No amendment, alteration or repeal of this Agreement shall adversely affect any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his or her Corporate Status prior to such amendment, alteration or repeal. No waiver of any of the provisions of this Agreement shall constitute or be deemed a waiver of any other provision of this Agreement nor shall any waiver constitute a continuing waiver.

26. **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, or otherwise delivered by hand, messenger or courier service addressed:

(a) if to Indemnitee, to Indemnitee's address, as shown on the signature page of this Agreement or in the Company's records, as may be updated in accordance with the provisions hereof; or

(a) if to the Company, to the attention of the Chief Executive Officer of the Company at 100 Columbia, Aliso Viejo, CA 92656, or at such other current address as the Company shall have furnished to the Indemnitee, with a copy (which shall not constitute notice) to Martin Waters, Wilson Sonsini Goodrich & Rosati, P.C., 12235 El Camino Real, San Diego, California 92130.

Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given (i) if delivered by hand, messenger or courier service, when delivered (or if sent *via* a nationally-recognized overnight courier service, freight prepaid, specifying next-business-day delivery, one business day after deposit with the courier), or (ii) if sent *via* mail, at the earlier of its receipt or five days after the same has been deposited in a regularly-maintained receptacle for the deposit of the United States mail, addressed and mailed as aforesaid.

27. **Applicable Law and Consent to Jurisdiction**. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 13(a) of this Agreement, or except as mutually agreed by the parties in writing, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Court of Chancery, and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court of Chancery for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, The Corporation Trust Company, Wilmington, Delaware as its agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court of Chancery, and (v) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court of Chancery has been brought in an improper or inconvenient forum.

28. **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. This Agreement may also be executed and delivered by facsimile signature and in counterparts,

each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

29. **Captions**. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

(*signature page follows*)

The parties are signing this Indemnification Agreement as of the date stated in the introductory sentence.

RXSIGHT, INC.

(Signature)

(Print Name)

(Title)

INDEMNITEE

(Signature)

(Print Name)

(Street address)

(City, State and ZIP)

Exhibit 10.5

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (as the same may from time to time be amended, modified, supplemented or restated, this "**Agreement**") dated as of October 29, 2020 (the "**Effective Date**") among OXFORD FINANCE LLC, a Delaware limited liability company with an office located at 133 North Fairfax Street, Alexandria, Virginia 22314 ("**Oxford**"), as collateral agent (in such capacity, "**Collateral Agent**"), the Lenders listed on Schedule 1.1 hereof or otherwise a party hereto from time to time including Oxford in its capacity as a Lender (each a "**Lender**" and collectively, the "**Lenders**"), and RXSIGHT, INC., a California corporation with offices located at 100 Columbia, Aliso Viejo, CA 92656 ("**Borrower**"), provides the terms on which the Lenders shall lend to Borrower and Borrower shall repay the Lenders. The parties agree as follows:

1. ACCOUNTING AND OTHER TERMS

1.1 Accounting terms not defined in this Agreement shall be construed in accordance with GAAP. Calculations and determinations must be made in accordance with GAAP, except with respect to unaudited financial statements (a) non-compliance with FAS 123R in monthly reporting, and (b) for the absence of footnotes and subject to normal year-end audit adjustments, provided that if at any time any change in GAAP would affect the computation of any covenant requirement set forth in any of the Loan Documents, and either Borrower, Collateral Agent or Lenders shall so request, Borrower, Collateral Agent and Lenders shall negotiate in good faith to amend such ratio or covenant requirement to preserve the original intent thereof in light of such change in GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein. All references to "**Dollars**" or "**$**" are United States Dollars, unless otherwise noted.

2. LOANS AND TERMS OF PAYMENT

2.1 Promise to Pay. Borrower hereby unconditionally promises to pay each Lender, the outstanding principal amount of all Term Loans advanced to Borrower by such Lender and accrued and unpaid interest thereon and any other amounts due hereunder as and when due in accordance with this Agreement.

2.2 Term Loans.

(a) Availability.

(i) Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, to make term loans to Borrower on the Effective Date in an aggregate amount of Twenty-Five Million Dollars ($25,000,000.00) according to each Lender's Term A Loan Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to singly as a "**Term A Loan**", and collectively as the "**Term A Loans**"). After repayment, no Term A Loan may be re-borrowed.

(ii) Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, during the Second Draw Period, to make term loans to Borrower in an aggregate amount up to Five Million Dollars ($5,000,000.00) and disbursed in a single advance according to each Lender's Term B Loan Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to singly as a "**Term B Loan**", and collectively as the "**Term B Loans**"). After repayment, no Term B Loan may be re-borrowed.

(iii) Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, during the Third Draw Period, to make term loans to Borrower in an aggregate amount up to Ten Million Dollars ($10,000,000.00) and disbursed in a single advance according to each Lender's Term C Loan Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to singly as a "**Term C Loan**", and collectively as the "**Term C Loans**"). After repayment, no Term C Loan may be re-borrowed.

(iv) Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, during the Fourth Draw Period, to make term loans to Borrower in an aggregate amount up to Five Million Dollars ($5,000,000.00) and disbursed in a single advance according to each Lender's Term D Loan

Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to singly as a "**Term D Loan**", and collectively as the "**Term D Loans**"). After repayment, no Term D Loan may be re-borrowed.

(v) Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, during the Fifth Draw Period, to make term loans to Borrower in an aggregate amount up to Five Million Dollars ($5,000,000.00) and disbursed in a single advance according to each Lender's Term E Loan Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to singly as a "**Term E Loan**", and collectively as the "**Term E Loans**"). After repayment, no Term E Loan may be re-borrowed.

(vi) Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, during the Sixth Draw Period, to make term loans to Borrower in an aggregate amount up to Ten Million Dollars ($10,000,000.00) and disbursed in a single advance according to each Lender's Term F Loan Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to singly as a "**Term F Loan**", and collectively as the "**Term F Loans**"; each Term A Loan, Term B Loan, Term C Loan, Term D Loan, Term E Loan, and Term F Loan is hereinafter referred to singly as a "**Term Loan**" and the Term A Loans, Term B Loans, Term C Loans, Term D Loans, Term E Loans, and Term F Loans are hereinafter referred to collectively as the "**Term Loans**"). After repayment, no Term F Loan may be re-borrowed.

(b) Repayment. Borrower shall make monthly payments of interest only commencing on the first (1st) Payment Date following the Funding Date of each Term Loan, and continuing on the Payment Date of each successive month thereafter through and including the Payment Date immediately preceding the Amortization Date. Borrower agrees to pay, on the Funding Date of each Term Loan, any initial partial monthly interest payment otherwise due for the period between the Funding Date of such Term Loan and the first Payment Date thereof. Commencing on the Amortization Date, and continuing on the Payment Date of each month thereafter, Borrower shall make consecutive equal monthly payments of principal, together with applicable interest, in arrears, to each Lender, as calculated by Collateral Agent (which calculations shall be deemed correct absent manifest error) based upon: (1) the amount of such Lender's Term Loan, (2) the effective rate of interest, as determined in Section 2.3(a), and (3) a repayment schedule equal to (x) twenty-three (23) months if the Amortization Date is December 1, 2023, and (y) eleven (11) months if the Amortization Date is December 1, 2024. All unpaid principal and accrued and unpaid interest with respect to each Term Loan is due and payable in full on the Maturity Date. Each Term Loan may only be prepaid in accordance with Sections 2.2(c) and 2.2(d).

(c) Mandatory Prepayments. If the Term Loans are accelerated following the occurrence of an Event of Default (unless such Event of Default has been waived in writing by Collateral Agent and the Required Lenders in their sole discretion), Borrower shall immediately pay to Lenders, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of: (i) all outstanding principal of the Term Loans plus accrued and unpaid interest thereon through the prepayment date, (ii) the Final Payment, plus (iii) all other outstanding Obligations that are due and payable, including Lenders' Expenses and interest at the Default Rate with respect to any past due amounts. Notwithstanding (but without duplication with) the foregoing, on the Maturity Date, if the Final Payment had not previously been paid in full in connection with the prepayment of the Term Loans in full, Borrower shall pay to Collateral Agent, for payment to each Lender in accordance with its respective Pro Rata Share, the Final Payment in respect of the Term Loans.

(d) Permitted Prepayment of Term Loans.

(i) Borrower shall have the option to prepay all, but not less than all, of the Term Loans advanced by the Lenders under this Agreement, provided Borrower (i) provides written notice to Collateral Agent of its election to prepay the Term Loans at least ten (10) Business Days prior to such prepayment, and (ii) pays to the Lenders on the date of such prepayment, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of (A) all outstanding principal of the Term Loans plus accrued and unpaid interest thereon through the prepayment date, (B) the Final Payment, plus (C) all other outstanding Obligations (other than inchoate indemnification obligations) that are then due and payable, including Lenders' Expenses and interest at the Default Rate with respect to any past due amounts.

(ii) Notwithstanding anything herein to the contrary, after December 31, 2021 Borrower shall also have the option to prepay part of Term Loans advanced by the Lenders under this Agreement,

provided Borrower (i) provides written notice to Collateral Agent of its election to partially prepay the Term Loans at least ten (10) Business Days prior to such prepayment, (ii) prepays such part of the Term Loans in a denomination that is not less than Five Million Dollars ($5,000,000.00) or, if in excess thereof, in integral whole number multiples of Five Hundred Thousand Dollars ($500,000.00) in excess thereof, and (iii) pays to the Lenders on the date of such prepayment, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of (A) the portion of outstanding principal of such Term Loans to be prepaid plus all accrued and unpaid interest thereon through the prepayment date, (B) the Final Payment in respect of such prepayment, (C) all other Obligations that are then due and payable, including Lenders' Expenses and interest at the Default Rate with respect to any past due amounts, and (D) without duplication of any amounts described in the foregoing clauses (A) through (C), a prorated portion of any fee that would have otherwise been due pursuant upon a prepayment of all Term Loans in whole under Section 2.2(d)(i); provided that the obligation to pay Collateral Agent and Lenders such fee arose prior to a partial prepayment made hereunder. For the purposes of clarity, any partial prepayment shall be applied pro-rata to all outstanding amounts under each Term Loan, and shall be applied pro-rata within each Term Loan tranche to reduce amortization payments under Section 2.2(b) on a pro-rata basis; provided, further however, that, unless the Lenders have provided their prior written consent to Borrower, which may be withheld in the Lenders' sole discretion, Borrower shall not be permitted to make more than one (1) partial prepayment.

2.3 Payment of Interest on the Credit Extensions.

(a) Interest Rate. Subject to Section 2.3(b), the principal amount outstanding under the Term Loans shall accrue interest at a floating per annum rate equal to the Basic Rate, determined by Collateral Agent on the Funding Date of the applicable Term Loan, and reset monthly, which interest shall be payable monthly in arrears in accordance with Sections 2.2(b) and 2.3(e). Interest shall accrue on each Term Loan commencing on, and including, the Funding Date of such Term Loan, and shall accrue on the principal amount outstanding under such Term Loan through and including the day on which such Term Loan is paid in full.

(b) Default Rate. Upon the occurrence and during the continuance of an Event of Default, Obligations shall accrue interest at a floating per annum rate equal to the rate that is otherwise applicable thereto plus five percentage points (5.00%) (the "**Default Rate**"). Payment or acceptance of the increased interest rate provided in this Section 2.3(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Collateral Agent.

(c) 360-Day Year. Interest shall be computed on the basis of a three hundred sixty (360) day year, and the actual number of days elapsed.

(d) Debit of Accounts. Collateral Agent and each Lender may debit (or ACH) any deposit accounts, maintained by Borrower or any of its Subsidiaries, including the Designated Deposit Account, for principal and interest payments or any other amounts Borrower owes the Lenders under the Loan Documents when due. Any such debits (or ACH activity) shall not constitute a set-off.

(e) Payments. Except as otherwise expressly provided herein, all payments by Borrower under the Loan Documents shall be made to the respective Lender to which such payments are owed, at such Lender's office in immediately available funds on the date specified herein. Unless otherwise provided, interest is payable monthly on the Payment Date of each month. Payments of principal and/or interest received after 11:00 am Pacific time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment is due the next Business Day and additional fees or interest, as applicable, shall continue to accrue until paid. All payments to be made by Borrower hereunder or under any other Loan Document, including payments of principal and interest, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim, in lawful money of the United States and in immediately available funds.

2.4 Secured Promissory Notes. The Term Loans shall be evidenced by a Secured Promissory Note or Notes in the form attached as Exhibit D hereto (each a "**Secured Promissory Note**"), and shall be repayable as set forth in this Agreement. Borrower irrevocably authorizes each Lender to make or cause to be made, on or about the Funding Date of any Term Loan or at the time of receipt of any payment of principal on such Lender's Secured Promissory Note, an appropriate notation on such Lender's Secured Promissory Note Record reflecting the making of such Term Loan or (as the case may be) the receipt of such payment. The outstanding amount of each Term Loan set

forth on such Lender's Secured Promissory Note Record shall be prima facie evidence of the principal amount thereof owing and unpaid to such Lender, but the failure to record, or any error in so recording, any such amount on such Lender's Secured Promissory Note Record shall not limit or otherwise affect the obligations of Borrower under any Secured Promissory Note or any other Loan Document to make payments of principal of or interest on any Secured Promissory Note when due. Upon receipt of an affidavit of an officer of a Lender as to the loss, theft, destruction, or mutilation of its Secured Promissory Note**,** Borrower shall issue, in lieu thereof, a replacement Secured Promissory Note in the same principal amount thereof and of like tenor.

2.5 Fees. Borrower shall pay to Collateral Agent:

(a) Final Payment. The Final Payment, when due hereunder, to be shared between the Lenders in accordance with their respective Pro Rata Shares; and

(b) Lenders' Expenses. All Lenders' Expenses (including reasonable and documented attorneys' fees and expenses for documentation and negotiation of this Agreement) incurred through and after the Effective Date, when due.

(c) Good Faith Deposit. Borrower has paid to Collateral Agent for account of the Lenders a deposit of Sixty Thousand Dollars ($60,000.00) (the "**Good Faith Deposit**"), to initiate Collateral Agent's and Lenders' due diligence review and documentation process. The Good Faith Deposit will be used to pay Lenders' Expenses due on the Effective Date; provided, however, Borrower shall be responsible for the entire amount of Lenders' Expenses payable under Section 2.5(b) hereof.

2.6 Withholding. Payments received by the Lenders from Borrower hereunder will be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any governmental authority (including any interest, additions to tax or penalties applicable thereto, collectively, "**Taxes**"). Specifically, however, if at any time any Governmental Authority, applicable law, regulation or international agreement requires Borrower to make any withholding or deduction from any such payment or other sum payable hereunder to the Lenders, Borrower hereby covenants and agrees that the amount due from Borrower with respect to such payment or other sum payable hereunder will be increased to the extent necessary to ensure that, after the making of such required withholding or deduction, each Lender receives a net sum equal to the sum which it would have received had no withholding or deduction been required and Borrower shall pay the full amount withheld or deducted to the relevant Governmental Authority; provided, however, Borrower shall not be required to pay any additional amount to any Lender with respect to Excluded Taxes. Borrower will, upon request, furnish the Lenders with proof reasonably satisfactory to the Lenders indicating that Borrower has made such withholding payment; provided, however, that Borrower need not make any withholding payment if the amount or validity of such withholding payment is contested in good faith by appropriate and timely proceedings and as to which payment in full is bonded or reserved against by Borrower. The agreements and obligations of Borrower contained in this Section 2.6 shall survive the termination of this Agreement.

On the date of this Agreement, each Lender shall deliver to Borrower a complete and properly executed IRS Form W-9. If any assignee of a Lender's rights under Section 12.1 of this Agreement is (a) a "United States Person" as defined in Section 7701(a)(30) of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), such assignee shall, upon becoming a party to this Agreement, deliver to Borrower a complete and properly executed IRS Form W-9, or (b) not a "United States Person" as defined in Section 7701(a)(30) of the Code ("Non-U.S. Lender"), such Non-U.S. Lender shall, upon becoming party to this Agreement, deliver to Borrower a complete and properly executed IRS Form W-8BEN-E (or W-8BEN, as applicable), W-8ECI or W-8IMY, as appropriate, or any successor form prescribed by the IRS, certifying that such Non-U.S. Lender is entitled to an exemption from U.S. withholding tax on interest and other amounts payable under this Agreement. Notwithstanding the foregoing, (i) Borrower shall not be required to pay any additional amount to any Non-U.S. Lender hereunder if such Non-U.S. Lender fails or is unable to deliver the forms, certificates or other evidence described in the preceding sentence, unless such Non-U.S. Lender's failure or inability to deliver such forms is the result of any change in any applicable law, treaty or governmental rule, or any change in the interpretation thereof after such Non-U.S. Lender became a party to this Agreement and (ii) Borrower shall not be required to pay any additional amount to any Non-U.S. Lender hereunder with respect to taxes imposed under Sections 1471 through 1474 of the U.S. Internal Revenue Code, as of the date of this Agreement (or any

amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof.

3. CONDITIONS OF LOANS

3.1 Conditions Precedent to Initial Credit Extension. Each Lender's obligation to make a Term A Loan is subject to the condition precedent that Collateral Agent and each Lender shall consent to or shall have received, in form and substance satisfactory to Collateral Agent and each Lender, such documents, and completion of such other matters, as Collateral Agent and each Lender may reasonably deem necessary or appropriate, including, without limitation:

(a) original Loan Documents, each duly executed by Borrower and each Subsidiary, as applicable;

(b) to the extent required under Section 6.6, duly executed original Control Agreements with respect to any Collateral Accounts maintained by Borrower;

(c) duly executed original Secured Promissory Notes in favor of each Lender according to its Term A Loan Commitment Percentage;

(d) the Operating Documents and good standing certificates of Borrower and its Subsidiaries certified by the Secretary of State (or equivalent agency) of Borrower's and such Subsidiaries' jurisdiction of organization or formation, each as of a date no earlier than thirty (30) days prior to the Effective Date**;**

(e) a completed Perfection Certificate for Borrower and each of its Subsidiaries;

(f) the Annual Projections, for the current calendar year;

(g) duly executed original officer's certificate for Borrower and each Subsidiary (if any) that is a party to the Loan Documents, in a form acceptable to Collateral Agent and the Lenders;

(h) certified copies, dated as of date no earlier than thirty (30) days prior to the Effective Date, of financing statement searches, as Collateral Agent shall request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;

(i) a landlord's consent executed in favor of Collateral Agent in respect of Borrower's leased location at (1) 100 Columbia, Aliso Viejo, CA 92656, (2) 5 Columbia, Aliso Viejo, CA 92656 and (3) 75 Columbia, Aliso Viejo, CA 92656;

(j) a bailee waiver executed in favor of Collateral Agent in respect of each third party bailee where Borrower maintains Collateral having a book value in excess of Two Hundred Fifty Thousand Dollars ($250,000.00);

(k) a duly executed legal opinion of counsel to Borrower dated as of the Effective Date;

(l) evidence satisfactory to Collateral Agent and the Lenders that the insurance policies required by Section 6.5 hereof are in full force and effect, together with appropriate evidence showing loss payable and/or additional insured clauses or endorsements in favor of Collateral Agent, for the ratable benefit of the Lenders;

(m) a copy of any applicable Registration Rights Agreement or Investors' Rights Agreement and any amendments thereto; and

(n) payment of the fees and Lenders' Expenses then due as specified in Section 2.5 hereof.

3.2 Conditions Precedent to all Credit Extensions. The obligation of each Lender to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent:

(a) receipt by Collateral Agent of an executed Disbursement Letter in the form of Exhibit B attached hereto;

(b) the representations and warranties in Section 5 hereof shall be true, accurate and complete in all material respects on the date of the Disbursement Letter and on the Funding Date of each Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in Section 5 hereof are true, accurate and complete in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date;

(c) in such Lender's sole but reasonable discretion, there has not been any Material Adverse Change or any material adverse deviation by Borrower from the Annual Projections of Borrower presented to and accepted by Collateral Agent and each Lender;

(d) to the extent not delivered at the Effective Date, duly executed original Secured Promissory Notes, in number, form and content acceptable to each Lender, and in favor of each Lender according to its Commitment Percentage, with respect to each Credit Extension made by such Lender after the Effective Date; and

(e) payment of the fees and Lenders' Expenses then due as specified in Section 2.5 hereof.

3.3 Covenant to Deliver. Borrower agrees to deliver to Collateral Agent and the Lenders each item required to be delivered to Collateral Agent under this Agreement as a condition precedent to any Credit Extension. Borrower expressly agrees that a Credit Extension made prior to the receipt by Collateral Agent or any Lender of any such item shall not constitute a waiver by Collateral Agent or any Lender of Borrower's obligation to deliver such item, and any such Credit Extension in the absence of a required item shall be made in each Lender's sole discretion.

3.4 Procedures for Borrowing. Subject to the prior satisfaction of all other applicable conditions to the making of a Term Loan set forth in this Agreement, to obtain a Term Loan, Borrower shall notify the Lenders (which notice shall be irrevocable) by electronic mail, facsimile, or telephone by 11:00 am Pacific time five (5) Business Days prior to the date the Term Loan is to be made. Together with any such electronic, facsimile or telephonic notification, Borrower shall deliver to the Lenders by electronic mail or facsimile a completed Disbursement Letter executed by a Responsible Officer or his or her designee. The Lenders may rely on any telephone notice given by a person whom a Lender reasonably believes is a Responsible Officer or designee. On the Funding Date, each Lender shall credit and/or transfer (as applicable) to the an account of Borrower as set forth in the Disbursement Letter, an amount equal to its Term Loan Commitment.

4. CREATION OF SECURITY INTEREST

4.1 Grant of Security Interest. Borrower hereby grants Collateral Agent, for the ratable benefit of the Lenders, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Collateral Agent, for the ratable benefit of the Lenders, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral. The Collateral may also be subject to Permitted Liens. If Borrower shall acquire a commercial tort claim (as defined in the Code), Borrower, shall promptly notify Collateral Agent in a writing signed by Borrower, as the case may be, of the general details thereof (and further details as may be required by Collateral Agent) and grant to Collateral Agent, for the ratable benefit of the Lenders, in such writing a security interest therein

and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Collateral Agent.

If this Agreement is terminated, Collateral Agent's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations (other than inchoate indemnity obligations) and at such time as the Lenders' obligation to make Credit Extensions has terminated, Collateral Agent shall, at the sole cost and expense of Borrower, release its Liens in the Collateral and all rights therein shall revert to Borrower.

4.2 Authorization to File Financing Statements. Borrower hereby authorizes Collateral Agent to file financing statements or take any other action required to perfect Collateral Agent's security interests in the Collateral, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Collateral Agent's interest or rights under the Loan Documents, including a notice that any disposition of the Collateral, except to the extent permitted by the terms of this Agreement, by Borrower, or any other Person, shall be deemed to violate the rights of Collateral Agent under the Code.

4.3 Pledge of Collateral. Borrower hereby pledges, collaterally assigns and grants to Collateral Agent, for the ratable benefit of the Lenders, a security interest in all the Shares constituting Collateral, together with all proceeds and substitutions thereof, all cash, stock and other moneys and property paid thereon, all rights to subscribe for securities declared or granted in connection therewith, and all other cash and noncash proceeds of the foregoing, as security for the performance of the Obligations. On the Effective Date, or, to the extent not certificated as of the Effective Date, within thirty (30) days of the certification of any Shares constituting Collateral, the certificate or certificates for the Shares constituting Collateral will be delivered to Collateral Agent, accompanied by an instrument of assignment duly executed in blank by Borrower. To the extent required by the terms and conditions governing the Shares constituting Collateral, Borrower shall cause the books of each entity whose Shares are part of the Collateral and any transfer agent to reflect the pledge of such Shares. Upon the occurrence and during the continuance of an Event of Default hereunder, Collateral Agent may effect the transfer of any securities included in the Collateral (including but not limited to the Shares constituting Collateral) into the name of Collateral Agent and cause new (as applicable) certificates representing such securities to be issued in the name of Collateral Agent or its transferee. Borrower will execute and deliver such documents, and take or cause to be taken such actions, as Collateral Agent may reasonably request to perfect or continue the perfection of Collateral Agent's security interest in the Shares constituting Collateral. Unless an Event of Default shall have occurred and be continuing, Borrower shall be entitled to exercise any voting rights with respect to the Shares constituting Collateral and to give consents, waivers and ratifications in respect thereof, provided that no vote shall be cast or consent, waiver or ratification given or action taken which would be inconsistent with any of the terms of this Agreement or which would constitute or create any violation of any of such terms. All such rights to vote and give consents, waivers and ratifications shall terminate upon the occurrence and continuance of an Event of Default.

5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Collateral Agent and the Lenders as follows:

5.1 Due Organization, Authorization: Power and Authority. Borrower and each of its Subsidiaries is duly existing and in good standing as a Registered Organization in its jurisdictions of organization or formation and Borrower and each of its Subsidiaries is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its businesses or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a Material Adverse Change. In connection with this Agreement, Borrower and each of its Subsidiaries has delivered to Collateral Agent a completed perfection certificate signed by an officer of Borrower or such Subsidiary (each a "**Perfection Certificate**" and collectively, the "**Perfection Certificates**"). Borrower represents and warrants that, except to the extent otherwise notified to Collateral Agent pursuant to Section 7.2 (which notifications shall be incorporated into any updated Perfection Certificate subsequently delivered), (a) Borrower and each of its Subsidiaries' exact legal name is that which is indicated on its respective Perfection Certificate and on the signature page of each Loan Document to which it is a party; (b) Borrower and each of its Subsidiaries is an organization of the type and is organized in the jurisdiction set forth on its respective Perfection Certificate; (c) each Perfection Certificate accurately sets forth each of Borrower's and its Subsidiaries' organizational identification number or accurately states that Borrower or such Subsidiary has none; (d) each Perfection Certificate

accurately sets forth Borrower's and each of its Subsidiaries' place of business, or, if more than one, its chief executive office as well as Borrower's and each of its Subsidiaries' mailing address (if different than its chief executive office); (e) Borrower and each of its Subsidiaries (and each of its respective predecessors) have not, in the past five (5) years, changed its jurisdiction of organization, organizational structure or type, or any organizational number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificates pertaining to Borrower and each of its Subsidiaries, is accurate and complete in all material respects (it being understood and agreed that Borrower and each of its Subsidiaries may from time to time update certain information in the Perfection Certificates (including the information set forth in clause (d) above) after the Effective Date to the extent permitted by one or more specific provisions in this Agreement); such updated Perfection Certificates subject to the review and approval of Collateral Agent. If Borrower or any of its Subsidiaries is not now a Registered Organization but later becomes one, Borrower shall notify Collateral Agent of such occurrence and provide Collateral Agent with such Person's organizational identification number within five (5) Business Days of receiving such organizational identification number.

The execution, delivery and performance by Borrower and each of its Subsidiaries of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's or such Subsidiaries' organizational documents, including its respective Operating Documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law applicable thereto, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or such Subsidiary, or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect) or are being obtained pursuant to Section 6.1(b), or (v) constitute an event of default under any material agreement by which Borrower or any of such Subsidiaries, or their respective properties, is bound. Neither Borrower nor any of its Subsidiaries is in default under any agreement to which it is a party or by which it or any of its assets is bound, in each case, in which such default could reasonably be expected to have a Material Adverse Change.

5.2 Collateral.

(a) Borrower and each its Subsidiaries have good title to, have rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien under the Loan Documents, free and clear of any and all Liens except Permitted Liens, and neither Borrower nor any of its Subsidiaries have any Deposit Accounts, Securities Accounts, Commodity Accounts or other investment accounts other than the Collateral Accounts or the other investment accounts, if any, described in the Perfection Certificates delivered to Collateral Agent in connection herewith in respect of which Borrower or such Subsidiary has given Collateral Agent notice and taken such actions as are necessary to give Collateral Agent a perfected security interest therein to the extent required under Section 6.6. The Accounts are bona fide, existing obligations of the Account Debtors.

(b) On the Effective Date, and except as disclosed on the Perfection Certificate or for Collateral in aggregate book value not exceeding One Million Dollars ($1,000,000.00) at any time in transit to/from or at a sterilizer to be sterilized in the ordinary course of business, or as permitted pursuant to Sections 6.11 and 7.2, (i) the Collateral is not in the possession of any third party bailee (such as a warehouse) which has not executed and delivered a bailee waiver in form and substance reasonably satisfactory to Collateral Agent, and (ii) no such third party bailee possesses components of the Collateral in excess of Two Hundred Fifty Thousand Dollars ($250,000.00). None of the components of the Collateral (except for Collateral in aggregate book value not exceeding One Million Dollars ($1,000,000.00) at any time in transit to/from or at a sterilizer to be sterilized in the ordinary course of business) shall be maintained at locations other than as disclosed in the Perfection Certificates on the Effective Date or as permitted pursuant to Sections 6.11 and 7.2.

(c) All Inventory is in all material respects of good and marketable quality, free from material defects.

(d) Borrower and each of its Subsidiaries is the sole owner of the Intellectual Property each respectively purports to own (except for (1) non-exclusive licenses granted in the ordinary course of business, (2) over-the-counter software that is commercially available to the public and other nonmaterial Intellectual Property licensed to Borrower or its Subsidiaries, and (3) material Intellectual Property licensed to Borrower or its Subsidiaries and noted on the Perfection Certificate), free and clear of all Liens other than Permitted Liens. Except as noted on the

Perfection Certificates, neither Borrower nor any of its Subsidiaries is a party to, nor is bound by, any material license or other material agreement with respect to which Borrower or such Subsidiary is the licensee that (i) prohibits or otherwise restricts Borrower or its Subsidiaries from granting a security interest in Borrower's or such Subsidiaries' interest in such material license or material agreement or any other property, or (ii) for which a default under or termination of could interfere with Collateral Agent's or any Lender's right to sell any Collateral. Borrower shall provide written notice to Collateral Agent and each Lender within ten (10) days of Borrower or any of its Subsidiaries entering into or becoming bound by any license or agreement with respect to which Borrower or any Subsidiary is the licensee (other than over-the-counter software that is commercially available to the public).

5.3 Litigation. Except as disclosed (i) on the Perfection Certificates, or (ii) in accordance with Section 6.9 hereof (such disclosure shall be deemed to update the applicable provision of the Perfection Certificate), there are no actions, suits, investigations, or proceedings pending or, to the knowledge of the Responsible Officers, threatened in writing by or against Borrower or any of its Subsidiaries that could reasonably be expected to result in damages to Borrower and its Subsidiaries of more than Two Hundred Fifty Thousand Dollars ($250,000.00).

5.4 No Material Deterioration in Financial Condition; Financial Statements. All consolidated financial statements for Borrower and its Subsidiaries delivered to Collateral Agent fairly present, in conformity with GAAP, in all material respects the consolidated financial condition of Borrower and its Subsidiaries as of the respective dates thereof, and the consolidated results of operations of Borrower and its Subsidiaries for the periods covered thereby, subject, in the case of such interim financial statements, to the absence of footnotes and to normal year-end audit adjustments. There has not been any material deterioration in the consolidated financial condition of Borrower and its Subsidiaries since the date of the most recent financial statements submitted to any Lender.

5.5 Solvency. Borrower and Borrower and its Subsidiaries, on a consolidated basis, are Solvent.

5.6 Regulatory Compliance. Neither Borrower nor any of its Subsidiaries is an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Neither Borrower nor any of its Subsidiaries is engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower and each of its Subsidiaries has complied in all material respects with the Federal Fair Labor Standards Act. Neither Borrower nor any of its Subsidiaries is a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" as each term is defined and used in the Public Utility Holding Company Act of 2005. Neither Borrower nor any of its Subsidiaries has violated any laws, ordinances or rules, the violation of which could reasonably be expected to have a Material Adverse Change. Neither Borrower's nor any of its Subsidiaries' properties or assets has been used by Borrower or such Subsidiary or, to Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with applicable laws. Borrower and each of its Subsidiaries has obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

None of Borrower, any of its Subsidiaries, or any of Borrower's or its Subsidiaries' Affiliates or any of their respective agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is (i) in violation of any Anti-Terrorism Law, (ii) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, or (iii) is a Blocked Person. None of Borrower, any of its Subsidiaries, or to the knowledge of Borrower and any of their Affiliates or agents, acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (x) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (y) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

5.7 Investments. Neither Borrower nor any of its Subsidiaries owns any stock, shares, partnership interests or other equity securities except for Permitted Investments.

5.8 Tax Returns and Payments; Pension Contributions. Borrower and each of its Subsidiaries has timely filed all required foreign, federal and material state and local tax returns and reports, and Borrower and each

of its Subsidiaries, has timely paid all foreign, federal, and material state and local taxes, assessments, deposits and contributions owed by Borrower and such Subsidiaries, in all jurisdictions in which Borrower or any such Subsidiary is subject to taxes, including the United States, unless (a) such taxes are being contested in accordance with the following sentence or (b) if such taxes, assessments, deposits and contributions do not individually or in the aggregate, exceed Fifty Thousand Dollars ($50,000). Borrower and each of its Subsidiaries, may defer payment of any contested taxes, provided that Borrower or such Subsidiary, (a) in good faith contests its obligation to pay the taxes by appropriate proceedings promptly and diligently instituted and conducted, (b) notifies Collateral Agent in writing of the commencement of, and any material development in, the proceedings, and (c) posts bonds or takes any other steps required to prevent the Governmental Authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a "**Permitted Lien**." Neither Borrower nor any of its Subsidiaries is aware of any claims or adjustments proposed for any of Borrower's or such Subsidiaries', prior tax years which could result in additional taxes becoming due and payable by Borrower or its Subsidiaries. Borrower and each of its Subsidiaries have paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and neither Borrower nor any of its Subsidiaries have, withdrawn from participation in, and have not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower or its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

5.9 Use of Proceeds. Borrower shall use the proceeds of the Credit Extensions solely as working capital and to fund its general business requirements in accordance with the provisions of this Agreement, and not for personal, family, household or agricultural purposes.

5.10 Shares. Borrower has full power and authority to create a first lien on the Shares constituting Collateral and (other than that certain Warrant to Purchase Series W Common Stock issued by Borrower to the holder thereof, dated as of October 12, 2017 (the "**Series W Warrant**")) no contractual obligation exists that would prohibit Borrower from pledging the Shares constituting Collateral pursuant to this Agreement. To Borrower's knowledge, other than the Series W Warrant, there are no subscriptions, warrants, rights of first refusal or other restrictions on transfer relative to, or options exercisable with respect to the Shares constituting Collateral. The Shares have been and will be duly authorized and validly issued, and are fully paid and non-assessable. To Borrower's knowledge, the Shares are not the subject of any present or threatened suit, action, arbitration, administrative or other proceeding, and Borrower knows of no reasonable grounds for the institution of any such proceedings.

5.11 Full Disclosure. No written representation, warranty or other statement of Borrower or any of its Subsidiaries in any certificate or written statement given to Collateral Agent or any Lender, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Collateral Agent or any Lender, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

5.12 Definition of "**Knowledge.**" For purposes of the Loan Documents, whenever a representation or warranty is made to Borrower's knowledge or awareness, to the "best of" Borrower's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of the Responsible Officers.

6. AFFIRMATIVE COVENANTS

Borrower shall, and shall cause each of its Subsidiaries to, do all of the following:

6.1 Government Compliance.

(a) Maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of organization and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Change. Comply with all laws, ordinances and regulations to

which Borrower or any of its Subsidiaries is subject, the noncompliance with which could reasonably be expected to have a Material Adverse Change.

(b) Obtain and keep in full force and effect, all of the material Governmental Approvals necessary for the performance by Borrower and its Subsidiaries of their respective businesses and obligations under the Loan Documents and the grant of a security interest to Collateral Agent for the ratable benefit of the Lenders, in all of the Collateral. Borrower shall promptly provide copies to Collateral Agent of any material Governmental Approvals obtained by Borrower or any of its Subsidiaries.

6.2 Financial Statements, Reports, Certificates.

(a) Deliver to each Lender:

(i) as soon as available, but no later than forty-five (45) days after the last day of each fiscal quarter, a company prepared consolidated and consolidating (if applicable) balance sheet, income statement and cash flow statement covering the consolidated operations of Borrower and its Subsidiaries for such fiscal quarter certified by a Responsible Officer and in a form reasonably acceptable to Collateral Agent;

(ii) as soon as available, but no later than one hundred twenty (120) days after the last day of Borrower's fiscal year or within five (5) days of filing with the SEC, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified (other than a qualification with respect to going concern with respect to Borrower's liquidity position) opinion on the financial statements from an independent certified public accounting firm acceptable to Collateral Agent in its reasonable discretion;

(iii) as soon as available after approval thereof by Borrower's Board of Directors, but by no later than (x) sixty (60) days after the last day of each of Borrower's 2021 fiscal year and (y) fifteen (15) days after the last day of each of Borrower's fiscal years, commencing with its 2022 fiscal year, Borrower's annual financial projections for the entire current fiscal year as approved by Borrower's Board of Directors, which such annual financial projections shall be set forth in a month-by-month format (such annual financial projections as originally delivered to Collateral Agent are referred to herein as the "**Annual Projections**"; provided that, any revisions of the Annual Projections approved by Borrower's Board of Directors shall be delivered to Collateral Agent and the Lenders no later than seven (7) days after such Board of Directors' approval);

(iv) within five (5) days of delivery, copies of all statements, reports and notices made available generally to Borrower's security holders or holders of Subordinated Debt;

(v) in the event that Borrower becomes subject to the reporting requirements under the Securities Exchange Act of 1934, as amended, within five (5) days of filing, all reports on Form 10-K, 10-Q and 8-K filed with the Securities and Exchange Commission,

(vi) prompt notice of any amendments of or other changes to the capitalization table of Borrower (which are material) and to the Operating Documents of Borrower or any of its Subsidiaries, together with any copies reflecting such amendments or changes with respect thereto;

(vii) prompt notice of any event that could reasonably be expected to materially and adversely affect the value of the Intellectual Property;

(viii) as soon as available, but no later than thirty (30) days after the last day of each month, copies of the month-end account statements for each Collateral Account maintained by Borrower or its Subsidiaries, which statements may be provided to Collateral Agent and each Lender by Borrower or directly from the applicable institution(s), and

(ix) other information as reasonably requested by Collateral Agent or any Lender.

Notwithstanding the foregoing, documents required to be delivered pursuant to the terms hereof (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower posts such documents, or provides a link thereto, on Borrower's website on the internet at Borrower's website address or on a secure electronic dataroom site selected by Borrower.

(b) as soon as available, but no later than thirty (30) days after the last day of each month, deliver to each Lender, a duly completed Compliance Certificate signed by a Responsible Officer.

(c) Keep proper books of record and account in accordance with GAAP in all material respects, in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities. Borrower shall, and shall cause each of its Subsidiaries to, allow, at the sole cost of Borrower, Collateral Agent or any Lender, during regular business hours upon at least three (3) Business Days' prior written notice (provided that no notice shall be required when an Event of Default has occurred and is continuing), to visit and inspect any of its properties, to examine and make abstracts or copies from any of its books and records, and to conduct a collateral audit and analysis of its operations and the Collateral. Such audits shall be conducted no more often than once every year unless (and more frequently if) an Event of Default has occurred and is continuing.

6.3 Inventory; Returns. Keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Borrower, or any of its Subsidiaries, and their respective Account Debtors shall follow Borrower's, or such Subsidiary's, customary practices as they exist at the Effective Date. Borrower must promptly notify Collateral Agent and the Lenders of all returns, recoveries, disputes and claims that involve more than Five Hundred Thousand Dollars ($500,000.00) individually or in the aggregate in any calendar year.

6.4 Taxes; Pensions. Timely file and require each of its Subsidiaries to timely file, all required foreign, federal and material state and local tax returns and reports and timely pay, and require each of its Subsidiaries to timely pay, all foreign, federal, and material state and local taxes, assessments, deposits and contributions owed by Borrower or its Subsidiaries, except for deferred payment of any taxes contested pursuant to the terms of Section 5.8 hereof, and shall deliver to Lenders, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with the terms of such plans.

6.5 Insurance. Keep Borrower's and its Subsidiaries' business and the Collateral insured for risks and in amounts standard for companies in Borrower's and its Subsidiaries' industry and location and as Collateral Agent may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are reasonably satisfactory to Collateral Agent and the Required Lenders. All property policies shall have a lender's loss payable endorsement showing Collateral Agent as lender loss payee and waive subrogation against Collateral Agent, and all liability policies shall show, or have endorsements showing, Collateral Agent, as additional insured. The Collateral Agent shall be named as lender loss payee and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral, and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Collateral Agent, that it will give the Collateral Agent thirty (30) days prior written notice before any such policy or policies shall be canceled or not renewed. At Collateral Agent's request, Borrower shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any policy shall, at Collateral Agent's option, be payable to Collateral Agent as lender's loss payee or additional insured as Collateral Agent's interests may appear, for the ratable benefit of the Lenders, on account of the Obligations. Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any property policies up to but not exceeding (x) One Million Dollars ($1,000,000.00) in respect of inventory for all losses under all property policies in any policy year and (y) Five Hundred Thousand Dollars ($500,000.00) in respect of property other than inventory for all losses under all property policies in any policy year, toward the replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Collateral Agent has been granted a first priority security interest (which may be subject to Permitted Liens), and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such property policies shall, at the option of Collateral Agent, be payable to Collateral Agent, for the ratable benefit of the Lenders, on account of the Obligations. If Borrower or any of its Subsidiaries fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons, Collateral Agent and/or any Lender may make, at Borrower's expense, all

or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Collateral Agent or the Required Lenders deem prudent.

6.6 Operating Accounts.

(a) Maintain all of Borrower's and its Subsidiaries' Collateral Accounts as disclosed in the Perfection Certificate delivered on the Effective Date in accounts which are, in the case of Collateral Accounts of Borrower and any Guarantor, subject to a Control Agreement in favor of Collateral Agent, except to the extent otherwise permitted under Section 6.6(c).

(b) Notwithstanding anything to the contrary in Section 6.6(a), Borrower and its Subsidiaries shall not maintain cash and Cash Equivalents, in the aggregate, totaling more than the following amounts in Borrower's Collateral Accounts held at Bank of America, N.A., which are subject to a Control Agreement in favor of Collateral Agent: (i) Six Million Dollars ($6,000,000.00), at all times when the aggregate value of Borrower's cash and Cash Equivalents held in Borrower's Collateral Accounts at Merrill Lynch, Pierce, Fenner & Smith Incorporated, which are subject to a Control Agreement in favor of Collateral Agent, is equal to or greater than Twenty-Five Million Dollars ($25,000,000.00) and (ii) Four Million Dollars ($4,000,000.00), at all times when the aggregate value of Borrower's cash and Cash Equivalents held in Borrower's Collateral Accounts at Merrill Lynch, Pierce, Fenner & Smith Incorporated, which are subject to a Control Agreement in favor of Collateral Agent, is less than Twenty-Five Million Dollars ($25,000,000.00).

(c) Borrower shall provide Collateral Agent five (5) days' prior written notice before Borrower or any of its Subsidiaries establishes any Collateral Account at or with any Person other than any bank or financial institution that is not disclosed in the Perfection Certificate delivered on the Effective Date, such Person to be acceptable to Collateral Agent in its reasonable discretion. In addition, for each Collateral Account that Borrower or any Guarantor, at any time maintains, Borrower or such Guarantor shall cause the applicable bank or financial institution at or with which such Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Collateral Agent's Lien in such Collateral Account in accordance with the terms hereunder prior to the establishment of such Collateral Account, which Control Agreement may not be terminated without prior written consent of Collateral Agent. The provisions of the previous sentence shall not apply to (1) deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's, or any of its Subsidiaries', employees and identified to Collateral Agent by Borrower as such in the Perfection Certificates, (2) deposit accounts securing Indebtedness described in clause (g) of the definition of Permitted Indebtedness, (3) the deposit account of Borrower described in Section 5(c) of the Perfection Certificate and ending in xxx3771 so long as amounts held in such account do not exceed Seven Hundred Fifty Thousand Dollars ($750,000.00) and (4) the "master account" of Borrower held at Merrill Lynch, Pierce, Fenner & Smith Incorporated described in Section 5(c) of the Perfection Certificate and ending in xxx03527 so long as such account is at all times a "zero-balance" account (collectively, the "**Excluded Accounts**").

(d) Neither Borrower nor any of its Subsidiaries shall maintain any Collateral Accounts except Collateral Accounts maintained in accordance with Sections 6.6(a), (b) and (c).

6.7 Protection of Intellectual Property Rights. Borrower and each of its Subsidiaries shall: (a) use commercially reasonable efforts to protect, defend and maintain the validity and enforceability of its Intellectual Property that is material to Borrower's business; (b) promptly advise Collateral Agent in writing of material infringement by a third party of its Intellectual Property which has any material value; and (c) not allow any Intellectual Property material to Borrower's business to be abandoned, forfeited or dedicated to the public without Collateral Agent's prior written consent.

6.8 Litigation Cooperation. Commencing on the Effective Date and continuing through the termination of this Agreement, make available to Collateral Agent and the Lenders, without expense to Collateral Agent or the Lenders, Borrower and each of Borrower's officers, employees and agents and Borrower's Books, to the extent that Collateral Agent or any Lender may reasonably deem them necessary to prosecute or defend any third-party suit or proceeding instituted by or against Collateral Agent or any Lender with respect to any Collateral or relating to Borrower.

6.9 Notices of Litigation and Default. Borrower will give prompt written notice to Collateral Agent and the Lenders of any litigation or governmental proceedings pending or threatened (in writing) against Borrower or any of its Subsidiaries, which could reasonably be expected to result in damages or costs to Borrower or any of its Subsidiaries of Two Hundred Fifty Thousand Dollars ($250,000.00) or more or which could reasonably be expected to have a Material Adverse Change. Without limiting or contradicting any other more specific provision of this Agreement, promptly (and in any event within three (3) Business Days) upon a Responsible Officer of Borrower becoming aware of the existence of any Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default, Borrower shall give written notice to Collateral Agent and the Lenders of such occurrence, which such notice shall include a reasonably detailed description of such Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default.

6.10 Financial Covenant.

(a) Performance to Plan. Beginning on March 31, 2022 and until the occurrence of the IP Lien Event, Borrower shall achieve net sales revenues (measured in accordance with GAAP and, for the sake of clarity, exclusive of any revenue from intercompany transactions among Borrower and its Subsidiaries), measured on a trailing twelve (12) month basis and tested as of each Measuring Date, greater than or equal to fifty percent (50%) of the sales revenues target as set forth in the Annual Projections approved by Collateral Agent and the Required Lenders.

(b) Intellectual Property Lien. No later than thirty (30) days following Borrower's achievement of the IPO Milestone, Borrower may elect, by delivering notice to Collateral Agent and the Lenders in writing, to grant and pledge to Collateral Agent a valid, first priority, continuing security interest in Borrower's Intellectual Property (which security interest may be subject to Permitted Liens). No later than forty-five (45) days (or, if so requested by Borrower, such later date as Collateral Agent may agree to , the "**IP Lien Deadline**") following the delivery of such notice, Borrower shall have executed and delivered to Collateral Agent and the Lenders an amendment to this Agreement, intellectual property security agreement, and any other documentation reasonably requested by Collateral Agent to effect the grant of such lien in Borrower's Intellectual Property (the "**IP Lien Event**").

6.11 Landlord Waivers; Bailee Waivers. In the event that Borrower or any of its Subsidiaries, after the Effective Date, intends to add any new offices or business locations, including warehouses, or otherwise store any portion of the Collateral with, or deliver any portion of the Collateral (except for Collateral in aggregate book value not exceeding One Million Dollars ($1,000,000.00) at any time consisting of movable items of personal property such as laptop computers, or inventory at ambulatory surgery centers or sterilizers in the ordinary course of business) to, a bailee, in each case pursuant to Section 7.2, then Borrower or such Subsidiary will first receive the written consent of Collateral Agent and, in the event that the new location is the chief executive office of the Borrower or such Subsidiary or the Collateral at any such new location is valued in excess of Five Hundred Fifty Thousand ($500,000.00) in aggregate book value, such bailee or landlord, as applicable, must execute and deliver a bailee waiver or landlord waiver, as applicable, in form and substance reasonably satisfactory to Collateral Agent prior to the addition of such new offices or business locations, or such storage with or delivery to any such bailee, as the case may be.

6.12 Creation/Acquisition of Subsidiaries. In the event Borrower or any of its Subsidiaries creates or acquires any Subsidiary (including, without limitation, pursuant to a Division) after the Effective Date, Borrower shall provide prior written notice to Collateral Agent and each Lender of the creation or acquisition of such new Subsidiary and take all such action as may be reasonably required by Collateral Agent or the Required Lenders to cause each such new Subsidiary to become a co-Borrower hereunder or to guarantee the Obligations of Borrower under the Loan Documents and, in each case, grant a continuing pledge and security interest in and to the assets of such new Subsidiary (substantially as described on Exhibit A hereto); and Borrower (or its Subsidiary, as applicable) shall grant and pledge to Collateral Agent, for the ratable benefit of the Lenders, a perfected security interest in the Shares of each such newly created Subsidiary; provided, however, that solely in the circumstance in which Borrower or any Subsidiary creates or acquires a Foreign Subsidiary in an acquisition permitted by Section 8.15 hereof or otherwise approved by the Required Lenders, (i) such Foreign Subsidiary shall not be required to guarantee the Obligations of Borrower under the Loan Documents and grant a continuing pledge and security interest in and to the assets of such Foreign Subsidiary, and (ii) Borrower shall not be required to grant and pledge to Collateral Agent, for the ratable benefit of Lenders, a perfected security interest in more than sixty-five percent (65%) of the Shares of such Foreign Subsidiary which shares entitle the holder thereof to vote for directors or any other matter, if Borrower demonstrates to the reasonable

satisfaction of Collateral Agent that such Foreign Subsidiary providing such guarantee or pledge and security interest or Borrower providing a perfected security interest in more than sixty-five percent (65%) of the Shares would create a present and existing adverse tax consequence to Borrower under the U.S. Internal Revenue Code.

6.13 Further Assurances.

(a) Execute any further instruments and take further action as Collateral Agent or the Required Lenders reasonably request to perfect or continue Collateral Agent's Lien in the Collateral or to effect the purposes of this Agreement.

(b) Deliver to Collateral Agent and the Lenders, within ten (10) Business Days after the same are sent or received, copies of all material correspondence, reports, documents and other filings with any Governmental Authority that could reasonably be expected to have a material adverse effect on any of the Governmental Approvals material to Borrower's business or otherwise could reasonably be expected to have a Material Adverse Change.

7. NEGATIVE COVENANTS

Borrower shall not, and shall not permit any of its Subsidiaries to, do any of the following without the prior written consent of the Required Lenders:

7.1 Dispositions. Convey, sell, lease, transfer, assign, or otherwise dispose of (including, without limitation, pursuant to a Division) (collectively, "**Transfer**"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn out, surplus or obsolete Equipment; (c) in connection with Permitted Liens, Permitted Investments or Permitted Licenses; and (d) not to exceed Five Hundred Thousand Dollars ($500,000) in the aggregate in any fiscal year of Borrower.

7.2 Changes in Business, Management, Ownership, or Business Locations. (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses engaged in by Borrower as of the Effective Date or reasonably related thereto; (b) liquidate or dissolve; or (c) any Key Person shall cease to be actively engaged in the management of Borrower unless written notice thereof is provided to Collateral Agent within five (5) days of such change. Borrower shall not, without at least ten (10) Business Days' prior written notice to Collateral Agent: (A) add any new offices or business locations, including warehouses (unless such new offices or business locations (ii) contain less than Five Hundred Thousand Dollars ($500,000.00) in assets or property of Borrower or any of its Subsidiaries and (ii) are not Borrower's or its Subsidiaries' chief executive office); (B) change its jurisdiction of organization, (C) change its organizational structure or type, (D) change its legal name, or (E) change any organizational number (if any) assigned by its jurisdiction of organization.

7.3 Mergers or Acquisitions. Except for an IPO pursuant to clause (c) of such definition or an Investment pursuant to clause (h) of the defined term Permitted Investment, and in each such case subject to compliance with Section 6.12, merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock, shares or property of another Person (including, without limitation, pursuant to a Division). A Subsidiary may merge or consolidate into another Subsidiary (provided such surviving Subsidiary is a "co-Borrower" hereunder or has provided a secured Guaranty of Borrower's Obligations hereunder) or with (or into) Borrower provided Borrower is the surviving legal entity, and as long as no Event of Default is occurring prior thereto or arises as a result therefrom.

7.4 Indebtedness. Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

7.5 Encumbrance. Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, or permit any Collateral not to be subject to the first priority security interest granted herein (the Collateral may also be subject to Permitted Liens), or enter into any agreement, document, instrument or other

arrangement (except with or in favor of Collateral Agent, for the ratable benefit of the Lenders) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower, or any of its Subsidiaries, from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or such Subsidiary's Intellectual Property, in favor of Collateral Agent, except (A) as is otherwise permitted in Section 7.1 hereof and the definition of "Permitted Liens" herein, (B) for the Series W Warrant and (C) for customary covenants with such customary restrictions in merger or acquisition agreements restricting the granting of security interests on Borrower's or its Subsidiaries' property pending the closing of such transactions; provided, that (i) such covenants do not at any time prohibit the Borrower or such Subsidiaries from granting a security interest in Borrower's or such Subsidiaries' property in favor of Collateral Agent for the benefit of Lenders, or in any way impair the Liens in favor of Collateral Agent or any Lender made in connection with this Agreement, and (ii) the counterparty is not granted a security interest in any property of Borrower or any Subsidiary, and (iii) unless such purchase agreements and/or acquisition agreements provide for payment in full of all outstanding Obligations (other than inchoate indemnification obligations) contemporaneously with (or before) the consummation of the applicable merger or acquisition, no Event of Default has occurred and is continuing immediately prior to, nor would occur as a result of, entry into such purchase agreements and/or acquisition agreements. For the avoidance of doubt, in no way shall the preceding sentence be deemed to constitute a waiver of, or otherwise limit, Borrower's obligations under Section 7.3 or 8.14 of this Agreement.

7.6 Maintenance of Collateral Accounts. Maintain any Collateral Account except pursuant to the terms of Section 6.6 hereof.

7.7 [Reserved].

7.8 [Reserved].

7.9 Subordinated Debt. (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof or adversely affect the subordination thereof to Obligations owed to the Lenders, except, in each case, to the extent permitted under the terms of the subordination, intercreditor or other similar agreement to which such Subordinated Debt is subject.

7.10 Compliance. To the extent applicable to Borrower, become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a Material Adverse Change, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any material liability of Borrower or any of its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

7.11 Compliance with Anti-Terrorism Laws. Collateral Agent hereby notifies Borrower and each of its Subsidiaries that pursuant to the requirements of Anti-Terrorism Laws, and Collateral Agent's policies and practices, Collateral Agent is required to obtain, verify and record certain information and documentation that identifies Borrower and each of its Subsidiaries and their principals, which information includes the name and address of Borrower and each of its Subsidiaries and their principals and such other information that will allow Collateral Agent to identify such party in accordance with Anti-Terrorism Laws. Neither Borrower nor any of its Subsidiaries shall, nor shall Borrower or any of its Subsidiaries permit any Affiliate to, directly or indirectly, knowingly enter into any documents, instruments, agreements or contracts with any Person listed on the OFAC Lists. Borrower and each of its Subsidiaries shall immediately notify Collateral Agent if Borrower or such Subsidiary has knowledge that Borrower, or any Subsidiary or Affiliate of Borrower, is listed on the OFAC Lists or (a) is convicted on, (b) pleads *nolo contendere* to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or

predicate crimes to money laundering. Neither Borrower nor any of its Subsidiaries shall, nor shall Borrower or any of its Subsidiaries, permit any Affiliate to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224 or any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

7.12 Assets held by Foreign Subsidiaries. (a) Permit the value of cash, Cash Equivalents and other tangible assets held by the Foreign Subsidiaries of Borrower to exceed Five Hundred Thousand Dollars ($500,000.00) in the aggregate, or (b) Transfer to, license to or permit any Foreign Subsidiary of Borrower to hold or maintain any Intellectual Property.

8. EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an "**Event of Default**") under this Agreement:

8.1 Payment Default. Borrower fails to (a) make any payment of principal or interest on any Credit Extension on its due date, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day grace period shall not apply to payments due on the Maturity Date or the date of acceleration pursuant to Section 9.1 (a) hereof). During the cure period, the failure to cure the payment default is not an Event of Default (but no Credit Extension will be made during the cure period);

8.2 Covenant Default.

(a) Borrower or any of its Subsidiaries fails or neglects to perform any obligation in Sections 6.2 (Financial Statements, Reports, Certificates), 6.4 (Taxes), 6.5 (Insurance), 6.6 (Operating Accounts), 6.7 (Protection of Intellectual Property Rights), 6.9 (Notice of Litigation and Default), 6.10 (Financial Covenant) or 6.11 (Landlord Waivers; Bailee Waivers), or Borrower violates any covenant in Section 7; or

(b) Borrower, or any of its Subsidiaries, fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) Business Days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) Business Day period or cannot after diligent attempts by Borrower be cured within such ten (10) Business Day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Credit Extensions shall be made during such cure period). Grace periods provided under this Section shall not apply, among other things, to financial covenants or any other covenants set forth in subsection (a) above;

8.3 Material Adverse Change. A Material Adverse Change occurs;

8.4 Attachment; Levy; Restraint on Business.

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or any of its Subsidiaries or of any entity under control of Borrower or its Subsidiaries on deposit with any Lender or any Lender's Affiliate or any bank or other institution at which Borrower or any of its Subsidiaries maintains a Collateral Account, in excess of Five Hundred Thousand Dollars ($500,000.00), or (ii) a notice of lien, levy, or assessment is filed against Borrower or any of its Subsidiaries or their respective assets by any government agency, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any ten (10) day cure period; and

(b) (i) any material portion of Borrower's or any of its Subsidiaries' assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower or any of its Subsidiaries from conducting any material part of its business;

8.5 Insolvency. (a) Borrower or any of its Subsidiaries is or becomes Insolvent; (b) Borrower or any of its Subsidiaries begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower or any of its Subsidiaries and not dismissed or stayed within forty-five (45) days (but no Credit Extensions shall be made while Borrower or any Subsidiary is Insolvent and/or until any Insolvency Proceeding is dismissed);

8.6 Other Agreements. There is a default in any agreement to which Borrower or any of its Subsidiaries is a party with a third party or parties resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of Five Hundred Thousand Dollars ($500,000.00) or that could reasonably be expected to have a Material Adverse Change;

8.7 Judgments. One or more judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least Five Hundred Thousand Dollars ($500,000.00) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower or any of its Subsidiaries and shall remain unsatisfied, unvacated, or unstayed for a period of ten (10) Business Days after the entry thereof (provided that no Credit Extensions will be made prior to the satisfaction, vacation, or stay of such judgment, order or decree);

8.8 Misrepresentations. Borrower or any of its Subsidiaries or any Person acting for Borrower or any of its Subsidiaries makes any representation, warranty, or other statement now or later in this Agreement, any other Loan Document or in any writing delivered to Collateral Agent and/or Lenders or to induce Collateral Agent and/or the Lenders to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made;

8.9 Subordinated Debt. A default or breach occurs under any agreement between Borrower or any of its Subsidiaries and any creditor of Borrower or any of its Subsidiaries that signed a subordination, intercreditor, or other similar agreement with Collateral Agent or the Lenders, or any creditor that has signed such an agreement with Collateral Agent or the Lenders breaches any terms of such agreement;

8.10 Guaranty. (a) Any Guaranty terminates or ceases for any reason to be in full force and effect other than pursuant to the terms of such Guaranty; (b) any Guarantor does not perform any obligation or covenant under any Guaranty; (c) any circumstance described in Sections 8.3, 8.4, 8.5, 8.7, or 8.8 occurs with respect to any Guarantor, or (d) the liquidation, winding up, or termination of existence of any Guarantor;

8.11 Governmental Approvals. Any Governmental Approval shall have been revoked, rescinded, suspended, modified in an adverse manner, or not renewed in the ordinary course for a full term *and* such revocation, rescission, suspension, modification or non-renewal has resulted in or could reasonably be expected to result in a Material Adverse Change;

8.12 Lien Priority. Any Lien created hereunder or by any other Loan Document in favor of Collateral Agent shall at any time fail to constitute a valid and perfected Lien on any of the Collateral purported to be secured thereby, subject to no prior or equal Lien (the Collateral may also be subject to Permitted Liens);

8.13 Delisting. After completion of an IPO, the shares of common stock of Borrower are delisted from the NYSE or NASDAQ Capital Market because of failure to comply with continued listing standards thereof or due to a voluntary delisting which results in such shares not being listed on any other nationally recognized stock exchange in the United States having listing standards at least as restrictive as the NYSE or NASDAQ Capital Market, as appropriate;

8.14 Change of Control. Borrower or any of its Subsidiaries consummates any transaction or series of related transactions in which the stockholders of Borrower who were not stockholders immediately prior to the first such transaction own more than forty nine percent (49%) of the voting stock of Borrower immediately after giving

effect to such transaction or related series of such transactions (other than by the sale of Borrower's equity securities in a public offering (including an IPO), a private placement of public equity or to venture capital investors so long as Borrower identifies to Collateral Agent the venture capital investors prior to the closing of the transaction);

8.15 Distributions; Investments. Borrower or any of its Subsidiaries (a) pays any dividends (other than dividends payable solely in capital stock) or makes any distribution or payment in respect of or redeems, retires or purchases any capital stock, provided that (i) Borrower may convert any of its convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof, distribute capital stock upon the exercise of options or warrants and make cash payments solely in lieu of the issuance of fractional shares upon such exercise or conversion, (ii) Borrower may make distributions solely in capital stock, (iii) Borrower may repurchase the stock of former employees, directors, consultants or other service providers pursuant to the terms of employee stock purchase plans, employee restricted stock agreements, stockholder rights plans, director or consultant stock option plans, or similar plans, provided such repurchases do not exceed Five Hundred Thousand Dollars ($500,000.00) in the aggregate per fiscal year), and (iv) Borrower may make purchases or cash payments in lieu of fractional shares of capital stock arising out of stock dividends, splits or combinations not to exceed One Hundred Thousand Dollars ($100,000.00) in the aggregate per fiscal year; or (b) directly or indirectly makes, or permits any of its Subsidiaries to make, any Investment other than Permitted Investments; or

8.16 Transactions with Affiliates. Borrower or any of its Subsidiaries (a) directly or indirectly enters into or permits to exist any material transaction with any Affiliate of Borrower or any of its Subsidiaries, except for (a) transactions that are in the ordinary course of Borrower's or such Subsidiary's business, upon fair and reasonable terms that are no less favorable to Borrower or such Subsidiary than would be obtained in an arm's length transaction with a non-affiliated Person, (b) transactions permitted by Section 8.15 hereof, (c) commercially reasonable and customary compensation arrangements with Borrower's employees, officers, directors and managers and commercially reasonable and customary indemnification arrangements with Borrower's directors and managers, in each case, approved by Borrower's board of directors or a duly authorized committee thereof, and (d) Subordinated Debt or equity investments by Borrower's investors in Borrower or its Subsidiaries. For the sake of clarity, if the holder of the Series W Warrant provides a Notice of Exercise thereunder, no Event of Default shall occur under Section 8.14, Section 8.15 or this Section 8.16 so long as all Obligations (other than inchoate indemnification obligations) are paid in full in cash prior to or simultaneously with the Closing (as defined in the Series W Warrant).

9. RIGHTS AND REMEDIES

9.1 Rights and Remedies.

(a) Upon the occurrence and during the continuance of an Event of Default, Collateral Agent may, and at the written direction of Required Lenders shall, without notice or demand, do any or all of the following: (i) deliver notice of the Event of Default to Borrower, (ii) by notice to Borrower declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations shall be immediately due and payable without any action by Collateral Agent or the Lenders) or (iii) by notice to Borrower suspend or terminate the obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders (but if an Event of Default described in Section 8.5 occurs all obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders shall be immediately terminated without any action by Collateral Agent or the Lenders).

(b) Without limiting the rights of Collateral Agent and the Lenders set forth in Section 9.1(a) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right, without notice or demand, to do any or all of the following:

(i) foreclose upon and/or sell or otherwise liquidate, the Collateral;

(ii) apply to the Obligations any (a) balances and deposits of Borrower that Collateral Agent or any Lender holds or controls, or (b) any amount held or controlled by Collateral Agent or any Lender owing to or for the credit or the account of Borrower; and/or

(iii) commence and prosecute an Insolvency Proceeding or consent to Borrower commencing any Insolvency Proceeding.

(c) Without limiting the rights of Collateral Agent and the Lenders set forth in Sections 9.1(a) and (b) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right, without notice or demand, to do any or all of the following:

(i) settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Collateral Agent considers advisable, notify any Person owing Borrower money of Collateral Agent's security interest in such funds, and verify the amount of such account;

(ii) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Collateral Agent requests and make it available in a location as Collateral Agent reasonably designates. Collateral Agent may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Collateral Agent a license to enter and occupy any of its premises, without charge, to exercise any of Collateral Agent's rights or remedies;

(iii) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, and/or advertise for sale, the Collateral. Collateral Agent is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's and each of its Subsidiaries' labels, patents, copyrights, mask works, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Collateral Agent's exercise of its rights under this Section 9.1, Borrower's and each of its Subsidiaries' rights under all licenses and all franchise agreements inure to Collateral Agent, for the benefit of the Lenders;

(iv) place a "hold" on any account maintained with Collateral Agent or the Lenders and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(v) demand and receive possession of Borrower's Books;

(vi) appoint a receiver to seize, manage and realize any of the Collateral, and such receiver shall have any right and authority as any competent court will grant or authorize in accordance with any applicable law, including any power or authority to manage the business of Borrower or any of its Subsidiaries; and

(vii) subject to clauses 9.1(a) and (b), exercise all rights and remedies available to Collateral Agent and each Lender under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof);

Notwithstanding any provision of this Section 9.1 to the contrary, upon the occurrence of any Event of Default, unless such Event of Default shall have been waived in writing by Collateral Agent and the Required Lenders in their sole discretion, Collateral Agent shall have the right to exercise any and all remedies referenced in this Section 9.1 without the written consent of Required Lenders following the occurrence of an Exigent Circumstance. As used in the immediately preceding sentence, "**Exigent Circumstance**" means any event or circumstance that, in the reasonable judgment of Collateral Agent, imminently threatens the ability of Collateral Agent to realize upon all or any material portion of the Collateral, such as, without limitation, fraudulent removal, concealment, or abscondment thereof, destruction or material waste thereof, or failure of Borrower or any of its Subsidiaries after reasonable demand to maintain or reinstate adequate casualty insurance coverage, or which, in the judgment of Collateral Agent, could reasonably be expected to result in a material diminution in value of the Collateral.

9.2 Power of Attorney. Borrower hereby irrevocably appoints Collateral Agent as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse

Borrower's or any of its Subsidiaries' name on any checks or other forms of payment or security; (b) sign Borrower's or any of its Subsidiaries' name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Collateral Agent determines reasonable; (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Collateral Agent or a third party as the Code or any applicable law permits. Borrower hereby appoints Collateral Agent as its lawful attorney-in-fact to sign Borrower's or any of its Subsidiaries' name on any documents necessary to perfect or continue the perfection of Collateral Agent's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than inchoate indemnity obligations) have been satisfied in full and Collateral Agent and the Lenders are under no further obligation to make Credit Extensions hereunder. Collateral Agent's foregoing appointment as Borrower's or any of its Subsidiaries' attorney in fact, and all of Collateral Agent's rights and powers, coupled with an interest, are irrevocable until all Obligations (other than inchoate indemnity obligations) have been fully repaid and performed and Collateral Agent's and the Lenders' obligation to provide Credit Extensions terminates.

9.3 Protective Payments. If Borrower or any of its Subsidiaries fail to obtain the insurance called for by Section 6.5 or fails to pay any premium thereon or fails to pay any other amount which Borrower or any of its Subsidiaries is obligated to pay under this Agreement or any other Loan Document, Collateral Agent may obtain such insurance or make such payment, and all amounts so paid by Collateral Agent are Lenders' Expenses and immediately due and payable, bearing interest at the Default Rate, and secured by the Collateral. Collateral Agent will make reasonable efforts to provide Borrower with notice of Collateral Agent obtaining such insurance or making such payment at the time it is obtained or paid or within a reasonable time thereafter. No such payments by Collateral Agent are deemed an agreement to make similar payments in the future or Collateral Agent's waiver of any Event of Default.

9.4 Application of Payments and Proceeds. Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, (a) Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Collateral Agent from or on behalf of Borrower or any of its Subsidiaries of all or any part of the Obligations, and, as between Borrower on the one hand and Collateral Agent and Lenders on the other, Collateral Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Collateral Agent may deem advisable notwithstanding any previous application by Collateral Agent, and (b) the proceeds of any sale of, or other realization upon all or any part of the Collateral shall be applied: first, to the Lenders' Expenses; second, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the United States Bankruptcy Code, would have accrued on such amounts); third, to the principal amount of the Obligations outstanding; and fourth, to any other indebtedness or obligations of Borrower owing to Collateral Agent or any Lender under the Loan Documents. Any balance remaining shall be delivered to Borrower or to whoever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (x) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (y) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its pro rata share of amounts available to be applied pursuant thereto for such category. Any reference in this Agreement to an allocation between or sharing by the Lenders of any right, interest or obligation "ratably," "proportionally" or in similar terms shall refer to Pro Rata Share unless expressly provided otherwise. Collateral Agent, or if applicable, each Lender, shall promptly remit to the other Lenders such sums as may be necessary to ensure the ratable repayment of each Lender's portion of any Term Loan and the ratable distribution of interest, fees and reimbursements paid or made by Borrower. Notwithstanding the foregoing, a Lender receiving a scheduled payment shall not be responsible for determining whether the other Lenders also received their scheduled payment on such date; provided, however, if it is later determined that a Lender received more than its ratable share of scheduled payments made on any date or dates, then such Lender shall remit to Collateral Agent or other Lenders such sums as may be necessary to ensure the ratable payment of such scheduled payments, as instructed by Collateral Agent. If any payment or distribution of any kind or character, whether in cash, properties or securities, shall be received by a Lender in excess of its ratable share, then the portion of such payment or distribution in excess of such Lender's ratable share shall be received by such Lender in trust for and shall be promptly paid over to the other Lender for application to the payments of amounts due on the other Lenders' claims. To the extent any payment for the account of Borrower is required to be returned as a voidable transfer or otherwise, the Lenders shall contribute

to one another as is necessary to ensure that such return of payment is on a pro rata basis. If any Lender shall obtain possession of any Collateral, it shall hold such Collateral for itself and as agent and bailee for Collateral Agent and other Lenders for purposes of perfecting Collateral Agent's security interest therein.

9.5 Liability for Collateral. So long as Collateral Agent and the Lenders comply with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Collateral Agent and the Lenders, Collateral Agent and the Lenders shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

9.6 No Waiver; Remedies Cumulative. Failure by Collateral Agent or any Lender, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Collateral Agent or any Lender thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by Collateral Agent and the Required Lenders and then is only effective for the specific instance and purpose for which it is given. The rights and remedies of Collateral Agent and the Lenders under this Agreement and the other Loan Documents are cumulative. Collateral Agent and the Lenders have all rights and remedies provided under the Code, any applicable law, by law, or in equity. The exercise by Collateral Agent or any Lender of one right or remedy is not an election, and Collateral Agent's or any Lender's waiver of any Event of Default is not a continuing waiver. Collateral Agent's or any Lender's delay in exercising any remedy is not a waiver, election, or acquiescence.

9.7 Demand Waiver. Borrower waives, to the fullest extent permitted by law, demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Collateral Agent or any Lender on which Borrower or any Subsidiary is liable.

10. NOTICES

All notices, consents, requests, approvals, demands, or other communication (collectively, "**Communication**") by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Any of Collateral Agent, Lender or Borrower may change its mailing address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower:	RXSIGHT, INC. 100 Columbia Aliso Viejo, CA 92656 Attn: Shelley Thunen, CFO
with a copy (which shall not constitute notice) to:	Wilson Sonsini Goodrich & Rosati 12235 El Camino Real San Diego, CA 92130 Attn: Marty Waters and Charlotte Kim Fax:

If to Collateral Agent:	OXFORD FINANCE LLC 133 North Fairfax Street Alexandria, Virginia 22314 Attention: Legal Department Fax:
with a copy (which shall not constitute notice) to:	DLA Piper LLP (US) 500 8th Street, NW Washington, DC 20004 Attn: Eric Eisenberg Fax:

11. CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER, AND JUDICIAL REFERENCE

California law governs the Loan Documents without regard to principles of conflicts of law. Borrower, Collateral Agent and each Lender each submit to the exclusive jurisdiction of the State and Federal courts in Santa Clara County, California; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Collateral Agent or any Lender from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Collateral Agent or any Lender. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided by Borrower in accordance with, Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, first class, registered or certified mail return receipt requested, proper postage prepaid.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER, COLLATERAL AGENT AND EACH LENDER EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of the Santa Clara County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Santa Clara County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure §§ 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Santa Clara County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court

under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and orders applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to California Code of Civil Procedure § 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies, foreclose against collateral, or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

12. GENERAL PROVISIONS

12.1 Successors and Assigns. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not transfer, pledge or assign this Agreement or any rights or obligations under it without Collateral Agent's and each Lender's prior written consent (which may be granted or withheld in Collateral Agent's and each Lender's discretion, subject to Section 12.6). The Lenders have the right, without the consent of or notice to Borrower, to sell, transfer, assign, pledge, negotiate, or grant participation in **(any** such sale, transfer, assignment, negotiation**,** or grant of a participation, a **"Lender Transfer")** all or any part of, or any interest in, the Lenders' obligations, rights, and benefits under this Agreement and the other Loan Documents; *provided*, *however*, that any such Lender Transfer (other than a transfer, pledge, sale or assignment to an Eligible Assignee) of its obligations, rights, and benefits under this Agreement and the other Loan Documents shall require the prior written consent of the Required Lenders (such approved assignee, an "**Approved Lender**"**).** Borrower and Collateral Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned until Collateral Agent shall have received and accepted an effective assignment agreement in form satisfactory to Collateral Agent executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Assignee or Approved Lender as Collateral Agent reasonably shall require. The Collateral Agent, acting solely for this purpose as an agent of the Borrower, shall maintain a copy of each assignment agreement delivered to it and a register for the recordation of the names and addresses of the Lenders party hereto, and the Commitments of, and principal amounts (and stated interest) of the amounts owing to, each such Lender a party hereto pursuant to the terms hereof from time to time (the "Register "). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Collateral Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice. Notwithstanding anything to the contrary contained herein, so long as no Event of Default has occurred and is continuing, no Lender Transfer (other than a Lender Transfer in connection with (x) assignments by a Lender due to a forced divestiture at the request of any regulatory agency; or (y) upon the occurrence of a default, event of default or similar occurrence with respect to a Lender's own financing or securitization transactions) shall be permitted, without Borrower's prior written consent, to any Person which is an Affiliate or Subsidiary of Borrower, a direct competitor of Borrower or a vulture hedge fund, each as determined by Collateral Agent.

12.2 Indemnification. Borrower agrees to indemnify, defend and hold Collateral Agent and the Lenders and their respective directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Collateral Agent or the Lenders (each, an "**Indemnified Person**") harmless against: (a) all obligations, demands, claims, and liabilities (collectively, "**Claims**") asserted by any other party in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Loan Documents; and (b) all losses or Lenders' Expenses incurred, or paid by Indemnified Person in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Loan Documents between Collateral Agent, and/or the Lenders and Borrower (including reasonable attorneys' fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct. Borrower hereby further indemnifies, defends and holds each Indemnified Person harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnified Person) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnified Person shall be designated a party thereto and including any such proceeding initiated by or on behalf of Borrower, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any

commission, fee or compensation claimed by any broker (other than any broker retained by Collateral Agent or Lenders) asserting any right to payment for the transactions contemplated hereby which may be imposed on, incurred by or asserted against such Indemnified Person as a result of or in connection with the transactions contemplated hereby and the use or intended use of the proceeds of the loan proceeds except for liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements directly caused by such Indemnified Person's gross negligence or willful misconduct.

12.3 Time of Essence. Time is of the essence for the performance of all Obligations in this Agreement.

12.4 Severability of Provisions. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

12.5 Correction of Loan Documents. Collateral Agent and the Lenders may correct patent errors and fill in any blanks in this Agreement and the other Loan Documents consistent with the agreement of the parties, so long as Collateral Agent and the Lenders provide Borrower with written notice of such correction and allow Borrower at least ten (10) Business Days to object to such correction. In the event of such objection, such correction shall not be made, except by an amendment signed by Collateral Agent, the Lenders and Borrower**.**

12.6 Amendments in Writing; Integration. (a) No amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document, no approval or consent thereunder, or any consent to any departure by Borrower or any of its Subsidiaries therefrom, shall in any event be effective unless the same shall be in writing and signed by Borrower, Collateral Agent and the Required Lenders provided that:

(i) no such amendment, waiver or other modification that would have the effect of increasing or reducing a Lender's Term Loan Commitment or Commitment Percentage shall be effective as to such Lender without such Lender's written consent;

(ii) no such amendment, waiver or modification that would affect the rights and duties of Collateral Agent shall be effective without Collateral Agent's written consent or signature;

(iii) no such amendment, waiver or other modification shall, unless signed by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Term Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Term Loan (B) postpone the date fixed for, or waive, any payment of principal of any Term Loan or of interest on any Term Loan (other than default interest) or any fees provided for hereunder (other than late charges or for any termination of any commitment); (C) change the definition of the term "**Required Lenders**" or the percentage of Lenders which shall be required for the Lenders to take any action hereunder; (D) release all or substantially all or any material portion of the Collateral, authorize Borrower to sell or otherwise dispose of all or substantially all or any material portion of the Collateral or release any Guarantor of all or any portion of the Obligations or its guaranty obligations with respect thereto, except, in each case with respect to this clause (D), as otherwise may be expressly permitted under this Agreement or the other Loan Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 12.6 or the definitions of the terms used in this Section 12.6 insofar as the definitions affect the substance of this Section 12.6; (F) consent to the assignment, delegation or other transfer by Borrower of any of its rights and obligations under any Loan Document or release Borrower of its payment obligations under any Loan Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; (G) amend any of the provisions of Section 9.4 or amend any of the definitions of Pro Rata Share, Term Loan Commitment, Commitment Percentage or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder; (H) subordinate the Liens granted in favor of Collateral Agent securing the Obligations; or (I) amend any of the provisions of Section 12.10. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F), (G) and (H) of the preceding sentence;

(iv) the provisions of the foregoing clauses (i), (ii) and (iii) are subject to the provisions of any interlender or agency agreement among the Lenders and Collateral Agent pursuant to which any

Lender may agree to give its consent in connection with any amendment, waiver or modification of the Loan Documents only in the event of the unanimous agreement of all Lenders.

(b) Other than as expressly provided for in Section 12.6(a)(i)-(iii), Collateral Agent may, if requested by the Required Lenders, from time to time designate covenants in this Agreement less restrictive by notification to a representative of Borrower.

(c) This Agreement and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the Loan Documents merge into this Agreement and the Loan Documents.

12.7 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

12.8 Survival. All covenants, representations and warranties made in this Agreement continue in full force and effect until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been satisfied. The obligation of Borrower in Section 12.2 to indemnify each Lender and Collateral Agent, as well as the confidentiality provisions in Section 12.9 below, shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

12.9 Confidentiality. In handling any confidential information of Borrower, the Lenders and Collateral Agent shall exercise the same degree of care that it exercises for their own proprietary information, but disclosure of information may be made: (a) subject to the terms and conditions of this Agreement, to the Lenders' and Collateral Agent's Subsidiaries or Affiliates (provided that such Subsidiaries or Affiliates are bound by similar confidentiality obligations herein), or in connection with a Lender's own financing or securitization transactions and upon the occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction; (b) to prospective transferees (other than those identified in (a) above) or purchasers of any interest in the Credit Extensions (provided, however, the Lenders and Collateral Agent shall, except upon the occurrence and during the continuance of an Event of Default, obtain such prospective transferee's or purchaser's agreement to the terms of this provision or to similar confidentiality terms); (c) as required by law, regulation, subpoena, or other order; (d) to Lenders' or Collateral Agent's regulators or as otherwise required in connection with an examination or audit; (e) as Collateral Agent reasonably considers appropriate in exercising remedies under the Loan Documents; and (f) to third party service providers of the Lenders and/or Collateral Agent so long as such service providers have executed a confidentiality agreement with the Lenders and Collateral Agent with terms no less restrictive than those contained herein. Confidential information does not include information that either: (i) is in the public domain or in the Lenders' and/or Collateral Agent's possession when disclosed to the Lenders and/or Collateral Agent, or becomes part of the public domain after disclosure to the Lenders and/or Collateral Agent; or (ii) is disclosed to the Lenders and/or Collateral Agent by a third party, if the Lenders and/or Collateral Agent does not know that the third party is prohibited from disclosing the information. Collateral Agent and the Lenders may use confidential information for any purpose, including, without limitation, for the development of client databases, reporting purposes, and market analysis. The provisions of the immediately preceding sentence shall survive the termination of this Agreement. The agreements provided under this Section 12.9 supersede all prior agreements, understanding, representations, warranties, and negotiations between the parties about the subject matter of this Section 12.9.

12.10 Right of Set Off. Borrower hereby grants to Collateral Agent and to each Lender, a lien, security interest and right of set off as security for all Obligations to Collateral Agent and each Lender hereunder, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Collateral Agent or the Lenders or any entity under the control of Collateral Agent or the Lenders (including a Collateral Agent affiliate) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Collateral Agent or the Lenders may set off the same or any part thereof and apply the same to any liability or obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE COLLATERAL AGENT TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT

TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

12.11 Cooperation of Borrower. If necessary, Borrower agrees to (i) execute any documents (including new Secured Promissory Notes) reasonably required to effectuate and acknowledge each assignment of a Term Loan Commitment or Loan to an assignee in accordance with Section 12.1, (ii) make Borrower's management available to meet with Collateral Agent and prospective participants and assignees of Term Loan Commitments or Credit Extensions (which meetings shall be conducted no more often than once every twelve months unless an Event of Default has occurred and is continuing), and (iii) assist Collateral Agent or the Lenders in the preparation of information relating to the financial affairs of Borrower as any prospective participant or assignee of a Term Loan Commitment or Term Loan reasonably may request. Subject to the provisions of Section 12.9, Borrower authorizes each Lender to disclose to any prospective participant or assignee of a Term Loan Commitment, any and all information in such Lender's possession concerning Borrower and its financial affairs which has been delivered to such Lender by or on behalf of Borrower pursuant to this Agreement, or which has been delivered to such Lender by or on behalf of Borrower in connection with such Lender's credit evaluation of Borrower prior to entering into this Agreement.

13. DEFINITIONS

13.1 Definitions. As used in this Agreement, the following terms have the following meanings:

"**Account**" is any "account" as defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Borrower.

"**Account Debtor**" is any "account debtor" as defined in the Code with such additions to such term as may hereafter be made.

"**Affiliate**" of any Person is a Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members.

"**Agreement**" is defined in the preamble hereof.

"**Amortization Date**" is December 1, 2023; provided, however, if Borrower has achieved net sales revenues (measured in accordance with GAAP and, for the sake of clarity, exclusive of any revenue from intercompany transactions among Borrower and its Subsidiaries), measured on a trailing twelve (12) month basis and tested as of each Measuring Date, greater than or equal to fifty percent (50%) of the sales revenues target as set forth in the Annual Projections approved by Collateral Agent and the Required Lenders for each Measuring Date from March 31, 2022 through and including October 31, 2023, the Amortization Date shall be December 1, 2024.

"**Annual Projections**" is defined in Section 6.2(a).

"**Anti-Terrorism Laws**" are any laws relating to terrorism or money laundering, including Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act, and the laws administered by OFAC.

"**Approved Fund**" is any (i) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business or (ii) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (i) and that, with respect to each of the preceding clauses (i) and (ii), is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

"**Approved Lender**" is defined in Section 12.1.

"**Basic Rate**" is, with respect to a Term Loan:

(1) at all times prior to the Prime Rate Election Event, the per annum rate of interest (based on a year of three hundred sixty (360) days) equal to the greater of (i) nine and one quarter percent (9.25%) per annum and (ii) the sum of nine and nine hundredths percent (9.09%) per annum and the greater of (A) the thirty (30) day U.S. LIBOR rate (the "**Index Rate**") reported in The Wall Street Journal on the last Business Day of the month that immediately precedes the month in which the interest will accrue, and (B) sixteen hundredths percent (0.16%) per annum. Notwithstanding the foregoing, the Basic Rate for the Term Loans for the period from the Effective Date through and including October 31, 2020 shall be nine and one quarter percent (9.25%) per annum. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a LIBOR Transition Event, Collateral Agent may amend this Agreement to replace this clause (1) with a LIBOR Replacement Rate. Any such amendment with respect to a LIBOR Transition Event will become effective at 5:00 p.m. (Eastern Standard Time) on the third Business Day after Collateral Agent has notified Borrower of such amendment. Any determination, decision or election that may be made by Collateral Agent pursuant hereto will be conclusive and binding absent manifest error and may be made in Collateral Agent's sole but reasonable discretion and without consent from any other party; or

(2) at all times after the Prime Rate Election Event, the per annum rate of interest (based on a year of three hundred sixty (360) days) equal to the greater of (a) ten and one quarter percent (10.25%) per annum, and (b) the sum of (i) the "prime rate" reported in The Wall Street Journal on the last Business Day of the month that immediately precedes the month in which the interest will accrue, and (ii) seven percent (7.00%) per annum. If, after the Prime Rate Election Event, The Wall Street Journal no longer reports the "prime rate" or if The Wall Street Journal ceases to exist, Collateral Agent may, in good faith, select a replacement publication and shall notify Borrower of such replacement publication. Any determination, decision or election that may be made by Collateral Agent pursuant hereto will be conclusive and binding absent manifest error and may be made in Collateral Agent's sole but reasonable discretion and without consent from any other party

"**Blocked Person**" is any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224, or (e) a Person that is named a "specially designated national" or "blocked person" on the most current list published by OFAC or other similar list.

"**Borrower**" is defined in the preamble hereof.

"**Borrower's Books**" are Borrower's or any of its Subsidiaries' books and records including ledgers, federal, and state tax returns, records regarding Borrower's or its Subsidiaries' assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

"**Business Day**" is any day that is not a Saturday, Sunday or a day on which Collateral Agent is closed.

"**Cash Equivalents**" are (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor's Ratings Group or Moody's Investors Service, Inc., and (c) certificates of deposit maturing no more than one (1) year after issue provided that the account in which any such certificate of deposit is maintained is subject to a Control Agreement in favor of Collateral Agent. For the avoidance of doubt, the direct purchase by Borrower or any of its Subsidiaries of any Auction Rate Securities, or purchasing participations in, or entering into any type of swap or other derivative transaction, or otherwise holding or engaging in any ownership interest in any type of Auction Rate Security by Borrower or any of its Subsidiaries shall be conclusively determined by the Lenders as an ineligible Cash Equivalent, and any such transaction shall expressly violate each other provision of this Agreement governing Permitted Investments. Notwithstanding the foregoing, Cash Equivalents does not include and Borrower, and each of its Subsidiaries, are prohibited from purchasing, purchasing participations in, entering into any type of swap or other

equivalent derivative transaction, or otherwise holding or engaging in any ownership interest in any type of debt instrument, including, without limitation, any corporate or municipal bonds with a long-term nominal maturity for which the interest rate is reset through a dutch auction and more commonly referred to as an auction rate security (each, an "**Auction Rate Security**").

"**Claims**" are defined in Section 12.2.

"**Code**" is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of California; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Collateral Agent's Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of California, the term "Code" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

"**Collateral**" is any and all properties, rights and assets of Borrower described on Exhibit A.

"**Collateral Account**" is any Deposit Account, Securities Account, or Commodity Account, or any other bank account maintained by Borrower or any Subsidiary at any time.

"**Collateral Agent**" is, Oxford, not in its individual capacity, but solely in its capacity as agent on behalf of and for the benefit of the Lenders.

"**Commitment Percentage**" is set forth in Schedule 1.1, as amended from time to time.

"**Commodity Account**" is any "commodity account" as defined in the Code with such additions to such term as may hereafter be made.

"**Communication**" is defined in Section 10.

"**Compliance Certificate**" is that certain certificate in the form attached hereto as Exhibit C.

"**Contingent Obligation**" is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but "Contingent Obligation" does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

"**Control Agreement**" is any control agreement entered into among the depository institution at which Borrower or any of its Subsidiaries maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower or any of its Subsidiaries maintains a Securities Account or a Commodity Account, Borrower and such Subsidiary, and Collateral Agent pursuant to which Collateral Agent obtains control (within the meaning of the Code) for the benefit of the Lenders over such Deposit Account, Securities Account, or Commodity Account.

"**Copyrights**" are any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

"**Credit Extension"** is any Term Loan or any other extension of credit under the Loan Documents by Collateral Agent or Lenders for Borrower's benefit.

"**Default Rate"** is defined in Section 2.3(b).

"**Deposit Account"** is any "deposit account" as defined in the Code with such additions to such term as may hereafter be made.

"**Designated Deposit Account"** is Borrower's deposit account, account number xxxxxxxx4653, maintained with Bank of America, N.A.

"**Disbursement Letter"** is that certain form attached hereto as Exhibit B.

"**Division**" means, in reference to any Person which is an entity, the division of such Person into two (2) or more separate Persons, with the dividing Person either continuing or terminating its existence as part of such division, including, without limitation, as contemplated under Section 18-217 of the Delaware Limited Liability Company Act for limited liability companies formed under Delaware law, or any analogous action taken pursuant to any other applicable law with respect to any corporation, limited liability company, partnership or other entity.

"**Dollars**," "**dollars**" and "$" each mean lawful money of the United States.

"**Effective Date"** is defined in the preamble of this Agreement.

"**Eligible Assignee"** is (i) a Lender, (ii) an Affiliate of a Lender, (iii) an Approved Fund and (iv) any commercial bank, savings and loan association or savings bank or any other entity which is an "accredited investor" (as defined in Regulation D under the Securities Act of 1933, as amended) and which extends credit or buys loans as one of its businesses, including insurance companies, mutual funds, lease financing companies and commercial finance companies, in each case, which either (A) has a rating of BBB or higher from Standard & Poor's Rating Group and a rating of Baa2 or higher from Moody's Investors Service, Inc. at the date that it becomes a Lender or (B) has total assets in excess of Five Billion Dollars ($5,000,000,000.00), and in each case of clauses (i) through (iv), which, through its applicable lending office, is capable of lending to Borrower without the imposition of any withholding or similar taxes; provided that notwithstanding the foregoing, "Eligible Assignee" shall not include, unless an Event of Default has occurred and is continuing, (i) Borrower or any of Borrower's Affiliates or Subsidiaries or (ii) a direct competitor of Borrower or a vulture hedge fund, each as determined by Collateral Agent. Notwithstanding the foregoing, (x) in connection with assignments by a Lender due to a forced divestiture at the request of any regulatory agency, the restrictions set forth herein shall not apply and Eligible Assignee shall mean any Person or party and (y) in connection with a Lender's own financing or securitization transactions, the restrictions set forth herein shall not apply and Eligible Assignee shall mean any Person or party providing such financing or formed to undertake such securitization transaction and any transferee of such Person or party upon the occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction; provided that no such sale, transfer, pledge or assignment under this clause (y) shall release such Lender from any of its obligations hereunder or substitute any such Person or party for such Lender as a party hereto until Collateral Agent shall have received and accepted an effective assignment agreement from such Person or party in form satisfactory to Collateral Agent executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Assignee as Collateral Agent reasonably shall require.

"**Equipment**" is all "equipment" as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

"**ERISA**" is the Employee Retirement Income Security Act of 1974, as amended, and its regulations.

"**Event of Default**" is defined in Section 8.

"**Excluded Taxes**" means, with respect to a Lender, any Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes imposed as a result of such Lender being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or that are imposed as a result of a present or former connection between such Lender and the jurisdiction imposing such Tax (other than connections arising solely from such Lender becoming a party to this Agreement and performing its obligations and receiving payments under such Agreement).

"**Existing Subsidiary**" means each Subsidiary of Borrower existing on the Effective Date.

"**Federal Reserve Bank of New York's Website**" means the website of the Federal Reserve Bank of New York at http://www.newyorkfed.org, or any successor source.

"**Fifth Draw Period**" is the period commencing on October 1, 2021 and ending on the earlier of (i) December 31, 2021 and (ii) the occurrence of an Event of Default (unless such Event of Default has been waived in writing by Collateral Agent and the Required Lenders in their sole discretion); provided, however, that the Fifth Draw Period shall not commence if on October 1, 2021 an Event of Default has occurred and is continuing (unless such Event of Default has been waived in writing by Collateral Agent and the Required Lenders in their sole discretion).

"**Final Payment**" is a payment (in addition to and not a substitution for the regular monthly payments of principal plus accrued interest) due on the earliest to occur of (a) the Maturity Date, or (b) the acceleration of any Term Loan, or (c) the prepayment of all or part of the Term Loans pursuant to Section 2.2(c) or (d), equal to the original principal amount (or, in the case of a partial prepayment, the principal amount to be prepaid as permitted in accordance with Section 2.2(d)(ii)) of such Term Loan prepaid *multiplied by* the Final Payment Percentage, payable to Lenders in accordance with their respective Pro Rata Shares. For the avoidance of doubt, the calculation of any Final Payment shall not include the principal amount prepaid in accordance with Section 2.2(d)(ii) if a Final Payment based on such principal amount was made at the time of such prepayment.

"**Final Payment Percentage**" is (a) if the Final Payment is due on or before December 31, 2021, zero percent (0.00%), (b) if the Final Payment is due after December 31, 2021 and on or before October 31, 2022, three percent (3.00%), (c) if the Final Payment is due after October 31, 2022 and on or before October 31, 2023, four percent (4.00%), and (d) if the Final Payment is due after October 31, 2023, five percent (5.00%).

"**Foreign Subsidiary**" is (a) a Subsidiary that is not an entity organized under the laws of the United States or any territory thereof or (b) a Foreign Subsidiary Holding Company.

"**Foreign Subsidiary Holding Company**" is a Subsidiary all of the assets of which consist of the equity of one or more Foreign Subsidiaries and/or other Foreign Subsidiary Holding Companies.

"**Fourth Draw Period**" is the period commencing on July 1, 2021 and ending on the earlier of (i) September 30, 2021 and (ii) the occurrence of an Event of Default (unless such Event of Default has been waived in writing by Collateral Agent and the Required Lenders in their sole discretion); provided, however, that the Fourth Draw Period shall not commence if on July 1, 2021 an Event of Default has occurred and is continuing (unless such Event of Default has been waived in writing by Collateral Agent and the Required Lenders in their sole discretion).

"**Funding Date**" is any date on which a Credit Extension is made to or on account of Borrower which shall be a Business Day.

"**GAAP**" is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession in the United States, which are applicable to the circumstances as of the date of determination.

"**General Intangibles**" are all "general intangibles" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, trademarks, service marks and, to the extent permitted under applicable law, any applications therefor, whether registered or not, any trade secret rights, including any rights to unpatented inventions, payment intangibles, royalties, contract rights, goodwill, franchise agreements, purchase orders, customer lists, route lists, telephone numbers, domain names, claims, income and other tax refunds, security and other deposits, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

"**Good Faith Deposit**" is defined in Section 2.5(c).

"**Governmental Approval**" is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

"**Governmental Authority**" is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

"**Guarantor**" is any Person providing a Guaranty in favor of Collateral Agent.

"**Guaranty**" is any guarantee of all or any part of the Obligations, as the same may from time to time be amended, restated, modified or otherwise supplemented.

"**Indebtedness**" is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations.

"**Indemnified Person**" is defined in Section 12.2.

"**Insolvency Proceeding**" is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

"**Insolvent**" means not Solvent.

"**Intellectual Property**" means all of Borrower's or any Subsidiary's right, title and interest in and to the following:

(a) its Copyrights, Trademarks and Patents;

(b) any and all data, information, trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how, operating manuals;

(c) any and all source or object code;

(d) any and all design rights which may be available to Borrower;

(e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above;

(f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents; and

(g) any and all regulatory approvals necessary to develop or commercialize any product of the Borrower or any Subsidiary, including all marketing authorizations.

"**Inventory**" is all "inventory" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of any Person's custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

"**Investment**" is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance, payment or capital contribution to any Person.

"**IPO**" means an initial public offering of common stock of Borrower pursuant to (a) an effective registration statement filed with the United States Securities and Exchange Commission in accordance with the Securities Act of 1933, as amended, (b) a direct listing in the United States or (c) a reverse merger into a Publicly Reporting Company with shares of stock that are listed on a US national stock exchange and in which Borrower retains Control of (or is) the surviving entity.

"**IPO Milestone**" means Borrower's closing of an IPO on the NASDAQ Capital Market or NYSE, as a result of which Borrower receives, gross (reduced only for customary fees and expenses in connection with such IPO) unrestricted cash proceeds of at least Seventy Million Dollars ($70,000,000.00).

"**Key Person**" is each of Borrower's (i) President and Chief Executive Officer, who is Ron Kurtz as of the Effective Date, (ii) Chief Financial Officer, who is Shelley Thunen as of the Effective Date, (iii) Chief Commercial Officer, who is Eric Weinberg as of the Effective Date and (iii) Chief Operating Officer, who is Ilya Goldshleger as of the Effective Date.

"**Lender**" is any one of the Lenders.

"**Lenders**" are the Persons identified on Schedule 1.1 hereto and each assignee that becomes a party to this Agreement pursuant to Section 12.1.

"**Lenders' Expenses**" are all audit fees and expenses, costs, and expenses (including reasonable attorneys' fees and expenses, as well as appraisal fees, fees incurred on account of lien searches, inspection fees, and filing fees) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred by Collateral Agent and/or the Lenders in connection with the Loan Documents.

"**LIBOR Replacement Rate**"means the sum of: (a) the alternate benchmark rate (which may include SOFR) that has been selected by Collateral Agent in its reasonable good faith judgment, giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to the LIBOR rate for U.S. dollar-denominated syndicated credit facilities and (b) the LIBOR Replacement Spread**;** provided that, if the LIBOR Replacement Rate as so determined would be less than zero, the LIBOR Replacement Rate will be deemed to be zero for the purposes of this Agreement.

"**LIBOR Replacement Spread**" means, with respect to any replacement of clause (1) of the definition of Basic Rate, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by Collateral Agent in its reasonable good faith judgment, giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the LIBOR rate by the Relevant Governmental Body, (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or

determining such spread adjustment, for the replacement of the LIBOR rate for U.S. dollar-denominated syndicated credit facilities at such time, and (iii) a substantially similar interest floor and total rate in effect immediately prior to such replacement of clause (1) of the definition of Basic Rate.

"**LIBOR Transition Event**" means the occurrence of one or more of the following events with respect to the LIBOR rate:

(1) a public statement or publication of information by or on behalf of the administrator of the LIBOR rate announcing that such administrator has ceased or will cease to provide the LIBOR rate, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBOR rate;

(2) a public statement or publication of information by the regulatory supervisor for the administrator of the LIBOR rate, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for the LIBOR rate, a resolution authority with jurisdiction over the administrator for the LIBOR rate or a court or an entity with similar insolvency or resolution authority over the administrator for the LIBOR rate, which states that the administrator of the LIBOR rate has ceased or will cease to provide the LIBOR rate permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBOR rate; or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of the LIBOR rate announcing that the LIBOR rate is no longer representative.

"**Lien**" is a claim, mortgage, deed of trust, levy, charge, pledge, security interest, or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

"**Loan Documents**" are, collectively, this Agreement, the Perfection Certificates, each Compliance Certificate, each Disbursement Letter, any subordination agreements, any intellectual property security agreement, any note, or notes or guaranties executed by Borrower or any other Person, and any other present or future agreement entered into by Borrower, any Guarantor or any other Person for the benefit of the Lenders and Collateral Agent in connection with this Agreement; all as amended, restated, or otherwise modified.

"**Material Adverse Change**" is (a) a material impairment in the perfection or priority of Collateral Agent's Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations or condition (financial or otherwise) of Borrower or Borrower and its Subsidiaries, taken as a whole; or (c) a material impairment of the prospect of repayment of any portion of the Obligations.

"**Maturity Date**" is, for each Term Loan, October 1, 2025.

"**Measuring Date**" means, for each fiscal year of Borrower, commencing with Borrower's 2022 fiscal year (except as otherwise noted herein) until the occurrence of the IP Lien Event, each of January 31 (excluding for Borrower's 2022 fiscal year), February 28 (excluding for Borrower's 2022 fiscal year) March 31, April 30, May 31, June 30, July 31, August 31, September 30, October 31, November 30 and December 31 of such fiscal year.

"**Obligations**" are all of Borrower's obligations to pay when due any debts, principal, interest, Lenders' Expenses, the Final Payment, and other amounts Borrower owes the Lenders now or later, in connection with, related to, following, or arising from, out of or under, this Agreement or the other Loan Documents, or otherwise, and including interest accruing after Insolvency Proceedings begin (whether or not allowed) and debts, liabilities, or obligations of Borrower assigned to the Lenders and/or Collateral Agent, and the performance of Borrower's duties under the Loan Documents.

"**Obligor**" means Borrower or any Guarantor.

"**OFAC**" is the U.S. Department of Treasury Office of Foreign Assets Control.

"**OFAC Lists**" are, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

"**Operating Documents**" are, for any Person, such Person's formation documents, as certified by the Secretary of State (or equivalent agency) of such Person's jurisdiction of organization on a date that is no earlier than thirty (30) days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

"**Patents**" means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

"**Payment Date**" is the first (1st) calendar day of each calendar month, commencing on December 1, 2020.

"**Perfection Certificate**" and "**Perfection Certificates**" is defined in Section 5.1.

"**Permitted Indebtedness**" is:

(a) Borrower's Indebtedness to the Lenders and Collateral Agent under this Agreement and the other Loan Documents;

(b) Indebtedness existing on the Effective Date and disclosed on the Perfection Certificate(s);

(c) Subordinated Debt;

(d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;

(e) Indebtedness consisting of capitalized lease obligations and purchase money Indebtedness, in each case incurred by Borrower or any of its Subsidiaries to finance the acquisition, repair, improvement or construction of fixed or capital assets of such person, provided that (i) the aggregate outstanding principal amount of all such Indebtedness does not exceed Five Hundred Thousand Dollars ($500,000.00) at any time and (ii) the principal amount of such Indebtedness does not exceed the lower of the cost or fair market value of the property so acquired or built or of such repairs or improvements financed with such Indebtedness (each measured at the time of such acquisition, repair, improvement or construction is made);

(f) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of Borrower's business;

(g) Indebtedness in connection with corporate credit cards in an aggregate principal amount not to exceed Five Hundred Thousand Dollars ($500,000.00) at any time;

(h) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (g) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose materially more burdensome terms upon Borrower, or its Subsidiary, as the case may be;

(i) (i) Indebtedness of an Obligor to any other Obligor; (ii) Indebtedness of an Obligor owed to a Foreign Subsidiary; and (iii) Indebtedness of a Foreign Subsidiary owed to an Obligor; provided, that (x) all such Indebtedness is unsecured, (y) in the case of clause (ii), such Indebtedness is subject to a subordination agreement reasonably satisfactory to Collateral Agent and (z) in the case of clause (iii), the aggregate principal amount of such new Indebtedness incurred after the Effective Date shall not exceed, in the aggregate, Five Hundred Thousand Dollars ($500,000.00) at any time;

(j) Guarantees by any Obligor of Indebtedness of any other Obligor;

(k) unsecured Indebtedness incurred in connection with workers compensation claims, disability, health and other employee benefits and self-insurance obligations or other employee benefits or property, casualty or liability insurance pursuant to reimbursement or indemnification obligations to such Person, in each case incurred in the ordinary course of business;

(l) Indebtedness in connection with letters of credit for the benefit of any landlords of locations leased by Borrower or any of its Subsidiaries in an aggregate principal amount not to exceed Five Hundred Thousand Dollars ($500,000.00) at any time;

(m) Indebtedness under hedging agreements not for speculative purposes not to exceed Two Hundred Fifty Thousand Dollars ($250,000.00) at any time;

(n) other unsecured Indebtedness in an aggregate principal amount outstanding not to exceed Two Hundred Fifty Thousand Dollars ($250,000.00).

"**Permitted Investments**" are:

(a) Investments disclosed on the Perfection Certificate(s) and existing on the Effective Date;

(b) (i) Investments consisting of cash and Cash Equivalents, and (ii) any other Investments permitted by Borrower's investment policy, as amended from time to time, provided that such investment policy (and any such amendment thereto) has been approved in writing by Collateral Agent;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower or it is Subsidiaries;

(d) Investments consisting of deposit accounts in which Collateral Agent has a perfected security interest or of Excluded Accounts maintained in compliance with Section 6.6;

(e) Investments in connection with Transfers permitted by Section 7.1;

(f) Investments (i) by an Obligor in another Obligor, (ii) by Borrower in Subsidiaries not to exceed Five Hundred Thousand Dollars ($500,000.00) in the aggregate in any fiscal year and (iii) by Subsidiaries in other Subsidiaries not to exceed Five Hundred Thousand Dollars ($500,000.00) in the aggregate in any fiscal year or in Borrower;

(g) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower's Board of Directors; not to exceed Five Hundred Thousand Dollars ($500,000.00) in the aggregate for (i) and (ii) in any fiscal year;

(h) Investments consisting of the creation of a Subsidiary for the purpose of consummating a merger transaction permitted by Section 7.3, which is otherwise a Permitted Investment, or an IPO, in each such case subject to compliance with Section 6.12;

(i) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;

(j) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (i) shall not apply to Investments of Borrower in any Subsidiary;

(k) non-cash Investments in joint ventures or strategic alliances in the ordinary course of Borrower's business consisting of the non-exclusive licensing of technology, the development of technology or the providing of technical support; and

(l) other Investments in an amount not to exceed Two Hundred Fifty Thousand Dollars ($250,000.00) in any fiscal year.

"**Permitted Licenses**" are (A) licenses of over-the-counter software that is commercially available to the public, (B) licenses disclosed in the Perfection Certificate(s), and (C) non-exclusive and exclusive licenses for the use of the Intellectual Property of Borrower or any of its Subsidiaries entered into in the ordinary course of business, provided, that, with respect to each such license described in clause (C), (i) no Event of Default has occurred and is continuing on the date of such license; (ii) such license constitutes an arms-length transaction, the terms of which, on their face, do not provide for a sale or assignment of any Intellectual Property and do not restrict the ability of Borrower or any of its Subsidiaries, as applicable, to pledge, grant a security interest in or lien on, or assign or otherwise Transfer any Intellectual Property; (iii) in the case of any exclusive license, (x) Borrower delivers ten (10) days' prior written notice and a brief summary of the terms of the proposed license to Collateral Agent and the Lenders and delivers to Collateral Agent and the Lenders copies of the final executed licensing documents in connection with the exclusive license promptly upon consummation thereof, and (y) any such license could not result in a legal transfer of title of the licensed property but may be exclusive in respects other than territory and may be exclusive as to territory only as to discrete geographical areas outside of the United States; and (iv) all upfront payments, royalties, milestone payments or other proceeds arising from the licensing agreement that are payable to Borrower or any of its Subsidiaries are paid to a Deposit Account that is governed by a Control Agreement.

"**Permitted Liens**" are:

(a) Liens existing on the Effective Date and disclosed on the Perfection Certificates or arising under this Agreement and the other Loan Documents;

(b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on its Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;

(c) liens securing Indebtedness permitted under clause (e) of the definition of "**Permitted Indebtedness**," provided that (i) such liens exist prior to the acquisition of, or attach substantially simultaneous with, or within twenty (20) days after the, acquisition, lease, repair, improvement or construction of, such property financed or leased by such Indebtedness and (ii) such liens do not extend to any property of Borrower other than the property (and proceeds thereof) acquired, leased or built, or the improvements or repairs, financed by such Indebtedness;

(d) Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory, securing liabilities in the aggregate amount not to exceed Two Hundred Fifty Thousand Dollars ($250,000.00), and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(e) Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(f) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;

(g) leases or subleases of real property granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), and leases, subleases,

non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), if the leases, subleases, licenses and sublicenses do not prohibit granting Collateral Agent or any Lender a security interest therein;

(h) banker's liens, rights of setoff and Liens in favor of financial institutions incurred in the ordinary course of business arising in connection with Borrower's deposit accounts or securities accounts held at such institutions solely to secure payment of fees and similar costs and expenses and provided such accounts are maintained in compliance with Section 6.6(b) hereof;

(i) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 8.4 or 8.7;

(j) deposits to secure the performance of bids, tenders, trade contracts, leases, government contracts, statutory obligations, surety, stay, customs and appeal bonds, performance and return money bonds, other security indebtedness and other obligations of a like nature incurred in the ordinary course of business all such deposits or other security indebtedness in the aggregate amount not to exceed Three Hundred Fifty Thousand Dollars ($350,000.00) at any time;

(k) Liens in cash collateral accounts securing Indebtedness permitted under clauses (g) and (l) of the definition of "**Permitted Indebtedness**"; and

(l) Liens consisting of Permitted Licenses.

"**Person**" is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"**Prime Rate Election Event**" is Borrower's delivery to Collateral Agent and the Lenders of written notice stating Borrower's election to cause the Term Loans to accrue interest at a floating per annum rate based on the "prime rate" reported in The Wall Street Journal and equal to the Basic Rate set forth in clause (2) of the definition of "Basic Rate", such notice may only be exercised by Borrower once and such notice shall be irrevocable (such notice, the "**Prime Rate Election Notice**"). Notwithstanding anything to the contrary herein or in any other Loan Document, for purposes of calculating the applicable interest on the Term Loans, the Prime Rate Election Event will be deemed to occur on the first date following Borrower's delivery of the Prime Rate Election Notice on which Collateral Agent would otherwise complete the reset as contemplated under Section 2.3(a) so that no month's interest is calculated using a combination of clauses (1) and (2) of the definition of "Basic Rate."

"**Pro Rata Share**" is, as of any date of determination, with respect to each Lender, a percentage (expressed as a decimal, rounded to the ninth decimal place) determined by dividing the outstanding principal amount of Term Loans held by such Lender by the aggregate outstanding principal amount of all Term Loans.

"**Publicly Reporting Company**" means an issuer generally subject to the public reporting requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"**Relevant Governmental Body**" means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

"**Registered Organization**" is any "registered organization" as defined in the Code with such additions to such term as may hereafter be made.

"**Required Lenders**" means (i) for so long as all of the Persons that are Lenders on the Effective Date (each an "**Original Lender**") have not assigned or transferred any of their interests in their Term Loan, Lenders holding one hundred percent (100%) of the aggregate outstanding principal balance of the Term Loan, or (ii) at any time from

and after any Original Lender has assigned or transferred any interest in its Term Loan, Lenders holding at least sixty-six percent (66%) of the aggregate outstanding principal balance of the Term Loan and, in respect of this clause (ii), (A) each Original Lender that has not assigned or transferred any portion of its Term Loan, (B) each assignee or transferee of an Original Lender's interest in the Term Loan, but only to the extent that such assignee or transferee is an Affiliate or Approved Fund of such Original Lender, and (C) any Person providing financing to any Person described in clauses (A) and (B) above; provided, however, that this clause (C) shall only apply upon the occurrence of a default, event of default or similar occurrence with respect to such financing.

"**Requirement of Law**" is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"**Responsible Officer**" is any of the President, Chief Executive Officer, or Chief Financial Officer of Borrower acting alone.

"**Second Draw Period**" is the period commencing on January 1, 2021 and ending on the earlier of (i) March 31, 2021 and (ii) the occurrence of an Event of Default (unless such Event of Default has been waived in writing by Collateral Agent and the Required Lenders in their sole discretion); provided, however, that the Second Draw Period shall not commence if on January 1, 2021 an Event of Default has occurred and is continuing (unless such Event of Default has been waived in writing by Collateral Agent and the Required Lenders in their sole discretion).

"**Secured Promissory Note**" is defined in Section 2.4.

"**Secured Promissory Note Record**" is a record maintained by each Lender with respect to the outstanding Obligations owed by Borrower to Lender and credits made thereto.

"**Securities Account**" is any "securities account" as defined in the Code with such additions to such term as may hereafter be made.

"**Series W Warrant**" is defined in Section 5.10.

"**Shares**" is one hundred percent (100%) of the issued and outstanding capital stock, membership units or other securities owned or held of record by Borrower or Borrower's Subsidiary, in any Subsidiary; provided that, in the event Borrower, demonstrates to Collateral Agent's reasonable satisfaction, that a pledge of more than sixty five percent (65%) of the Shares of such Subsidiary which is a Foreign Subsidiary, creates a present and existing adverse tax consequence to Borrower under the U.S. Internal Revenue Code, "Shares" shall mean sixty-five percent (65%) of the issued and outstanding capital stock, membership units or other securities, owned or held of record by Borrower or its Subsidiary in such Foreign Subsidiary, which entitle the holder thereof to vote for directors or any other matter.

"**Sixth Draw Period**" is the period commencing on the date of the occurrence of the Sixth Draw Period Milestone and ending on the earliest of (i) April 30, 2022, (ii) thirty (30) days after the occurrence of the Sixth Draw Period Milestone and (iii) the occurrence of an Event of Default (unless such Event of Default has been waived in writing by Collateral Agent and the Required Lenders in their sole discretion); provided, however, that the Sixth Draw Period shall not commence if on the date of the occurrence of the Sixth Draw Period Milestone an Event of Default has occurred and is continuing (unless such Event of Default has been waived in writing by Collateral Agent and the Required Lenders in their sole discretion).

"**Sixth Draw Period Milestone**" is Borrower's delivery to Collateral Agent and the Lenders of evidence, reasonably satisfactory to Collateral Agent and the Required Lenders in their sole but reasonable discretion that Borrower has achieved trailing twelve (12) month sales revenues (measured in accordance with GAAP) of not less than Forty Million Dollars ($40,000,000).

"**SOFR**" with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or a successor administrator) on the Federal Reserve Bank of New York's Website.

"**Solvent**" is, with respect to any Person: the fair salable value of such Person's consolidated assets (including goodwill minus disposition costs) exceeds the fair value of such Person's liabilities; such Person is not left with unreasonably small capital after the transactions in this Agreement; and such Person is able to pay its debts (including trade debts) as they mature.

"**Subordinated Debt**" is indebtedness incurred by Borrower or any of its Subsidiaries subordinated to all Indebtedness of Borrower and/or its Subsidiaries to the Lenders (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Collateral Agent and the Required Lenders entered into between Collateral Agent, Borrower, and/or any of its Subsidiaries, and the other creditor), on terms acceptable to Collateral Agent and the Lenders.

"**Subsidiary**" is, with respect to any Person, any Person of which more than fifty percent (50%) of the voting stock or other equity interests (in the case of Persons other than corporations) is owned or controlled, directly or indirectly, by such Person or through one or more intermediaries.

"**Term Loan**" is defined in Section 2.2(a)(vi) hereof.

"**Term A Loan**" is defined in Section 2.2(a)(i) hereof.

"**Term B Loan**" is defined in Section 2.2(a)(ii) hereof.

"**Term C Loan**" is defined in Section 2.2(a)(iii) hereof.

"**Term D Loan**" is defined in Section 2.2(a)(iv) hereof.

"**Term E Loan**" is defined in Section 2.2(a)(v) hereof.

"**Term F Loan**" is defined in Section 2.2(a)(vi) hereof.

"**Term Loan Commitment**" is, for any Lender, the obligation of such Lender to make a Term Loan, up to the principal amount shown on Schedule 1.1. "**Term Loan Commitments**" means the aggregate amount of such commitments of all Lenders.

"**Third Draw Period**" is the period commencing on April 1, 2021 and ending on the earlier of (i) June 30, 2021 and (ii) the occurrence of an Event of Default (unless such Event of Default has been waived in writing by Collateral Agent and the Required Lenders in their sole discretion); provided, however, that the Third Draw Period shall not commence if on April 1, 2021 an Event of Default has occurred and is continuing (unless such Event of Default has been waived in writing by Collateral Agent and the Required Lenders in their sole discretion).

"**Trademarks**" means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

"**Transfer**" is defined in Section 7.1.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

BORROWER:

RXSIGHT, INC.

By /s/ Ron Kurtz
Name: Ron Kurtz
Title: President & CEO

COLLATERAL AGENT AND LENDER:

OXFORD FINANCE LLC

By _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

BORROWER:

RXSIGHT, INC.

By _____
Name: _____
Title: _____

COLLATERAL AGENT AND LENDER:

OXFORD FINANCE LLC

By /s/ Colette H. Featherly
Name: Colette H. Featherly
Title: Senior Vice President

SCHEDULE 1.1

Lenders and Commitments

Term A Loans

Lender	Term Loan Commitment	Commitment Percentage
OXFORD FINANCE LLC	$ 25,000,000.00	100.00%
TOTAL	**$ 25,000,000.00**	**100.00%**

Term B Loans

Lender	Term Loan Commitment	Commitment Percentage
OXFORD FINANCE LLC	$ 5,000,000.00	100.00%
TOTAL	**$ 5,000,000.00**	**100.00%**

Term C Loans

Lender	Term Loan Commitment	Commitment Percentage
OXFORD FINANCE LLC	$ 10,000,000.00	100.00%
TOTAL	**$ 10,000,000.00**	**100.00%**

Term D Loans

Lender	Term Loan Commitment	Commitment Percentage
OXFORD FINANCE LLC	$ 5,000,000.00	100.00%
TOTAL	**$ 5,000,000.00**	**100.00%**

Term E Loans

Lender	Term Loan Commitment	Commitment Percentage
OXFORD FINANCE LLC	$ 5,000,000.00	100.00%
TOTAL	**$ 5,000,000.00**	**100.00%**

Term F Loans

Lender	Term Loan Commitment	Commitment Percentage
OXFORD FINANCE LLC	$ 10,000,000.00	100.00%
TOTAL	**$ 10,000,000.00**	**100.00%**

Aggregate (all Term Loans)

Lender	Term Loan Commitment	Commitment Percentage
OXFORD FINANCE LLC	$ 60,000,000.00	100.00%
TOTAL	**$ 60,000,000.00**	**100.00%**

EXHIBIT A

Description of Collateral

The Collateral consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as noted below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts and other Collateral Accounts, all certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include (a) any Intellectual Property (provided, however, that (1) the Collateral shall include all Accounts and all proceeds of Intellectual Property and (2) if a judicial authority (including a U.S. Bankruptcy Court) would hold that a security interest in the underlying Intellectual Property is necessary to have a security interest in such Accounts and such property that are proceeds of Intellectual Property, then the Collateral shall automatically, and effective as of the Effective Date, include the Intellectual Property to the extent necessary to permit perfection of Collateral Agent's security interest in such Accounts and such other property of Borrower that are proceeds of the Intellectual Property); (b) any intent-to-use trademarks at all times prior to the first use thereof, whether by the actual use thereof in commerce, the recording of a statement of use with the United States Patent and Trademark Office or otherwise; (c) the Excluded Accounts; (d) more than 65% of the total combined voting power of all classes of stock entitled to vote the shares of capital stock (the "Shares") of any Foreign Subsidiary, if Borrower demonstrates to Collateral Agent's reasonable satisfaction that a pledge of more than sixty five percent (65%) of the Shares of such Subsidiary creates a present and existing adverse tax consequence to Borrower under the U.S. Internal Revenue Code; (e) more than sixty five percent (65%) of the total combined voting power of all Shares of each Existing Subsidiary; and (f) any license or contract, in each case if the granting of a Lien in such license or contract is prohibited by or would constitute a default under the agreement governing such license or contract (but (A) only to the extent such prohibition is enforceable under applicable law and (B) other than to the extent that any such term would be deemed ineffective under Sections 9-406, 9-408 or 9-409 (or any other Section) of Division 9 of the Code); provided that upon the termination, lapsing or expiration of any such prohibition, such license or contract, as applicable, shall automatically be subject to the security interest granted in favor of Collateral Agent hereunder and become part of the "Collateral.".

Pursuant to the terms of a certain negative pledge arrangement with Collateral Agent and the Lenders, Borrower has agreed not to encumber any of its Intellectual Property.

EXHIBIT B

Form of Disbursement Letter

[see attached]

DISBURSEMENT LETTER

October 29, 2020

The undersigned, being the duly elected and acting President and CEO of RXSIGHT, INC., a California corporation with offices located at 100 Columbia, Aliso Viejo, CA 92656 ("**Borrower**"), does hereby certify to **OXFORD FINANCE LLC** ("**Oxford**" and "**Lender**"), as collateral agent (the "**Collateral Agent**") in connection with that certain Loan and Security Agreement dated as of October 29, 2020, by and among Borrower, Collateral Agent and the Lenders from time to time party thereto (the "**Loan Agreement**"; with other capitalized terms used below having the meanings ascribed thereto in the Loan Agreement) that:

1. The representations and warranties made by Borrower in Section 5 of the Loan Agreement and in the other Loan Documents are true and correct in all material respects as of the date hereof.

2. No event or condition has occurred that would constitute an Event of Default under the Loan Agreement or any other Loan Document.

3. Borrower is in compliance with the covenants and requirements contained in Sections 4, 6 and 7 of the Loan Agreement.

4. All conditions referred to in Section 3 of the Loan Agreement to the making of the Loan to be made on or about the date hereof have been satisfied or waived by Collateral Agent.

5. No Material Adverse Change has occurred.

6. The undersigned is a Responsible Officer.

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7. The proceeds of the Term [A][B][C][D][E][F] Loan shall be disbursed as follows:

Disbursement from Oxford:		
Loan Amount	$	_____
Plus:		
[—Deposit Received		$ _____]
Less:		
—Facility Fee		($_____)
[—Interim Interest		($_____)]
—Lender's Legal Fees		($_____)*
TOTAL TERM [A][B][C][D][E][F] LAON NET PROCEEDS FROM LENDERS:	**$**	_____

8. The Term [A][B][C][D][E][F] Loan shall amortize in accordance with the Amortization Table attached hereto.

9. The aggregate net proceeds of the Term Loans shall be transferred to the Designated Deposit Account as follows:

Account Name:	RXSIGHT, INC.
Bank Name:	[_____]
Bank Address:	[_____]
	[_____]
Account Number:	[_____]
ABA Number:	[_____]

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* Legal fees and costs are through the Effective Date. Post-closing legal fees and costs, payable after the Effective Date, to be invoiced and paid post-closing.

Dated as of the date first set forth above.

BORROWER:

RXSIGHT, INC.

By

Name:
Title:

COLLATERAL AGENT AND LENDER:

OXFORD FINANCE LLC

By
Name:
Title:

AMORTIZATION TABLE
(Term [A][B][C][D][E][F] Loan)

[see attached]

EXHIBIT C

Compliance Certificate

TO: OXFORD FINANCE LLC, as Collateral Agent and Lender

FROM: RXSIGHT, INC.

The undersigned authorized officer ("**Officer**") of RXSIGHT, INC. ("**Borrower**"), hereby certifies that in accordance with the terms and conditions of the Loan and Security Agreement by and among Borrower, Collateral Agent, and the Lenders from time to time party thereto (the "**Loan Agreement**;" capitalized terms used but not otherwise defined herein shall have the meanings given them in the Loan Agreement),

(a) Borrower is in complete compliance for the period ending with all required covenants except as noted below;

(b) There are no Events of Default, except as noted below;

(c) Except as noted below, all representations and warranties of Borrower stated in the Loan Documents are true and correct in all material respects on this date and for the period described in (a), above; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date.

(d) Borrower, and each of Borrower's Subsidiaries, has timely filed all required foreign, federal and material state and local tax returns and reports, Borrower, and each of Borrower's Subsidiaries, has timely paid all foreign, federal, and material state and local taxes, assessments, deposits and contributions owed by Borrower, or Subsidiary, except as otherwise permitted pursuant to the terms of Section 5.8 of the Loan Agreement;

(e) No Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Collateral Agent and the Lenders.

Attached are the required documents, if any, supporting our certification(s). The Officer, on behalf of Borrower, further certifies that the attached financial statements are prepared in accordance with Generally Accepted Accounting Principles (GAAP) and are consistently applied from one period to the next except as explained in an accompanying letter or footnotes and except, in the case of unaudited financial statements, for the absence of footnotes and subject to year-end audit adjustments as to the interim financial statements.

Please indicate compliance status since the last Compliance Certificate by circling Yes, No, or N/A under "Complies" column.

	Reporting Covenant	Requirement	Actual	Complies	
1)	Financial statements	Quarterly within 45 days	Yes	No	N/A
2)	Annual (CPA Audited) statements	Within 120 days after FYE	Yes	No	N/A
3)	Annual Financial Projections/Budget (prepared on a monthly basis)	Annually (within 60 days after 2021 FYE and within 15 days for each other FYE), and when revised	Yes	No	N/A
4)	A/R & A/P agings	If applicable	Yes	No	N/A
5)	8-K, 10-K and 10-Q Filings	If applicable, within 5 days of filing	Yes	No	N/A
6)	Compliance Certificate	Monthly within 30 days	Yes	No	N/A

7)	IP Report	When required		Yes	No	N/A
8)	Total amount of Borrower's cash and cash equivalents at the last day of the measurement period		$_____	Yes	No	N/A
9)	Total amount of Borrower's Subsidiaries' cash and cash equivalents at the last day of the measurement period		$_____	Yes	No	N/A
10)	Total aggregate assets held at Borrower's Foreign Subsidiaries	$_____	$_____	Yes	No	N/A

Deposit and Securities Accounts

(Please list all accounts; attach separate sheet if additional space needed)

	Institution Name	Account Number	New Account?		Account Control Agreement in place?	
1)			Yes	No	Yes	No
2)			Yes	No	Yes	No
3)			Yes	No	Yes	No
4)			Yes	No	Yes	No

Financial Covenants

	Covenant	Requirement	Actual	Compliance		
1)	Minimum sales (trailing twelve (12) months)	At least 50% of projections	__%	Yes	No	N/A
		$_____	$_____			

Other Matters

1)	Has any Key Person ceased to be actively engaged in management since the last Compliance Certificate?	Yes	No
2)	Have there been any transfers/sales/disposals/retirement of Collateral or IP prohibited by the Loan Agreement?	Yes	No
3)	Have there been any new or pending claims or causes of action against Borrower that could reasonably be expected to result in aggregate damages of more than Two Hundred Fifty Thousand Dollars ($250,000.00)?	Yes	No
4)	Have there been any amendments of or other changes to the capitalization table of Borrower (which are material) and to the Operating Documents of Borrower or any of its Subsidiaries? If yes, provide copies of any such amendments or changes with this Compliance Certificate.	Yes	No

Exceptions

Please explain any exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions." Attach separate sheet if additional space needed.)

RXSIGHT, INC.

By _____
Name: _____
Title: _____

Date:

LENDER USE ONLY

Received by: _____ Date: _____

Verified by: _____ Date: _____

Compliance Status: Yes No

EXHIBIT D

Form of Secured Promissory Note

[see attached]

SECURED PROMISSORY NOTE
(Term [A][B][C][D][E][F] Loan)

$ Dated: October 29, 2020

FOR VALUE RECEIVED, the undersigned, RXSIGHT, INC., a California corporation with offices located at 100 Columbia, Aliso Viejo, CA 92656 ("**Borrower**") HEREBY PROMISES TO PAY to the order of OXFORD FINANCE LLC ("**Lender**") the principal amount of [ ] MILLION DOLLARS ($) or such lesser amount as shall equal the outstanding principal balance of the Term [A][B][C][D][E][F] Loan made to Borrower by Lender, plus interest on the aggregate unpaid principal amount of such Term [A][B][C][D][E][F] Loan, at the rates and in accordance with the terms of the Loan and Security Agreement dated October 29, 2020 by and among Borrower, Lender, Oxford Finance LLC, as Collateral Agent, and the other Lenders from time to time party thereto (as amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"). If not sooner paid, the entire principal amount and all accrued and unpaid interest hereunder shall be due and payable on the Maturity Date as set forth in the Loan Agreement. Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Principal, interest and all other amounts due with respect to the Term [A][B][C][D][E][F] Loan, are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Secured Promissory Note (this "**Note**"). The principal amount of this Note and the interest rate applicable thereto, and all payments made with respect thereto, shall be recorded by Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Note.

The Loan Agreement, among other things, (a) provides for the making of a secured Term [A][B][C][D][E][F] Loan by Lender to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Note may not be prepaid except as set forth in Section 2.2 (c) and Section 2.2(d) of the Loan Agreement.

This Note and the obligation of Borrower to repay the unpaid principal amount of the Term [A][B][C][D][E][F] Loan, interest on the Term [A][B][C][D][E][F] Loan and all other amounts due Lender under the Loan Agreement is secured under the Loan Agreement.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Note are hereby waived.

Borrower shall pay all reasonable fees and expenses, including, without limitation, reasonable attorneys' fees and costs, incurred by Lender in the enforcement or attempt to enforce any of Borrower's obligations hereunder not performed when due.

This Note shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of California.

The ownership of an interest in this Note shall be registered on a record of ownership maintained by Lender or its agent. Notwithstanding anything else in this Note to the contrary, the right to the principal of, and stated interest on, this Note may be transferred only if the transfer is registered on such record of ownership and the transferee is identified as the owner of an interest in the obligation. Borrower shall be entitled to treat the registered holder of this Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Note on the part of any other person or entity.

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IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

RXSIGHT, INC.

By _____
Name: _____
Title: _____

LOAN INTEREST RATE AND PAYMENTS OF PRINCIPAL

Date	Principal Amount	Interest Rate	Scheduled Payment Amount	Notation By

Corporate Borrowing Certificate

DEBTOR: **RXSIGHT, INC.**
SECURED PARTY: **OXFORD FINANCE LLC, as Collateral Agent**

EXHIBIT A TO UCC FINANCING STATEMENT

Description of Collateral

The Collateral consists of all of Debtor's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as noted below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts and other Collateral Accounts, all certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include (a) any Intellectual Property (provided, however, that (1) the Collateral shall include all Accounts and all proceeds of Intellectual Property and (2) if a judicial authority (including a U.S. Bankruptcy Court) would hold that a security interest in the underlying Intellectual Property is necessary to have a security interest in such Accounts and such property that are proceeds of Intellectual Property, then the Collateral shall automatically, and effective as of the Effective Date, include the Intellectual Property to the extent necessary to permit perfection of Collateral Agent's security interest in such Accounts and such other property of Borrower that are proceeds of the Intellectual Property); (b) any intent-to-use trademarks at all times prior to the first use thereof, whether by the actual use thereof in commerce, the recording of a statement of use with the United States Patent and Trademark Office or otherwise; (c) the Excluded Accounts; (d) more than 65% of the total combined voting power of all classes of stock entitled to vote the shares of capital stock (the "Shares") of any Foreign Subsidiary, if Borrower demonstrates to Collateral Agent's reasonable satisfaction that a pledge of more than sixty five percent (65%) of the Shares of such Subsidiary creates a present and existing adverse tax consequence to Borrower under the U.S. Internal Revenue Code; (e) more than sixty five percent (65%) of the total combined voting power of all Shares of each Existing Subsidiary; and (f) any license or contract, in each case if the granting of a Lien in such license or contract is prohibited by or would constitute a default under the agreement governing such license or contract (but (A) only to the extent such prohibition is enforceable under applicable law and (B) other than to the extent that any such term would be deemed ineffective under Sections 9-406, 9-408 or 9-409 (or any other Section) of Division 9 of the Code); provided that upon the termination, lapsing or expiration of any such prohibition, such license or contract, as applicable, shall automatically be subject to the security interest granted in favor of Collateral Agent hereunder and become part of the "Collateral".

Pursuant to the terms of a certain negative pledge arrangement with Collateral Agent and the Lenders, Borrower has agreed not to encumber any of its Intellectual Property.

Capitalized terms used but not defined herein have the meanings ascribed in the Uniform Commercial Code in effect in the State of California as in effect from time to time (the "Code") or, if not defined in the Code, then in the Loan and Security Agreement by and between Debtor, Secured Party and the other Lenders party thereto (as modified, amended and/or restated from time to time).

[***] = Certain information contained in this document, marked by brackets, has been omitted because it is both not material and would be competitively harmful if publicly disclosed.

LICENCE AGREEMENT

THIS AGREEMENT is effective as of the 28th day of July, 2015 (the "Effective Date"), between the **CALIFORNIA INSTITUTE OF TECHNOLOGY** ("Caltech"), a not-for-profit corporation duly organized and existing under the laws of the State of California with an address at 1200 East California Boulevard, MC 6-32, Pasadena, California 91125 and Calboun Vision, Inc. ("Licensee"), a California corporation having a place of business at 2555 E. Colorado Blvd., Pasadena, CA 91107 (the "Parties").

WHEREAS, Licensee is desirous of obtaining, and Caltech wishes to grant to Licensee, an exclusive license to certain Exclusively Licensed Patent Rights and to the Improvement Patent Rights, and a nonexclusive license under the Technology, as further defined below;

Now, THEREFORE, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

1.1 **"Affiliate"** means any corporation, limited liability company or other legal entity which directly or indirectly controls, is controlled by, or is under common control with Licensee as of the Effective Date of this Agreement. For the purpose of this Agreement, "control" shall mean the direct or indirect ownership of greater than fifty percent (>50%) of the outstanding shares on a fully diluted basis or other voting rights of the subject entity to elect directors, or if not meeting the preceding, any entity owned or controlled by or owning or controlling at the maximum control or ownership right permitted in the country where such entity exists. In addition, a party's status as an Affiliate of Licensee shall terminate if and when such control ceases to exist.

1.2 **"Caltech IP"** means the Exclusively Licensed Patent Rights, Improvement Patent Rights, and the Technology.

1.3 **"Deductible Expenses"** means the following expenses incurred in connection with sales or licensing of Licensed Products to the extent actually paid by Licensee, Affiliates or

Sublicensees in accordance with generally recognized principles of accounting: (a) sales, use or turnover taxes; (b) excise, value added, or other taxes or custom duties; (c) transportation, freight, and handling charges, and insurance on shipments to customers; (d) trade, cash or quantity discounts or rebates to the extent actually granted; (e) agent fees or commissions; and (f) rebates, refunds, and credits for any rejected or returned Licensed Products or because of retroactive price reductions or rebates.

1.4 **"Effective Date"** has the meaning set forth in the preamble.

1.5 **"Exclusively Licensed Patent Rights"** means Caltech's rights under: (a) all patents and patent applications listed in Exhibit A attached hereto; (b) any patents issuing therefrom; and (c) any patents or patent applications claiming a right of priority thereto (including reissues, reexaminations, renewals, extensions, divisionals, continuations, continued prosecution applications, continuations-in-part (only to the extent that the claims in such continuations-in-part are fully supported under 35 U.S.C. §112 by another patent or patent application in the Exclusively Licensed Patent Rights, or are Improvement Patent Rights) and foreign counterparts of any of the foregoing.

1.6 **"Field"** means all fields.

1.7 **"Improvements"** means any future inventions conceived and reduced to practice or otherwise developed solely in the laboratory of Robert H. Grubbs at Caltech or jointly between the laboratory and Licensee, in the Field, for a period of three (3) years from the Effective Date, which arc dominated by a Valid Claim under the Exclusively Licensed Patent Rights, and which Caltech has the right to license in accordance with this Agreement.

1.8 **"improvement Patent Rights"** means Caltech's rights under: (a) all patents and patent applications with claims directed to Improvements which have been elected on in writing by Licensee after disclosure by Caltech of such Improvements; (b) any patents issuing therefrom; and (c) any patents or patent applications claiming a right of priority thereto (including reissues, reexaminations, renewals, extensions, divisionals, continuations, continued prosecution applications, continuations-in-part (only to the extent that the claims in such continuations-in-part are supported under 35 U.S.C. §112 by another patent or patent application in the

Exclusively Licensed Patent Rights, or are Improvement Patent Rights) and foreign counterparts of any of the foregoing).

1.9 **"Licensed Product"** means any product, device, system, article of manufacture, machine, composition of matter, or process or service in the Field that is covered by, or is made by a process covered by, any Valid Claim, or that utilizes Technology in material part.

1.10 **"Net Revenues"** means all amounts, less Deductible Expenses, received by Licensee, Affiliates, and Sublicensees from the sale or other distribution (whether commercial or not) of Licensed Products Any non-cash consideration received by Licensee for the sale or other distribution of Licensed Products or the licensing of Exclusively Licensed Patent Rights will be converted to a cash value based on the fair market value or a value mutually agreed upon. Net Revenues will not include payments for Licensed Products that are covered only by pending claims of the Exclusively Licensed Patent Rights or Improvement Patent Rights that have a priority date more than seven (7) years before the date of sale of such Licensed Product.

1.11 **"Sublicensee"** means any person **or** entity sublicensed, or granted an option for a sublicense, by Licensee under this Agreement.

1.12 **"Sublieensing Revenue"** means cash consideration and cash value of all equity consideration valued at fair market value that Licensee and/or Affiliates receive from a Sublicensee in consideration for, and to the extent attributable to, the grant of a sublicense under the Caltech IP that is not royalties on Net Revenues. Sublicensing Revenue includes, but is not limited to, license fees, license maintenance fees, milestone payments, and other payments that Licensee receives (including payments for technical assistance and the like), Such Sublicensing Revenue specifically shall not include payments made by a Sublicensee solely in consideration of: (a) equity or debt securities of Licensee sold at market value; (b) to support research or development activities to be undertaken by Licensee; (c) upon the achievement by Licensee of specified milestones or benchmarks relating to the development of Licensed Products (excluding milestones tied to sales or marketing performance, which shall be subject to the percentage-based payments to Caltech herein); (d) pilot studies; (e) the license or sublicense of any intellectual property other than Caltech IP; (f) products other than Licensed Products; or (g) reimbursement for patent or other expenses, If

Licensee receives equity securities or securities that are convertible into equity securities from a Sublicensee, Licensee will hold the equity securities until the first liquidity event, at which time Licensee will make reasonable efforts to liquidate the equity securities, and any resulting cash shall be distributed as it would any other royalty or fee payments under this Agreement.

1.13 **"Technology"** means any technology existing as of the Effective Date, including but not limited to proprietary information, know-how, procedures, methods, prototypes, designs, technical data, and reports, that is requested by Licensee and consented to by Caltech, and that is: (a) specifically listed in Exhibit B or (b) disclosed in the patents and patent applications in the Exclusively Licensed Patent Rights.

1.14 **"Territory"** means throughout the world.

1.15 **"Valid Claim"** means:

(a) a claim of an issued patent within the Exclusively Licensed Patent Rights or Improvement Patent Rights that has not:

(i) expired or been canceled,

(ii) been finally adjudicated to be invalid or unenforceable by a decision of a court or other appropriate body of competent jurisdiction (and from which no appeal is or can be taken),

(iii) been admitted to be invalid or unenforceable through reissue, disclaimer or otherwise, or

(iv) been abandoned in accordance with, or as permitted by, the terms of this Agreement or by mutual written agreement; or

(b) a claim included in a pending patent application within the Exclusively Licensed Patent Rights or Improvement Patent Rights, which claim is being actively prosecuted in accordance with this Agreement and which has not been;

(i) canceled,

(ii) withdrawn from consideration,

(iii) finally determined to be unallowable by the applicable governmental authority (and from which no appeal is or can be taken), or

(iv) abandoned in accordance with, or as permitted by, the terms of this Agreement or by mutual written agreement.

ARTICLE 2
LICENSE GRANT

2.1 **Grant of Rights.** Caltech hereby grants to Licensee and its Affiliates the following licenses:

(a) an exclusive, royalty-bearing license under the Exclusively Licensed Patent Rights and the Improvement Patent Rights to make, have made, import, use, sell, and offer for sale Licensed Products in the Field in the Territory; and

(b) an exclusive, royalty-bearing license under the Technology to make, have made, import, use, sell, offer for sale, reproduce, distribute, display, perform, create derivative works of, and otherwise exploit Licensed Products in the Field in the Territory.

These licenses are personal to and nontransferable by Licensee, except as provided in Article 6. Rights not explicitly granted herein are reserved by Caltech.

2.2 **Reservation of Rights; Government Rights.** These licenses are subject to: (a) the reservation of Caltech's right to make, have made, import, and use Licensed Products for noncommercial educational and research purposes, but not for commercial sale or other commercial distribution to third parties; and (b) any existing right of the U.S. Government under Title 35, United States Code, Section 200 et seq. and under 37 Code of Federal Regulations, Section 401 et seq., including but not limited to legally required grants to the U.S. Government of a nonexclusive, nontransferable, irrevocable, paid-up license to practice any invention conceived or first actually reduced to practice in the performance of work for or on behalf of the U.S. Government throughout the world. Licensed Products shall be substantially manufactured in the United States to the extent (if at all) required by 35 U.S.C. Section 204. In addition, Caltech reserves the right to grant the Exclusively Licensed Patent Rights, Improvement Patent Rights, and associated technology to other non-profit institutions for noncommercial educational and research purposes, including clinical research.

2.3 **Sublicensing**. Licensee has the right hereunder to grant sublicenses to third parties, but Sublicensees shall not have the right to grant further sublicenses through more than two (2) tiers of further Sublicensees, and the sublicenses may be of no greater scope than the licenses granted under Section 2.1.

Licensee shall require that all sublicenses:

(a) are subject to the terms and conditions of this Agreement; and

(b) contain the Sublicensee's acknowledgment of the disclaimer of warranty and limitation on Caltech's liability, as provided by Articles 9 and 13 below; and

(c) contain provisions under which the Sublicensee accepts duties at least equivalent to those accepted by the Licensee in the following Sections: 5.9-5.10 (duty to keep records); 8.7 (duty to properly mark Licensed Products with patent numbers); 9.4 (duty to defend, hold harmless, and indemnify Caltech); 13.2 (duty to maintain insurance); 14.8 (duty to restrict the use of Caltech's name); and 14.9 (duty to control exports).

Licensee shall not receive, or agree to receive, anything of value in lieu of cash or equity from a third party under a sublicense granted pursuant to this Section 2.3, without Caltech's express prior written permission which shall not be unreasonably withheld.

Licensee shall furnish Caltech within thirty (30) days of the execution thereof a true and complete copy of each sublicense and any changes or additions thereto. Licensee shall inform Caltech of each sublicensee's entity status for the determination of fees payable to the U.S. Patent and Trademark Office (USPTO).

Any sublicenses granted by Licensee shall survive termination of the licenses granted in Section 2.1, or of this Agreement, provided that the following conditions are met as of the date of such termination:

(a) the written agreement between Licensee and Sublicensee pursuant to which the sublicense was granted (i) obligates the Sublicensee to thereafter render to Caltech all sublicense royalties or other sublicense-related consideration that the Sublicensee would have owed to Licensee under the sublicense, (ii) names Caltech as a third party beneficiary, and (iii) affirms that Licensee shall remain responsible for all obligations to Sublicensee (other than those

requiring Licensee to hold a license under the Exclusively Licensed Patent Rights, Improvement Patent Rights, or Technology) unless Caltech (at its discretion) elects to assume such obligations;

(b) Licensee informs the Sublicensee in writing (with a copy to Caltech) that the Sublicensee's obligations pursuant to (a) are in effect as a result of the termination; and

(c) the sublicense was granted in accordance with the sublicensing provisions of this Agreement.

Licensee shall be responsible for collecting and paying to Caltech all royalties on Net Revenues and Sublicensing Revenues owed by all Sublicensees.

2.4 **No Other Rights Granted.** The Parties agree that neither this Agreement, nor any action of the Parties related hereto, may be interpreted as conferring by implication, estoppel or otherwise, any license or rights under any intellectual property rights of Caltech other than as expressly and specifically set forth in this Agreement, regardless of whether such other intellectual property rights are dominant or subordinate to the Exclusively Licensed Patent .Rights.

2.5 **Purchaser Status.** Caltech shall be entitled to purchase Licensed Products from Licensee for educational, research or other noncommercial purposes on pricing terms that are commercially reasonable.

ARTICLE 3
RESERVED

ARTICLE 4
PROSECUTION OF PATENT APPLICATIONS AND PAYMENT OF PATENT COSTS

4.1 **Prosecution by Caltech.** Caltech shall use reasonable efforts, consistent with its normal practices, to: (a) prosecute any and all patent application(s) included in the Exclusively Licensed Patent Rights; and (b) file and prosecute Improvement Patent Rights licensed hereunder for which Caltech or Licensee deems it beneficial to obtain additional coverage, provided that Licensee is reimbursing patent expenses in accordance with Sections 4.4 and 4.5. Licensee may

recommend patent counsel for this purpose. Caltech shall permit Licensee to review and request modifications on all patent applications and claims made therein, and Caltech shall make reasonable efforts to implement modifications thereto as may be requested by Licensee prior to filing.

4.2 **Election of Improvements.** With respect to filings pursuant to Section 4.1(b) heroin above, Caltech shall promptly disclose such Improvements to Licensee, and Licensee shall elect within thirty (30) days whether such Improvements shall be included within the Improvement Patent Rights, at its expense. Caltech will have no obligation to prosecute patent applications that may constitute Improvements that are not elected by Licensee. Upon written election by Licensee, the Parties will amend, in a timely manner, Exhibit A hereto to include such Improvements within the Exclusively Licensed Patent Rights.

4.3 **Prosecution by Licensee.** If Caltech declines to file, prosecute or maintain a patent or patent application in the Exclusively Licensed Patent Rights or Improvement Patent Rights, then Licensee may elect to assume responsibility for such filing, prosecution or maintenance at its expense in Caltech's name, with Caltech remaining the client of record with the prosecuting attorney(s). Licensee shall fully cooperate with any and all other licensees, if any, of the patent or patent application. Caltech agrees to fully cooperate with Licensee in filing, prosecuting, and maintaining any such patent applications and patents, and Caltech agrees to execute any documents as shall be necessary for such purpose, and not to impair in any way the patentability of any of the foregoing.

4.4 **Past Patent Costs.** Licensee shall reimburse Caltech for all reasonable expenses (including attorneys' fees) incurred by Caltech prior to the Effective Date for the filing, prosecution and maintenance, interference or reexamination proceedings, of the Exclusively Licensed Patent Rights and Improvement Patent Rights. All amounts owed under this Section 4.4 shall be due on or before April 30, 2016. Past patent costs as of the Effective Date are approximately [***]. Promptly following the Effective Date, Caltech shall provide Licensee with an invoice for the past patent costs reimbursable by Licensee, including copies of Caltech's records evidencing such past patent costs.

4.5 **Ongoing Patent Costs.** Licensee shall reimburse Caltech for all fees and costs relating to ongoing filing, prosecution and maintenance, interference or reexamination proceedings of the Exclusively Licensed Patent Rights and Improvement Patent Rights that are not included in Section 4.4 above. Such reimbursement shall be made within thirty (30) days of receipt of Caltech's invoice. Should Licensee wish to terminate its license to any particular patent application or patent, Licensee may elect to do so by providing written notice to Caltech at least sixty (60) days in advance. Licensee is responsible for all patent costs incurred up until the date of its election and Licensee's subsequent reimbursement obligations of the ongoing patent costs with respect to said patent application or patent will be terminated. Upon such election, Caltech may, at its option, continue such prosecution or maintenance, although any patent or patent application resulting from such prosecution or maintenance will thereafter no longer be subject to the licenses granted in Section 2.1 hereunder. In the absence of proper election as described above, non-payment of any portion of patent costs, whether to Caltech or directly to the prosecuting law firm will be considered monetary breach pursuant to Section 10.2.

4.6 **Foreign Patent Applications.** Caltech shall file and prosecute foreign regional and national patent applications at the request of Licensee, provided that Licensee is reimbursing patent expenses in accordance with Sections 4.4 and 4.5. Caltech may require Licensee to make an advance payment on anticipated foreign patent expenses. In such cases, Licensee will be provided a quote for the expenses, and Licensee shall make an advance payment on the anticipated expenses within thirty (30) days before the patent applications are filed or patent prosecution actions are due.

ARTICLE 5
CONSIDERATION

5.1 **Timing and Computation.** All royalties hereunder (except **for** annual minimum royalties) shall be computed on a quarterly basis for the quarters ending March 31st, June 30th, September 30th, and December 31st of each calendar year. Royalties for each such quarter shall be due and payable within seventy-five (75) days after the end of such quarter.

5.2 **License Issue Fee.** Licensee shall pay to Caltech a License Issue Fee in the amount of [***]. The License Issue Fee is nonrefundable and is due

fourteen (14) days from the complete execution of this Agreement.

5.3 **Royalty on Valid Claims.** For any country in which the Exclusively Licensed Patent Rights include a Valid Claim where the Licensed Products are made, used, or sold, Licensee shall pay Caltech a royalty of [***] of Net Revenues. Royalties due under this Section 5.3 shall be payable on a country-by-country and Licensed Product-by-Licensed Product basis until the expiration of the last-to-expire issued Valid Claim covering such Licensed Product in such country.

5.4 **Royalty on Technology.** For any country in which the Exclusively Licensed Patent Rights do not include a Valid Claim, Licensee shall pay Caltech a royalty of [***] of Not Revenues for a period of seven (7) years from a first commercial sale.

5.5 **Bundled Products and Services.** In the event that Licensed Products are sold, licensed, distributed or used in combination with one or more other products or services which are not Licensed Products, the Net Revenues for such combination products will be calculated on a country-by-country basis by multiplying actual net sales (calculated on the basis as if they were Net Revenues) of such combination products by the fraction A/(A+B) where A is the average invoice price, during the relevant quarterly period, of the Licensed Product when sold or licensed separately by Licensee or an Affiliate, and B is the average invoice price during such period of any other product(s) or services in the combination when sold or licensed separately by Licensee or an Affiliate. If the products or services in the combination that are not Licensed Products have not been sold or licensed separately by Licensee or a Affiliate in the relevant quarterly period, Net Revenues shall be calculated by multiplying actual net sales (calculated on a basis as if they were Net Revenues) of such combination products by the fraction A/C where A is the average invoice price, during the last quarterly period, of the Licensed Product when sold or licensed separately and C is the average invoice price of the combination product during such period. If the Licensed Product has not been sold or licensed separately by Licensee or a Affiliate in the last quarterly period, regardless of whether the combination product without the Licensed Product is sold or licensed separately, Net Revenues shall be calculated as in the

immediately preceding sentence except that A shall be the total manufacturing cost of the Licensed Product and C shall be the total manufacturing cost of the combination.

5.6 **Royalty on Sublicensing Revenue.** Licensee shall pay Caltech [***] of the Sublicensing Revenue.

5.7 **License Maintenance Fees; Minimum Annual Royalties.** A license maintenance fee of [***] is due to Caltech one year from the Effective Date and each anniversary thereof prior to the first commercial sale of a lens Licensed Product. A minimum annual royalty of [***] is due to Caltech each anniversary of the Effective Date following the first commercial sale of a Licensed Product. Any royalties paid under Sections 5.3, 5.4, 5.5, and 5.6 for the one-year period preceding the date of payment of the minimum annual royalty shall be creditable against the annual minimum. Caltech shall have the right to terminate this Agreement pursuant to Section 10.2 (Termination for Monetary Breach) for failure to pay such minimum annual royalty.

5.8 **Third Party Royalty Offset; No Multiple Royalties.** If Licensee or an Affiliate is required to make any payment (including, but not limited to, royalties or other license fees) to one or more third parties to obtain a patent license in the absence of which it could not legally make, import, use, sell, or offer for sale Licensed Products in any country, and Licensee provides Caltech with reasonably satisfactory evidence of such third-party payments, [***] of such third-party payments shall be creditable against royalties owed to Caltech hereunder, provided that in no one year shall the aggregate of all such expenses be credited against more than [***] of royalty payments to Caltech. Any greater amount of such expenses may be carried over and credited against royalties owed in future years, subject in every case to the [***] annual cap for that year. Licensee shall not be required to pay multiple royalties under this Agreement and the existing Exclusive License Agreement between Caltech and Licensee dated November 20, 2003 (the "2003 Agreement") on the same Net Revenues. In the event that Licensee or its Affiliate or Sublicensee sells any Licensed Product for which royalties would be due under this Agreement and the 2003 Agreement, the royalties thereon shall be allocated between this Agreement and the 2003 Agreement based upon the

relative value of the licenses granted under such agreements with respect to the applicable Licensed Product, as reasonably determined by Licensee.

5.9 **Currency Conversion.** For the purpose of determining royalties payable under this Agreement, any royalties or other revenues Licensee receives from Sublicensees in currencies other than U.S. dollars and any Net Revenues denominated in currencies other than U.S. dollars shall be converted into U.S. dollars according to the noon buying rate of the Federal Reserve Bank of New York on the last business day of the quarterly period for which such royalties are calculated.

5.10 **Recordkeeping and Audits.** Licensee shall keep complete and accurate production and accounting records relating to commercialization (including via sublicensing) of Licensed Products for three (3) years following the end of the calendar year to which they pertain. Caltech shall be entitled to appoint an independent CPA to periodically audit such records, upon reasonable advance notice and during Licensee's normal business hours, to determine Licensee's compliance with the provisions of this Article 5. Licensee shall reimburse Caltech one hundred percent (100%) of any unpaid royalties resulting from any noncompliance discovered as a result of any such audit; and Licensee shall also pay Caltech a late payment fee of one percent (1%) per month of the entire amount of any underpayment. Such audits shall be at Caltech's expense, and shall occur no more than once annually, except that in the case of any underpayment exceeding ten percent (10%) of the amount actually paid: (a) Licensee shall reimburse Caltech for the cost of such audit; and (b) Caltech shall be entitled to conduct additional quarterly audits, at Licensee's expense, until any such audit demonstrates that Licensee is in compliance with its obligations. Licensee must flow this requirement down to all Sublicensees.

5.11 **Royalty Reports.** For so long as royalties are payable under this Agreement, Licensee shall provide a royalty report in writing to Caltech on or before the payment due date for the applicable quarter in accordance with Section 5.1. The report shall include, for all Licensed Products that are sold or otherwise distributed by Licensee, Affiliates, and each Sublicensee, on a country-by-country basis:

(a) a description of all Licensed Products;

(b) number of Licensed Products sold;

(c) total revenues from each of the Licensed Products received by Licensee, Affiliates, and Sublicensees;

(d) Deductible Expenses for each of the Licensed Products;

(e) Net Revenues from Licensed Product(s);

(f) royalties on Net Revenues due to Caltech;

(g) Sublicensing Revenue, including supporting data;

(h) foreign currency conversion rate and calculations (if applicable) and total royalties due; and

(i) names and contact information for all Sublicensees having a sublicense or option therefor any time during the particular royalty period.

Each such report shall also set forth an explanation of the calculation of the royalties payable hereunder and be accompanied by payment of the royalties shown by said report to be due Caltech.

ARTICLE 6
ASSIGNMENT AND TRANSFER

6.1 **"Assign"** (including all variations thereof) shall mean to transfer, including Assignment of rights and delegation of duties.

6.2 **Assignment by Caltech.** This Agreement shall be binding upon and inure to the benefit of any successor or Assignee of Caltech.

6.3 **Assignment by Licensee.** Licensee cannot Assign this Agreement without the prior written consent of Caltech, except that Licensee may Assign this Agreement without the prior written consent of Caltech to any Affiliate or any successor of, or purchaser of substantially all of, the assets or operations of its business to which this Agreement pertains. Any permitted Assignee shall succeed to all of the rights and obligations of Licensee under this Agreement.

6.4 **Any Other Assignment by Licensee.** Any other attempt to Assign this Agreement or to pledge any of the license rights granted in this Agreement as security for any creditor by

Licensee is null and void from the beginning.

6.5 **Conditions of Assignment.** Prior to any Assignment, the following conditions must be met:

(a) Licensee must give Caltech thirty (30) days prior written notice of the assignment, including the new Assignee's contact information; and

(b) the new Assignee must agree in writing to Caltech to be bound by this Agreement; and.

(c) Caltech must have provided written permission to Assign the agreement, and (i) received a [***] of the transaction assignment fee; or (ii) Licensee may establish that an additional royalty be paid to Caltech for the sales of Licensed Products by the Assignee of this Agreement in lieu of any assignment fee. If Licensee chooses to pay a royalty in lieu of an assignment fee, Caltech and Licensee agree to amend this Agreement in good faith to address the royalty considerations prior to the Assignment of this Agreement.

6.6 **After the Assignment.** Upon **a** permitted Assignment by Licensee of this Agreement pursuant to this Article, Licensee will be released of liability under this Agreement and the term "Licensee" in this Agreement will mean the Assignee.

ARTICLE 7
DUE DILIGENCE

7.1 **Commercialization.** Licensee agrees to use commercially reasonable efforts to commercially introduce and reasonably fulfill market demand for Licensed Products in the Field as soon as practical. Licensee shall be deemed to have satisfied its obligations under this Section 7.1 if Licensee has an ongoing and active research, development or marketing program, directed primarily toward commercial production, use, and sale of one or more Licensed Products. Any efforts of Licensee's Affiliates or Sublicensees shall be considered efforts of Licensee for the sole purpose of determining Licensee's compliance with its obligations under this Section 7.1.

7.2 **Reporting.** On each yearly anniversary of the Effective Date, Licensee shall issue to Caltech a detailed written report on its progress in introducing commercial Licensed

Product(s). The report will be considered confidential information of Licensee subject to Article 11.

7.3 **Failure to Commercialize.** If Licensee is not fulfilling its obligations under Section 7.1 with respect to the Field, and Caltech so notifies Licensee in writing, Caltech and Licensee shall negotiate in good faith any additional efforts to be taken by Licensee. If the Parties do not reach agreement within thirty (30) days of Caltech's written notice, Caltech may terminate this Agreement pursuant to Article 10.

ARTICLE 8
LITIGATION

8.1 **Enforcement.** Both Caltech and Licensee agree to promptly notify the other in writing should either party become aware of possible infringement by a third party of the Exclusively Licensed Patent Rights or Improvement Patent Rights. Upon notice and exchange of evidence of such infringement, Licensee and Caltech shall meet and confer within thirty (30) days to discuss how best to proceed with enforcement. During that meeting, Caltech may request that Licensee take steps to enforce the Exclusively Licensed Patent Rights or Improvement Patent Rights. If Licensee does not, within ninety (90) days of such request, elect to file an action against the alleged infringer in the Field, Caltech will have all rights required by law to initiate an enforcement action in Caltech's name at Caltech's expense. Licensee shall be entitled to control any such action initiated by it, but will keep Caltech apprised of the status of such action or suit, and will consult with Caltech should any issues arise in litigation that may affect Caltech or other Caltech licensees. If Caltech is. required by law to join in such an action, or is subject to discovery requests in such an action, it will do so provided that: (a) Caltech will be represented by outside counsel of its choice; and (b) Licensee shall reimburse Caltech for all reasonable out-of-pocket expenses (including Caltech's outside counsel) and all reasonable internal Caltech expenses in connection with the action. Licensee may take appropriate action to terminate or prevent the infringement; provided, however that Licensee may not bring an action against an accused infringer without prior written approval of Caltech, where approval will not be unreasonably withheld, delayed or conditioned, and provided, further, that Caltech shall have the right to withhold such approval only if Caltech reasonably establishes and confirms to Licensee in writing, that withholding such approval would materially further a substantial

purpose of Caltech relevant to its non-profit status, academic mission and reputation. Caltech shall notify Licensee in writing within thirty (30) days of receiving Licensee's request for approval, if Caltech elects to withhold such approval (such notice a "Disapproval Notice"). Failure by Caltech to provide a Disapproval Notice within such thirty (30) day period shall be deemed approval. In the event that Caltech provides a Disapproval Notice, Licensee shall have no obligation to pay any royalties on any Net Revenues made during the period from the Disapproval Notice until the earlier of (A) the date, if any, that Caltech subsequently grants an approval for Licensee to bring such action against an accused infringer or (B) the date such infringement ceases. Caltech further agrees that if a Disapproval Notice is provided by Caltech, Caltech will at Licensee's request cooperate with Licensee in good faith, using diligent efforts, in connection with Licensee's efforts to abate the subject infringement activity via alternative dispute resolution means that do not involve litigation. Where settlement terms with an accused infringer requires any admission or forbearance of any right on the part of Caltech, Licensee may not enter into a settlement agreement with an accused infringer without prior written approval of Caltech, where approval will not be unreasonably withheld, delayed or conditioned.

8.2 **Other Defensive Litigation.** If a declaratory judgment action alleging invalidity, unenforceability or non-infringement of any of the Exclusively Licensed Patent Rights or Improvement Patent Rights is brought against Licensee and/or Caltech, Licensee shall have the first right to control the defense of such action at its own expense. Caltech may elect to control the defense of such action if Licensee declines to do so, and if Caltech so elects it shall bear all the costs of the action and shall make settlements only with the advice and written consent of Licensee. If mutually agreed between the Parties, Caltech may also undertake the defense of any interference, opposition or similar procedure with respect to the Exclusively Licensed Patent Rights or Improvement Patent Rights, providing that Caltech bears all the costs thereof and makes settlements only with the advice and written consent of Licensee.

8.3 **Cooperation.** In the event either party takes control of a legal action or defense pursuant to Sections 8.1 or 8.2 (thus becoming the Controlling Party), the non-controlling party shall fully cooperate with and supply all assistance reasonably requested by the Controlling Party, including by: (a) using commercially reasonable efforts to have its employees consult and testify when requested; (b) making available relevant records, papers, information, samples,

specimens, and the like; and (c) joining any such action in which it is an indispensable party. The Controlling Party shall bear the reasonable expenses (including salary and travel costs) incurred by the non-controlling party in providing such assistance and cooperation. The Controlling Party shall keep the non-controlling party reasonably informed of the progress of the action or defense. If the non-controlling party is not required by law to join the action, that party shall nevertheless be entitled to participate in such action or defense at its own expense and using counsel of its choice. As a condition of controlling any action or defense involving the Exclusively Licensed Patent Rights or Improvement Patent Rights pursuant to Sections 8.1 or 8.2, Licensee shall use commercially reasonable efforts to preserve the validity and enforceability thereof.

8.4 **Settlement.** If Licensee controls any action or defense under Section 8.1 or 8.2, then Licensee shall have the right to settle any claims thereunder, but only upon terms and conditions that are reasonably acceptable to Caltech.. Should Licensee elect to abandon such an action or defense other than pursuant to a settlement with the alleged infringer that is reasonably acceptable to Caltech, Licensee shall give timely advance notice to Caltech who, if it so desires, may continue the action or defense.

8.5 **Recoveries.** Any amounts paid by third parties to Caltech or Licensee as the result of an action or defense pursuant to Sections 8.1 or 8.2 (including in satisfaction of a judgment or pursuant to a settlement) shall first be applied to reimbursement of the unreimbursed expenses (including attorneys' fees and expert fees) incurred by each party. In the event that Caltech is the Controlling Party, the remainder shall be retained by Caltech. In the event that Licensee is the Controlling Party, any remainder shall be divided between the Parties as follows:

(a) To the extent the amount recovered reflects Licensee's lost profits or royalties, Licensee shall retain the remainder, less the amount of any royalties that would have been due Caltech under Article 5 on account of such lost profits or royalties, provided that Licensee shall in any event retain at least [***] of the remainder; and

(b) To the extent the amount recovered does not reflect Licensee's lost profits or royalties (e.g., special or punitive damages), [***] shall be paid to Licensee, and [***] to Caltech.

8.6 **Infringement Defense.** If Licensee, its Affiliate or Sublicensee, distributor or other customer issued by a third party charging infringement of patent rights that cover a Licensed Product, Licensee will promptly notify Caltech. Licensee will be responsible for the expenses of, and will be entitled to control the defense or settlement of, any such action(s).

8.7 **Marking.** Licensee agrees to mark the Licensed Products with the numbers of applicable issued patents within the Exclusively Licensed Patent Rights or Improvement Patent Rights, unless such marking is not legally required or commercially infeasible in accordance with normal commercial practices in the Field, in which case the Parties shall cooperate to devise a commercially reasonable alternative to such marking.

8.8 **Expiration or Abandonment.** In a case where one or more patents or particular claims thereof within the Exclusively Licensed Patent Rights or Improvement Patent Rights expire, or are abandoned, or are declared invalid or unenforceable by a court of last resort or by a lower court from whose decree no appeal is taken, or certiorari is not granted within the period allowed therefor, then the effect thereof hereunder shall be:

(a) that such patents or particular claims shall, as of the date of expiration or abandonment or final decision as the case may be, cease to be included within the Exclusively Licensed Patent Rights or Improvement Patent Rights for the purpose of this Agreement; and

(b) that such construction so placed upon the Exclusively Licensed Patent Rights or Improvement Patent Rights by the court shall be followed from and after the date of entry of the decision, and royalties shall thereafter be payable by Licensee only in accordance with such construction.

8.9 **Adjustment.** In the event that any of the contingencies provided for in Section 8.8 occurs, Caltech agrees to renegotiate in good faith with Licensee a reasonable royalty rate under the remaining Exclusively Licensed Patent Rights or Improvement Patent Rights which are unexpired and in effect and under which Licensee desires to retain a license.

8.10 **Licensee Challenges**. If Licensee or any of its Affiliates brings an action or proceeding, or assists any third party in bringing an action or proceeding, seeking a declaration or ruling that any claim in any of the Exclusively Licensed Patent Rights or Improvement Patent Rights is invalid or unenforceable, or asserts that any product does not infringe the Exclusively Licensed Patent Rights or Improvement Patent Rights:

(a) during the pendency of such action or proceeding, the royalty rate will be increased to double the royalty rate set forth in Section 5.3;

(b) should the outcome of such action or proceeding determine that any claim of a Licensed Patent challenged by Licensee is valid, enforceable, and/or infringed by a Licensed Product, the royalty rate will be increased to triple the royalty rate set forth in Section 5.2 and Licensee shall pay Caltech's attorneys' fees, expert witness fees, court costs, third-party costs, and other litigation expenses;

(c) Licensee shall have no right to recoup any royalties paid before such action or proceeding or during the period in which such action or proceeding is pending (including on appeal);

(d) Licensee shall not pay royalties into any escrow or other similar account, but rather shall continue to pay royalties directly to Caltech; and

(e) Caltech shall have full control and authority to defend the Exclusively Licensed Patent Rights and Improvement Patent Rights in the action or proceeding.

Licensee shall provide written notice to Caltech at least ninety (90) days before Licensee or any of its Affiliates initiates any action or proceeding seeking a declaration or ruling that any claim of any Licensed Patent is invalid or unenforceable or that any product would not infringe (but for this Agreement) any claim in the Exclusively Licensed Patent Rights or Improvement Patent Rights, Licensee will include with such written notice an identification of all prior art it believes is material.

Any dispute regarding the validity or enforceability of any of the Exclusively Licensed Patent Rights or Improvement Patent Rights, or whether any product would infringe (but for this

Agreement) any claim in the Exclusively Licensed Patent Rights or Improvement Patent Rights, shall be litigated exclusively in the U.S. District Court for the Central District of California situated in the County of Los Angeles, and each Party hereby agrees to submit to the exclusive jurisdiction of such court, and waives any objection to venue, for such purposes.

ARTICLE 9
REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION

9.1 **Representations and Warranties of Caltech.** Caltech hereby represents and warrants to Licensee that, to the knowledge of Caltech's Office of Technology Transfer, as of the Effective Date:

(a) there are no outstanding licenses, options or agreements of any kind relating to the Exclusively Licensed Patent Rights in the Field, other than pursuant to this Agreement herein;

(b) Caltech has the power to grant the rights, licenses and privileges granted herein and can perform as set forth in this Agreement without violating the terms of any agreement that Caltech has with any third party.

9.2 **Exclusions**. The Parties agree that nothing in this Agreement shall be construed as, and CALTECH HEREBY DISCLAIMS, ANY EXPRESS OR IMPLIED REPRESENTATION, WARRANTY, COVENANT, OR OTHER OBLIGATION:

(a) THAT ANY PRACTICE BY OR ON BEHALF OF LICENSEE OF ANY INTELLECTUAL PROPERTY LICENSED HEREUNDER IS OR WILL BE FREE FROM INFRINGEMENT OF RIGHTS OF THIRD PARTIES;

(b) AS TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON INFRINGEMENT OF THIRD PARTY RIGHTS, WITH RESPECT TO ANY TECHNOLOGY PROVIDED BY CALTECH TO LICENSEE HEREUNDER.

9.3 **Indemnification by Caltech.** Caltech shall indemnify, defend and hold harmless Licensee, its officers, agents and employees from and against any and all losses, damages, costs

and expenses (including attorneys' fees) arising out of a material breach by Caltech of its representations and warranties ("Indemnification Claims"), except to the extent involving or relating to a material breach by Licensee of its representations and warranties, provided that: (a) Caltech is notified promptly of any Indemnification Claims; (b) Caltech has the sole right to control and defend or settle any litigation within the scope of this indemnity; and (c) all indemnified parties cooperate to the extent necessary in the defense of any Indemnification Claims. The foregoing shall be the sole and exclusive remedy of Licensee for breach of Section 9.1.

9.4 **Indemnification by Licensee.** Licensee shall indemnity, defend and hold harmless Caltech, its trustees, officers, agents and employees from and against any and all losses, damages, costs and expenses (including reasonable attorneys' fees) arising out of third party claims brought against Caltech relating to the manufacture, sale, licensing, distribution or use of Licensed Products by or on behalf of Licensee or its Affiliates ("Third Party Claims"), except to the extent involving or relating to a material breach by Caltech of its representations and warranties, provided that: (a) Licensee is notified promptly of any Third Party Claims; and (b) all indemnified parties cooperate to the extent necessary in the defense of any Third Party Claims.

9.5 **Certain Damages.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR INDIRECT DAMAGES ARISING OUT OF THIS AGREEMENT, HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY.

ARTICLE 10
TERM AND TERMINATION

10.1 **Term.** This Agreement and the rights and licenses hereunder shall take effect on the Effective Date and continue until the expiration, revocation, invalidation, or unenforceability of the Exclusively Licensed Patent Rights and Improvement Patent Rights licensed to Licensee hereunder, or as long as royalties are due pursuant to Article 5 of this Agreement, unless earlier terminated pursuant to the terms of this Agreement. Upon expiration of this Agreement under this Section 10.1, Licensee, its Affiliates and Sublicensees shall have a paid-up, worldwide non-exclusive license under the Technology for use in the Field.

10.2 **Termination for Monetary Breach.** Caltech shall have the right to terminate this Agreement and the rights and licenses hereunder If Licensee fails to make any payment due including patent expenses, minimum annual royalties or royalties hereunder and Licensee continues to fail to make the payment (either to Caltech directly or by placing any disputed amount into an interest-bearing escrow account to be released when the dispute is resolved) for a period of fourteen (14) days after receiving written notice from Caltech specifying Licensee's failure. Upon any such termination, (a) Licensee shall have six (6) months to complete the manufacture of any Licensed Products that are then works in progress for sale and to sell its inventory of Licensed Products, provided that Licensee pays the applicable royalties, and (b) any sublicenses shall survive termination in accordance with Section 2.3.

10.3 **Termination for Non-Monetary Breach.** Non-monetary breach shall include, but is not limited to: (a) failure to fulfill the obligations in Article 7 (Due Diligence), or Section 8.7 (Marking); and (b) pursuit of exploitation of Exclusively Licensed Patent Rights or Improvement Patent Rights outside the field. Non-monetary breach shall include the cessation of Licensee's operations in general, or the cessation of Licensee's commercial activities in the Field in particular. If this Agreement is materially breached by either party, the non-breaching party may elect to give the breaching party written notice describing the alleged breach. If the breaching party has not cured such breach within thirty (30) days after receipt of such notice, the notifying party will be entitled, in addition to any other rights it may have under this Agreement, to terminate this Agreement and the rights and licenses hereunder; such termination shall be deemed to have been effective as of the date of the material breach.

10.4 **Dispute of Breach.** Notwithstanding Sections 10.2 and 10.3, if Licensee disputes any alleged breach in writing within seven (7) days of receiving written notice from Caltech regarding the alleged breach, Caltech shall not have the right to terminate this Agreement unless and until the mediation proceedings as described in Article 12 have concluded, and (a) if the mediation results in the parties settling such dispute, Caltech may terminate this Agreement in accordance with the terms of the settlement if Licensee fails to comply with the terms of such settlement, or (b) if the mediation fails to settle such dispute, Caltech may terminate this Agreement if Licensee fails to cure such breach within thirty (30) days after the conclusion of the mediation proceedings. If the parties agree pursuant to Article 12, whether prior to or following

the conclusion of the mediation proceedings, to settle such dispute by arbitration, Caltech shall not have the right to terminate this Agreement unless and until an arbitrator determines in a written decision delivered to the parties that such breach occurred, and Licensee fails to cure such breach within thirty (30) days after such determination.

10.5 **Bankruptcy or Insolvency.** This Agreement shall terminate, without notice, (a) upon Licensee's filing for bankruptcy, receivership, or bankruptcy proceedings or any other proceedings for the settlement of Licensee's debts; (b) upon Licensee making an assignment for the benefit of creditors; or (c) upon Licensee's dissolution or ceasing to do business. Caltech may terminate this Agreement upon the insolvency of the Licensee. Licensee must inform Caltech of its intention to file a voluntary petition of bankruptcy, or of another's intention to file an involuntary petition of bankruptcy, at least thirty (30) days prior to the filing of such a petition. Licensee's filing without conforming to this requirement shall be deemed a material, pre-petition incurable breach of this Agreement which will cause this Agreement to terminate without notice upon such filing.

10.6 **Accrued Liabilities.** Termination of this Agreement for any reason shall not release any party hereto from any liability which, at the time of such termination, has already accrued to the other party or which is attributable to a period prior to such termination, nor preclude either party from pursuing any rights and remedies it may have hereunder or at law or in equity which accrued or are based upon any event occurring prior to such termination.

10.7 **Survival.** The following shall survive any expiration or termination (in whole or in part) of this Agreement: (a) any provision plainly indicating that it should survive; (b) any royalty due and payable on account of activity prior to the termination; and (c) Sections or Articles 5.10, 9, 11,12,13, and 14.7.

ARTICLE 11
CONFIDENTIALITY

11.1 **Nondisclosure and Nonuse.** Each party agrees not to disclose any of the terms of this Agreement to any third party without the prior written consent of the other party, except to prospective investors, sublicensees and acquirers, and to such party's accountants, attorneys and other professional advisors, or as required by securities or other applicable laws. Except

with respect to the above third parties, each party agrees not to disclose the subject matter of the Exclusively Licensed Patent Rights or Improvement Patent Rights to any third party unless under an appropriate nondisclosure agreement ("NDA") that is mutually agreed upon by Caltech and Licensee.

11.2 **Permitted Disclosures.** Notwithstanding the foregoing, each party may disclose: (a) confidential information as required by securities or other applicable laws or pursuant to governmental proceedings, provided that the disclosing party gives advance written notice to the other party and reasonably cooperates therewith in limiting the disclosure to only those third parties having a need to know; and (b) the fact that Licensee has been granted a license under the Exclusively Licensed Patent Rights and Improvement Patent Rights.

ARTICLE 12
DISPUTE RESOLUTION

12.1 No issue of the validity of any of the licensed patents, enforceability of any of the licensed patents, infringement of any of the licensed patents, the scope of any of the claims of the licensed patents and/or any dispute that includes any such issue, shall be subject to mediation under this Agreement unless otherwise agreed by the Parties in writing. In addition, no dispute between the Parties as to any matter relating to this Agreement shall be subject to arbitration unless otherwise agreed by the Parties in writing.

12.2 Except for those issues and/or disputes described in Section 10.2, any dispute between the Parties concerning the interpretation, construction or application of any terms, covenants or conditions of this Agreement shall be resolved by mediation.

12.3 Mediation shall be in the Los Angeles office of ADR Services, Inc. (http://www.adrservices.org/) before an attorney or a retired judge with experience in intellectual property or patent matters, and contract, commercial or business disputes selected by the Parties from candidates proposed by ADR Services, Inc. in accordance with the ADR Mediation Rules and Procedures in force at the time the mediation is initiated.

12.4 The requirement for mediation shall not be deemed a waiver of any right of termination under this Agreement, subject to the provisions of Section 10.4.

12.5 Each party shall bear its own expenses incurred in connection with any attempt to resolve disputes hereunder, but the compensation and expenses of the mediator shall be borne equally.

ARTICLE 13
PRODUCT LIABILITY

13.1 **Indemnification.** Licensee agrees that Caltech (including its trustees, officers, faculty and employees) shall have no liability to Licensee, its Affiliates, their customers or any third party for any claims, demands, losses, costs, or other damages which may result from personal injury, death, or property damage related to the Licensed Products ("Product Liability Claims"). Licensee agrees to defend, indemnify, and hold harmless Caltech, its trustees, officers, faculty and employees from any such Product Liability Claims, provided that: (a) Licensee is notified promptly of any Product Liability Claims; (b) Licensee has the sole right to control and defend or settle any litigation within the scope of this indemnity; and (c) all indemnified parties cooperate to the extent necessary in the defense of any Claims.

13.2 **Insurance.** Prior to such time as Licensee begins to manufacture, sell, license, distribute or use Licensed Products, Licensee shall at its sole expense procure and maintain policies of comprehensive general liability insurance in amounts not less than one million dollars ($1,000,000.00) per incident and three million dollars ($3,000,000.00) in annual aggregate, and naming those indemnified under Section 13.1 as additional insureds. Such comprehensive general liability insurance shall provide: (a) product liability coverage and (b) broad form contractual liability coverage for Licensee's indemnification of Caltech under Section 13.1. In the event the aforesaid product liability coverage does not provide for occurrence liability, Licensee shall maintain such comprehensive general liability insurance for a reasonable period of not less than five (5) years after it has ceased commercial distribution or use of any Licensed Product. Licensee shall provide Caltech with written evidence of such insurance upon request of Caltech.

13.3 **Loss of Coverage.** Licensee shall provide Caltech with notice at least fifteen (15) days prior to any cancellation, non-renewal or material change in such insurance, to the extent Licensee receives advance notice of such matters from its insurer. If Licensee docs not obtain

replacement insurance providing comparable coverage within sixty (60) days following the date of such cancellation, non-renewal or material change, Caltech shall have the right to terminate this Agreement effective at the end of such sixty (60) day period without any additional waiting period; provided that if Licensee provides credible written evidence that it has used reasonable efforts, but is unable, to obtain the required insurance, Caltech shall not have the right to terminate this Agreement, and Caltech instead shall cooperate with Licensee to either (at Caltech's discretion) grant a limited waiver of Licensee's obligations under this Article or assist Licensee in identifying a carrier to provide such insurance or in developing a program for self-insurance or other alternative measures.

ARTICLE 14
MISCELLANEOUS

14.1 **Notices**. All notices, requests, demands and other communications hereunder shall be in English and shall be given in writing and shall be: (a) personally delivered; (b) sent by telecopier, facsimile transmission or other electronic means of transmitting written documents with confirmation of receipt; or (c) sent to the Parties at their respective addresses indicated herein by registered or certified mail, return receipt requested and postage prepaid, or by private overnight mail courier services with confirmation of receipt. The respective addresses to be used for all such notices, demands or requests are as follows:

(a) If to CALTECH, to:

California Institute of Technology
1200 East California Boulevard
Mail Code 6-32
Pasadena, CA 91125
ATTN: Chief Innovation Officer

Phone No.: (626) 395-3066
Fax No.: (626) 356-2486
Email:

Or to such other person or address as Caltech shall furnish to Licensee in writing.

(b) If to LICENSEE, to:

Calhoun Vision, Inc.
171 N. Altadena Dr. Suite 201
Pasadena, CA 91107
ATTN: Richard Drinkward, CFO

Phone No.:

If personally delivered, such communication shall be deemed delivered upon actual receipt by the "attention" addressee or a person authorized to accept for such addressee; if transmitted by facsimile pursuant to this Section 14.1, such communication shall be deemed delivered the next business day after transmission, provided that sender has a transmission confirmation sheet indicating successful receipt at the receiving facsimile machine; if sent by overnight courier pursuant to this Section 14.1, such communication shall be deemed delivered upon receipt by the "attention" addressee or a person authorized to accept for such addressee; and if sent by mail pursuant to this Section 14.1, such communication shall be deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service. If the Licensee fails or refuses to accept delivery by courier or mail at the address most recently provided under this Section 14.1, communication shall be deemed delivered as of the date of such failure or refusal. Any party to this Agreement may change its address for the purposes of this Agreement by giving notice thereof in accordance with this Section 14.1.

14.2 **Entire Agreement.** This Agreement sets forth the complete agreement of the Parties concerning the subject matter hereof. No claimed oral agreement in respect thereto shall be considered as any part hereof. No amendment or change in any of the terms hereof subsequent to the execution hereof shall have any force or effect unless agreed to in writing by duly authorized representatives of the Parties.

14.3 **Waiver.** No waiver of any provision of this Agreement shall be effective unless in writing. No waiver shall be deemed to be, or shall constitute, a waiver of a breach of any other provision of this Agreement, whether or not similar, nor shall such waiver constitute a continuing waiver of such breach unless otherwise expressly provided in such waiver.

14.4 **Severability.** Each provision contained in this Agreement is declared to

constitute a separate and distinct covenant and provision and to be severable from all other separate, distinct covenants and provisions. It is agreed that should any clause, condition or term, or any part thereof, contained in this Agreement be unenforceable or prohibited by law or by any present or future legislation then: (a) such clause, condition, term or part thereof, shall be amended, and is hereby amended, so as to be in compliance with the legislation or law; but (b) if such clause, condition or term, or part thereof, cannot be amended so as to be in compliance with the legislation or law, then such clause, condition, term or part thereof shall be severed from this Agreement and all the rest of the clauses, terms and conditions or parts thereof contained in this Agreement shall remain unimpaired.

14.5 **Construction.** The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof. Unless expressly noted, the term "include" (including all variations thereof) shall be construed as merely exemplary rather than as a term of limitation.

14.6 **Counterparts/Facsimiles.** This Agreement may be executed in one or more counterparts, all of which taken together shall be deemed one original. Facsimile and scanned signatures shall be deemed original.

14.7 **Governing Law.** This Agreement, the legal relations between the Parties and any action, whether contractual or non-contractual, instituted by any party with respect to matters arising under or growing out of or in connection with or in respect of this Agreement shall be governed by and construed in accordance with the internal laws of the State of California, excluding any conflict of law or choice of law rules that may direct the application of the laws of another jurisdiction, and be brought in the state or federal courts in Los Angeles, California.

14.8 **No Endorsement.** Licensee agrees that it shall not make any form of representation or statement which would constitute an express or implied endorsement by Caltech or the Jet Propulsion Laboratory (JPL) of any Licensed Product, and that it shall not authorize others to do so, without first having obtained written approval from Caltech, except as may be required by governmental law, rule or regulation.

14.9 **Export Regulations**. This Agreement is subject in all respects to the laws and regulations of the United States of America, including the Export Administration Act of 1979, as

amended, and any regulations thereunder, Licensee, its Affiliates, or its Sublicenses will not in any form export, re-export, resell, ship, divert, or cause to be exported, re-exported, resold, shipped, or diverted, directly or indirectly, any product or technical data or software of the other party, or the direct product of such technical data or software, to any country for which the United States Government or any agency thereof requires an export license or other governmental approval without first obtaining such license or approval.

14.10 **Force Majeure.** Neither party shall lose any rights hereunder or be liable to the other party for damages or losses (except for payment obligations) on account of failure of performance by the defaulting party if the failure is occasioned by war, strike, fire, Act of God, earthquake, flood, lockout, embargo, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control and not caused by the negligence or intentional conduct or misconduct of the nonperforming party, and such party has exerted all reasonable efforts to avoid or remedy such force majeure; provided, however, that in no event shall a party be required to settle any labor dispute or disturbance.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed:

Date: 7/28/15

CALIFORNIA INSTITUTE OF TECHNOLOGY (Caltech)

By: /s/ Case Cortese
Name: Case Cortese, PhD
Title: Associate Director

Date: July 27, 2015

CALHOUN VISION, INC (Licensee)

By: /s/ Richard B. Drinkward
Name: Richard B. Drinkward
Title: CFO

Exhibit A

Exclusively Licensed Patent Rights

CIT #	Serial No.	Filing Date	Title and Inventors
5409	13/177,483	07/06/2011	On-Demand Photoinitiated Polymerization Andrew J. Boydston; Robert H. Grubbs; Nebojsa Momcilovic; Christopher Scot Daeffler
5409-D	14/071,947	11/05/2013	On-Demand Photoinitiated Polymerization Andrew J. Boydston; Robert H. Grubbs; Christopher Scot Daeffler; Nebojsa Momcilovic
5409-EPO	11804307.4	07/06/2011	On-Demand Photoinitiated Polymerization Andrew J. Boydston; Robert H. Grubbs; Christopher Scot Daeffler; Nebojsa Momcilovic
5409-P	61/223,314	07/06/2009	On-Demand Photoinitiated Polymerization Andrew J. Boydston; Robert H. Grubbs
5409-P2	61/362,249	07/07/2010	On-Demand Photoinitiated Polymerization Andrew J. Boydston; Robert H. Grubbs
5409-PCT	PCT/US2011/043097	07/06/2011	On-Demand Photoinitiated Polymerization Andrew J. Boydston; Robert H. Grubbs; Nebojsa Momcilovic
6472	14/636,329	03/03/2015	Light-Triggered Shape-Changeable Hydrogels And Their Use in Optical Devices. Robert H. Grubbs
6472-P	61/776,476	03/11/2013	Light-Triggered Shape-Changeable Hydrogels And Their Use in Optical Devices. Robert H. Grubbs
6472-P2	61/952,280	03/13/2014	Light-Triggered Shape-Changeable Hydrogels And Their Use in Optical Devices. Robert H. Grubbs
6472-PCT	PCT/US2015/018406	03/03/2015	Light-Triggered Shape-Changeable Hydrogels And Their Use in Optical Devices. Robert H. Grubbs
7186-P	62/161,415	05/14/2015	Light Adjustable Intraocular Lens using Upconverting Nanoparticles and Near IR Light Robert H. Grubbs; Shane L. Mangold
7226-P	62/184,128	06/24/2015	An Aqueous Gel Whose Shape Can Be Changed with Long Wavelength (>800nm) Light. Robert H. Grubbs

Exhibit B

Technology

Name	Description

Exhibit 10.7

[***] = Certain information contained in this document, marked by brackets, has been omitted because it is both not material and would be competitively harmful if publicly disclosed.

EXCLUSIVE LICENSE AGREEMENT

between

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

and

CALHOUN VISION, INC.

for

SILICONE INTRAOCULAR LENSES EMBEDDED WITH PHOTOSENSITIVE COMPOSITIONS (SF99-076)

and

METHODS AND PHARMACEUTICAL COMPOSITIONS FOR THE CLOSURE OF RETINAL BREAKS (SF99-026)

EXCLUSIVE LICENSE AGREEMENT

for

SILICONE INTRAOCULAR LENSES EMBEDDED WITH PHOTOSENSITIVE COMPOSITIONS (SF99-076)

and

METHODS AND PHARMACEUTICAL COMPOSITIONS FOR THE CLOSURE OF RETINAL BREAKS (SF99-026)

This license agreement (the "Agreement") is made effective March 1, 2000 (the "Effective Date") between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation having its statewide administrative offices at 1111 Franklin Street, Oakland, California 94607-5200, ("The Regents"), and acting through its Office of Technology Management, University of California San Francisco, 1294 Ninth Avenue - Suite 1, Box 1209, San Francisco, CA 94143-1209 ("UCSF"), and CALHOUN VISION INC., a California corporation having a principal place of business at [***], (the "Licensee").

BACKGROUND

A. Certain research performed at The University of California San Francisco ("UCSF") and at the California Institute of Technology ("Caltech") resulted in the development of two inventions owned jointly by UCSF and CalTech, disclosed in (i) UCSF Case No. SF99-076 and Caltech No. CIT 2923, entitled "Silicone Intraocular Lenses Embedded with Photosensitive Compositions", with Jagdish M. Jethmalani, Daniel M. Schwartz, Julia Kornfield, Robert H. Grubbs, and Christian Sandstedt as inventors, which invention was also the subject of nonprovisional U.S. Application 09/415,909 entitled "Lenses Capable of Post-Fabrication Power Modification," and (ii) UCSF Case No. SF99-026 and Caltech No. CIT 3062, entitled

"Biodegradable Polymers for Closure of Retinal Breaks and Prevention of Proliferative Vitreoretinopathy" which invention was also the subject of nonprovisional U.S. Application 09/181,041 entitled "Methods and Pharmaceutical Compositions for the Closure Of Retinal Breaks," with Daniel M. Schwartz, Jeffrey Hubbell and Alexander Irvine as inventors (together, (i) and (ii) are the "Inventions"), which are the subject of an interinstitutional agreement between The Regents and Caltech wherein The Regents and Caltech agreed that The Regents will have the sole right to license patent rights in the Inventions. Certain aspects of the Inventions were made in the course of research at Caltech and Caltech has granted exclusively to The Regents the sole right to administer and commercialize Caltech's rights, title and interest in UCSF Case Nos. SF99-026 and SF99-076 (the "Interinstitutional Agreement").

B. The Inventions are covered by Regents' Patent Rights (as defined in this Agreement) and were developed by Daniel M. Schwartz and Alexander Irvine at UCSF and by Jagdish M. Jethmalani, Julia Kornfield, Robert H. Grubbs, Christian Sandstedt and Jeffrey Hubbell at Caltech (the "Inventors").

C. The Licensee and The Regents have executed a Letter of Intent (U.C. Control No. 98-30-0021) dated December 1, 1997 and subsequently amended on November 11, 1998 to include the inventions disclosed in SF99-026 and on June 18, 1999 to include SF99-076 for the purpose of negotiating a license to Regents' Patent Rights;

D. The Licensee wishes to obtain rights from The Regents for the commercial development, use, and sale of products from the Inventions, and The Regents is willing to grant those rights so that the Inventions may be developed to their fullest and the benefits enjoyed by the general public; and

E. The Licensee is a small business "concern" as defined in 15 U.S.C. §632;

F. Licensee recognizes and agrees that royalties due under this Agreement will be paid on both pending patent applications and issued patents;

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In view of the foregoing, the parties agree:

1. DEFINITIONS

1.1 "Affiliate" means any corporation or other business entity in which the Licensee owns or controls, directly or indirectly, at least fifty percent (50%) of the outstanding stock or other voting rights entitled to elect directors, or in which the Licensee is owned or controlled directly or indirectly by at least fifty percent (50%) of the outstanding stock or other voting rights entitled to elect directors; but in any country where the local law does not permit foreign equity participation of at least fifty percent (50%), then an "Affiliate" includes any company in which the Licensee owns or controls or is owned or controlled by, directly or indirectly, the maximum percentage of outstanding stock or voting rights permitted by local law.

1.2 "Field of Use" means the research, development, and commercialization of products for all commercial applications.

1.3 "Licensed Product" means any material that is covered by Regents' Patent Rights, that is produced by the Licensed Method, or that the use of which would constitute, but for the license granted to the Licensee under this Agreement, an infringement of any pending or issued claim within Regents' Patent Rights.

1.4 "Licensed Method" means any method that is covered by Regents' Patent Rights, the use of which would constitute, but for the license granted to the Licensee under this Agreement, an infringement of any pending or issued claim within Regents' Patent Rights.

1.5 "Net Sales" means the total of the gross invoice prices (subject to Section 4.1) of Licensed Products sold or Licensed Methods performed by the Licensee, an Affiliate, or a sublicensee, less the sum of the following actual and customary deductions where applicable: cash, trade, or quantity discounts; sales, use, tariff, import/export duties or other excise taxes imposed on particular sales; costs of insurance, packing and transportation from place of manufacture to the point of delivery; and credits to customers because of rejections or returns. For purposes of calculating Net Sales, transfers to an Affiliate or sublicensee for end use by the Affiliate or sublicensee will be treated as sales at list price; provided that transfers to Affiliates or sublicensees for use in clinical development of Licensed Products or Licensed Methods shall not be included in the calculation of Net Sales.

1.6 “Regents’ Patent Rights” means all right, title and interest of The Regents in, to and under: a) the provisional patent applications entitled “Silicone Intraocular Lenses Embedded with Photosensitive Compositions” filed on January 12, 1999 (Serial No. 60/115,617), May 5, 1999 (Serial No. 60/132,871), and June 17, 1999, b) the corresponding nonprovisional U.S. Application 09/415,909 entitled “Lenses Capable of Post-Fabrication Power Modification,” and c) the patent application entitled “Methods and Pharmaceutical Compositions for the Closure of Retinal Breaks” (Serial No. 09/181,041) filed on October 27, 1998, and d) any divisionals, continuations, or continuations-in-part (but only to the extent such continuations-in-part have inventors from both institutions and to the extent they are enabled by the parent case) thereof; any corresponding foreign applications thereof; and any U.S. or foreign patents issued thereon or reissues or extensions thereof.

1.7 “Valid Claim” means a claim of an issued and unexpired patent, or of a patent application, which claim (i) is included in the Regents’ Patent Rights, (ii) has not lapsed, been canceled, or become abandoned, (iii) has not been declared invalid by a court of competent jurisdiction, (iv) has not been admitted to be invalid or unenforceable through reissue or disclaimer; and (v) in the case of patent applications, has not been pending for more than six (6) years.

2. LIFE OF PATENT EXCLUSIVE GRANT

2.1 Subject to the limitations set forth in this Agreement, The Regents grants to the Licensee a world-wide license under Regents’ Patent Rights to make, have made, use, sell, offer to sell and import Licensed Products and to practice Licensed Methods.

2.2 Except as otherwise provided in this Agreement, the license granted in Paragraph 2.1 is exclusive for the life of the Agreement.

2.3 The license granted in Paragraphs 2.1 and 2.2 is limited to Licensed Methods and Licensed Products that are within the Field of Use. For other methods and products, the Licensee has no license under this Agreement.

2.4 The Regents and Caltech reserve the right to use the Inventions and associated technology for their own educational and research purposes.

3. SUBLICENSES

3.1 The Regents also grants to the Licensee the right to issue sublicenses to third parties to make, have made, use, sell, offer to sell and import Licensed Products and to practice Licensed Methods, as long as the Licensee has current exclusive rights thereto under this Agreement; provided that any sublicense granted prior to conversion of Licensee's license to a nonexclusive license shall continue in effect on a nonexclusive basis during the term of this Agreement. To the extent applicable, sublicenses must include, at a minimum, all of the rights of and obligations due to The Regents (and, if applicable, the United States Government) contained in this Agreement, to the extent applicable to the sublicensee. In addition, Licensee shall pay to The Regents a percentage of all compensation received by Licensee from sublicensees other than royalties on sales of Licensed Products in consideration for the grant of a sublicense under the Regents' Patent Rights, as set forth in the following table, not to exceed a total of [***] in the aggregate ("Sublicense Revenue"):

Portion of Aggregate Sublicense Revenue Received by Licensee	*Percentage of Such Portion Due to The Regents*
[***]	[***]
[***]	[***]
[***]	[***]

Sublicense revenue payments shall be due upon amounts received in the form of upfront fees and milestone payments, but shall not be due upon any amounts received as support for research and development activities, as a loan, for the purchase of an equity interest in the Licensee, as reimbursement for patent costs, as earned royalties on net sales, or as consideration for the grant of intellectual property rights and materials other than those claimed under Regents' Patent Rights. Licensee may offset any payments made to The Regents pursuant to Section 7.3 against sublicense revenue payments due under this Section 3.1 for the same event.

3.2 The Licensee shall promptly provide The Regents with a copy of each sublicense issued, redacted to exclude confidential information not reasonably necessary for The Regents to evaluate whether the sublicense conforms to the requirements of this Agreement; shall use

commercially reasonable efforts to collect payment of all payments due The Regents from sublicensees; and shall summarize and deliver all reports due The Regents from sublicensees.

3.3 Upon termination of this Agreement for any reason, The Regents, at its sole discretion, shall determine whether the Licensee shall cancel or assign to The Regents any and all sublicenses, provided, however, that prior to terminating any sublicense The Regents shall, upon request, discuss with the sublicensee the terms under which such sublicensee may retain such sublicense.

4. PAYMENT TERMS

4.1 Paragraphs 1.1, 1.2, and 1.3 define Regents' Patent Rights, Licensed Products and Licensed Methods so that royalties are payable on products and methods covered by claims of both pending patent applications and issued patents. Royalties will accrue in each country for the duration of Valid Claims included in the Regents' Patent Rights in that country and are payable to The Regents when Licensed Products are invoiced, or if not invoiced, when delivered to a third party end user.

4.2 Licensee shall pay earned royalties quarterly on or before February 28, May 31, August 31 and November 30 of each calendar year. Each payment will be for earned royalties accrued within the Licensee's most recently completed calendar quarter of sales.

4.3 All monies due The Regents are payable in United States dollars. When Licensed Products are sold for monies other than United States dollars, the Licensee shall first determine the earned royalty in the currency of the country in which Licensed Products were sold and then convert the amount into equivalent United States funds, using the exchange rate quoted in the Wall Street Journal on the last business day of the reporting period.

4.4 Licensee shall promptly pay for and on behalf of the Regents to the appropriate governmental authority any tax for the account of the Regents and any transfer charges, fees or other charges incurred in connection therewith required to be withheld by Licensee under the laws of any foreign country, and shall deduct such amounts from payments due to The Regents hereunder. Licensee shall make reasonable efforts to furnish The Regents with proof of such payment.

4.5 If at any time legal restrictions prevent the prompt remittance of royalties by the Licensee from any country where a Licensed Product is sold, the Licensee shall deposit the amount owed in an interest-bearing account within that country until such time as the restrictions are lifted, at which time the Licensee shall promptly convert the amount then on deposit in said account into United States funds and pay such amount to The Regents.

4.6 If any Valid Claim is held invalid in a final decision by a court of competent jurisdiction and last resort and from which no appeal has or can be taken, all obligation to pay royalties based on that Valid Claim or any other Valid Claim patentably indistinct therefrom will cease as of the date of final decision. The Licensee will not, however, be relieved from paying any royalties that accrued before the final decision or that are based on a Valid Claim not involved in the final decision.

4.7 No royalties shall be due to The Regents from Licensee, its Affiliates or sublicensees on Licensed Products sold to the account of the U.S. Government, any agency thereof, state or domestic municipal government as provided for in the License to the Government.

4.8 If payments, rebillings or fees are not received by The Regents when due, the Licensee shall pay to The Regents interest charges on the above at a rate of the lower of two percent (2%) over the then current prime interest rate (as quoted in the Wall Street Journal on the last day of the quarter) per annum or ten percent (10%) per annum. Interest is calculated from the date due until actually received by The Regents.

4.9 Caltech and The Regents have separately agreed upon a mechanism by which they will share all payments made by Licensee hereunder, and Licensee shall not be obligated to make any payments directly to Caltech due to its practice of rights under this Agreement.

5. LICENSE-ISSUE FEE

5.1 The Licensee shall pay to The Regents a license-issue fee of [***] payable in two installments of [***]. Such installments shall be paid within thirty (30) days after the Effective Date of this Agreement and within thirty (30) days after the first anniversary of the Effective Date. This fee is non-refundable, non-cancelable, and is not an advance against royalties.

6. LICENSE MAINTENANCE FEE

6.1 The Licensee shall also pay to The Regents a royalty in the form of an annual license maintenance fee of [***] commencing upon the second anniversary of the Effective Date and continuing annually on each anniversary of the Effective Date. The maintenance fee is not due on any anniversary of this Agreement if on that date the Licensee is commercially selling a Licensed Product and paying an earned royalty to The Regents on the sales of that Licensed Product. License maintenance fees are non-refundable and not an advance against earned royalties, except that in the year of commercial launch of a Licensed Product or Licensed Method, the license maintenance fee shall be creditable against earned royalties or the minimum annual royalty for such year.

7. EARNED ROYALTIES, MINIMUM ANNUAL ROYALTIES AND MILESTONES

7.1 The Licensee shall also pay to The Regents an earned royalty of [***] of the Net Sales by Licensee, its Affiliates and sublicensees of Licensed Products or Licensed Methods covered by a Valid Claim under Regents' Patent Rights. If Licensee owes to one or more third parties earned royalties or similar payments on sales of Licensed Products by Licensee, its Affiliates or sublicensees, Licensee may offset [***] of all such payments made to such third party(ies) against earned royalties due to The Regents on sales of Licensed Products, provided that in no event shall the earned royalties due to The Regents be reduced by operation of such offsets by more than [***].

7.2 The Licensee shall pay to The Regents a minimum annual royalty of [***] for the life of Regents' Patent Rights, beginning with the year of the first commercial sale of Licensed Product. For the first year of commercial sales, the Licensee's obligation to pay the minimum annual royalty will be pro-rated for the number of months remaining in that calendar year when commercial sales commence and will be due the following February 28, to allow for crediting against the earned royalties for such year or crediting of the earned royalties for such year against such minimum annual royalty, as applicable. For subsequent years, the minimum annual royalty will be paid to The Regents by February 28 of

each year and will be credited against the earned royalty due for the calendar year in which the minimum payment was made.

7.3 Licensee shall pay The Regents the following amounts within thirty (30) days after achievement of the specified event for Licensed Products by Licensee, its Affiliates or sublicensees;

Filing of an Investigational Device Exemption with the FDA for a trial involving more than 20 persons, or other equivalent applications filed with governmental authorities to enable start of clinical trials in a country	[***]
First use in a Patient as part of a Phase II Clinical Trial	[***]
First use in a Patient as part of a Phase III Clinical Trial	[***]
Approval by the FDA of a Pre-Marketing Approval Application (or equivalent application with the FDA)	[***]

8. DUE DILIGENCE

8.1 The Licensee, on execution of this Agreement, shall diligently proceed with the development, manufacture and sale of Licensed Products and shall diligently endeavor to market the same within a reasonable time after execution of this Agreement in quantities sufficient to meet market demands.

8.2 The Licensee shall endeavor to obtain all necessary governmental approvals for the manufacture, use and sale of Licensed Products in countries in which Licensee reasonably determines to develop and market Licensed Products.

8.3 The Licensee shall:

8.3.1 commence proof-of-concept studies in an animal model by the third anniversary of the Effective Date;

8.3.2 submit an Investigational Device Exemption for a Licensed Product with the United States Food and Drug Administration by the sixth anniversary of the Effective Date;

8.3.3 market the Licensed Product by within six (6) months of the date a Pre-Marketing Approval application is approved for such Licensed Products

and achieve first commercial sale of a Licensed Product in the United States by the twelfth anniversary of the Effective Date; and

8.3.4 use commercially reasonable efforts to fill the market demand for Licensed Products following commencement of marketing at any time during the exclusive period of this Agreement.

8.4 If the Licensee is unable to perform any of the provisions of Section 8.3 for a reason relating to unforeseen safety or technical problems arising during the term of this Agreement, the foregoing target dates shall be extended by mutual consent for a reasonable period reflecting any additional development work necessary to address such problem;

8.5 If the Licensee does not perform any of its obligations under Section 8.3 for any reason other than those relating to unforeseen safety or technical problems or other events outside the control of Licensee arising during the term of this Agreement, the Regents shall have the right and option to convert Licensee's exclusive license to a nonexclusive license, provided that it has first conferred with the Licensee to develop a plan under which Licensee may cure such failure. If Licensee has failed to perform under such plan to cure nonperformance, The Regents may convert the Licensee's exclusive license to a non-exclusive license. If Licensee does not cure such failure to perform its obligations under Section 8.3 diligently within one hundred eighty (180) days following conversion by The Regents of Licensee's exclusive license to a nonexclusive license, then The Regents may thereafter terminate this Agreement. This right, if exercised by The Regents, supersedes the rights granted in Article 2 (GRANT).

9. PROGRESS AND ROYALTY REPORTS

9.1 Beginning August 31, 2000 and semi-annually thereafter, file Licensee shall submit to The Regents a progress report covering the Licensee's (and any Affiliate's or sublicensee's) activities related to the development and testing of all Licensed Products and the obtaining of the governmental approvals necessary for marketing. Progress reports are required for each Licensed Product until the first commercial sale of that Licensed Product occurs in the United States and shall be again required if commercial sales of such Licensed Product are suspended or discontinued.

9.2 Progress Reports are Licensee's confidential information. The Regents shall not disclose to third parties any such information or use such information for any reason other than to determine Licensee's compliance with this Article 9, unless such information is already in the public domain through no fault of the Regents.

9.3 Progress Reports submitted under Paragraph 9.1 shall include, but are not limited to, the following topics with respect to Licensed Products:

- summary of work completed
- summary of work in progress
- current schedule of anticipated events or milestones,
- anticipated commercial launch dates for introduction of Licensed Products, and

9.4 The Licensee has a continuing responsibility to keep The Regents informed of the large/small business entity status (as defined by the United States Patent and Trademark Office) of itself and its sublicensees and Affiliates.

9.5 The Licensee shall report to The Regents the date of first commercial sale of a Licensed Product in each country in its immediately subsequent progress and royalty report.

9.6 After the first commercial sale of a Licensed Product anywhere in the world, the Licensee shall make quarterly royalty reports to The Regents on or before each February 28, May 31, August 31 and November 30 of each year. Each royalty report will cover the Licensee's most recently completed calendar quarter and will show (a) the gross sales and Net Sales of Licensed Products sold during the most recently completed calendar quarter; (b) the number of each type of Licensed Product sold; (c) the royalties, in U.S. dollars, payable with respect to sales of Licensed Products; (d) the method used to calculate the royalty; and (e) the exchange rates used.

9.7 If no sales of Licensed Products have been made during any reporting period following commercial launch of a Licensed Product, a statement to this effect is required.

10. BOOKS AND RECORDS

10.1 The Licensee shall keep accurate books and records showing all Licensed Products manufactured, used, and/or sold under the terms of this Agreement. Books and records must be preserved for at least five (5) years from the date of the royalty payment to which they pertain.

10.2 Books and records must be open to inspection by an independent auditor reasonably acceptable to Licensee at reasonable times, but no more often than once per calendar year. The Regents shall bear the fees and expenses of such inspection but if an error in payment of royalties is detected indicating an underpayment of more than [***] of the total royalties due for any year in any examination, then the Licensee shall bear the fees and expenses of that examination.

11. LIFE OF THE AGREEMENT

11.1 Unless otherwise terminated by operation of law or by acts of the parties in accordance with the terms of this Agreement, this Agreement will be in force from the Effective Date until the later of: (i) the expiration of the last-to-expire patent included in The Regents' Patent Rights licensed under this Agreement containing a Valid Claim; or (ii) fifteen (15) years after the first commercial sale of Licensed Products, subject to renewal by written mutual consent of the parties.

11.2 Any termination of this Agreement will not affect the rights and obligations set forth in the following Articles:

Article 10	Books and Records
Article 14	Disposition of Licensed Products on Hand on Termination
Article 15	Use of Names and Trademarks
Article 20	Indemnification
Article 28	Secrecy

12. TERMINATION BY THE REGENTS

12.1 If the Licensee materially fails to perform or violates any material term of this Agreement, then The Regents may give written notice of default (a "Notice of Default") to the Licensee. If the Licensee fails to cure the default within sixty (60) days of the effective date of the Notice of Default, The Regents may terminate this Agreement and all licenses granted

hereunder by a second written notice (a "Notice of Termination"). If a Notice of Termination is sent to the Licensee, this Agreement will automatically terminate on the date Licensee receives the Notice of Termination or such later date as the Notice of Termination may specify. Termination will not relieve the Licensee of its obligation to pay any fees owing at the time of termination and will not impair any accrued right of The Regents. Any notices to be provided hereunder are subject to Article 21 (Notices).

13. TERMINATION BY LICENSEE

13.1 The Licensee has the right at any time to terminate this Agreement at will in whole or as to any portion of Regents' Patent Rights by giving notice in writing to The Regents. Any notice of termination provided hereunder will be subject to Article 21 (Notices). The termination by Licensee of this Agreement will be effective sixty (60) days from The Regents' receipt of such notice from Licensee hereunder.

13.2 Any termination under the above paragraph does not relieve the Licensee of any obligation or liability accrued under this Agreement prior to termination or rescind any payment made to The Regents prior to the effective date of such termination. Any termination under this Article 13 does not affect in any manner any rights of The Regents arising under this Agreement prior to termination.

14. DISPOSITION OF LICENSED PRODUCTS ON HAND UPON TERMINATION

14.1 Upon termination of this Agreement the Licensee is entitled to dispose of all Licensed Products previously made or partially made existing at such time within a period of one hundred and twenty (120) days after such termination, provided that the sale of those Licensed Products is subject to the terms of this Agreement, including but not limited to the rendering of reports and payment of royalties required under this Agreement.

15. USE OF NAMES AND TRADEMARKS

15.1 Nothing contained in this Agreement confers any right to use in advertising, publicity, or other promotional activities any name, trade name, trademark, or other designation of either party hereto (including any contraction or abbreviation of any of the foregoing). Unless

required by law, the use by the Licensee of the name “The Regents of the University of California” or the name of any campus of the University of California is prohibited without The Regents’ prior written consent.

16. LIMITED WARRANTY

16.1 The Regents warrants to the Licensee that it has the lawful right to grant the license granted to Licensee pursuant to Article 3, and the power to enter into and perform under this Agreement.

16.2 The license granted to Licensee hereunder and the associated Inventions are provided WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. THE REGENTS MAKES NO REPRESENTATION OR WARRANTY THAT THE LICENSED PRODUCTS OR LICENSED METHODS WILL NOT INFRINGE ANY PATENT OR OTHER PROPRIETARY RIGHT OF A THIRD PARTY.

16.3 IN NO EVENT MAY EITHER PARTY OR CALTECH BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM THE GRANT OR EXERCISE OF THIS LICENSE OR THE USE OF THE INVENTIONS OR LICENSED PRODUCTS.

16.4 This Agreement does not:

16.4.1 express or imply a warranty or representation as to the validity or scope of any of Regents’ Patent Rights;

16.4.2 express or imply a warranty or representation that anything made, used, sold, offered for sale or imported or otherwise disposed of under any license granted in this Agreement is or will be free from infringement of patents of third parties;

16.4.3 obligate The Regents to bring or prosecute actions or suits against third parties for patent infringement except as provided in Article 19;

16.4.4 confer by implication, estoppel or otherwise any license or rights under any patents of The Regents other than Regents’ Patent Rights as defined

in this Agreement, regardless of whether those patents are dominant or subordinate to Regent's Patent Rights; or

16.4.5 obligate The Regents to furnish any know-how not provided in Regents' Patent Rights.

17. PATENT PROSECUTION AND MAINTENANCE

17.1 As long as the Licensee continues to pay patent costs as provided for in this Article, The Regents shall prosecute and maintain the United States and foreign patents comprising Regents' Patent Rights using counsel of its choice that is reasonably acceptable to Licensee. The Regents shall provide the Licensee with copies of all documentation relating to The Regents' Patent Rights so that the Licensee shall be informed of the continuing prosecution reasonably in advance of any date of anticipated submission so the Licensee may review and comment on such correspondence. The Licensee agrees to keep this documentation confidential. The Regents will inform the Licensee of upcoming deadlines and dates to file patent applications or other documents in the United States and foreign countries reasonably in advance of any relevant deadlines. The Regents' counsel will take instructions only from The Regents, and all patents and patent applications under this Agreement will be assigned solely to The Regents.

17.2 The Regents shall use all reasonable efforts to amend any patent application within the Regents' Patent Rights to include claims or modifications of the specifications reasonably requested by the Licensee.

17.3 The Licensee shall apply for an extension of the term of any patent included within Regents' Patent Rights if appropriate under the Drug Price Competition and Patent Term Restoration Act of 1984 and/or European, Japanese and other foreign counterparts of this law. The Licensee shall prepare all documents necessary to apply for such extension with the cooperation of The Regents' patent counsel. The Regents shall execute such documents and take additional action as the Licensee reasonably requests in connection therewith.

17.4 If either party receives notice under the Drug Price Competition and Patent Term Restoration Act of 1984 (and/or foreign counterparts of this law) pertaining to infringement or potential infringement of any claim in an issued patent included within Regents' Patent Rights,

that party shall notify the other party within ten (10) days after receipt of notice of infringement.

17.5 The Licensee shall bear the costs of preparing, filing, prosecuting and maintaining all United States and foreign patent applications included in The Regents' Patent Rights. Costs incurred by The Regents in connection therewith will be rebilled to the Licensee which shall pay such amounts within thirty (30) days of receipt of an invoice therefor by Licensee. These costs include patent prosecution costs for the Inventions incurred by The Regents prior to the execution of this Agreement and any patent prosecution costs that may be reasonably incurred for conducting or providing patentability opinions, re-examinations, re-issues, interferences, or inventorship determinations. Prior to the Effective Date, Licensee has paid to the Regents approximately [***] for patent prosecution costs.

17.6 The Licensee may request The Regents to obtain patent protection on the Inventions in foreign countries if available. The Licensee shall notify The Regents of its decision to obtain or maintain foreign patents not less than sixty (60) days prior to the deadline for any payment, filing, or action to be taken in connection therewith. If, however, Licensee received notice of the deadline from The Regents later than sixty (60) days before the deadline, the Licensee shall notify the Regents of its decision to obtain or maintain foreign patents within a reasonable time after receiving notice of the deadline from the Regents. Licensee's requests concerning foreign filings must be in writing and must identify the countries in which Licensee desires such filings to be made. The absence of such a notice from the Licensee to The Regents will be considered an election not to obtain or maintain foreign rights, unless The Regents has failed to give notice of the impending deadline pursuant to Section 17.1.

17.7 The Licensee's obligation to pay patent prosecution costs for The Regents' Patent Rights will continue for so long as this Agreement remains in effect, but the Licensee may terminate its obligations with respect to any given patent application or patent included in the Regents' Patent Rights upon three (3) months written notice to The Regents. The Regents will use its best efforts to curtail patent costs when a notice of termination is received from the Licensee. At its sole discretion and expense, The Regents may prosecute and maintain any

application(s) or patent(s) for which Licensee has terminated its payment obligations. The Licensee will have no further right or licenses under such applications and patents.

17.8 The Regents may file, prosecute or maintain patent applications at its own expense in any country in which the Licensee has not elected to file, prosecute, or maintain patent applications in accordance with this Article, and those applications and resultant patents in such countries will not be subject to this Agreement.

18. PATENT MARKING

18.1 The Licensee shall mark all Licensed Products made, used or sold under the terms of this Agreement, or their containers, in accordance with the applicable patent marking laws.

19. PATENT INFRINGEMENT

19.1 If the Licensee learns of the substantial infringement of any patent licensed under this Agreement, the Licensee shall call The Regents' attention thereto in writing and provide The Regents with reasonable evidence of infringement of which Licensee is aware. Neither party will notify a third party of the infringement of any of Regents' Patent Rights without first obtaining consent of the other party, which consent will not be unreasonably denied. Both parties shall use commercially reasonable efforts in cooperation with each other to terminate infringement without litigation.

19.2 The Licensee may request that The Regents take legal action against the infringement of Regents' Patent Rights. Such request must be in writing and must include reasonable evidence of infringement and damages to the Licensee. If the infringing activity has not abated within ninety (90) days following the effective date of a request by Licensee, The Regents then has the right to commence suit on its own account; or refuse to participate in the suit. The Regents shall give notice of its election hereunder in writing to the Licensee by the end of the one-hundredth (100th) day after receiving notice of written request from the Licensee. The Licensee may thereafter bring suit for patent infringement, at its own expense, if The Regents elects not to commence suit and if the infringement occurred during the period and in a jurisdiction where the Licensee had exclusive rights under this Agreement.

19.3 Any legal action brought pursuant to this Article 19 will be at the expense of the party bringing suit but legal action brought jointly by The Regents and the Licensee will be at the joint expense of the parties and all recoveries will be shared jointly by them in proportion to the share of expense paid by each party. If a party solely brings an action against a third party for alleged infringement of The Regents' Patent Rights, any damages recovered in such suit shall be applied first toward any unreimbursed expenses and legal fees of the parties related thereto, with any balance being allocated between the parties in accordance with their relative interests in the infringed patents in The Regents Patent Rights such that if such damages are awarded for lost profits on sales of Licensed Products in the Field of Use, then the balance shall be retained by Licensee, subject to the payment of a royalty thereon to The Regents that would be due if such balance were Net Sales of Licensed Products in the Field of Use, but if such damages are awarded for lost profits on sales of products other than Licensed Products in the Field of Use, then The Regents shall retain such balance.

19.4 Each party shall cooperate with the other in litigation proceedings instituted hereunder but at the expense of the party bringing suit. Litigation will be controlled by the party bringing the suit, except that either party may be represented by counsel of its choice, at its expense, in any suit brought by the other party.

20. INDEMNIFICATION

20.1 The Licensee shall indemnify, hold harmless and defend The Regents, its officers, employees, and agents; the sponsors of the research that led to the Inventions; and the inventors of the patents and patent applications in Regents' Patent Rights and their employers (collectively, the "Regents' Indemnitees") against any and all third party claims, suits, losses, liabilities, damages, costs, fees, and expenses resulting from or arising out of exercise of this license or any sublicense by Licensee, its Affiliates, and its sublicensees, unless such claims, suits, losses, liabilities, damages, costs, fees and expenses result from neglect and/or willful acts by The Regents' Indemnitees. This indemnification includes, but is not limited to, any third party claims of product liability relating to Licensed Products, and is subject to the Regents' giving prompt notice of such claim to Licensee and cooperation in any such action.

20.2 The Licensee, at its sole cost and expense, shall insure its activities in connection with the work under this Agreement and obtain, keep in force and maintain insurance as follows, or an equivalent program of self insurance;

20.3 Comprehensive or commercial form general liability insurance (contractual liability included) with limits as follows:

(a) prior to commencement of human clinical testing: Each Occurrence $1,000,000; and

(b) upon commencement of human clinical testing:- Products/Completed Operations Aggregate $5,000,000;- Personal and Advertising Injury $1,000,000; and General Aggregate (commercial form only) $5,000,000.

The coverage and limits referred to under the above do not in any way limit the liability of the Licensee under Section 20.1. The Licensee shall furnish The Regents with certificates of insurance showing compliance with all requirements. Certificates must:

(a) Provide for thirty (30) days' advance written notice to The Regents of any modification in the scope of coverage.

(b) Indicate that The Regents has been endorsed as an additional Insured under such insurance policy.

(c) Include a provision that the coverage will be primary and will not participate with nor will be excess over any valid and collectable insurance or program of self-insurance carried or maintained by The Regents.

20.4 The Regents shall notify the Licensee in writing of any claim or suit brought against The Regents in respect of which The Regents intends to invoke the provisions of this Article. The Licensee shall keep The Regents informed on a current basis of its defense of any claims under this Article.

21. NOTICES

22. Any notice or payment required to be given to either party is properly given and effective (a) on the date of delivery if delivered in person, (b) five (5) days after mailing if mailed by first-class certified mail, postage paid, or (c) on the date of receipt of facsimile transmission (provided that receipt is confirmed), to the respective addresses and numbers given below, or to another address as is designated by written notice given to the other party.

In the case of the Licensee:	Calhoun Vision, Inc. Attention: John Maynard Fax:
With a copy to:	Cooley Godward LLP 5 Palo Alto Square 3000 El Camino Real Palo Alto, California 94306-2155 Attention: Andrei Manoliu Fax:
In the case of The Regents:	Office of Technology Management University of California San Francisco 1294 Ninth Avenue, Suite 1 - Box 1209 San Francisco, CA 94143-1209 Attention: Director Referring to: UCSF Case Nos. SF99-026, SF99-076 Fax:

23. ASSIGNABILITY

23.1 This Agreement may be assigned by The Regents, but is personal to the Licensee and assignable by the Licensee only with the written consent of The Regents, not to be unreasonably withheld, except that Licensee may assign this Agreement in connection with a merger, consolidation or sale of all or substantially all of Licensee's assets.

24. NO WAIVER

24.1 No waiver by either party of any default of this Agreement may be deemed a waiver of any subsequent or similar default.

25. GOVERNING LAWS

25.1 THIS AGREEMENT WILL BE INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, but the scope and validity of any patent or patent application will be governed by the applicable laws of the country of the patent or patent application.

26. PREFERENCE FOR UNITED STATES INDUSTRY

26.1 Because this Agreement grants the exclusive right to use or sell the Inventions in the United States, the Licensee agrees that any products sold in the U.S. embodying these Inventions or produced through the use thereof will be manufactured substantially in the United States unless a waiver of the requirement for substantial manufacture within the U.S. is obtained from the U.S. government. The Regents shall cooperate with Licensee in taking such actions as are reasonably necessary to obtain such waiver, if requested.

27. GOVERNMENT APPROVAL OR REGISTRATION

27.1 Licensee shall notify The Regents if it becomes aware that this Agreement is subject to any U.S. or foreign government reporting or approval requirement. Licensee shall make all necessary filings and pay all costs including fees, penalties, and all other out-of-pocket costs associated with such reporting or approval process.

28. EXPORT CONTROL LAWS

28.1 The Licensee shall observe all applicable United States and foreign laws with respect to the transfer of Licensed Products and related technical data to foreign countries, including, without limitation, the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations.

29. SECRECY

29.1 With regard to confidential information (“Data”), received in oral and/or written form, received from The Regents regarding these Inventions, the Licensee agrees:

29.1.1 not to use the Data except for the sole purpose of performing under the terms of this Agreement;

29.1.2 to safeguard Data against disclosure to others with the same degree of care as it exercises with its own data of a similar nature;

29.1.3 not to disclose Data to others (except to its employees, agents or consultants who are bound to the Licensee by a like obligation of confidentiality) without the express written permission of The Regents, except that the Licensee is not prevented from using or disclosing any of the Data that:

29.1.3.1 the Licensee can demonstrate by written records was previously known to it;

29.1.3.2 is now, or becomes in the future, public knowledge other than through acts or omissions of the Licensee; or

29.1.3.3 is lawfully obtained by the Licensee from sources independent of The Regents;

29.1.3.4 is independently developed by Licensee without use of such Data, as evidenced by written records; and

29.1.3.5 that the secrecy obligations of the Licensee with respect to Data will continue for a period ending five (5) years from the termination date of this Agreement

30. MISCELLANEOUS

30.1 The headings of the several sections are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

30.2 This Agreement is not binding on the parties until it has been signed below on behalf of each party. It shall then be effective as of the Effective Date.

30.3 No amendment or modification of this Agreement shall be valid or binding on the parties unless made in writing and signed on behalf of each party.

30.4 This Agreement embodies the entire understanding of the parties and supersedes all previous communications, representations or understandings, either oral or written, between the parties relating to the subject matter hereof.

30.5 In case any of the provisions contained in this Agreement is held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality or unenforceability will not affect

any other provisions of this Agreement, and this Agreement will be construed as if the invalid, illegal, or unenforceable provisions had never been contained in it.

30.6 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, both The Regents and the Licensee have executed this Agreement, in duplicate originals, by their respective and duly authorized officers on the day and year written.

CALHOUN VISION, INC.		THE REGENTS OF THE UNIVERSITY OF CALIFORNIA	
By:	/s/ John T. Maynard (Signature)	By:	/s/ Joel B. Kirschbaum (Signature)
Name:	John T. Maynard (Please Print)	Name:	Joel B. Kirschbaum (Please Print)
Title:	Treasurer	Title:	Interim Director - OTM
Date:	3/8/00	Date:	3/7/00

Nakashima, Susan

From: Nakashima, Susan
Sent: Thursday, May 29, 2008 3:15 PM
To: 'John Maynard'
Co: Kirschbaum, Joel
Subject: RE: UCSF Invoice No. 15-002737

John,

You're welcome. The invoice was for the 2nd maintenance fee in the USPTO. All foreign applications have been abandoned. Your e-mail is sufficient notice for me [***] from the license. I'll check with Joel and Caltech to see if anyone is Interested in keeping this patent alive. There is only one more maintenance fee due (In 4 years) during the life of this patent.

Best regards,
Susan

From: John Maynard
Sent: Thursday, May 29, 2008 3:09 PM
To: Nakashima, Susan
Subject: RE: UCSF Invoice No. 15-002737

Susan,

Thanks for your (as always) quick reply! I'll pay this invoice, but am informing you that we no longer intend to develop the Biodegradable Polymer technology. Please let me know what we should do to have this case removed from the license.

Regards,
John

From: Nakashima, Susan
Sent: Thursday, May 29, 2008 3:05 PM
To: John Maynard
Subject: RE: UCSF Invoice No. 15-002737

Hi John,

It was the 1999-026-3 (U.S. Patent 6,475,508) that was the subject of the interference and Calhoun should not receive any invoices for the -3. The -2 refers to U.S. Patent 6,149,931. Please let me know if you have further questions.

Warm regards,
Susan

From: John Maynard
Sent: Thursday, May 29, 2008 2:47 PM
To: Nakashima, Susan
Subject: UCSF Invoice No. 15-002737

Hi Susan,

We've received an Invoice from UCSF for [***], which is related to Case 1999-026-2 (Biodegradable Polymers). I think this billing is in error, because you probably recall that the underlying patent licensed from the University was Invalidated. I believe that Genzyme brought infringement action against the University, and it's my understanding that they won an appeal to the USPTO. Accordingly, I thought the case had been removed from our license.

I'd appreciate clarification on this matter, and if you agree that the case is no longer valid, please ask UCOP to cancel the invoice.

Regards,
John

Calhoun Vision, Inc.
John Maynard, CFO
2555 E Colorado Blvd, Ste 400
Pasadena, CA 91107
tel: | fax:

AMENDMENT TO EXCLUSIVE LICENSE AGREEMENT FOR
SILICONE INTRAOCULAR LENSES EMBEDDED WITH PHOTOSENSITIVE
COMPOSITIONS and METHODS AND PHARMACEUTICAL COMPOSITIONS FOR THE
CLOSURE OF RETINAL BREAKS

This amendment ("Amendment") is made effective this 5th day of December, 2013 ("Effective Date"), between The Regents of the University of California, a California corporation, having its statewide administrative offices at 1111 Franklin Street, 12th Floor, Oakland, California 94607-5200 ("The Regents") and acting through its University of California, San Francisco Office of Innovation, Technology & Alliances, 3333 California Street, Suite S-11, San Francisco, CA, 94143-1209 ("UCSF") and Calhoun Vision, Inc., a California corporation, having a principal place of business at 171 N. Altadena Drive, Suite 201, Pasadena, CA 91107 (the "Licensee").

BACKGROUND

A. Whereas, Licensee and The Regents entered into a license agreement effective March 1, 2000, having UC Agreement Control No. 2000-04-0032 (the "Agreement");

B. Whereas, Licensee has not made the milestone payment in the amount of [***] required under Article 7.3 of the Agreement for First Use in a Patient as Part of a Phase III Clnical Trial:

C. Whereas, Licensee was unable to meet the due diligence requirement of Article 8.3.3 to achieve first commercial sale of a Licensed Product in the United States by the twelfth anniversary of the effective date of the agreement, and wishes to extend such date;

D. Whereas, Licensee and The Regents now desire to amend the Agreement to settle the milestone payment owed by Licensee and to extend the diligence requirement of Article 8.3.3 of the Agreement.

THEREFORE, in view of the foregoing, the parties agree as follows:

1. Defined terms in this Amendment have the meaning set forth in the Agreement unless specifically changed by the provisions hereof.

2. Licensee shall pay to The Regents the milestone payment in the amount of [***] required under Article 7.3 of the Agreement for First Use in a Patient as Part of a Phase III Clinical Trial in two equal installments as follows:

(i) [***] the week of December 2nd, 2013; and

(ii) [***] the week of January 1st, 2014.

3. Licensee shall pay to The Regents a milestone payment in the amount of [***] within seven (7) days of either:

(i) closing of an initial public offering of the common stock of licensee pursuant to a registration statement filed with the Securities and Exchange Commission ("SEC"); or

(ii) a Change of Control Transaction.

"Change of Control Transaction" means any acquisition, consolidation, merger, reorganization or other transaction or series of transactions in which greater than fifty percent (50%) of the voting power of Licensee is transferred to a third party.

This milestone payment shall be a one-time payment obligation and will survive termination or expiration of the Agreement.

4. The last milestone payment of Article 7.3 of the Agreement is deleted and replaced with the following:

"Approval by the FDA of a Pre-Marketing Approval Application (or equivalent application with the FDA) [***]"

5. Article 8.3.3 of the Agreement is deleted in its entirety and replaced with the following:

> "*8.3.3 achieve approval by the United States Food and Drug Administration ("FDA") of a Pre-Marketing Approval Application (or equivalent application with the FDA) by December 31st, 2017, and achieve first commercial sale of a Licensed Product in the USA within six (6) months of such FDA approval; and*"

The Agreement shall remain in full force and effect in accordance with its terms except as amended herein.

IN WITNESS WHEREOF, The Regents and the Licensee have executed this Amendment by their respective and duly authorized representatives, as evidenced by the signatures below on the day and year hereinafter written.

CALHOUN VISION, INC.		THE REGENTS OF THE UNIVERSITY OF CALIFORNIA	
By:	/s/ D. Verne Sharma (Signature)	By:	/s/ Karin Immergluck (Signature)
Name:	D. Verne Sharma (Please print)	Name:	Karin Immergluck
Title:	CEO	Title:	Acting Director, Technology Management Innovation, Technology & Alliances
Date:	12/5/2013	Date:	12/5/2013

THIRD AMENDMENT TO EXCLUSIVE LICENSE AGREEMENT FOR
SILICONE INTRAOCULAR LENSES EMBEDDED WITH PHOTOSENSITIVE
COMPOSITIONS and METHODS AND PHARMACEUTICAL COMPOSITIONS FOR THE
CLOSURE OF RETINAL BREAKS

This amendment ("Amendment") is made effective this 10th of November, 2016 ("Effective Date"), between The Regents of the University of California, a California corporation, having its statewide administrative offices at 1111 Franklin Street, 12th Floor, Oakland, California 94607-5200 ("The Regents") and acting through its University of California, San Francisco Office of Innovation, Technology & Alliances, 3333 California Street, Suite S-11, San Francisco. CA, 94143-1209 ("UCSF") and Calhoun Vision, Inc., a California corporation, having a principal place of business at 171 N, Altadena Drive, Suite 201, Pasadena, CA 91107 (the "Licensee").

BACKGROUND

A. Whereas, Licensee and The Regents entered into a license agreement effective March 1, 2000, having UC Agreement Control No. 2000-04-0032 (the "Agreement");

B. Whereas, the Agreement was amended on December 5th, 2013 (UC Control No. 2000-04-0032 RevL) to settle the milestone payment owed by Licensee and extend the diligence requirement of Article 8.3.3 of the Agreement;

C. Whereas, the Agreement was amended on May 29th, 2008 (UC Control No. 2000-04-0032 RevJ) to exclude UCSF Case No. SF99-026-2 from the Regents' Patent Rights listed in Article 1.6 of the Agreement;

D. Whereas, Licensee and The Regents now desire to amend the Agreement to clarify and update the Regents' Patent Rights listed in Article 1.6 of the Agreement.

THEREFORE, in view of the foregoing, the parties agree as follows:

1. Defined terms in this Amendment have the meaning set forth in the Agreement unless specifically changed by the provisions hereof.

2. Article 1.6 is deleted in its entirety and replaced with the following:

"1.6 "Regents' Patent Rights" means all right, title and interest of The Regents in, to and under the patent applications or patents listed below:

UC Case Number	United States Application Number or United States Patent Number	Filing or issue Date
SF99-076-1	60/115,617	01/12/1999
SF99-076-2	60/132,871	05/05/1999
SF99-076-3	60/140,298	06/17/1999
SF99-076-4	09/416,044	10/08/1999
	6,450,642	09/17/2002
SF99-076-5	60/190,738	03/20/2000
SF99-076-6	09/813,598	03/20/2001
	6,749,632	6/15/2004
SF99-076-7	09/991,560	11/21/2001
SP99-076-8	10/175,552	06/18/2002
	7,210,783	5/1/2007
SF99-076-9	10/176,947	06/18/2002
SF99-076-A	10/177,722	06/18/2002
SF99-076-B	10/192,017	07/10/2002
SF99-076-C	10/223,086	08/15/2002
	6,813,097	11/2/2004
SF99-076-D	10/358,065	02/03/2003
	6,824,266	11/30/2004

UC Case Number	United States Application Number or United States Patent Number	Filing or issue Date
SF99-076-E	11/454,472	06/16/2006
	7,837,326	11/23/2010
SF99-076-F	11/743,119	05/01/2007
	7.,98,644	9/21/2010

Regents' Patent Rights shall further Include any divisionals, continuations, or continuations-in-part (but only to the extent such continuations-in-part have inventors from both institutions and to the extent they are enabled by the parent case) thereof; any corresponding foreign applications thereof; and any U.S. or foreign patents issued thereon or reissues or extensions thereof. Specifically excluded from the Regents' Patent Rights are a) UC Case Number SF99-026-1 (U.S. Application No. 60/063,297 filed on October 27th, 1997), b) UC Case Number SF99-026-2 (U.S. Patent No. 6,149,931, issued on November 21st, 2000), c) UC Case Number SF99-026-3 (U.S. Patent No. 6,475,508, issued on November 5th, 2002) and, d) any divisionals, continuations, or continuations-in-part thereof; any corresponding foreign applications thereof; and any U.S. or foreign patents issued thereon or reissues or extensions thereof."

The Agreement shall remain in full force and effect in accordance with its terms except as amended herein.

IN WITNESS WHEREOF, The Regents and the Licensee have executed this Amendment by their respective and duly authorized representatives, as evidenced by the signatures below on the day and year hereinafter written.

CALHOUN VISION, INC.

By: /s/ Ron Kurtz
(Signature)

Name: Ron Kurtz
(Please print)

Title: President & CEO

Date: 11/9/16

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: /s/ Sunita Rajdev
(Signature)

Name: Sunita Rajdev

Title: Associate Director, Technology Management
Innovation, Technology & Alliances

Date: 11/10/16

Approved as to legal term.

/s/ Rita A. Hoo 11-8-2016
Rita A. Hoo Dale
Senior Counsel
Office of the General Counsel

FOURTH AMENDMENT TO EXCLUSIVE LICENSE AGREEMENT FOR
SILICONE INTRAOCULAR LENSES EMBEDDED WITH PHOTOSENSITIVE
COMPOSITIONS and METHODS AND PHARMACEUTICAL COMPOSITIONS FOR THE
CLOSURE OF RETINAL BREAKS

This amendment ("Amendment") is made effective this 4th of April, 2017 ("Amendment Effective Date"), between The Regents of the University of California, a California corporation, having its statewide administrative offices at 1111 Franklin Street, 12th Floor, Oakland, California 94607-5200 ("The Regents") and acting through its University of California, San Francisco Office of Innovation, Technology & Alliances, 3333 California Street, Suite S-l1, San Francisco, CA, 94143-1209 ("UCSF") and RxSight, Inc., a California corporation, having a principal place of business at 100 Columbia, Suite 120, Aliso Viejo, CA 92656 (the "Licensee").

BACKGROUND

A. Whereas, Licensee and The Regents entered into a license agreement effective March 1, 2000, having UC Agreement Control No. 2000-04-0032 (the "Agreement");

B. Whereas, the Agreement was amended on May 29th, 2008 (UC Control No. 2000-04-0032 RevJ) to exclude UCSF Case No. SF99-026-2 from the Regents' Patent Rights listed in Section 1.6 of the Agreement;

C. Whereas, the Agreement was amended on December 5th, 2013 (UC Control No. 2000-04-0032 RevL) to settle the milestone payment owed by Licensee and extend the diligence requirement of Section 8.3.3 of the Agreement;

D. Whereas, the Agreement was amended on November 10th, 2016 to clarify and update the Regents' Patent Rights listed in Section 1.6 of the Agreement.

E. Whereas, the Licensee and The Regents now desire to amend the Agreement to clarify the term of the Agreement and manufacturing obligations with respect to the Inventions.

THEREFORE, in view of the foregoing, the parties agree as follows:

1. Defined terms in this Amendment have the meaning set forth in the Agreement unless specifically changed by the provisions hereof.

2. The following sentence is hereby inserted at the end of Section 7.1;

"Licensee's royalty obligations set forth in forth Section 7.1 shall commence with the first commercial sale of a Licensed Product or Licensed Method where such Licensed Product or Licensed Method is covered by a Valid Claim at any time, and continue until the expiration of the last-to-expire patent included in The Regents' Patent Rights licensed under this Agreement,

IN WITNESS WHEREOF, The Regents and the Licensee have executed this Amendment by their respective and duly authorized representatives, as evidenced by the signatures below on the Amendment Effective Date.

RXSIGHT, INC.		THE REGENTS OF THE UNIVERSITY OF CALIFORNIA	
By:	/s/ Ron Kurtz (Signature)	By:	/s/ Karin Immorgluck (Signature)
Name:	Ron Kurtz (Please print)	Name:	Karin Immorgluck
Title:	President & CEO	Title:	Executive Doctor, Technology Management Innovation, Technology & Alliances
Date:	4/3/2017	Date:	4/4/2017

FIFTH AMENDMENT TO EXCLUSIVE LICENSE AGREEMENT FOR
SILICONE INTRAOCULAR LENSES EMBEDDED WITH PHOTOSENSITIVE
COMPOSITIONS and METHODS AND PHARMACEUTICAL COMPOSITIONS FOR THE
CLOSURE OF RETINAL BREAKS

This amendment ("Amendment") is made effective this 21st day of June, 2017 ("Amendment Effective Date"), between The Regents of the University of California, a California corporation, having its statewide administrative offices at 1111 Franklin Street, 12th Floor, Oakland, California 94607-5200 ("The Regents") and acting through its University of California, San Francisco Office of Innovation, Technology & Alliances, 3333 California Street, Suite S-11, San Francisco, CA, 94143- 1209 ("UCSF") and RxSight, Inc., a California corporation, having a principal place of business at 100 Columbia, Suite 120, Aliso Viejo, CA 92656 (the "Licensee").

BACKGROUND

A. Whereas, Licensee and The Regents entered into a license agreement effective March 1, 2000, having UC Agreement Control No. 2000-04-0032 (the "Agreement");

B. Whereas, the Agreement was amended on May 29th, 2008 (UC Control No. 2000-04-0032 RevJ) to exclude UCSF Case No. SF99-O26-2 from the Regents' Patent Rights listed in Section 1.6 of the Agreement;

C. Whereas, the Agreement was amended on December 5th, 2013 (UC Control No. 2000-04- 0032 RevL) to settle the milestone payment owed by Licensee and extend the diligence requirement of Section 8.3.3 of the Agreement;

D. Whereas, the Agreement was amended on November 10th, 2016 (UC Control No. 2000-04- 0032 RevM) to clarify and update the Regents' Patent Rights listed in Section 1.6 of the Agreement;

E. Whereas, the Agreement was amended on April 4, 2017 (UC Control No. 2000-04-0032 RevO) to clarify the Royalty Term described in Sections 7.1 and 11.1 as well as clarify the manufacturing requirement in Section 26.1; and

F. Whereas, the Licensee and The Regents now desire to amend the Agreement to extend the last due diligence milestone and amend the last milestone payment amount.

THEREFORE, in view of the foregoing, the parties agree as follows:

1. Defined terms in this Amendment have the meaning set forth in the Agreement unless specifically changed by the provisions hereof.

2. The last milestone payment of Section 7.3 of the Agreement is deleted and replaced with the

following:

"Approval by the FDA of a Pro-Marketing Approval Application (or equivalent application with the FDA) [***]."

3. Section 8.3.3 is hereby deleted in its entirety and replaced with the following:

"8.3.3 achieve approval by the United States Food and Drug Administration ("FDA") of a Pre-Marketing Approval Application (or equivalent application with the FDA) by December 31, 2018, and achieve first commercial sale of a Licensed Product in the USA by December 31, 2019; and"

The Agreement shall remain in full force and effect in accordance with its terms except as amended herein.

[Signature Page Follows]

IN WITNESS WHEREOF, The Regents and the Licensee have executed this Amendment by their respective and duly authorized representatives, as evidenced by the signatures below on the Amendment Effective Date.

RXSIGHT, INC.

By: /s/ Ron Kurtz
(Signature)

Name: Ron Kurtz
(Please print)

Title: President & CEO

Date: 6/22/17

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: /s/ Sunita Rajdev
(Signature)

Name: Sunita Rajdev

Title: Associate Director, Technology Management
Innovation, Technology & Alliances

Date: 6-22-17

Approved as to legal form.

/s/ Rita A. Hao 6-21-2017
Rita A. Hao Date
Senior Counsel
Office of the General Counsel

SIXTH AMENDMENT TO EXCLUSIVE LICENSE AGREEMENT FOR
SILICONE INTRAOCULAR LENSES EMBEDDED WITH PHOTOSENSITIVE
COMPOSITIONS and METHODS AND PHARMACEUTICAL COMPOSITIONS FOR THE
CLOSURE OF RETINAL BREAKS

This amendment ("Amendment") is made effective this 21st day of May, 2019 ("Amendment Effective Date"), between The Regents of the University of California, a California corporation, having its statewide administrative offices at 1111 Franklin Street, 12th Floor, Oakland, California 94607-5200 ("The Regents") and acting through its University of California, San Francisco Office of Technology Management, 600 16th Street, Suite S-272, San Francisco, CA, 94143 ("UCSF") and RxSight, Inc., a California corporation, having a principal place of business at 100 Columbia, Suite 120, Aliso Viejo, CA 92656 (the "Licensee").

BACKGROUND

A. Whereas, Licensee and The Regents entered into a license agreement effective March 1, 2000, having UC Agreement Control No. 2000-04-0032 (the "Agreement");

B. Whereas, the Agreement was amended on May 29th, 2008 (UC Control No. 2000-04-0032 RevJ) to exclude UCSF Case No. SF99-026-2 from the Regents' Patent Rights listed in Section 1.6 of the Agreement;

C. Whereas, the Agreement was amended on December 5th, 2013 (UC Control No. 2000-04-0032 RevL) to settle the milestone payment owed by Licensee and extend the diligence requirement of Section 8.3.3 of the Agreement;

D. Whereas, the Agreement was amended on November 10th, 2016 (UC Control No. 2000-04-0032 RevM) to clarify and update the Regents' Patent Rights listed in Section 1.6 of the Agreement;

E. Whereas, the Agreement was amended on April 4th, 2017 (UC Control No. 2000-04-0032 RevO) to clarify the Royalty Term described in Sections 7.1 and 11.1 as well as clarify the manufacturing requirement in Section 26.1;

F. Whereas, the Agreement was amended on June 21st, 2017 (UC Control No. 2000-04-0032 RevP) to update Sections 7.3 and 8.3.3; and

G. Whereas, the Licensee and The Regents now desire to amend the Agreement to include obligations to the United States Department of Veteran Affairs ("VA").

THEREFORE, in view of the foregoing, the parties agree as follows:

1. Defined terms in this Amendment have the meaning set forth in the Agreement unless specifically changed by the provisions hereof,

2. The following Paragraphs shall be added to the Background section of the Agreement:

   "The development of the Invention was sponsored in part by the United States Federal Government, and as a consequence this license is subject to overriding obligations to the United States Federal Government under 35 U.S.C. §§ 200-212 and applicable regulations including a non-exclusive, non-transferable, irrevocable, paid-up license to practice or have practiced the Invention for or on behalf of the United States Government throughout the world.

   Dr. Daniel M. Schwartz is an employee of the Veterans Administration Medical Center and The Regents. In accordance with the policy of the United States Department of Veterans Affairs ("VA"), the Invention (UC Case No. 1999-076) was reported to the VA for a determination of rights. On May 21st, 2019, the VA asserted the U.S, Federal Government's rights in the Invention. The Regents and the VA entered into a letter agreement with an effective date of May 21st, 2019 ("Letter Agreement", hereby attached as Appendix A), whereby the VA granted The Regents the right to administer the Invention on behalf of both parties."

3. Paragraph 2 of the Agreement is deleted in its entirety and replaced with the following:

   "2.1 Subject to the limitations and other terms and conditions set forth in this Agreement including the license granted to the United States Government and those reserved by The Regents set forth in the Background and in Paragraphs 2.5 (obligations to the United States Government), The Regents grants to the Licensee a world-wide license under its rights in and to Regents' Patent Rights to make, have made, use, sell, offer to sell and import Licensed Products and to practice Licensed Methods.

   2.2 Except as otherwise provided in this Agreement, the license granted under Paragraph 2.1 is exclusive for the life of the Agreement.

   2.3 The license granted in Paragraph 2.1 and 2.2 is limited to Licensed Methods and Licensed Products that are within the Field of Use. For other methods and products, the Licensee has no license under this Agreement.

   2.4 The Regents, the VA and Caltech reserve the right to use the Invention and associated technology for their own educational and research purposes.

2.5 The license granted in Paragraph 2 and 3 is subject to the following:

The obligations to the United States Government under 35 U.S.C. §§ 200-212 and all applicable governmental implementing regulations, as amended from time to time, including the obligation to report on the utilization of the Invention as set forth in 37 CFR. § 401.14(h), and all applicable provisions of any license to the United States Government executed by The Regents; and

the National Institutes of Health "Principles and Guidelines for Recipients of NIH Research Grants and Contracts on Obtaining and Disseminating Biomedical Research Resources," 64 F.R. 72090 (Dec. 23, 1999), as amended from time to time."

4. Paragraph 16.3 shall be replaced in its entirety with the following:

"IN NO EVENT MAY EITHER PARTY, CALTECH OR THE VA BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM THE GRANT OR EXERCISE OF THIS LICENSE OR THE USE OF THE INVENTIONS OR LICENSED PRODUCTS."

5. The last sentence of Paragraph 17.1 shall be replaced in its entirety with the following:

"The Regents' counsel will take instructions only from The Regents, and all patents and patent applications under this Agreement will be assigned solely to The Regents (and as relevant the VA and Caltech)."

The Agreement shall remain in full force and effect in accordance with its terms except as amended herein.

[Signature Page Follows]

IN WITNESS WHEREOF, The Regents and the Licensee have executed this Amendment by their respective and duly authorized representatives, as evidenced by the signatures below on the Amendment Effective Date.

RXSIGHT, INC.

By: /s/ Ron Kurtz
(Signature)
Name: Ron Kurtz
(Please print)
Title: CEO
Date: 8/27/2019

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: /s/ Gonzalo Barrera-Hernandez, Ph.D.
(Signature)
Name: Gonzalo Barrera-Hernandez, Ph.D.
(Please print)
Title: Associate Director Innovation Venture UCSF
Date: 9/3/2019

APPENDIX A

LETTER AGREEMENT BETWEEN THE REGENTS OF THE UNIVERSITY OF CALIFORNIA AND THE UNITED STATES DEPARTMENT OF VETERANS FOR ADJUSTABLE INTRAOCULAR LENS

This letter agreement ("Agreement") is made effective this 21st day of May, 2019 ("Effective Date"), between The Regents of the University of California, a California corporation having its statewide administrative offices at 1111 Franklin Street, 12th Floor, Oakland, CA 94607-5200 ("The Regents"), aoting through its Office of Technology Management, University of California San Francisco ("UCSF"), with an address of 600 16th Street, Suite S-272, San Francisco, CA 94143 ("UCSF") and the United States Department of Venterans Affairs ("VA"), as represented by the Technology Transfer Program ("TTP"), Office of Research and Development, having an address at 810 Vermont Avenue NW, Washington, D.C. 20420.

BACKGROUND

A. Whereas, certain research performed at UCSF by Daniel M. Schwartz, and at the California Institute of Technology ("Caltech") by Jaqdish M. Jethmaliani, Julia A. Kornfield and Robert Grubbs at the California Institute of Technology ("Caltech"), resulted in the development of inventions generally characterized as "Adjustable Intraocular Lens" and disclosed in UC Case No. SF1999-076 and CIT 3062 (the "Invention").

B. Whereas the Invention is covered by US Patent Nos. 6,450,642; 6,749,632; 7,210,783; 6,813,097; 6,824,266; 7,837,326; and 7,798,664; and corresponding foreign patents.

C. Whereas, The Regents and Caltech entered into an Inter-Institutional Agreement with an effective date of December lst, 1999 (UC Agreement Control No. 2000-18-0021); as amended on March 21st, 2001; and as further amended on November 17th, 2016 ("IIA"),

D. Whereas, under the terms of the IIA Caltech granted to The Rogonts the sole responsibility for administering and commercializing the Invention on behalf of both

parties.

E. Whereas, subject to the terms of the IIA, The Regents exclusively licensed its rights in the Invention to Calhoun Vision, Inc. (now RxSight, Inc.) with an effective date of March 1st, 2000 (UC Agreement Control No. 2000-04-0032) (the "RxSight License").

F. Whereas, Dan M. Schwartz is a VA employee and the VA's Office of General Counsel, subject to its rights under 37 C.F.R § 501.6(a)(1), reviewed the relevant records related to the Invention and asserted an ownership right in and to the Invention in a letter to Dan M. Schwartz dated May 21st, 2019 (OGC Case No. 33853).

G. Whereas, it is the desire of The Regents and the VA that the Invention be administered by The Regents on behalf of both parties.

H. Whereas, on May 19th, 2000, The Regents and the VA entered into a Cooperative Technology Administration Agreement governing the administration of inventions made by any person who is employed by and has entered into a signed employment or patent agreement with both the VA and The Regents (UC Agreement Control No. 2000-18-0690) (the "CTAA").

THEREFORE, in view of the foregoing the parties agree as follows:

1. Defined terms in this Agreement have the meaning set forth in the Background section above, unless specifically changed by the provisions hereof.

2. The Regents will file with the United States Patent and Trademark Office ("USPTO") an assignment transferring to the VA an undivided interest of UCSF's rights in the US patents listed above in Paragraph B of Background.

3. The Parties agree that, as of the Effective Date, The Regents will administer patent prosecution and licensing of the Invention on behalf of both The Regents and the VA. The VA shall not grant to any person or entity (other than The Regents) any commercial right, license, title or interest in, to, or under the Invention and US Patents and corresponding foreign counterparts, described above in Paragraph B of the Background.

4. The Regents will share with the VA, pursuant to the terms of the CTAA, any Net Revenues (as defined in the CTAA) from any License Agreement (as defined in the CTAA) received by The Regents prior to the Effective Date which have not already been distributed by The Regents.

5. The Regents will share with the VA, pursuant to the CTAA, Net Revenues (as defined in the CTAA) received by The Regents as of the Effective Date from any License Agreement (as defined in the CTAA).

6. The Regents will amend the RxSight License to reference the VA's contribution towards development of the Invention and include obligations to the United States Federal Government, as per the attached draft sixth amendment to the RxSight License (Exhibit A).

IN WITNESS WHEREOF, The Regents and the VA have executed this Agreement, by their respective and duly authorized representatives, as evidenced by the signatures below on the day and year hereinafter written.

U.S. DEPARTMENT OF VETERAN AFFAIRS

By: /s/ John J. Kaplan
Name: John J. Kaplan
Title: Director, TTP
Date: 16 July 2019

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: /s/ Gonzalo Barrera-Hernandez, Ph.D.
Name: Gonzalo Barrera-Hernandez, Ph.D.
Title: Associate Director Innovation Ventures UCSF
Date: July 16, 2019

LICENSE AND MAINTENANCE AGREEMENT

This license and maintenance agreement ("Agreement") is made effective **October 29, 2015** between:

QAD Inc., having its principal place of business at 100 Innovation Place, Santa Barbara, CA 93108 USA (hereinafter "**QAD**"), and

Calhoun Vision, Inc. having its principal place of business at **171 North Altadena Drive, Suite 201, Pasadena, CA 91107** (hereinafter "**Customer**"),

WHEREAS QAD designs, develops and markets certain enterprise Software and provides Maintenance for such Software; and

WHEREAS Customer and/or its Affiliates are interested in purchasing licenses to and Maintenance for such Software and wish to establish the terms and conditions applicable to the licensing and Maintenance of the Software; and

WHEREAS the grant of licenses to the Software takes place once a signed Purchase Order referring to this framework Agreement is issued and QAD or another member of the QAD Group of Companies accepts such order;

NOW THEREFORE, the parties agree us follows:

Article 1. Definitions

The following terms will have the following meanings in this Agreement:

1.1 Affiliate(s) shall mean legal entities affiliated with Customer, in which Customer a) directly or indirectly holds more than fifty percent (50%) of the nominal value of the issued share capital, or b) has more than fifty percent (50%) of the voting power at general meetings; or c) has the power to appoint a majority of the directors; or d) otherwise maintains core control of such company.

1.2 Add-On Product shall mean software, other than the Application Bundle, which is owned by, licensed to or resold by QAD and may be licensed by Customer.

1.3 Application Bundle shall mean a bundle of software, sold as a single package, comprising Tools and Database and products owned or licensed by QAD Inc. that together comprise the QAD enterprise software solution. The description of the full contents of the Application Bundle is available in the Software and Cloud Services Terms.

1.4 Licensee shall mean Customer or Affiliate to which a license for the Software has been granted for a Location.

1.5 Location shall mean the physical location of any Licensee where the Software is installed.

1.6 Maintenance shall mean (1) upon written request, delivery of releases and updates, (2) access to an internet knowledge base at the QAD website (www.QAD.com), (3) the possibility to log calls on the QAD support webpage and (4) after a call has been logged, remote assistance provided in the English language (or the local language if available) such as by telephone and/or via electronic means.

1.7 Partner shall mean any QAD authorized distributor, system integrator, consulting firm or other third party operating under a written agreement with QAD.

1.8 Purchase Order shall mean a single document or a set of documents forming a single instrument in which Customer or Affiliate commits to purchase licenses to and/or Maintenance for the Software. In addition to the fees due by Customer or Affiliate in consideration of the purchase, such document(s) shall incorporate, or shall be deemed to have incorporated, this Agreement by reference, and shall contain wording effectuating the actual license grant, as well as information on the license configuration and Location.

1.9 QAD Group of Companies shall mean QAD Inc., with an address of 100 Innovation Place, Santa Barbara, CA 93108 USA, and any directly or indirectly held subsidiaries of QAD Inc.

1.10 Remote Affiliate shall mean an Affiliate remotely accessing the Software installed at the Location of a Licensee for its own business purposes (i.e. to run the business of such Remote Affiliate).

1.11 Software shall mean the Application Bundle and any Add-On Products, including the software manuals, licensed to a Licensee.

1.12 Software and Cloud Services Terns shall mean the documents available at http://www.qad.com/legal.html. The Software and Cloud Services Terms contain product specific licensing terms, reseller terms and open source terms.

1.13 Tools and Database shall mean software owned or licensed by Progress Software Corporation that is provided as part of the Application Bundle.

1.14 User shall mean each individual, device, or process that is permitted to perform an operation on a database or have access to an Add-On Product (also referred to as a "Named User"). Some Software is licensed on the basis of a different licensing metric (i.e. not on the basis of Named Users). In such instances, the definition of such metric shall replace the definition of User for such Software only. A full list of additional licensing metrics for the Software is available in the Software and Cloud Services Terms.

Article 2. Licenses

2.1 Software and Cloud Services Terms. The Software and Cloud Services Terms are hereby incorporated by reference into the Agreement, but only to the extent that they concern products licensed by Licensee. Licenses granted under application of the Software and Cloud Services Terms are not altered by changes made to the Software and Cloud Services Terms after the date of the license grant and such licenses will continue to be governed by the version of the Software and Cloud Services Terms that was in effect at the time of the license grant.

2.2 Purchase Order Required. A Customer or Affiliate that wishes to have QAD grant a license to the Software for a certain Location must provide QAD with a Purchase Order. If a Licensee orders additional licenses and issues a purchase order that does not meet all requirements for a Purchase Order as defined in this Agreement, QAD may, at its sole option, decide to process the purchase order without requiring any further documentation (i.e. documentation incorporating this Agreement by reference and specifically addressing the license grant). In such event, Licensee hereby accepts that the terms and conditions of this Agreement apply and that any licenses are granted accordingly.

2.3 License Grant. Upon acceptance by QAD or a member of the QAD Group of Companies of a Purchase Order from Customer or Affiliate and in return for the applicable license fee, QAD or such member shall grant to Customer or Affiliate a non-exclusive, non-transferable (except as expressly provided herein), perpetual license to use the Software described in the Purchase Order at the Location, subject to the terms and conditions of the Agreement.

2.4 Restrictions on Use. Licensee's use of the Software shall be subject to the following restrictions. Licensee shall:

a) only use the Software for its own business purposes, or for the business purposes of Customer or a Remote Affiliate.

b) inform QAD of the Location where the Software is used and of any changes to such Location prior to making such changes.

c) provide QAD with the name and address (and any changes to such information) of any Remote Affiliate prior to allowing such Remote Affiliate access to the Software.

d) arrange for any Remote Affiliate to be directly bound by the conditions of this Agreement and to agree that QAD may enforce the terms of this Agreement against any Remote Affiliate.

e) restrict its usage of the Software to the number of licenses (Users) purchased for the Location.

f) use unique logon IDs for individuals, devices and processes (i.e. logon IDs shall not be shared).

g) not use any method, software or technology which hides or understates the actual number of Users using the Software (e.g. by circumventing the Software's log-on process).

h) not sub-license the Software.

i) not use the Software for timesharing, rental or service bureau purposes.

j) not decompile, or reverse engineer the Software, unless expressly permitted by law and only to the extent permitted law.

k) not use the Software to develop a commercially available software product that works with the Software or competes with the Software.

l) only use the Software for its intended purpose.

2.5 Third Party Access. Customer or Licensee is entitled to appoint sub-contractors to carry out the installation, implementation, operation, training, and customizing of the Software, upon receipt of the prior written approval of QAD. Such sub-contractor shall be bound by an appropriate non-disclosure agreement. A separate non-disclosure agreement is not necessary in the event such sub-contractor is a Partner. Moreover, a Licensee may allow other parties in its supply chain (suppliers and customers) access to the Software for the benefit of Licensee subject to the terms and conditions of the Agreement. If Customer and/or Licensee grants a third party access to the Software in accordance with the terms of this Agreement, Customer and/or Licensee shall indemnify and hold QAD harmless against any claim, actions, legal proceedings, costs, damages and fees (including reasonable attorneys' fees) brought against QAD, as well as any damages suffered by QAD related to such access.

2.6 Remote Affiliate Changes. If at any time a Remote Affiliate ceases to be an Affiliate, such former Affiliate no longer has a right to (remotely) access the Software.

2.7 Add-On Products. Additional and/or alternative terms may apply to the licensing of certain Add-On Products. A full overview of such additional restrictions is available in the Software and Cloud Services Terms. Licensee hereby acknowledges that it has reviewed and agrees to these additional restrictions.

2.8 Limited Use Modules. There are certain modules delivered with the Application Bundle and/or with certain Add-On Products to facilitate processes internal to the Software but which must be licensed separately if Licensee wishes to use them as independent products. A license to the Application Bundle or the Add-On Product includes a limited use license to use these modules to facilitate the use of the Software only and not to use these modules independently (for avoidance of doubt, unless these modules are separately licensed, Licensee may not use the limited use license modules for any other purpose than to operate the licensed Software). The "limited use" modules are listed in the Software and Cloud Services Terms.

2.9 Reseller Products. All third party products resold by QAD, including but not limited to the Tools and Database, shall only be used in combination with the Software, unless explicitly stated otherwise (i.e. they can not be used as stand-alone products). Additional and/or alternative terms may apply to the licensing of reseller products. Licensing terms for reseller products resold by QAD are available in the Software and Cloud Services Terms. Licensee hereby acknowledges that it has reviewed and agrees to these additional or alternative terms.

2.10 Development Software. The development software provided as part of the Tools and Database may only be used to install, support, localize or customize the Application Bundle. Only one User license to the development software provided as part of the Tools and Database is provided per Location. If Licensee wishes to use development software to create additional functionality not directly related to the Application Bundle or if Licensee requires additional licenses to the development software, a separate license for such software must be purchased.

2.11 Open Source. Certain Software may contain open source products or other freely available software components. If such products are included, the terms of the accompanying license agreement apply in addition to or in lieu of this Agreement. The license agreements for open source and other freely

available software components are either packaged with the Software when it is shipped and/or available in the Software and Cloud Services Terms. Licensee hereby acknowledges that it has reviewed and agrees to the terms of these agreements.

2.12 Backups and Failover Environments. Licensee is allowed to make copies of the Software for archive and back-up purposes. Additionally, Licensee can use the Software in a failover environment on the condition that the failover environment is set up as a passive mirror against which applications cannot execute, transact or query directly. In this scenario, failover is accomplished by after-imaging. If the files in the failover environment are maintained in such a format or configuration that a relevant application can execute, transact or query directly against them, additional licenses are required.

2.13 Customer Guarantee. Customer guarantees the performance of each Licensee and/or Remote Affiliate and shall indemnify QAD from any damages resulting from Licensee's or Remote Affiliate's failure to perform.

Article 3. Maintenance

3.l Maintenance. Maintenance shall be provided in accordance with the following trims:

a) QAD shall provide Maintenance to Licensees for each Location for which the Maintenance fee has been paid. Maintenance for reseller products must be purchased from the applicable third party, under the terms and conditions offered by such third party, unless otherwise agreed in writing.

b) Maintenance for the Tools and Database is included in the standard QAD Maintenance offering.

c) Remote assistance as part of Maintenance shall be provided in the English language (or the local language, where available) by telephone and/or via electronic means (via the internet or electronic mail). Such telephone assistance shall be available to a Licensee during normal business hours, Monday through Friday, excluding holidays. Before requesting remote assistance, a Licensee shall attempt to resolve an issue via the internet knowledge base and log the incident on the QAD support webpage.

d) Maintenance under this Agreement shall mean Maintenance for standard Software. QAD shall not be obligated under this Agreement to provide Maintenance for any portion of the Software which is modified.

3.2 Purchasing Maintenance. Maintenance is provided on an annual basis and is compulsory for the first year after a license is initially granted at a Location under this Agreement. Thereafter, a Licensee may choose to continue Maintenance as provided herein. Maintenance shall begin on the first of the month following the delivery of the Software. A Licensee may purchase Maintenance from QAD by paying to QAD an annual, non-refundable fee based on the then current list price for Maintenance. QAD shall have no obligation to provide Maintenance until payment is received.

3.3 Automatic Rcnewal. Maintenance shall be automatically renewed for a period of one (l) year upon expiration of the previous one (1) year term unless terminated by either party at least sixty (60) days prior to the effective date of renewal.

3.4 Maintenance for Entire License. A Licensee may only procure Maintenance for the entire Software licensed at a Location. A Licensee may not purchase or terminate Maintenance for only pan of the licensed Software at a Location.

3.5 Product Life Cycle. QAD shall provide Maintenance only for those releases of the Software noted in the applicable product life cycle policy available on the QAD website.

3.6 Training Issues. Maintenance is a service provided to address problems with the Software. If a Licensee raises Maintenance calls that are not based on problems with the Software, but are instead due to lack of training on how to use the Software, QAD can refuse to respond to such calls. In this event, Licensee shall undergo, and pay for, additional training on the use of the Software.

3.7 Primary Contact. Each Licensee shall appoint one person to function as the primary contact for Maintenance issues at a Location.

3.8 Cooperation of Licensee. In the event a Licensee on Maintenance requests the assistance of QAD. a Licensee shall at the request of QAD, provide to QAD reasonable debugging information (such as

memory dumps, screen prints and reproduction steps) and shall cooperate in investigating errors including allowing access to the Software during normal business hours for test and debugging purposes. A Licensee shall render all reasonable assistance to duplicate an error, certify that the error is directly related to the Software, and verify that the error has been corrected. A Licensee shall acquire and maintain any products reasonably recommended by QAD that will enable QAD to provide remote assistance (such as dial-in and diagnostic software). In the event QAD provides on site assistance, Licensee shall pay QAD at the daily rate in effect at the time of the assistance plus reasonable travel and living expenses.

3.9 Subcontracting. QAD may subcontract Maintenance to a third party without a Licensee's consent. However, QAD shall remain liable to provide Maintenance as provided in this Agreement.

Article 4. Payments

4.1 Fees. In consideration for the licenses granted and Maintenance provided by QAD to a Licensee, Licensee agrees to pay to QAD the amount specified on the relevant Purchase Order(s). The license and Maintenance fees do not include delivery costs, installation, consulting, or any other services.

4.2 Payment Terms. Unless otherwise noted in a Purchase Order, payment for the Software licenses shall be due thirty (30) days after delivery of the Software. Payment of the Maintenance fee shall be due on the first day of each renewal period. The failure of a Licensee to pay when payment is due, or the subsequent dishonoring of any check, draft, or credit card from Licensee shall constitute a material breach of this Agreement.

4.3 Interest. Any amounts due to QAD under this Agreement which are not paid within the agreed payment term shall incur interest at the rate of one and one half percent (1½%) per month or any part of the month. The interest shall be calculated from the date payment is originally due under this Agreement until the date payment is made in full. Customer shall pay such interest, with all payments first being applied to interest and then to principal. Reasonable legal costs incurred by QAD in enforcing its rights in relation to any overdue payment shall be paid by Customer to QAD.

4.4 Delivery. Delivery of the items in a Purchase Order shall be made FCA shipping point with freight prepaid (Free Carrier, lncoterms 2000), or electronically (if available electronically).

4.5 Taxes. License and Maintenance fees arc exclusive of all taxes, duties and fees. Licensee shall make no deductions for taxes, duties or fees of any kind from any payment to QAD under this Agreement. If Licensee is required by law to withhold taxes, duties or fees, then Licensee shall pay QAD a gross amount of money, such that the net amount received by QAD (after deducting or withholding the required taxes, duties or fees) is equal to the amount of the fee originally owed before subtracting such taxes, duties or fees. Taxes on the net income of QAD are the responsibility of QAD.

4.6 QAD Group of Companies. QAD reserves the right to assign the invoicing and/or the collection of payments to other entities in the QAD group of companies.

Article 5. Audits

5.1 Access to Software. QAD (or its agents for audit purposes) has a right to access the Software in order to verify appropriate usage of the Software. Customer and Licensee agree to cooperate with QAD in performing such audits. Customer and Licensee further agree to keep adequate books and records in connection with Licensee's actions under this Agreement and to provide QAD (via email or otherwise at QAD's direction) with any files reasonably requested by QAD which will enable QAD to determine the actual usage of the Software. Such files include, but are not limited to, a single master list of all User IDs used at all Locations and the log files generated by the Software. The failure to provide log-files and the editing of log-files by the Customer, other than at the direction of QAD, shall be deemed a material breach of the Agreement.

5.2 Single Point of Contact. Customer will assign a single point of contact for any audit issues (i.e. a contact that can address audit related issues for all Licensees).

5.3 Protection. Licensee agrees that QAD, at its option, may implement measures intended to prevent usage of certain Software in excess of or otherwise in conflict with the license that was granted for the Software. As part of this protection, QAD may issue Software keys. Any attempt by Licensee to alter, remove or deactivate this protection will be deemed a material breach by Licensee of this Agreement.

5.4 Third Party Beneficiaries. Customer and Licensee agree that certain components of the Software are supplied by third-party vendors (including, but not limited to, Progress Software Corporation), who are intended beneficiaries under this Agreement and who may independently enforce the license terms applicable to such components.

5.5 Non-Compliance. If as a result of any audit it is discovered that Licensee is using the Software in excess of or otherwise in conflict with the license that was granted for the Software, then Customer or Licensee shall pay QAD, within thirty (30) days of receipt of notice from QAD, the amounts due to become compliant (including any related Maintenance fees and interest). Failure to do so shall be a material breach of this Agreement. If the deficiency is U.S. $10,000 (ten thousand dollars) or more, the Customer and/or Licensee shall also be liable to pay the reasonable cost of the audit report and shall indemnify QAD for all reasonable costs incurred by QAD in recovering any amounts due to QAD, including, but not limited to, legal costs.

Article 6. Confidentiality

6.1 Confidential Information. Both parties agree that any information obtained directly or indirectly, from the other party in connection with this Agreement and marked as “confidential” or “proprietary” or some similar legend, or made known to the other party as being confidential or proprietary is the confidential or proprietary property of such party (hereinafter “Confidential Information”), Information shall not be deemed Confidential Information, and the receiving party shall have no obligation with respect to any such information. which the receiving party can prove by written records:

- is already in the public domain other than by a breach of this Agreement on the part of the receiving party; or
- is rightfully disclosed to recipient by a third party which has the right to disclose the information and transmits it to the receiving party without any obligation of confidentiality; or
- is rightfully known to the receiving party without any limitation on us or disclosure prior to receipt of the same from the disclosing party; or
- is independently developed by personnel of the receiving party who have not had, either directly or indirectly, access to, or knowledge of, Confidential Information received from the disclosing party; or
- is generally made available to third parties by the disclosing party without any restriction concerning use or disclosure; or
- is approved for release by written authorization of the disclosing party; or
- is required to be disclosed by a court or governmental entity with jurisdiction over the receiving party, and the receiving party gives the disclosing party prompt written notice sufficient to allow the disclosing party to seek a protective order or other appropriate remedy, and the receiving party discloses only such information as is legally required and uses reasonable efforts to obtain confidential treatment of any information so disclosed.

6.2 Treatment of Confidential Information. It is agreed that Confidential Information under the Agreement shall: (a) be kept confidential by the receiving party; (b) be treated by the receiving party in the same way as the receiving party treats Confidential Information generated by itself; (c) not be used by the receiving party otherwise than in connection with the Agreement; and (d) not be divulged by the receiving party, except to its personnel who have a need to know and have undertaken to keep the Confidential Information confidential.

6.3 Disclosure by Employees. Both parties shall use all reasonable steps to ensure that Confidential Information received under the Agreement is not disclosed by its employees or agents in violation of this Article.

Article 7. Intellectual Property

7.1 Ownership Rights. Customer and Licensee shall not acquire any rights of ownership in the Software. A Licensee only acquires the right to use the Software subject to the terms of this Agreement. Customer

and Licensee confirm and acknowledge that all intellectual property rights used or embodied in or in connection with the Software shall be and remain the sole property of the owners of such Software. A Licensee shall maintain the copyright and proprietary notice on the Software and shall reproduce such copyright and proprietary notice on any copy of the Software. Customer and Licensee shall remain liable to QAD for the protection and security of such copy(-ies).

7.2 Modifications. A Licensee may only modify the Software if Licensee has obtained a license to the source code of the Software being modified. Source code licenses may not be available for all Software.

7.3 Ownership of Modifications. Any intellectual property rights arising from any modification of the Software created by or for a Licensee, shall vest solely in the owner of such Software. Customer and/or Licensee hereby assign all rights, title, and interest in the intellectual property arising from the modifications of the Software to such owners. Customer and/or Licensee further agree to do all acts and execute all documents necessary to confirm and perfect the Software owner's title in such modifications. If this is not possible at law, Customer and/or Licensee hereby irrevocably license to the owner of the Software, without charge, the right to use, modify. supplement and exploit in the broadest sense of the word, the modifications of the Software on a perpetual and worldwide basis. Customer and/or Licensee shall indemnify QAD against any claim that such modifications to the source code infringe the intellectual property rights of any third party.

7.4 Use of Modifications. Modifications to the Software can be used by any Licensee, subject to the terms and conditions of the Agreement, provided such Licensee has a license for the Software at the Location where Licensee intends to use such modifications (i.e. a Licensee should have an adequate license for the Software that was modified prior to using any modifications).

Article 8. Indemnification

8.1 Intellectual Property Indemnification. QAD shall defend, at its expense, any action brought against a Licensee based on the claim that the use of the licensed Software owned by QAD or the Tools and Database, when used within the scope of this Agreement infringes any intellectual property rights. QAD shall indemnify a Licensee for any damages finally awarded against a Licensee which are attributable to such claim, provided a) Licensee notifies QAD within ten (10) days of any suit or claim, b) Licensee lets QAD defend, compromise, or settle the claim, and c) Licensee gives QAD the requested information and fully cooperates in defending, compromising or settling the claim.

8.2 Additional Remedies. QAD shall, in addition to indemnification, a) procure for the Licensee the right or license to use the Software, or b) replace or modify the infringing Software to make it non-infringing, or c) if the foregoing alternatives are not commercially reasonable, terminate the license for the infringing part of the Software and refund the license fees paid by Licensee for the infringing part of the Software.

8.3 Exclusions. QAD shall have no liability for any claim based on a) the use of anything other than the latest release of the licensed Software, if such infringement could have been avoided by the use of the latest release of the licensed Software, or b) use or combination of the licensed Software with software, hardware or other materials not provided by QAD, or c) modification of the Software.

8.4 Entire Liability. THIS ARTICLE STATES THE ENTIRE LIABILITY OF QAD WITH RESPECT TO INFRINGEMENT OF COPYRIGHTS, TRADE SECRETS, PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS ARISING FROM THE USE OF THE LICENSED SOFTWARE.

Article 9. Limited Warranty

9.1 Software Warranty. QAD warrants for a period of ninety (90) days from date of delivery of the Software, as well as for any period during which Maintenance is provided by QAD, that the Software shall be free from material program errors and defects in materials and workmanship and that the Software shall function substantially in accordance with the Software manuals. QAD does not warrant that the Software is completely error free and QAD does not warrant that the Software conforms to or satisfies any federal, national, state or local laws. The warranty applies to the standard Software only. If the Software is modified in any way, then the warranty applies only to the unmodified Software as distributed by QAD.

Reseller products, with the exception of the Tools and Database, are warranted by the party that owns such products and QAD makes no warranties regarding such products.

9.2 Warranty Requirements. The warranty described above shall only apply providing:

a) the Software is installed and implemented by QAD or a Partner.

b) Licensee provides written notice of the Software's material program error(s) or defect(s) in material and workmanship in reasonable detail within the warranty period.

c) Licensee installs all releases and updates to the Software provided by QAD or Partner which intend to fix errors or defects.

d) Licensee installs and uses the latest version of all prerequisite operating system and other software currently recommended by QAD.

e) QAD can reproduce the defect in a standard version of the Software on officially supported configurations.

f) Licensee uses the Software in accordance with the Software manuals.

9.3 Remedies· During the initial ninety (90) day warranty term, if QAD is unable, after reasonable efforts, to make the Software perform ns warranted, Licensee's sole remedy shall be to terminate the license by removing the licensed Software from the Location and returning it to QAD. Licensee will then receive a refund of the license fees paid for the Software. After the initial ninety (90) day warranty term but during a period when Maintenance is in effect for the Software, Licensee's remedy shall be limited solely to the following. If QAD is unable, after reasonable efforts, to make the Software perform as warranted, Licensee may terminate Maintenance at the Location by removing the release or update of the licensed Software that gave rise to the issues and returning it to QAD. Licensee will then receive a pro-rata refund of the Maintenance fees paid for the licensed Software in the year in which the cancellation is effective. Further, if QAD is unable, after reasonable efforts, to make the Software perform as warranted, Licensee may terminate the license to the Software. Licensee will then receive a refund of a portion of the license fees paid for the Software. Such portion shall be determined based on a three (3) year straight-line depreciation of the fees paid for the licensed Software. The period of depredation shall begin on the date of the initial license grant.

9.4 Content. QAD may provide with the Software (but not as part of the Software) trade content, including compliance content. QAD is not the author of such content and merely conveys the information to Licensee. QAD does not take any responsibility or make any warranties or representations, expressed or implied, as to the accuracy, reliability or prevailing status of the content, nor does QAD approve, sanction, promote, recommend or endorse the content. Licensee acknowledges that content provided with the Software is not intended as a substitute for reading the actual statutes, regulations, and other documents that apply. In no event docs QAD accept liability of any description resulting from use or inability to use the content. QAD accepts no responsibility for keeping the information up to date or liability for any failure to do so.

9.5 Warranty Exclusions. THE LIMITED WARRANTIES EXPRESSED IN THIS ARTICLE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NO OTHER WARRANTY IS MADE HEREUNDER BY QAD AND ALL OTHER CONDITIONS, WARRANTIES, AND REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, ARE EXCLUDED.

Article 10. Limitation of Liability

10.1 Damages. TO THE MAXIMUM EXTENT PERMITTED BY THE APPLICABLE LAW, IN NO EVENT SHALL QAD BE LIABLE FOR ANY LOST REVENUES OR PROFITS OR OTHER SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF ANY THEORY OF LIABILITY, EVEN IF QAD HAS, OR SHOULD HAVE HAD, ANY KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES.

10.2 License/Maintenance Fee Limitation. THE MAXIMUM LIABILITY OF QAD FOR DAMAGES RELATED TO ANY USE OF THE SOFTWARE SHALL BE LIMITED TO THE LICENSE FEES PAID BY A LICENSEE UNDER THIS AGREEMENT FOR THE PARTICULAR LICENSED SOFTWARE WHICH CAUSED THE DAMAGES. THE MAXIMUM LIABILITY OF QAD FOR DAMAGES RELATED TO MAINTENANCE SHALL BE LIMITED TO THE FEES PAID BY A LICENSEE FOR MAINTENANCE UNDER THIS AGREEMENT FOR THE PARTICULAR

SOFTWARE AND IN THE PARTICULAR YEAR IN WHICH THE DAMAGES OCCURRED. FOR AVOIDANCE OF DOUBT, THE LIMITATION OUTLINED IN THIS CLAUSE DOES NOT APPLY TO THE QAD OBLIGATION TO INDEMNIFY LICENSEE AGAINST INTELLECTUAL PROPERTY INFRINGEMENTS AS OUTLINED IN THE ARTICLE TITLED "INDEMNIFICATION".

10.3 Personal Injury. Nothing in this Agreement shall exclude or restrict the liability of QAD for death or personal injury caused by the negligence of QAD.

10.4 Loss/damage of Data. QAD shall not be responsible for any loss or damage of data. Licensee is responsible for having adequate backup procedures to avoid any loss or damage of data.

10.5 Internet Based Software. Certain Software provided by QAD is for use via the internet. QAD accepts no responsibility or liability for a Licensee's connection to the internet, the availability of the internet, lapses in online security, or improper use of a Licensee's information by a third party.

Article 11. Term and Termination

11.1 Termination for Convenience. This Agreement shall remain in effect unless terminated by either party giving the other party ninety (90) days prior written notice. Termination of the Agreement for convenience does not affect any licenses granted under the Agreement. If the Agreement is terminated for convenience while Licensees are on Maintenance, then Maintenance shall terminate on the last day prior to the start of the next renewal period for each Licensee. The terms of the Agreement will continue to govern the provision of Maintenance until the date Maintenance stops.

11.2 Termination for Cause. Either party may terminate this Agreement and/or any licenses granted there under, upon the occurrence of a material breach of this Agreement by the other party, provided the non-breaching party first gives the other party thirty (30) days notice to remedy such breach. If a breach is incapable of being remedied, or if a party is adjudicated as bankrupt under any applicable law or if a receiver, liquidator, administrator, custodian or similar official is appointed to manage the financial affairs of a party, termination can take place without providing the thirty-day period, unless such (earlier) termination is not permitted by law. Termination, either voluntary or involuntary, shall not entitle Customer or Licensee to any refund for any fees paid nor shall it relieve Customer or Licensee of the obligation to pay any outstanding amounts due to QAD, unless provision is made to the contrary in this Agreement.

11.3 Consequences. In the event of termination of a license, the Licensee shall:

a) immediately discontinue all use of the licensed Software.

b) within fourteen (14) days of termination, return to QAD, and not keep any copies of the Software, manuals or other related materials. Licensee shall certify in writing that any copies of the Software, manuals and other related materials have been returned to QAD or destroyed and that Licensee is no longer using the Software, manuals or materials.

c) pay to QAD all amounts outstanding.

Article 12. Assignments and Transfers

12.1 Transfers Between Affiliates/Licensees. A Licensee may transfer licenses to other Licensees, Affiliates and/or Locations provided that:

a) all licenses at both the transferring and the receiving Location are current on Maintenance.

b) the Software and the type of Users licensed at the transferring and the receiving site are the same.

c) the minimum number of licenses that can be transferred is four (4).

d) Application Bundles are not split in a transfer (only the entire Application Bundle may be transferred).

e) licenses are not transferred in order to cure a breach (e.g. in relation to User count).

f) QAD is notified prior to such transfer and the appropriate documentation has been completed.

12.2 Transfers to Third Parties. Licensee shall not transfer any licenses to the Software (by operation of law or otherwise) without the written consent of QAD. The consent of QAD to a license transfer will be conditioned on requirements set by QAD, including but not limited to the following:

a) all licenses involved are current on Maintenance.

b) neither Customer, nor Licensee has breached the Agreement.

c) Application Bundles are not split in a transfer (only the entire Application Bundle may be transferred).

d) the party to which licenses are transferred is not a competitor of QAD.

e) QAD is notified prior to such transfer and the written consent of QAD is obtained.

f) all parties involved comply with applicable laws regarding such transfer, including U.S. export laws.

g) the entity to which licenses are transferred enters into a new, separate QAD standard license agreement within thirty (30) days after the effective date of such transfer.

h) Customer or Licensee signs a document confirming that the licenses have been transferred.

i) Customer or Licensee pays to QAD a transfer fee equal to fifty percent (50%) of the then current list price of the Software being transferred.

For purposes of this clause, "transfer" includes a change of ownership of Licensee whereby Licensee ceases to be an Affiliate.

12.3 Assignment by QAD. QAD may use members of the QAD Group of Companies in the execution of its rights and duties under this Agreement. QAD may assign this Agreement to a member of the QAD Group of Companies under any conditions or to an unrelated company pursuant to the sale, merger or other consolidation of QAD or any of its operating divisions. Customer and Licensee hereby consent to any such assignment in advance.

Article 13. Miscellaneous

13.1 Law Applicable to this Agreement. This Agreement shall be subject to and construed, interpreted, and applied in accordance with the laws of the State of California, United States of America. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, shall be determined by arbitration in Los Angeles California USA before a single arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. The arbitral language shall be English. The arbitral award may be enforced in any court having jurisdiction thereof. Any discovery as part of the arbitration process shall include the right to subpoena. Parties acknowledge and agree that the U.N. Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act shall not apply to this Agreement.

13.2 Legal Construction. To the extent that any law, statute, treaty, or regulation by its terms as determined by a court, tribunal, or other government authority of competent jurisdiction, is in conflict with this Agreement, the conflicting terms of this Agreement shall be superseded only to the extent necessary by the terms required by such law, statute, treaty, or regulation. If any portion of this Agreement shall be otherwise unlawful, void, or for any reason unenforceable, then that provision shall be enforced to the maximum extent permissible so as to give effect to the intent of the parties. In either case, the remainder of this Agreement shall continue in full force and effect.

l3.3 Preprinted Purchase Order Terms and Conditions. Additional or different terms or conditions appearing on Customer's or Licensee's Purchase Order shall be deemed null and void.

13.4 Segmentation. Customer and Licensee acknowledge that any services (such as but not limited to, installation, consulting, customization, training, or implementation) acquired for the Software are offered by QAD separately from any licenses for the Software based on the terms of a separate written services agreement.

13.5 Pricing and Policies. Any issues not specifically dealt with in this Agreement shall be as set out in the latest version of the pricing, licensing and maintenance policies of QAD unless otherwise agreed in writing.

13.6 Personnel. Customer and Licensee shall not knowingly solicit, with the intent to employ, any employee of QAD during the term of this Agreement and for six (6) months after termination of this Agreement unless Customer or Licensee pay to QAD an amount equal to six (6) months of such employee's current compensation.

13.7 Publicity. QAD is allowed to incorporate Customer and/or Licensee's name in the customer reference list of QAD and in any public filings required by law and to issue a press release that the Parties have entered into this Agreement.

13.8 Force Majeure. Except as it relates to Customer's obligation to make payments, neither party shall be liable for delays or non-performance if such delays or non-performance are beyond such party's reasonable control provided the party takes reasonable steps to remedy the delay or non-performance promptly.

13.9 Waiver. The waiver by any party of a breach or default by the other party of any provision of this Agreement shall not be construed as a waiver by such party of any succeeding breach or default by the other party of the same or another provision.

13.10 Notices. Any notices required or permitted to be given pursuant to this Agreement shall be in writing, addressed to the addresses noted in the heading of this Agreement or, if the notice is to a Licensee, to the Licensee's address as shown on the documentation granting the license. Notice shall be treated as having been received upon the earlier of the actual receipt (e.g. in case of facsimile transmissions) or five (5) days after sending by post or courier. These written communications shall be in such a manner that proof of delivery can be verified. Each party shall notify the other in writing in the event of any address change.

13.11 Language. The original of this Agreement has been written in the English language. Customer and/or Licensee hereby waive any right they may have under the laws of the country in which the Software is licensed to have this Agreement written in another language. The user manuals and on-line documentation are provided in English and, when available, in other languages.

13.12 Compliance with Laws. Customer and Licensee shall be responsible for complying with all applicable governmental regulations of the United States (including US export laws) and any foreign country (where applicable) with respect to the use of the Software. The Software is not to be used in any government and/or defense related activity unless approved under U.S. Export Law and Regulation. Export/re-export of the Software may be contrary to U.S. and other export laws. Customer and Licensee shall defend, indemnify and hold QAD harmless from and against any and all liabilities arising out of the non-compliance with applicable governmental regulations.

13.13 Entire Agreement. This Agreement, including exhibits, referenced documents, attachments, or amendments, incorporated herein by reference, contains the entire agreement between the parties with respect to the subject matter hereof and shall supersede any and all prior communications, representations, minutes, agreements, and/or undertakings, either verbal or written, between the parties regarding the said subject matter.

13.14 Survival. The provisions of this Agreement which are by their nature intended to survive termination of this Agreement, will survive such termination. Such provisions include, but are not limited to, the provisions on Confidentiality, Intellectual Property, Indemnification, Limitation of Liability and Compliance with laws.

13.15 Counterparts and Valid Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Both parties represent and warrant that the signatures on any documents are authorized, valid signatures and both parties agree that facsimile copies of such documents are acceptable as originals.

The undersigned hereby agree that by signing this document, they become parties to said Agreement and agree to be bound by all terms, conditions and obligations contained therein.

QAD Inc.		**Calhoun Vision, Inc.**	
SIGN:	/s/ Ed Boclair	SIGN:	/s/ Ron Kurtz
NAME:	Ed Boclair	NAME:	Ron Kurtz
TITLE:	SVP North America	TITLE:	COO
DATE:	10/30/2015	DATE:	10-29-15

Legal Review

DS
JP

10/30/2015

QAD Hosted On Premise Project Proposal

Developed for:	Calhoun Vision 171 N. Altadena Dr., Suite 201 Pasadena, CA 91107
Date:	October 16, 2015
By:	Strategic Information Group 1953 San Elijo Avenue, Suite 201 Cardiff-by-the-Sea, CA 92007 USA Phone: 760-697-1050
Expires:	October 31, 2015
Revision:	Calhoun Vision QAD ERP Hosted On Premise Proposal 151016-02 Calhoun Vision EE SOW On Premise 150920-03.xls

Strategic Information Group ("**Strategic**") appreciates the opportunity to submit this proposal to provide QAD software and implementation services to Calhoun Vision Inc. ("**Calhoun Vision**"). This proposal outlines our understanding of the assistance that we will provide to Calhoun Vision, the scope of the work, and the professional fee arrangement.

This proposal is broken into the following sections:

Executive Summary

This document summarizes the ERP project of purchasing and implementing QAD at Calhoun Vision in a QAD Hosted environment meeting FDA standards.

QAD wants to become Calhoun Vision ERP business partner and feel we have the following advantages:

- Significant ERP and Quality Management expertise in the Life Sciences industry
- Ongoing, proactively developed cGMP supply chain solutions, to FDA standards
- Our implementation methodology including FDA validation, giving us significant experience and expertise deploying these solutions for Life Sciences companies

We have worked with numerous Medical Device customers to help them prepare for commercialization, growth and expansion, such as:

- **Bioness –** a developer and manufacturer of medical devices designed to use neuromodulation to rehabilitate and increase limb mobility for patients with Stroke, Multiple Sclerosis, Traumatic Brain Injury, Cerebral Palsy, and Spinal Cord Injury
- **Facet Technologies –** Facet Technologies is an FDA registered, ISO 13485:2003 certified engineering and manufacturing company striving to be the partner of choice for the design, development and manufacture of today's medical device marketplace. Facet's specialty is in development of new, innovative, hand-held medical devices that are designed to offer precision and intuitive performance in the hands of the patient and/or healthcare professional.
- **Medrobotics –** Medrobotics Corporation develops flexible robot platforms for single-site surgical and interventional applications. The company develops robot platforms, which allow minimally-invasive procedures to replace open surgical procedures for various parts of the anatomy, as well as enable physicians to operate through non-linear circuitous paths from a single access point into the body. Its flexible robot platforms contain multiple open device channels to accept various flexible surgical and interventional tools, as well as on-board visualization.
- **Accelerate Diagnostics –** Accelerate Diagnostics is focused on developing and commercializing instrumentation for the rapid identification and antibiotic susceptibility testing of infectious pathogens.

Below is a cost summary for the ERP project for Calhoun Vision:

ERP Project Summary Hosted On Premise Deployment	Annual Cost Year 1	Annual Cost Year 2
QAD Software and Maintenance		
10 named users, QMS and SSM	$ 84,630	$ 15,880
SIG Software and Maintenance	$ 11,000	$ 1,000
Consulting Services	$ 160,800	$ 0
Managed Services	$ 75,893	$ 59,268
Subtotals	**$ 332,323**	**$ 76,148**
Discounts	**($ 52,354)**	**($ 5,928)**
Totals	**$ 279,969**	**$ 70,220**

Background

Calhoun Vision, Inc. provides light adjustable lenses for use in cataract surgery. It offers its products to patients in Germany, the United Kingdom, France, Italy, Spain, Mexico, the Czech Republic, and Canada. The company was founded in 1997 and is based in Pasadena, California.

Calhoun Vision is considering an implementation of QAD Enterprise Applications as its integrated Enterprise Resource Planning (ERP) system.

Scope, Approach, and Deliverables

The scope of this Phase I project is to implement QAD Enterprise Applications for Calhoun Vision in a Hosted On Premise, FDA validated environment with Managed Services. The scope of this project includes the Life Science bundle modules of QAD 2015 EE and QAD QMS Document Control, HR/Training, Integration and Problem Solver modules.

The approach we will use for this project is Strategic's Direct Start implementation methodology. This proven approach emphasizes knowledge transfer and change management techniques to guide Calhoun Vision to a rapid ROI and successful implementation, validated to FDA standards. Your consulting team will have extensive implementation experience and will direct Calhoun Vision to QAD-enabled best practices and process design.

The deliverable of this Phase I project will be the successful implementation of QAD business systems for the Phase I modules. Strategic will work with the Calhoun Vision project team as outlined below to transfer QAD knowledge and assist with the design, testing and documentation of Calhoun Vision business processes and user procedures; convert data; and cut over operations to QAD following a structured project plan to be developed at the outset of the project.

Assumptions and Risks

All initiatives of this nature involve both assumptions and risks. Successful projects clearly define both assumptions and risks, and take steps up front to mitigate identified risks.

This project assumes the following:

1. Calhoun Vision will take on the responsibility of the project management role. Strategic will provide a project manager to manage Strategic resources and guide the Calhoun Vision project manager.
2. Services estimates do not include any electronic banking activities. Activities such as electronic bank activity import, ACH and positive pay files may be enabled as a change order to the project if needed.
3. During financial reporting training, the balance sheet and income statement reports will be developed. Customer to be responsible for creating additional financial reports after training.
4. Calhoun Vision will provide a project team that can participate in this project at a resource level to be agreed upon during the project planning phase of the project.
5. All services will take place in the Pasadena, CA facility.
6. Strategic will use a “train the trainer’ approach that requires the Calhoun Vision project team members to be responsible to participate in the project and to be primarily responsible for any end user training, with Strategic guidance and assistance
7. Calhoun Vision project team will participate in self-study courses and reading assigned by the Strategic consultants.
8. Strategic will provide Calhoun Vision with project templates and checklists to facilitate the implementation process to include but not be limited to: end user instruction templates, conversion plan, training templates, data mapping templates and file load sequences.
9. Strategic will provide Calhoun Vision with a base set of end user procedures (Documentation) which Calhoun Vision can fine tune for its implementation design. The Documentation shall be the most recent version distributed by Strategic in the English language in the form of document files. Strategic does not warrant that procedures are error free or that a pre-written procedure is provided for every business process Calhoun Vision implements. Procedures are not included for running reports and browses. Calhoun Vision acknowledges that the Documentation is protected by copyright and may be reproduced or translated for internal purposes only.
10. QAD will be implemented with no source code modifications enabling Calhoun Vision a straightforward and uncomplicated upgrade path. Any requests for modifications or interfaces not included in this proposal will be managed per a change control process.
11. The project will be managed to a detailed plan, and weekly project status updates and periodic project steering meetings will be conducted. Strategic will deliver periodic project status reports and will aggressively monitor scope and budget to actual consulting hours to ensure an on-time and on-budget implementation.
12. Using standard templates as the basis, Strategic will modify the forms shown in the SOW to incorporate the Calhoun Vision logo. Further customization of the forms is not in scope.

13. Regarding data conversion, Calhoun Vision will be responsible for data extracts from their legacy system(s). Strategic will be responsible for automated data import of a select number of files listed shown in the SOW. Calhoun Vision will be responsible for all entry of manually entered data. Calhoun Vision will also be responsible for verification of converted data. We assume Calhoun Vision will provide “clean” data to load, i.e. Strategic will not have to manipulate or programmatically convert data from one format to another prior to loading. This estimate assumes two data loads for each file. Additional loads may incur additional costs.

14. Project teams shall, whenever possible, remain stable for the duration of their implementation efforts. Should a project team member from Calhoun Vision be removed or unable to work on project, Calhoun Vision will replace that individual with a comparable person and Strategic may charge Calhoun Vision for an appropriate period of time to get the new resource trained and up to speed on the project.

15. Calhoun Vision will be responsible for providing a work area and training environment for this project, including a computer projector and access to the QAD server for the project team.

16. Calhoun Vision will purchase all software components listed in this proposal, including the FDA Validation Toolkit if Strategic is to perform any Validation services.

17. Calhoun Vision will purchase or provide recommended hardware per Strategic’s specification.

18. Consulting services may be rendered on or off-site at Strategic’s discretion, with Calhoun Vision approval.

19. QAD QMS implementation Phase 1 Document Control, HR/Training Records and Problem Solver (CAPA & NCMR). During Phase 2 Customer Complaints will be implemented from the Problem Solver module.

20. Calhoun Vision will use the Easy On Boarding (EOB) templates for the QAD QMS implementation. Any changes to the EOB templates may result in additional services. Initial integration between the QAD ERP and QMS will include master data (Items, Sites, Domains, Suppliers, Customer, Departments, Work Centers) and integration of the lot status data resulting from Non-conforming inventory.

21. Validation testing for QAD QMS is related to developing the Operational Qualification scripts based on the EOB templates, Calhoun Vision is responsible for approving and executing the OQ test scripts.

22. If scheduled consulting resources are cancelled within two weeks and Strategic is not able to redeploy said resources, Calhoun Vision will be charged for the time.

23. Modules marked as “Phase 2” or “Out of Scope” in the modules tab, if any, on the SOW are not included in the consulting estimate.

No risks have been identified to date.

Estimated Costs

Software

The estimated costs for software for this project are as follows:

Phase 1 Software	Quantity	One time cost	Annual Cost	Year 1 Cost
QAD Life Sciences Bundle including Service/Support Management	10 Named users	$ 26,500	$ 7,430	$ 33,930
QAD QMS Modules (Document Control, HR/Training Records, Problem Solver and Integration Tool)	4	$ 40,000	$ 8,000	$ 48,000
QAD OMS Named User	5	$ 2,250	$ 450	$ 2,700
SIG FDA Validation Toolkit	1 production database	$ 10,000	$ 1,000	$ 11,000
subtotal		**$ 78,750**	**$ 16,880**	**$ 95,630**
New Customer Discount		**($20,625)**	**($ 1,588)**	**($ 22,213)**
Total		**$ 58,125**	**$ 15,292**	**$ 73,417**

Software Terms

Payment terms are 50% Deposit, Net 30 for QAD software and maintenance. We also require you to sign appropriate Software License Agreements and issue Purchase Orders or their equivalent to complete your purchase.

The terms for the SIG software are 50% deposit, Net 30.

QAD will apply a 30% software discount from list price on all QAD software products for 12 months from the initial date of purchase. This only applies to QAO On-premise software. QAD Cloud products and other 3rd party products sold through QAD are excluded from this offer.

Managed Services

The estimated costs for managed services for this project are as follows:

Managed Services	Quantity	Monthly cost	Annual Cost	Year 1 Cost
1 x Hosted Linux Server for QAD	1	$ 1,180	$ 14,160	$ 14,160
1 x Hosted Windows Server for OMS (includes unlimited SQL user licenses)	1	$ 1,309	$ 15,708	$ 15,708
Managed Services 1 x Production QAD Server (8 Hours per day / 5 days per week)	11-25 users	$ 1,000	$ 12,000	$ 12,000
Managed Services 1 x QMS Windows server (8x5)	1-10 users	$ 750	$ 9,000	$ 9,000
Infrastructure Management includes Patching and Updates (Linux and Windows)	11-25 users	$ 600	$ 7,200	$ 7,200
Monitoring of QMS Integration	11-25 users	$ 100	$ 1,200	$ 1,200
Ad-Hoc @ $195per hour (1)	11-25 users			
Project Management, Architecture. Documentation & Setup Fee for QMS Integration	One Time Fee			$ 1,025
Hosting Setup Fees for 1 x Linux QAD Server includes IQ Validation and Hosting Setup Fees for 1 x Windows QMS Server includes IQ Validation	One Time Fee			$ 10,000
Setup Fees for Managed Services Monitoring Software includes Validation for 1 Linux Server and 1 Windows QMS Server	One Time Fee			$ 5,600
Subtotal		**$ 4,939**	**$ 59,268**	**$ 75,893**
Discount for Managed Services		**($ 494)**	**($ 5,928)**	**($ 5,928)**
One Time Fee Discount				**($ 1,663)**
Total		**$ 4,445**	**$ 53,340**	**$ 68,302**

Managed Services Terms

Payment terms are for manage services is as stated in Appendix D – Master Services Agreement.

Assumption – One integration for QMS.

Implementation Services

A detailed breakdown of our QAD implementation consulting services is shown in the attached Statement of Work (SOW) in Appendix B. Consulting services cost for this project are as follows:

	Hosted On Premise Deployment		
Recommended Services	**Quantity**	**Rate**	**Dollars**
QAD ERP Implementation and training services including Validation	62.5 days	$ 1,600/day	$ 100,000
QAD QMS Implementation and training services including Validation	38 days	$ 1,600/day	$ 60,800
subtotal	**100.5 days**	**$ 1,600/day**	**$ 160,800**
QAD ERP Services Discount	**62.5 days**	**($ 300/day)**	**($ 18,750)**
QAD QMS Services Discount	**38 days**	**($ 100/day)**	**($ 3,800)**
Totals			**$ 138,250**

Note: Actual T&E expenses will be billed separately and are estimated to be 15% of fees.

Implementation Service Terms

We require a 10% services down payment to initiate your project. This down payment will be applied to your final invoices for Strategic.

Professional fees will be billed on a time and materials basis for actual hours incurred plus out-of-pocket expenses. Out-of-pocket expenses are billed separately at cost. If less time is required than estimated, our fees will be lower. Actual consulting fees will be based upon actual hours worked.

It is expected that travel and out of pocket expenses will be incurred for this project. All travel and out of pocket expenses will be pre-authorized by the Calhoun Vision Project Manager. These expenses are in addition to the Professional Fees and shall be invoiced separately for all actual expenses incurred at cost, substantiated by receipts.

Work required by customer to be performed on weekends (Saturday & Sunday) and Holidays that is unplanned will be billed at 1.5 times the agreed upon billing rate. Holidays are defined by Strategic's official Holiday list and can be provided upon request.

For travel Strategic will charge 50% of our billing rate for travel time. Travel time will be defined as the scheduled airline flight time between our consultant's home airport and the destination airport. Travel time will also include any significant ground transportation if necessary to get to the final destination (significant is defined by greater than 1 hour).

Project Authorization

We require a signed Purchase Order, consistent with our billing terms, and down payments as indicated above to initiate the project. A copy of our Professional Services Agreement is provided in Appendix A along with this arrangement letter and is incorporated herein. If there is a difference between this proposal and the Professional Services Agreement, the proposal shall be the governing document. The Statement of Work is attached as Appendix B and along with Appendices C, D, E and F further defines the responsibilities and deliverables for this project.

Strategic Information Group is pleased to serve Calhoun Vision in this important project. If these services are in accordance with your request, please indicate your acceptance by signing in the space provided below and returning an acknowledgment copy to us. Should you have any questions regarding this engagement letter please call me at .

Yours truly,

/s/ Douglas Novak
Douglas Novak
President & CEO
Strategic Information Group

Accepted for Calhoun Vision by:

Signature	/s/ Ron Kurtz
Name	Ron Kurtz
Title	COO
Date	10-29-15

Appendices

Appendix A – Professional Services Agreement

1. **PROFESSIONAL SERVICES DEFINITIONS:** The Professional Services provided by Strategic Information Group (Strategic), a California limited liability company, are optional services you have chosen to use to ensure a more timely and effective implementation of the QAD Enterprise Applications Licensed Software. You have elected to use Strategic as the provider of these Services. You may issue written requests ("Purchase Orders") to Strategic setting forth the services that you desire Strategic to perform with respect to the Software. Strategic will promptly notify you of its acceptance or rejection of the Purchase Order, which shall not be unreasonably rejected. Any Purchase Order submitted by you and accepted by Strategic will be governed by the terms and conditions of this Agreement.

2. **PERFORMANCE:** Strategic will perform the Services specified in any accepted Purchase Order to the best of its ability and in a careful, professional and workmanlike manner. In consideration of Strategic's performance of the Services, you agree to pay Strategic the fees set forth in the applicable Purchase Order plus any costs incurred by Strategic in connection with its performance of the Services.

3. **ADEQUATE FACILITIES:** To perform the Ordered Service(s), Strategic personnel will most likely need to visit your site one or more times. You agree to provide adequate facilities so that the Strategic personnel can be effective. These facilities should include a workspace, a phone with outside access, escorted or unescorted access to the Server where the Licensed Software will reside, access to a workstation connected to the Server by way of the same network which will be used by the end users and unescorted access to the building and common facilities (e.g., rest rooms, etc.) during normal business hours. Strategic personnel will (i) comply with all sign-in procedures for vendors and other service personnel, (ii) observe all general and safety rules and regulations in effect at the site, and (iii) observe rules regarding restricted areas. Strategic acknowledges you may need to temporarily remove Strategic personnel at any time for any reason.

4. **TIMEFRAMES:** You and Strategic will mutually agree to a timeframe and schedule for delivery of the Service(s). Strategic will use its best efforts to comply with the mutually agreed schedule subject to a) your completion of your dependent action items, b) access to adequate facilities as described above, and c) force majeure events beyond Strategic's control. This agreement shall become effective as of the date signed below and shall remain in effect until thirty (30) days after either party has given the other party a written notice of termination.

5. **LIMITATION OF LIABILITY:** THESE TERMS AND CONDITIONS CONSTITUTE A SERVICE CONTRACT AND NOT A PRODUCT WARRANTY. NEITHER PARTY WILL, UNDER ANY CIRCUMSTANCES OR UNDER THEORY OF LIABILITY, BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY NATURE ARISING IN ANY WAY OUT OF THIS AGREEMENT.

6. **TRAVEL & LIVING COSTS:** You agree to pay all reasonable travel, meals and living expenses and other out-of-pocket expenses incurred by Strategic personnel in connection with performing the Service(s). Strategic will adhere to your policies for these types of expenses, provided you have policies for these types of expenses, submitted them to Strategic, and Strategic has agreed to them in advance of the cost being incurred. Otherwise, these costs will be subject to Strategic's standard internal policies.

7. **ADVERTISING PUBLICATIONS**: Strategic is allowed to incorporate company's name or logo in a customer reference list, company website or other marketing materials and to issue a press release that the parties have entered into this Agreement.

8. **INDEPENDENT CONTRACTOR**: It is understood and agreed by the parties hereto that Strategic will be an independent contractor; and that nothing in this Agreement is intended to make either party an agent, legal representative, subsidiary, joint venture, partner, employee, or servant of the other for any purpose whatsoever. Strategic represents that it will and does carry workers compensation, general liability, and other commercially appropriate and reasonable insurance for its employees.

9. **NONSOLICITATION**: During and for a period of one year after the completion of all Services provided to you by Strategic under this Agreement, you shall not recruit, secure, solicit, or employ or attempt to recruit, secure, solicit, or employ any employee of Strategic for your benefit or the benefit of any other person or entity. Any violation of this provision may be remedied in equity and law at the discretion of Strategic. It is stipulated that any completed and successful recruitment of any Strategic employee in violation of this Paragraph subjects you, among other possible remedies, to the payment of damages to Strategic in an amount equal to the greater of a) the employee's last year's salary at Strategic and b) the employee's first year's salary at the new employer.

10. **GENERAL**: This is the entire agreement regarding Services. This Agreement shall not be assigned by either party without the others prior written consent. No waiver or amendments to this Agreement shall be effective unless expressly stated on this Document, or otherwise in writing and signed by both parties. If any provision of this Agreement is found to be unenforceable or invalid, the balance of this agreement shall remain enforceable according to its terms. This Agreement shall be governed by the laws of the State of California and the United States without regard to conflicts of law provisions. The prevailing party in any action to enforce this Agreement shall be entitled to recover costs and expenses, including attorney's fees. The courts of the State of California shall have jurisdiction in all matters subject to the Agreement

11. **PAYMENT**: Services performed against a Purchase Order will be invoiced weekly as work is performed, due net 30 days. Late payment charges may be assessed at the rate of 1.5% per month.

12. **TAXES:** All sales, VAT, and import taxes and duties are the responsibility of the buyer, and payment for same must be reflected in the accompanying purchase order.

13. **FUTURE QUOTATIONS:** Any future quotations from Strategic to you for Services shall be governed by the terms of this Agreement unless expressly excluded by such quotations or made subject to a new professional services agreement.

14. **DISPUTE RESOLUTION:** Prior to initiating any legal action in any dispute subject to this Agreement, the parties agree to communicate directly with each other in a good faith effort to resolve such dispute and, as to any matter unresolved after such communications, further agree to participate in a mediation before a mutually selected, impartial mediator in a good faith attempt to negotiate a resolution of such matter. The costs of the mediation shall be paid by the parties on a 50/50 basis.

15. **SUCCESSORS IN INTEREST.** This Agreement shall be binding on any and all successors in interest of the parties and no merger, acquisition, or business reorganization by any party shall change the rights, duties, and obligations of that party hereunder.

Appendix B – QAD Implementation Services Statement of Work

Please see attached *Statement of Work (SOW), Calhoun Vision EE SOW On Premise 150920-03.xls*

Appendix C – QAD QMS

Additional Software Required by Calhoun Vision:

- Microsoft SQL Server Database Engine License (SQL database only).
- Microsoft SQL Server Client Access License (SQL database only).
- Remote meeting software (free)

** Additional software shown above is required to operate or support the QAD QMS software and may be acquired by Calhoun Vision from their supplier of choice and is not included in the above investment numbers

Modules to be deployed:

Module	Brief Description
Administration/Dashboards	Provides comprehensive administration tools to help the administrator manage, configure and monitor the entire software quality system. The system is highly configurable in terms of user security, terminology and interfacing with e-mail. This includes full workflow creation by state, screen configuration down to form layout and field creation, security at the state and field level, field level calculation with an expression builder, metrics creation and easy drag and drop onto one of multiple configurable dashboards among many other features!
Document Management System	Eliminates manual administration and distribution of documents by electronically automating the entire document management process, including editing, routing, approval and withdrawal. The system is extremely versatile yet incredibly user friendly all while complying with all aspects to major quality requirements.
Integration	Manages data input redundancy between QAD QMS and other applications such as ERP/MRP or accounting software. It provides automatic one-way data synchronization from any ODBC compliant data source to ensure that data in QAD QMS is accurate and current.
Human Resources (Training) System	Maintains on-line records of training executed, including hours and costs. Provide for graphical Training Effectiveness Analysis. Identifies training needs and facilitates training and succession planning based on skill inventory. Tracks key information including descriptive, job-related, training and previous work history for each employee.
Problem Solver	A centralized corrective and preventive action center for all quality management processes which enhances the detection, correction and prevention of problems through effectively managing all corrective action and non-conformances.

Overview

QAD QMS' QAD QMS Elements enterprise quality management software has been built using the latest Microsoft user interface technology called Silverlight. The following specification summarizes the components required in order to install and use the product:

NOTE: All hardware and software specifications in this document are suggested minimal requirements. Server

Component	Brief Description	Notes
Microsoft .NET Framework Redistributable version 4.5.1 for QAD QMS Elements v2.3.	Required in order to install The Product on the Web Server.	1 2 4*
MS Windows Server 2008 R2 64bit or greater	Microsoft Windows Server (Web, SQL, Document)	1 3 4 5 7 8*
SQL Server 2008 R2 or SQL Server 2012 ** Please note that SQL Server 2012 is required for Easy Onboarding*	Microsoft SQL Server 2008 R2 or Microsoft SQL Server 2012 ** Please note that SQL Server 2012 is required for Easy Onboarding*	3 4 5*
Microsoft Internet Information Server v7 or greater. v7.5 or greater is recommended.	The Microsoft Web Server. Is part of the Windows 2008 or Above operating system (although may not be installed by default).	1 3 4*

Client

Component	Brief Description	Notes
One of the following web browsers: • Internet Explorer • Mozilla Firefox • Google Chrome	The client runs directly in a web browser.	3 6 9* Modern web browsers are generally automatically updated on a very frequent basis. QAD QMS will do it's best to maintain compliance with the latest updates.
Microsoft Windows XP or greater	The Clients Operating System	3 6*
Microsoft Silverlight v5	MS Silverlight is a framework that allows rich Internet applications to be created independent of the browser. It uses a browser plug-in that provides a lightweight set of standard components that is used to publish the application within the browser. This is automatically downloaded and installed on the client when Client connects to the Web Server.	

1. This component is required by Web Server.
2. This component is supplied with the Product package
3. This component is not supplied with the Product package.
4. These components may be installed on the same machine, provided that the machine can meet the sum of the vendor's minimum requirements for each component.
5. This component is required for the SQL Server
6. This component is required by the client
7. This component is required by the Document Web Server
8. Web Server/ SQL Server/ Document Server. Each component should be run on their own dedicated servers. Combining these components on a single server may impact performance.

* These are off-the-shelf 3rd party components. QAD QMS asks that prior to installation of the Product that the customer install these components.

Web Server (Web/Document Servers)

All requirements are based on a 30 user install of QAD QMS Elements “Easy on Boarding” processes. These requirements assume each server (llS and SQL) are dedicated to QAD QMS Elements. Any additional users and / or additional or more complex processes will require additional memory, processing power, and hard drive space. As a general guideline, RAM, CPU Cores, and HD space should double at 100 users and again at 200 users. Similarly, if the servers are used for applications or purposes outside of dedicated support for QAD QMS Elements, the resource requirements should be increased as needed.

Hardware Requirements

Component	Brief Description
Processor	Recommended: 2GHz or faster, Four Core or more, 64bit capable**
	2 CPUs encouraged for Optimal Performance
Memory	Recommended: 8GB RAM or greater**
Available Disk Space	Recommended: 40GB or greater**

Software Requirements

Component	Brief Description
Operating System	Windows Server 2008 R2 64bit or Above
All with Microsoft llS v7 or greater installed and configured. v7.5 or greater is recommended.	
TCP/IP	The TCP/IP protocol must be available.

SQL Server

Hardware Requirements

Component	Brief Description
Processor	See Microsoft system requirements for the version of SQL being used**
Memory	See Microsoft system requirements for Version of SQL being used**
Available Disk Space	40GB of data storage for database required (based on estimated usage)**
Microsoft SQL System Requirements	SQL Server 2008 R2
	http://msdn.microsoft.com/en-us/library/ms143506(SQL.105).aspx*
	SQL Server 2012
	http://msdn.microsoft.com/en-us/library/ms143506.aspx
	* *Please note that SQL Server 2012 is required for Easy Onboarding*

Software Requirements

Component	Brief Description
Microsoft SQL Server	Microsoft SQL Server 2008 R2 or SQL Server 2012
	* *Please note that SQL Server 2012 is required for Easy Onboarding*
Operating System	See Microsoft System requirements (visit links above)

Client

Hardware Requirements

Component	Brief Description
Processor	Recommended: 2GHz or faster, Dual Core or more, 64bit capable
Memory	Recommended: 2GB RAM or greater

Software Requirements

Component	Brief Description
Operating System	OS capable of running the required Web Browser w/ Microsoft Silverlight v5.
One of the following web browsers: • Internet Explorer • Mozilla Firefox • Google Chrome	The client runs directly in a web browser. Modern web browsers are generally automatically updated on a very frequent basis. QAD QMS will do it's best to maintain compliance with the latest updates.

* Links are correct as of the date of this document.
** As the 30 user mark is approached, the system requirements should be increased.

Appendix D – Hosting Services Agreement

This Hosting Services Agreement is made and entered into on October 29, 2015 (the **"Effective Date").**

By and between	**and**
Strategic Information Group	Calhoun Vision
1953 San Elijo Ave, Suite 201	171 N. Altadena Dr., Suite 201
Cardiff-by-the-Sea, CA 92007	Pasadena, CA 91107
("Strategic")	**("Customer")**

Customer and Strategic are sometimes referred to individually in this Agreement as a **"Party"** and collectively as the **"Parties."**

Definitions *(As used in this Agreement):*

16. **AGREEMENT:** This Hosting Services Agreement (HSA) and all Statements of Work, schedules and attachments attached hereto or to or otherwise made a part of this agreement.

17. **CONFINDENTIAL INFORMATION:** Any information furnished by Discloser to Recipient during the term of this Agreement, including, without limitation, pricing, methods, processes, financial data, lists, statistics, software, systems or equipment, programs, research, development, strategic plans, operating data, or related information of each of the parties and/or its or their customers and suppliers, concerning past, present, or future business activities of said entities. This Agreement is the Confidential Information of Strategic. All other Confidential Information must be clearly designated as "Confidential." Information provided orally will be considered confidential only if a written memorandum of such information clearly designated as marked "Confidential" is delivered to Recipient within thirty (30) days of the Disclosure. As to any particular Confidential Information, "Discloser" means the Party disclosing the Confidential Information and the "Recipient" means the Party receiving the Confidential Information.

18. **CONTENT:** information, software, Customer Data and other data including, without limitation, HTML files, scripts, programs, recordings, sound, music, graphics, and images that Customer or any of its Users create, install, upload or transfer in or through the Hosting Environment.

19. **CUSTOMER COMPONENTS:** Hardware, software, other products, and other Content including, without limitation, those specified in a SOW as being provided by Customer.

20. **CUSTOMER DATA:** All data and information about Customer's business(es), customers employees, operations, facilities, products, markets, assets or finances that Strategic obtains, creates, generates, collects or processes in connection with its performance of Services and is stored in any Hosting Environment.

21. **DISCLOSURE:** Release, publication, or dissemination of Confidential Information by a Party and excludes the release, publication, or dissemination of Confidential Information by a third party.

22. **HOSTING ENVIRONMENT:** Strategic's application hosting environment provided by Logicalis for the delivery of Services, consisting of, but not limited to, network, storage and server devices, software programs, applications network management devices, and other items specified in any Statement of Work.

23. **LEC:** Refers to the Logicalis Enterprise Cloud.

24. **LOGICALIS:** Refers to Logicalis, Inc. Strategic has partnered with Logicalis to provide secure, virtual and or physical Operating Environments supporting selected software, network services, storage & backups, coupled with professional monitoring and management services.

25. **PCR:** Project change request (change order) signed by both Parties authorizing a change in the scope of the Services.

26. **REQUIRED CONSENTS:** Any consents, licenses, or approvals required to give Strategic, or any person or entity acting for Strategic under this Agreement, the right or license to access, use and/or modify in electronic form and in other forms, including, without limitation, derivative works, the Customer Components and Content, without infringing the ownership or intellectual property rights of the providers, Strategic, or owners of such Customer Components and Content.

27. **SERVICES**: Information technology services to be delivered by Strategic under this Agreement as specified in any Statement of Work and does not include Third Party Services.

28. **STATEMENT OF WORK (SOW)**: Shall have the meaning ascribed to it in the section "Agreement Structure."

29. **THIRD PARTY SERVICES**: Information technology services to be delivered by a third party under this Agreement as specified in any Statement of Work.

30. **USER**: Any entity or individual that receives or uses the Services, or the results or products of the Services, through Customer.

Any capitalized term which is defined in this Agreement shall have the same meaning when used in any Statement of Work, unless the language or context requires otherwise. SOW-specific definitions, if any, shall be included in the applicable SOW, and shall apply only with respect to such SOW.

General

Agreement Structure

This Agreement contains general contractual terms for all information technology services to be provided by Strategic. The specific information technology services that Strategic will provide, applicable pricing and payment terms, service level agreement, if any, and other transaction-specific provisions will be agreed upon through statements of work to this Agreement (each a "Statement of Work" or "SOW"). Each SOW shall be signed by both Parties and will be deemed to incorporate all of the provisions of this Agreement by reference. Each SOW will be a separate agreement between Strategic and Customer.

Order of Precedence

In the event of any inconsistencies between the terms of this Agreement and the terms of any Statement of Work, the terms of this Agreement shall control. The Parties may specify in the applicable SOW that a particular provision of the SOW is to supersede a provision of this Agreement, in which case the superseding SOW provisions shall be applicable only to such SOW and shall be effective for such SOW only if such provision expressly references the applicable Section of this Agreement that is to be modified and clearly states that such provision supersedes the conflicting or inconsistent provision in this Agreement.

Services

Scope of Services

Subject to the terms and conditions in this Agreement and the applicable SOW, Strategic will use commercially reasonable efforts to perform the Services described in the applicable Statements of Work.

Designated Contact Persons

Each Party shall designate an individual who will be a primary point of contact for that Party and will have the authority to act and make decisions for that Party in all aspects of the Services, including PCRs. Customer shall make available all technical matter, data, information, operating supplies, and computer system(s), as reasonably required by Strategic. Either Party may change its designated contact person by written notice to the other Party.

Changes

In the event Customer wishes to add additional programs, applications or data sources, systems servers, network devices of any kind (hubs, routers, switches), requests an expansion in the scope of the Services, or increases the network load in the Hosting Environment managed by Strategic under this Agreement,

then Customer shall present its request for such alterations of its network to Strategic for scoping. No alterations will be permitted under this Agreement without a signed PCR.

Fees and Payment Terms

Charges

Customer shall pay to Strategic all recurring periodic charges and non-recurring additional charges, for services, hardware or software not covered by the base rate at the rates and charges set forth on the applicable SOW or Customer quotation. The periodic charge shall be billed on the 1st day of the month for the services to be provided during the following quarter. The stated charges are not subject to increase during the initial term of the SOW, without a mutually agreed upon Project Change Order.

Reimbursable Expenses

Except as may otherwise be stated in the applicable SOW, Customer agrees to reimburse Strategic all reasonable and customary out-of-pocket expenses, including, but not limited to, airfare, rental car, mileage, tolls, and lodging expenses, incurred by Strategic in connection with the performance of services. Meal expenses shall be billed at actual amount incurred. Travel time will be billed at one-half the on-site billable rate each way. Reimbursable expenses shall be invoiced on a monthly basis. Upon request by Customer, Strategic shall provide copies of documentation for such expenses

Invoices

All invoices shall be due and payable upon receipt. Customer agrees to pay a late payment charge at the rate of one and one-half percent (1.5%) per month, or at the maximum late payment charge permitted by applicable law, whichever is less, on any unpaid amount for each calendar month (or portion thereof) that any payment is thirty (30) days past due. Strategic may apply any payment received to any delinquent amount outstanding.

Taxes

The amounts payable under this Agreement are exclusive of all sales, use, value-added, withholding, and other taxes and duties. Customer shall pay all taxes levied and duties assessed by any authority based upon this Agreement, excluding any taxes based upon Strategic's income. This provision shall not apply to any taxes for which Customer is exempt and for which Customer has furnished Strategic with a valid tax exemption certificate authorized by the appropriate taxing authority.

Information Security

Security Measures

Strategic will maintain commercially reasonable security measures that are designed to (a) ensure the security of the Customer Data stored by Strategic in the Hosting Environment; (b) protect against any anticipated threats or hazards to the security or integrity of the Customer Data stored by Strategic in the Hosting Environment; and (c) protect against any unauthorized access to or use of the Customer Data as stored by Strategic in the Hosting Environment.

Notification and Prevention Obligations

Upon becoming aware, Strategic shall promptly notify Customer of any actual security breach in its Hosting Environment that may result in the unauthorized access to or disclosure of unencrypted Customer Data. This notification will state in reasonable detail the Customer Data at risk. Strategic agrees to take all actions reasonably necessary under the circumstances to immediately prevent the continued unauthorized access of such information. Strategic further agrees that in the event of a breach of confidentiality or security, it will work in good faith and cooperate with Customer to address the breach. Strategic shall not be responsible or liable for any security breach caused by Customer.

Audits by Logicalis

Logicalis will conduct an annual Statement on Standards for Attestation Engagements, No. 16 (SSAE No. 16) or equivalent audit of its security measures related to the hosted environment. Upon Customer's written request, Strategic shall provide a copy of its most recent Logicalis audit report. The report is to be treated as Confidential Information under this Agreement whether or not marked or otherwise identified as "Confidential" and remains the property of Strategic.

Audits by Customer

Customer shall have the right to review Logicalis' security measures prior to the commencement of the Services and thereafter on an annual basis during the term of this Agreement. Such annual review may include an onsite audit, conducted by qualified personnel, of Logicalis' data centers in order to inspect the Hosting Environment to verify Logicalis' compliance with this Agreement. The dates of any on site audit shall be mutually agreed upon by the Parties. Customer shall be responsible for the entire cost of any onsite audit. Strategic may charge Customer on a time-and-materials basis at the then-current standard time and materials rate for Customer audits and requests for information based on the length and detail of the audit/information requested. No such audit may include activities that might result in "downtime" or unavailability for the Hosting Environment. Any "downtime" or unavailability as a result of any audit by Customer shall not count as downtime for purposes of any SOW and shall not be a breach of this Agreement or any SOW by Strategic.

Other Customer Responsibilities

Acceptable Use

Customer is responsible for all acts and omissions of its Users in connection with receipt or use of the Services. Customer agrees, and will ensure its Users agree, to act responsibly and not use the Strategic Services for any illegal or unauthorized purpose including, but not limited to, hacking, phishing, spamming, identity theft, financial fraud, e-mail spoofing, virus distribution, network attacks, pirating software, harassment, using copyrighted text, sharing illegal software, and unauthorized use of images. Strategic has the right to investigate potential violations of this Section. If Strategic determines that a breach has occurred, then Strategic may, in its sole discretion: (a) restrict Customer's and Users' access to the Services; (b) remove or require removal of any offending Content; (c) terminate this Agreement for cause; and/or (d) exercise other rights and remedies, at law or in equity. Except in an emergency or as may otherwise be required by law, before undertaking the actions in this Section, Strategic will attempt to notify Customer by any reasonably practical means under the circumstances, such as, without limitation, by telephone or e-mail. Customer will promptly notify Strategic of any event or circumstance related to this Agreement, Customer's or any User's use of the Services, or Content of which Customer becomes aware, that could lead to a claim or demand against Strategic, and Customer will provide all relevant information relating to such event or circumstance to Strategic at Strategic's request. Strategic agrees to allow Customer complete and unrestricted access at all times to Customer's software applications, devices, equipment hardware, and all Services-related license files so that Customer can audit its Users' compliance with the terms of this Agreement.

Content

Customer is solely responsible for: (a) all Content including, without limitation, its selection, creation, design, licensing, installation, accuracy, maintenance, testing, backup and support; (b) all copyright, patent and trademark clearances in all applicable jurisdictions and usage agreements for any and all Content; (c) the selection of controls on the access and use of Content; and (d) the selection, management and use of any public and private keys and digital certificates it may use with the Services. Customer agrees not to access the Hosting Environment by any means other than through the interface that is provided by Strategic for use in accessing the Hosting Environment.

Required Consents

Customer shall obtain and keep in effect all Required Consents necessary for Strategic to perform all of its obligations as set forth in this Agreement. Upon request, Customer will provide to Strategic evidence of any Required Consent. Strategic will be relieved of its obligations to the extent that they are affected by Customer's failure to promptly obtain and provide to Strategic any Required Consents. Strategic will adhere to reasonable terms and conditions pertaining to Content as notified in writing to Strategic. Strategic agrees not to remove or alter any copyright or other proprietary notice on or in any Content without Customer's consent.

Software

Customer authorizes Strategic to determine whether or not software specified in any SOW is currently in place, operational and maintained and supported at the level required for Strategic to perform the Services required under this Agreement. Customer grants Strategic, at no charge, the right to use any Customer-owned or developed application software systems required by Strategic to provide the Services specified in any SOW to Customer.

Capacity Planning

Customer is solely responsible for determining whether the services, Hosting Environment, and related Content meet Customer's capacity, performance, or scalability needs. Customer is responsible for planning for and requesting changes to the Hosting Environment and services, including any additional capacity required to support anticipated peaks in demand that may significantly increase website hits, transaction volumes, or otherwise increase system resource utilization.

Customer Components

Customer is solely responsible for the selection, operation and maintenance of all Customer Components.

Security

Customer shall (a) use reasonable security precautions in connection with its use of the Services, i.e., maintain up-to-date virus scanning and operating system security patches and firewall protection; (b) Customer shall require each User to use reasonable security precautions, i.e., maintain up-to-date virus scanning and operating system security patches and firewall protection. In addition, Customer shall not take any action or install any software that may preclude or impair Strategic's ability to access or administer its network or provide the Services.

Encryption

It is the Customers responsibility to encrypt at the application level Confidential Information, Customer Data, and all data that is considered sensitive data or that must be treated as confidential under state or federal law or under Customer's contractual obligations to others. This includes, but is not limited to, Social Security Numbers, financial account numbers, driver's license numbers, state identification numbers, Protected Health Information (as that term is defined in Title II, Subtitle F of the Health Insurance Portability and Accountability Act, as amended (HIPAA) and regulations promulgated there under) and Non-public Personal Information (as that term is defined in Financial Services Modernization Act of 1999 (Gramm-Leach-Bliley) and regulations promulgated there under).

Confidential Information

Restrictions on Use; Non-Disclosure

Recipient agrees that it will use the same care and discretion to avoid Disclosure of any Confidential Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate (but in no event less than a reasonable degree of care). Except as otherwise expressly permitted in writing by an authorized representative of Discloser, Recipient agrees that it will not: (a) use the Confidential

Information of Discloser for any purpose other than the purpose for which Discloser disclosed the information; or (b) disclose or reveal Confidential Information of Discloser to any person or entity other than its employees, directors, officers, agents and consultants who (i) have a need to know to further the purpose of this Agreement; and (ii) are subject to legally binding obligations of confidentiality no less restrictive than those contained in this Agreement.

Exceptions

The obligations set forth in Section 7.1 shall not apply to Confidential Information that: (a) before the time of its Disclosure was already in the lawful possession of the Recipient; or (b) at the time of its Disclosure to Recipient is available to the general public or after Disclosure to Recipient by Discloser becomes available to the general public through no wrongful act of the Recipient; or (c) Recipient demonstrates to have been lawfully and independently developed by Recipient without the use of or reliance upon any Confidential Information of the Discloser and without any breach of this Agreement.

Disclosures Required by Law

If Recipient becomes legally compelled (by deposition, interrogatory, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, then Recipient shall notify Discloser of the requirement promptly in writing so that Discloser may seek a protective order or other appropriate remedy. If a protective order or other remedy is not obtained, or if Discloser waives in writing compliance with the terms hereof, then Recipient shall furnish only that portion of the information which Recipient is advised by written opinion of counsel is legally required and to exercise reasonable efforts to obtain confidential treatment of such information.

Disposal of Confidential Information

Upon termination of this Agreement or upon Discloser's request at any time, Recipient agrees to promptly return to Discloser all copies of Confidential Information. If return is impossible as to any portion of the Confidential Information, then Recipient shall certify to Discloser promptly that all such Confidential Information of Discloser, including all copies thereof, has been totally and permanently destroyed. Strategic will return to the Customer, all Customer Data in its possession at the date of termination in its then-existing format and on its Customer-supplied media, however, Strategic may keep a copy in accordance with its record retention policy. Any conversion of format or media performed by Strategic in order to discharge its obligations under this Section shall be at Customer's expense.

Remedies

The Parties acknowledge and agree that a breach of this Agreement by either Party will cause continuing and irreparable injury to the other's business as a direct result of any such violation, for which the remedies at law will be inadequate, and that Discloser shall therefore be entitled, in the event of any actual or threatened violation of this Agreement by Recipient, and in addition to any other remedies available to it, to seek to obtain a temporary restraining order and to injunctive relief against the other Party to prevent any violations thereof, and to any other appropriate equitable relief.

Duration

The obligations set forth in this Section 7 shall apply during the term of this Agreement for a period of one (1) year.

Ownership Rights

Services

Strategic retains all right, title, and interest in the Services and in all improvements, enhancements, modifications, or derivative works thereof including, without limitation, all rights to patent, copyright, trade

secret, and trademark. The Services contain proprietary and confidential information that is protected by applicable intellectual property and other laws, and Customer agrees not to disclose such information to any third party without Strategic's prior permission.

Content

Strategic acknowledges and agrees that all Content, including copyrights, trademarks, database rights and other intellectual property contained in such Content are owned or licensed by Customer. Customer grants Strategic a license to store, record, transmit and display the Content solely to perform Strategic's obligations under this Agreement.

Representations and Warranties

By Each Party

Each Party represents and warrants to the other Party that: (a) it has full power and authority to enter into this Agreement; (b) it is in compliance, and will continue to comply during the term of this Agreement, with all laws and regulations governing its possession and use of Customer Data and its provision or use of the Services; and c) it has the requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement.

By Customer

Customer represents and warrants to Strategic that: (a) it owns, or is a licensee of, having the right to sublicense, the Content and that Customer has the right to grant Strategic the rights that Customer purports to grant in this Agreement; (b) Strategic's possession or use of the Content or Customer Data does not and will not infringe on, violate, or misappropriate any patent, trademark, or copyright, or misappropriate any trade secret or other proprietary right of any third party; and (c) it will not use, nor will it allow any third parties under its control to use, the Services for high risk activities, such as the operation of nuclear facilities, air traffic control, or life support systems, where the use or failure of the Services could lead to death, personal injury, or environmental damage.

By Strategic

Strategic represents and warrants to Customer that:

- **Industry Standards** – The Services shall be performed in a good, workmanlike, professional and conscientious manner by experienced and qualified employees of Strategic according to the generally accepted standards of the industry to which the Services pertain. For Services containing a deliverable, such Services will be deemed accepted by Customer if not rejected in a reasonably detailed writing within five (5) days of submission to Customer, or as otherwise identified in the applicable Statement of Work. In the event the Services provided by Strategic are not in conformance with this warranty, Customer must provide written notice to Strategic within five (5) days after the performance of the Services and such notice will specify in reasonable detail the nature of the breach. Upon confirmation of the breach, Strategic will use commercially reasonable efforts to take the steps necessary to correct the deficiency at no charge to Customer. This is Customer's sole and exclusive remedy for breach of this warranty.
- **Service Levels** – The Services will meet the technical standards of performance or service levels, if any, set forth in the applicable SOW. Customer's sole and exclusive remedy for any failure to meet the applicable technical standards of performance or service levels shall be as specified in the applicable SOW.
- **Staffing Placement Services** – Strategic warrants that any consultant provided to Customer will have the qualifications and hold the certifications represented to Customer by Strategic. Strategic

makes no other representations or warranties with respect to the staffing placement Services to be provided.

Customer is not authorized to make, and Customer shall not make, any representations or warranties on behalf of Strategic to any third party. Customer shall be solely responsible and liable for any representations or warranties that Customer makes to any third party regarding Strategic, the Hosted Environment, the Services, or any other aspect of this Agreement. Strategic makes no representations or warranties with regard to the Third Party Services and passes through to Customer the terms and conditions for the services delivered by a third party.

Disclaimer

Except as expressly provided in this section, neither party makes any other representation or warranty of any kind, whether express, implied, statutory or otherwise, including, without limitation, the implied warranties of merchantability, fitness for a particular purpose, non-infringement, and any warranties arising from the usage of trade or course of performance. No employee, agent or representative of Strategic is authorized to many any additional or other representations or warranties on behalf of Strategic. Customer is not relying on any other representations or warranties. In addition, Customer understands and acknowledges that the interest if not a secure medium, may be inherently unreliable and subject to interruption or disruption and may be subject to inadvertent or deliberate breaches of security, for which strategic cannot be held liable.

Indemnification

Indemnification by Strategic

Subject to the terms and conditions in this Agreement, Strategic will, at its cost, (i) defend Customer and its officers, directors, shareholders, employees, agents, successors and assigns (collectively the "Customer Indemnified Parties") from and against any claim, suit, action, or proceeding (threatened or otherwise) (each a "Claim") made or brought by a third party against Customer Indemnified Parties to the extent based upon (a) any breach by Strategic of any of it representations and warranties under Section 9.1; (b) real property damage or personal injury, including death, solely and directly caused by Strategic's employees or contractors in the course of performance under this Agreement; (c) any breach by Strategic of Section 7 but only with respect to the Disclosure of Confidential Information and to the extent the Disclosure is the result of actions predominantly attributable to Strategic; (d) any uncured breach by Strategic of its obligations under Section 5; and (e) any allegation that Customer's receipt of the Services under this Agreement infringes any of such third party's copyrights, or any such third party's patents issued in the United States as of the Effective Date, or misappropriates any of such third party's trade secrets (each an "IP Claim"); and (ii) Strategic shall pay any final award of damages (or settlement amount approved by Strategic in writing and) paid to the third party that brought any such Claim.

Indemnification by Customer

Customer will indemnify, defend and hold harmless Strategic and its officers, directors, shareholders, employees, agents, successors and assigns from any and all liabilities, damages, costs and expenses, including reasonable attorney's fees and expenses, arising out of any claim, suit or proceeding (threatened or otherwise) made or brought by a third party against Strategic or its officers, directors, shareholders, employees, agents, successors and assigns based upon (a) any breach by Customer of any of it representations and warranties under Section 9; (b) real property damage or personal injury, including death, directly caused by Customer; (c) any breach by Customer of Section 7 but only with respect to the Disclosure of Confidential Information and to the extent the Disclosure is the result of actions predominantly attributable to Customer; (d) any breach by Customer of its obligations under Section 6.1 and Section 6.3; and (e) any claim that Strategic's possession, storage, or transmission of the Content or possession or use

of the Customer Components, infringes on, violates, or misappropriates any patent, copyright, trademark, service mark, trade secret or other intellectual property or proprietary rights of such third party.

Procedure

A Party (or other person) having a right to defense and indemnification under this Agreement ("Indemnified Party") that desires such indemnification shall tender to the Party having an obligation to defend and indemnify under this Agreement ("Indemnifying Party") sole control of the defense and settlement of the Claim for which indemnity is sought, provided that the Indemnified Party shall notify the Indemnifying Party promptly in writing of each Claim and the Indemnified Party shall give the Indemnifying Party information and assistance to defend and settle the Claim. The Indemnified Party, at its own expense, shall have the right to employ its own counsel and to participate in any manner in the defense against any claim for which indemnification is sought under this Section 10. The Indemnified Party shall cooperate in all reasonable respects with the Indemnifying Party and its attorneys in the investigation, trial and defense of any Claim. In no event shall either Party make any settlement of a Claim, including without limitation, any settlement that involves a remedy relating to admission of liability by, injunctive relief against, or other affirmative obligations by the Indemnified Party without the other Party's prior written consent, which consent will not be unreasonably withheld, delayed, or conditioned.

Mitigation for IP Claims

At any time after notice of an IP Claim, or if Strategic believes there is a basis for an IP Claim, Strategic has the right, at Strategic's sole option and expense, to either (a) procure the right for Customer to continue receiving the Services as provided in this Agreement, or (b) replace or modify the applicable Service with a service that has substantially similar functionality and that Supplier believes would not be subject to the IP Claim. If Strategic deems (a) or (b) not feasible or not commercially reasonable, Strategic has the right to terminate the applicable SOW. In the event of any such termination, Strategic will refund to Customer the unused portion of any amounts paid by Customer for the affected Service. In addition, upon any such termination, Customer shall cease the use of the applicable Service.

Limitations as to IP Claims

Notwithstanding anything to the contrary, Strategic shall have no obligations or liability under section "Indemnification by Strategic" if the IP Claim is based upon, arises out of, or is related to, in whole or in part, or if any of the following apply: (a) the combination of the applicable Service with any product, software, solution, or service not entirely developed and provided by Strategic, (b) use of the applicable Service outside the scope of the licenses or rights set forth in this Agreement or in violation of any law or any restriction or limitation set forth in this Agreement, (c) Customer's failure to comply with Strategic's direction to cease any activity that in Strategic's reasonable judgment may result in an IP Claim, (d) any allegation by a third party that does not specifically reference a Strategic Service, or that does not reference a feature of function of a Strategic Service, or (e) any IP Claim for which Customer does not promptly tender control of the defense thereof to Strategic.

Sole Remedy

The terms in this section (Indemnification) shall be the Customer's sole and exclusive remedy and Strategic's sole and exclusive liability and obligation with respect to third party claims of infringement or misappropriation of third part intellectual property rights. Except as expressly set forth in this section (Indemnification), Strategic shall not have any obligation to defend of indemnify Customer for third party claims.

Limitation of Liability

Limit on Types of Damages Recoverable

To the maximum extent permitted by applicable law, neither party will (and Strategic's suppliers and licensors will not) be liable to the other party or any other party claiming through a party for any incidental, consequential, special, indirect, exemplary, or punitive damages (Including, without limitation, lost profits, lost revenues, loss of goodwill, lost or damaged data, investments made, and loss of business opportunity or interruption) that the other party may incur or experience in connection with this agreement, any sow, or the services, however caused and under whatever theory of liability (including, without limitation, breach of contract, tort, strict liability and negligence), even if (a) such party has been advised of the possibility of such damages, (b) direct damages do not satisfy a remedy, or (c) a limited remedy set forth in his agreement or any sow fails of its essential purpose.

Limit on the Amount of Damages Recoverable

To the maximum extent permitted by applicable law, Strategic's total cumulative liability under or relation to this agreement and the services, regardless of the nature of the obligation, form of action or theory of liability (including without limitation, contract, tort, strict liability, and negligence), shall be limited in all cases to an amount which shall not exceed, in the aggregate, fees paid by Customer to Strategic during the six (6) month period immediately preceding the first event giving rise to liability for the services that are the basis of the particular claim and under the applicable SOW.

Non-Managed Systems

Strategic shall not be liable for any damages caused by services, systems, software, or other components that neither it nor its employees, agents or subcontractors furnish or manage pursuant to this Agreement.

Applicability

The terms in this Section 11 shall apply to the maximum extent permitted by applicable law. If applicable law precludes a party from excluding liability for certain types of damages for certain acts or omissions or capping its liability for certain acts or omissions, then the terms in this Section 11 shall apply to not limit liability for such acts and omissions, but will apply for all other acts and omissions.

Allocation of Risk

Each party acknowledges that the foregoing damages exclusions and limitations of liability set forth in this section, reflects the allocation of risk set forth in this agreement and acknowledges that the other party would not have entered into this agreement absent such exclusions and limitations of liability or that the prices paid by customer for the services would have been higher.

Terms and Termination

Terms of this Agreement

This Agreement shall commence on the Effective Date and remain in effect until terminated by either party as provided in this section.

Terms of Statement of Work

The term of each SOW shall be as specified in that Statement of Work.

Termination for Convenience

Either Party may terminate this Agreement for convenience at any time upon written notice to the other Party. If there are any pending Statements of Work, termination shall be effective upon the expiration or termination of the last Statement of Work. If there are no pending Statements of Work, termination shall be effective upon receipt of the written notice.

Termination For Breach

Either Party may terminate this Agreement or any individual SOW in accordance with subsection 12.3.1 (in certain circumstances where an opportunity to cure must be provided) or subsection 12.3.2 (in certain circumstances where an opportunity to cure is not available).

- **Cure –** If the other Party breaches any material provision of this Agreement or any SOW and fails to cure such breach within thirty (30) days of receipt of notice of such breach from the non-breaching Party ("Cure Period"). The notice from the non-breaching Party shall specify the basis on which the Agreement or SOW is being terminated, including a description of the breach and how the breach can be cured within the Cure Period. If the breaching Party fails to cure the breach within the Cure Period, then termination shall be effective on the thirty-first (31st) day following receipt of such notice by the breaching Party.
- **No Opportunity to Cure** – If: (a) the other Party breaches any representation or warranty in this Agreement, subject to the limitation set forth in Section 9.3.2; (b) any representation or warranty is inaccurate, incomplete, false or misleading in any material aspect; or (c) the breach is of a type or nature that is not capable of being cured within such time period (such as, by way of example and not limitation, an obligation relating to Confidential Information). The notice from the non-breaching Party shall specify the basis on which the Agreement or SOW is being terminated, including a description of any breach. Termination shall be effective immediately upon receipt of such notice by the breaching Party.

Termination for Financial Insecurity

Either Party may terminate this Agreement and all SOWs upon written notice if the other Party ceases conducting business in the normal course, admits its insolvency, makes an assignment for the benefit of creditors, or becomes the subject of any judicial or administrative proceedings in bankruptcy, receivership or reorganization. Termination shall be effective upon receipt of the written notice.

Final Payment

Within thirty (30) days after any termination of this Agreement or individual SOW, Strategic will submit to Customer a final itemized invoice for all fees and expense due and owing by Customer. Customer shall pay the invoice in accordance with section "Invoices."

Effects of Termination

Upon termination of this Agreement or an individual SOW and payment by Customer of the final invoice described in section "Final Payment," Strategic will, to the extent applicable:

(a) Exercise reasonable efforts and cooperation to effect an orderly and efficient transition of Services to any successor provider identified by Customer;

(b) Disclose to Customer all relevant information regarding the equipment, software and third-party vendor services required to perform the Services;

(c) Make reasonable efforts to effect a transfer or assignment of relevant licenses or agreement(s) for software or any third-party services utilized exclusively to provide the Services to Customer;

(d) At Customer's option, either provide Customer with a full backup of the Customer Data in NetBackup format (including the encryption keys necessary to decrypt such media if such media is encrypted) or destroy such full backup; and

(e) Expire all NetBackup catalog references to Customer Data.

Any additional transition services requested by Customer shall be provided by Strategic on a time and material basis.

Survival

Those provisions that by their nature should survive termination of this Agreement, will survive termination. Without limiting the generality of the foregoing statement, Sections 8 (Ownership Rights); 9 (Representations and Warranties); 10 (Indemnification); and 11 (Limitation of Liability) shall survive any termination of this Agreement.

Miscellaneous

Force Majeure

Neither Party shall be liable to the other Party for any delay or failure to perform, which delay or failure is due to causes or circumstances beyond its control and without its fault or negligence, including acts of civil or military authority, national emergencies, labor strikes, fire, flood or catastrophe, acts of God, insurrection, war, riots or failure of transportation or a general and/or city-wide power failure. Each Party shall use reasonable efforts to mitigate the extent of the aforementioned excusable delay or failure and their adverse consequences, provided however, that should any such delay or failure continue for more than thirty (30) days, the Agreement may be terminated without liability by the non-delaying Party.

Export Compliance

Each Party shall be responsible for compliance with all applicable export and re-export control laws and regulations, including, without limitation, the Export Administration Regulations (15 CFR Parts 730-774) maintained by the United States Department of Commerce and that it is not relying on the other Party for any advice or counselling on such export control requirements. Customer shall be solely responsible for such compliance with respect to Customer Data and the Content that it provides to Strategic.

Insurance

Each Party will obtain and maintain in effect during the term of this Agreement, a policy or policies of comprehensive general liability, workers' compensation, professional liability and other types of insurance each deems necessary to protect their individual interests from such claims, liabilities, or damages which may arise out of the performance of their respective obligations under this Agreement. For the avoidance of doubt, each Party is solely responsible for insuring its personal property wherever located and each Party acknowledges that neither of them will insure the property of the other while it is in transit or in the possession of the opposite Party.

Waiver

The failure of either Party to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Agreement or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any rights and the obligations of the Party with respect to such future performance and shall continue in full force and effect.

Agreement Binding On Successors

This Agreement shall inure to the benefit of and be binding upon the successors and permitted assignees of the respective Parties.

Governing Law and Jurisdiction

The validity, construction and interpretation of this Agreement and the rights and duties of the Parties hereto, shall be governed by and construed in accordance with the laws of the State of California. Any legal action or proceeding arising under this Agreement will be brought either in the federal court in San Diego

County, California or state courts located in San Diego County, California and the parties hereby irrevocably consent to the personal jurisdiction and venue therein.

Relationship of Parties

The Parties hereto are independent contractors and this Agreement shall not create or imply an agency relationship between the Parties. Pursuant to and during the term of this Agreement, Strategic may, from time to time, request that the Customer execute such instruments and documents appointing Strategic an agent of the Customer for a specific limited purpose. An officer of Customer shall, in a timely manner, execute and deliver to Strategic or the third party requiring the same, such instruments designating Strategic as Customer's agent to the extent required by Strategic to manage and perform to Services provided by it under this Agreement.

Subcontractors

Strategic may engage subcontractors to perform services under any SOW. Except as provided herein, Strategic shall be fully responsible for the acts of all subcontractors to the same extent it is responsible for the acts of its own employees.

Severability

In the event that any of the provisions of this Agreement are declared or held by a court of competent jurisdiction invalid, illegal or unenforceable, the unaffected portions of this Agreement shall be unimpaired and remain in full force and effect. In the event of such a ruling, the Parties shall negotiate in good faith a substitute for the provision declared invalid, illegal or unenforceable.

Notices

Any notices or other communications required or permitted to be given or delivered under this Agreement shall be in writing and shall be sufficiently given if hand delivered or sent by first-class certified or overnight delivery mail, postage prepaid:

If to Strategic:

Strategic Information Group.
Attn: President
1953 San Elijo Ave, Suite 201
Cardiff-by-the-Sea, CA 92007

If to Customer, then to the person executing this Agreement on behalf of Customer at the address indicated on the first page of this Agreement.

A Party may change its address for notices by sending a change of address notice using this notice procedure.

Errors

Neither Party shall be held accountable nor incur any additional costs due to discrepancies, errors, omissions in documentation or other information supplied by the other Party.

Active Negotiations

Each Party acknowledges that this Agreement has been the subject of active and complete negotiations, and that this Agreement should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

Captions

The descriptive headings of the Sections and subsections of this Agreement are for convenience only, do not constitute a part of this Agreement, and do not affect this Agreement's construction or interpretation.

Amendments

No waiver of any right or remedy and no amendment, change or modification of the terms of this Agreement shall be binding on a Party unless it is in writing and is signed by the Party to be charged.

Counterparts

This Agreement may be executed in two or more counterparts, each of which will be considered an original but all of which together will constitute one agreement.

Publicity

Nothing contained in this Agreement shall be interpreted so as to permit Strategic or Customer to publicize its business relationship with the other Party or the nature of the Services performed for Customer, without the other Party's prior written consent.

No Solicitation of Employees

Each Party agrees that during the term of this Agreement, and for a period of one year after the termination or expiration of this Agreement, it will not solicit, without the other Party's prior written consent, any person employed then by the other Party if such person became known to the soliciting Party through the relationship established pursuant to this Agreement. This prohibition will not apply to job opportunities posted on recruiting websites or in other publications in which one Party seeks to find candidates for open positions (absent direct solicitation and/or recruitment). Any violation of this provision may be remedied in equity and law at the discretion of the offended party. It is stipulated that any completed and successful recruitment of an employee from the other party is in violation of this Paragraph subjects the offending party, among other possible remedies, to the payment of damages to the offended party in an amount equal to the greater of a) the employee's last year's salary and b) the employee's first year's salary at the new employer.

No Third Party Beneficiaries

Except as provided in Section 10 (Indemnification), this Agreement does not and is not intended to confer any enforceable rights or remedies upon any person or party other than the Parties.

Entire Agreement

This Agreement, including all SOWs and all schedules, attachments and/or other documents attached hereto or incorporated by reference constitutes the final agreement between the Parties. It is the complete and exclusive expression of the Parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the Parties on the matters contained in this Agreement are expressly superseded by this Agreement. The provisions of this Agreement may not be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither Party has relied upon any statement, representation, warranty or agreement of the other Party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement, other than those expressly stated in this Agreement.

Dispute Resolution

Prior to initiating any legal action in any dispute subject to this Agreement, the parties agree to communicate directly with each other in a good faith effort to resolve such dispute and, as to any matter unresolved after such communications, further agree to participate in a mediation before a mutually selected, impartial mediator in a good faith attempt to negotiate a resolution of such matter. The costs of the mediation shall be paid by the parties on a 50/50 basis.

Successors in Interest

This Agreement shall be binding on any and all successors in interest of the parties and no merger, acquisition, or business reorganization by any party shall change the rights, duties, and obligations of that party hereunder.

The parties have executed this Agreement as of the Effective Date.

Appendix E – Hosting Services Statement of Work Agreement

General Overview

Strategic Information Group, Inc. in partnership with Logicalis, Inc. is proud to offer the Logicalis Enterprise Cloud (LEC) solution for **Client. ("Client")** ERP hosting solution.

Strategic is partnering with Logicalis to provide data center, application, unified communication implementation services based on Customer's requirements.

The Logicalis Enterprise Cloud (LEC) provides secure, virtual Operating Environments supporting selected software, network services, storage & backups, coupled with professional monitoring and management services.

Strategic Information Group, Inc. is committed to providing Services defined in the Statement of Work ("SOW") to **Client** ("Customer"). These hosting services are provided on a 24 hours per day, 365 day per year basis.

This SOW describes the hosting services associated with: service tasks, alarm thresholds, urgency classifications, and prioritization that will apply to this project.

References to Logicalis are made in this document in reference to the service they are providing as a partner of Strategic Information Group, Inc. for these hosting solutions.

Contracted LEC Offerings

Below is a list of selected LEC services being implemented for this project:

Table 1: Logicalis Enterprise Cloud Service Option Summary

	X86 Compute Container		Managed Virtual Server / Service		Software
X	Flexible Container		Virtual Windows Server		SharePoint
	Fixed Container	X	Virtual Linux Server (Red Hat)		Citrix XenApp
	DR Container		Virtual Windows Server w/ SQL		
			WAN Acceleration		
			Load Balancer		

The LEC service structure is set forth on the attached *Schedule A.*

A dashboard/self-service portal is available for the Customer to query reports, analyze graphic data, create service call tickets, make requests and approve changes.

Monitoring and Management Services

All Service Offerings include:

- Change Management
- Reporting & Portal Access

The scope and level of event detection, notification, incident management, remediation, problem and event analysis and service delivery reviews is described in the applicable Service Offering Attachment. All services are conducted from Logicalis' Operations Center. Strategic will work with the customer and Logicalis to ensure these items are properly implemented for the customer.

Implementation Services

Based on the information provided, Strategic will work on the following Professional Services Tasks and Activities.

- Create Server validation protocol
- Execute Server validation protocol steps
- Document Server validation result and provide report to client

The Implementation Services will be considered complete when any one of the following criteria is met:

- The services outlined above are complete.

Customer Selected Services and Pricings

Strategic's services are priced per the attached document(s) of the same date. These prices are valid for the Initial Term.

Time and Materials Rates & Travel Expenses

Any request outside of the scope of this SOW will be evaluated on a case-by-case basis and, if approved, be executed through a separate SOW and delivered on a time-and-materials basis at the Standard Time and Materials Rate of (TBD) based on scope of work per hour, or executed through a Change Order to this SOW. A minimum charge of 1 hour for off-site services and 8 hours for on-site services may apply. Should any of this work be scheduled outside of normal business hours (8:00 AM – 5:00 PM, Monday through Friday), on a holiday, or on the weekend, a rate of $225 per hour will apply.

Travel expenses will be tracked separately and billed directly to the client. Travel expenses will include cost incurred from travel (airfare, rental car, mileage, tolls, and lodging. The amount does not include taxes, if any, which will be client responsibility.

Strategic will coordinate any Time and Materials or Travel activity and will include with invoicing which will occur on a weekly basis for ad hoc consulting services. Billing will occur on the 1st day of the month for the services to be provided for the following quarter.

Term and Early Termination

Commencement Date

As used in this SOW, "**Commencement Date**" means the date the contracted services are fully operational and available to Customer. Strategic will inform Logicalis to begin set-up services once this SOW is executed. Assuming Customer fully performs its set-up responsibilities in a timely fashion, the Commencement Date should occur within 30 days of the execution date of this SOW.

Term

The initial term of this SOW is - 12 months and will commence on the Commencement Date (the "**Initial Term**"). Thereafter, this SOW will automatically renew for successive one (1) year renewal terms unless terminated by either party upon written notice to the other at least ninety (90) days before expiration of the then-current term.

Early Termination Fee

Customer may terminate this SOW for convenience at any time during the Initial Term upon a minimum of thirty (30) days' prior written notice to Strategic. Such termination will not become effective until Customer has paid (a) any outstanding invoices still owed and (b) an early termination fee equal to thirty five (35%)

of the Monthly Recurring Fees for the remaining months (including partial months) in the Initial Term. For purposes of computing the Early Termination Fee the "**Monthly Recurring Fee**" means the monthly recurring fees paid or owed by Customer for the full month immediately preceding the termination or seventy-five percent (75%) of the monthly recurring fees on the Commencement Date, whichever amount is greater.

Service Level Agreements

The service level agreements ("**SLAs**") for the LEC services are set forth on the attached Schedule B.

Setup Roles and Responsibilities

The roles and responsibilities and a description of certain one-time setup tasks needed in order to prepare Strategic's and Customer's environment for ongoing services are set forth on the attached quote.

Assumptions

The scope, pricing and deliverables under this SOW are based on the assumptions set forth on the attached Schedule C. Any change to these assumptions may result in a change in pricing.

Contact Information

Contacts for the specification and delivery of services under this SOW are:

Service Contact	Title	Street Address City, State, Zipcode	Phone

Contacts for any billing and invoicing regarding this SOW are:

Service Contact	Title	Street Address City, State, Zipcode	Phone

Schedules

Schedule A – LEC Service Structure

1. Compute Container

A Compute Container consists of a collection of infrastructure (CPU, Memory, Storage, & Network Bandwidth), and associated Virtual Machines. Strategic in partnership with Logicalis is able to offer various Compute Container options:

Table A-1: Compute Container options

Compute Container	Brief Description
x86 Fixed Compute Container	Is a Compute Container that does not offer burstability, i.e., there is no ability to exceed the selected container capacity in terms of CPU and Bandwidth.
x86 Flexible Compute Container	Is a Compute Container that has the ability to burst within the Logicalis Enterprise Cloud, i.e., CPU compute resources (Ghz) and bandwidth (Mbps), resources have the ability to exceed the contracted allotment based on the 95th percentile (described below).
x86 DR Compute Container	Cost effective-Non-burstable Compute container designed to support a clients DR replication (leveraging Double Take technologies for x86 technologies (Windows & Linux).
IBM Power Fixed Compute Container	Is a Compute Container capable of supporting IBM Power Solutions (AIX & IBM i) that does not offer burstability, i.e., there is no ability to exceed the selected container capacity in terms of CPU and Bandwidth.
IBM Power Flexible Compute Container	Is a Compute Container capable of supporting IBM Power Solutions (AIX & IBM iSeries) that has the ability to burst within the Logicalis Enterprise Cloud, i.e., CPU compute resources and bandwidth (Mbps), resources have the ability to exceed the contracted allotment based on the 95th percentile (described below).

95th Percentile Measurement

- Burstability usage of CPU and Network Bandwidth (Mbps) is measured by taking samples of usage every 5 minutes during a calendar month.
- The measurements are stored and become data points. At the end of the month, all data points taken during the month are ranked in ascending order. Logicalis will discard the top 5% for each set of data points. The highest remaining sample of each technology set becomes the account's sustained (base) or Burstable usage number for that billing cycle.
- The Burstable usage is rounded up to the nearest whole number and is invoiced monthly based on the additional burstable charge set forth below in Table A-2.

Table A-2: Computer Container Matrix

Compute Container Resources	Units	95th Percentile*
CPU (Ghz)* (x86)	1 Ghz	Yes
CPW (IBM i OS)	500	Yes
rPerf (AIX)	2	Yes
Memory	1 GB	NA
Network Bandwidth (Mbps)	1 Mbps	Yes
Storage (GB)	25 GB	NA
Encrypted Storage (GB)	25 GB	NA

* If burstability usage exceeds the contracted allotment based on the 95th percentile. Customer shall pay an additional burstable charge equal to 135% of calculated monthly cost per unit. Burstability is capped at 150% subject to resource availability.

2. Virtual Machine

A Virtual Machine ("**VM**") is a software implementation that executes programs in the same manner as a physical machine. Each Compute Container houses select VM's to run within the Cloud. Each VM and its associated components are monitored and managed by Logicalis at a customer selected service level.

Each Virtual Machine includes:

- VM w/ Operating System & assigned memory
- Patching & Management of Operating System
- Backups of all Virtual Operating Systems and associated data
- 1 External IP Address
- 50 GB OS boot partition per VM
- Optional - Monthly Licensed Software (database, middleware, collaboration, etc.)

Managed Services Solutions Monitoring and Management Services (Optional)

1. Change Management

Logicalis provides change management for all contracted Service Offerings as described below. Change Types, Major, Minor and Routine. Any change outside of those listed in the applicable Service Offering Attachment will be assessed to determine scope and will be proposed on a T&M basis.

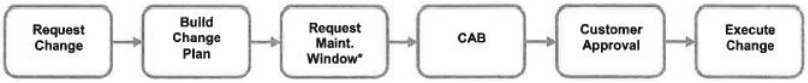
Table A-3: Change Target Lead Time

	Target Lead Time	
Type	**Build Change Plan**	**Execution**
Major	120 Hrs	Planned Date
Minor	72 Hrs	Planned Date
Routine	24 Hrs	
Routine with Approval	24 Hrs	
Emergency – Major	24 Hrs	
Emergency – Minor	24 Hrs	
Emergency – Routine	4 Hrs	

* Logicalis will make every effort to meet these Target Lead Times, however, failure to do so does not constitute a breach of contract or a SLA penalty. The Change Target Lead Timers will pause while waiting for Customer approval or vendor responses or any other condition outside of Logicalis' control.

Change Process Overview

Major and Minor Change process overview for a non-validated environment. These items will be discussed as part of the on-boarding process of how they should be handled in a validated environment. If required for a validated environment, an appendix of the change process for the Validated environment can be added to the SOW to ensure proper documentation of the validated environment.



Routine Change process overview:

* If not originated, or provided, by customer
** Only required if the Requestor is not a designated Change Approver

Change Notes and Process

- Change requests can be initiated by Strategic and/or Logicalis or Customer.
- Customer change requests must provide detailed and relevant information for change.
- Change approval is required from the Customer, Strategic, and from Logicalis' Change Board (CAB) prior to execution of a change with the exception of Routine Changes and Emergency changes, see relevant sections below.
- Change process in a validated environment must follow the change control process that has been established for the customer. Strategic will work with the Customer and Logicalis to ensure changes are properly made.
- Any Customer-requested change, outside of those listed in the applicable Service Offering Attachment, will be assessed to determine scope and will be proposed on a T&M basis.

- Strategic and/or Logicalis will utilize Customer-provided maintenance windows. Where necessary, Strategic and /or Logicalis will schedule additional maintenance windows with Customer to implement Customer-approved changes.
- Electronic change requests will be used for all changes unless otherwise stated for a validated environment.
- A Customer-authorized approver will provide electronic approval for change prior to change evaluation and implementation unless otherwise stated for a validated environment.

Table A-4: Change Types

Type of Change	Description
Patch Changes	• Patching and updates are included in the Hosting price • Strategic and Logicalis will review and work together with the customer to provide proper OS level patches. • Customer is required to maintain a support contract at an appropriate level in order to obtain the patch media sets. • Where applicable, Customer needs to provide the test environment and resources for testing patches, and for testing/deploying new code or technology. Testing of patches with applications is provided by Logicalis on a T&M basis.
Routine Changes	• Routine Changes, defined in the Service Offering Attachment(s), are deemed to be pre-approved and do not require change approval from Customer or Logicalis' CAB.

Emergency Changes	• An Emergency Change occurs when both of the following conditions are true:
	  • The device requiring the change is covered by a Platinum Service Level; and
	  • A High Urgency Event, as defined in the Incident Management Services tables within the Service Offerings Attachments section, is associated with the change.
	• Emergency Changes will follow an escalated approval process and will bypass Customer approvals. Customer will however be notified of the Emergency Change. Approvals will be documented by Logicalis' Emergency Change Board (ECAB). Full documentation will be provided after the change and Customer sign-off will be required to confirm restoration of service and change success.
	• The following scenarios will be billed in one (1) hour increments on a premium T&M basis at $320 per hour and will be prioritized immediately after any Platinum Emergency Changes or P1 Incidents:
	  • Changes deemed to be an Emergency by Customer, for a CI not covered by Platinum Service Level.
	  • Emergency Changes that are required as a result of something the Customer performed in the environment.
	• Emergency Changes will be evaluated before and after execution to ensure adherence to the conditions above. As a result of this evaluation, Logicalis reserves the right to modify Emergency Changes to the premium T&M rate

2. Portal Reports and Portal Access

Portal Reports

Logicalis provides incident reporting directly through the Self-Service Portal. The "SS-P" license type (see "Portal" section below) allows custom filters and views of ticket data. In addition reports related to specific Service Offerings can be found within the reporting section of the applicable Service Offering Attachment.

Upon request the following reports can be produced on a quarterly basis:

- Ticket Performance Report – Shows a summary of how many tickets met the TRT vs. tickets that didn't meet the TRT.
- Missed TRT Report – Shows Ticket Summary information for each ticket that missed the TRT, grouped by Valid misses and Invalid misses. This report will show the target and actual time for each ticket.
- For LEC services, % of Compute Container capacity

Portal Access

Strategic and Logicalis provide portal access to a variety of information and functions. The following portal user roles define the access and functionality available. Strategic uses the portal to communicate and track issue for the customer. It is optional for the customer to have access to the portal. Monthly fee for the portal license is $30/month.

Table A-5: Portal User Roles (optional)

	Self-Service (SS)	Self-Service Plus (SSP)
Ticket Creation		
Create a Service Call Ticket for Logicalis	✓	✓
Create a Request for Information Ticket for Logicalis	✓	✓
Create an Information only Ticket for Logicalis	✓	✓
Create Change Requests		✓
Approve Changes	✓	✓
Views/Reports		
View Homepage Dashboard	✓	✓
View Knowledge Articles	✓	✓
View My Incidents (open, resolved, closed)	✓	✓
View My Changes (pending, open, closed)	✓	✓
View Monitoring Analysis & Reporting	SD	SD
View My Problems (open, resolved, closed)		✓
View All Incidents (open, resolved, closed)		✓
View All Changes (open, closed)		✓
View All Problems (open, resolved, closed)		✓
View Critical Incidents Map		✓
View CMDB/Configuration Items		✓
Custom Views and Filters		✓
Administration		
Notification Preferences	✓	✓
Password Change	✓	✓

* SD – Service Dependent (i.e., availability of this feature is dependent on the type of Managed Services being provided). Please note additional license types are available for customers wanting to leverage the ticketing system for their internal use.

3. Audit

All audit related activities, including but not limited to, requests for custom reports, information gathering, and conference calls with internal or external auditors will be charged at the Time and Materials rate(s) noted in the SOW.

Setup Roles and Responsibilities

1. Customer Roles and Responsibilities

For Customer's Roles and Responsibilities, only items checked below apply to this SOW.

LEC	Managed Services	Implementation Services	Customer Roles and Responsibilities
✓			Complete on boarding information for Customer that includes contact information (telephone, cell phone, pager, e-mail)
✓			Specify Notification, Alert, and Escalation contacts for priority and device types. Customer needs to document who will be notified and how notification will be received (Customer may specify single or multiple notifications and also specify an escalation path).
✓			Participate in meetings to understand processes for assignment, escalation, change management, and status communication.
✓			Provide a distribution list, during the integration phase, within Customer's email service for alarm notifications.
✓			Ensure that Strategic is kept up to date with changes to distribution list alarm notifications.
✓			Assign and make available a contact person with the authority to make decisions regarding alternative solutions and resolution verification recommended by Strategic. Strategic and/or Logicalis may, without penalty, pause SLA timers if the Customer contact is not available for necessary information or decisions.
			Install, setup and configure of all hardware (i.e., servers, routers, switches, firewalls, etc.) and software (i.e., applications, databases, operation systems, etc.).
			Provide all IP information and host name and serial numbers where applicable for all relevant Configuration Items.
			Configure devices to report SNMP traps unless otherwise noted in this SOW.
			Enable event forwarding to Logicalis' management systems, i.e., Customer will open all Logicalis required ports to enable monitoring and management.
			Strategic will assist customer in the completion of Logicalis Configuration requests detailing Customer's technical environment.
			Follow vendor's device recommendations for all devices that are not hosted by Logicalis for example cooling / room temperature.
			Either use a Logicalis-supplied VPN endpoint (preferred) or provide Logicalis access to ping Customer's external interface of their VPN endpoint. This is important in determining the root cause of alarms. In either case, the VPN is required to be a persistent LAN-to-LAN connection.
			Implement recommendations of Strategic and/or Logicalis. Strategic and/or Logicalis will always make a best effort to look out for the best

interests of the Customer but Strategic and/or Logicalis are not responsible for Customer requests that do not follow best practices.

Assign and make available a contact person with the authority to make decisions regarding alternative solutions and resolution verification recommended by Strategic and/or Logicalis. Strategic and/or Logicalis may, without penalty, pause SLA timers if the Customer contact is not available for necessary information or decisions.

Strategic and Logicalis provides ticketing system functionality to ensure Disaster Recovery (D/R) service fail-over functionality between devices in the ticketing system. Strategic will work with the Customer to identify production/primary devices and fail-over devices. In the event a production server fails and a D/R server is activated as the primary server, Customer may call Strategic and request that the specific server be moved to "D/R Active" status. Logicalis will ensure the production server is in failed mode and will then activate the "D/R Active" status on the D/R server. The "D/R Active" status will ensure that all incidents and problems are handled with the same priority they would be for the equivalent production server. Customer will be responsible (as part of its D/R procedures) for calling to activate and de-activate the D/R status. Customer will also be responsible for identifying D/R & Production device relationships during the on boarding process and ensuring that Logicalis receives timely updates when changes to the D/R device relationships are made.

Work with Strategic and/or Logicalis to determine the severity, course of action, and remote assistance for incident resolution.

Where necessary, provide site resources to work with hardware vendor service personnel requiring on site access.

Provide required access and information to perform relevant management tasks per this SOW. SLA timers are paused while waiting for Customer or vendor.

Follow Strategic and/or Logicalis' recommendations to resolve identified environmental or resource issues which are currently or can potentially cause future problems.

Provide access to vendor ticketing system where required.

Provide timely access to people and information including, but not limited to, the following areas:

- Operations personnel knowledgeable of system and network administration and problem resolution flow.
- Applications knowledgeable personnel for the applications that will be running on the systems.

✓ Management personnel who are knowledgeable of the architecture of the project to resolve issues that occur during the project. These people shall be designated in advance and be readily available to the Logicalis consultants. To the extent possible, meetings will be scheduled in advance. However, access on an ad hoc basis may be necessary as work proceeds.

✓ Schedule and facilitate 'down-time' for systems and applications during certain periods during the project.

✓ Provide appropriate work areas for Logicalis consultants when they are onsite. This includes a quiet work area, telephone access, printer access, Internet access, and fax access.

✓ Provide all necessary security access to the locations where the work is to be delivered.

✓	Provide all the necessary support agreements for the software that is needed for the environment.
✓	Provide the specified/required floor/rack space, power and network connectivity for a single timely installation of the new hardware configuration.
✓	To have any and all licensing issues related to the movement of applications understood and resolved. New license key codes, if required, are obtained.
✓	To have all application sources readily available in the event of having to reload applications from scratch.
✓	Provide Customer personnel to perform all required backup of its data prior to work being performed by Strategic and/or Logicalis technical specialists.

2. Strategic/Logicalis Roles and Responsibilities

For Strategic/Logicalis Roles and Responsibilities, only items checked below apply to this SOW.

LEC	Managed Services	Implementation Services	Strategic/Logicalis Roles and Responsibilities
✓			Provide/setup Compute Container with associated Virtual Machines and associated CI per specifications in this SOW.
✓			Review of Configuration Item information that includes each item to be supported.
✓			Reports, Dashboards and Portal Setup.
✓			Configure Service Offering Reports as detailed in each Service Offering Attachment.
✓			Participation in meetings to discuss processes for assignment, escalation, change management, and status communication.
			Connectivity Setup on Logicalis' Network including IP addressing information, VPN Connectivity, testing, and documentation of networking support contacts at Customer.
			Agent, SPI or Probe Installation and Configuration.
			Review of (Customer completed) Configuration Item information that includes each item to be supported, support identifiers, IP addresses, IDs passwords, support contract IDs and contact information, and configuration documentation.

Schedule B – LEC Service Level Agreements

1. Compute Container

Logicalis Enterprise Cloud Availability

Logicalis maintains 99.9% availability of all Compute Containers to be measured and reported by monitoring critical services every 5 minutes. An "Outage" occurs when the Customer's Compute Container is unavailable as defined below.

"Availability" Availability for each Compute Container will be calculated monthly using the following formula (and will be rounded up to the next one-tenth of a percentage point):

Compute Container Availability = [(Base Time – Unscheduled Downtime) / (Base Time)] x 100

"Base Time" equals 24 hours in a day multiplied by 60 minutes

"Unscheduled Downtime" equals the time (in minutes) in the applicable day during which any single component of the Compute Container Environment is not operational excluding "Scheduled Downtime". For purposes of assessing the SLA Availability penalties below, the clock will start at the commencement of the Unscheduled Downtime and will stop when all single components of the Compute Container is operational.

"Scheduled Downtime" equals the aggregate total of all minutes of planned and scheduled maintenance performed during a day to perform any necessary hardware, operating software, network, database, application software maintenance, repairs, updates, and upgrades. Strategic and Customer will determine the dates, times and timeframe lengths of Scheduled Downtime in each Client SOW.

In the event 99.9% availability for the Compute Container is not achieved, Customer shall be entitled to one credit of 1/30th of the monthly recurring charges per day associated with the related service. Any cumulative credits will be applied quarterly as a reduction to the Customer's next invoice. Total credits per month may not exceed the amount of one month's recurring charges for the service. If Customer requires clarification of or modification to a credit, a request must be submitted by Customer to Strategic within forty five (45) days of credit issuance.

2. Virtual Machines/Services

The monitoring and management services for VMs and associated Service Offerings have penalties based on resolving incidents and in committed time frames. Each VM and Service Offering is covered by a customer-selected Service Level which defines the priority for each event, per Table B-1 below. In turn, each priority has defined target resolution times, per Table **Error! Reference source not found.** below. For example, a High Urgency event on a Platinum Service Level is a Priority 1 Incident, whereas a Medium Urgency event on a Gold Service Level is a Priority 3 Incident.

Table B-1: Change Target Lead Times

	Service Level		
Event Urgency	**Platinum**	**Gold**	**Silver**
High	Priority 1	Priority 2	Priority 3
Medium	Priority 2	Priority 3	Priority 4
Low	Priority 3	Priority 4	Priority 5

Table B-2: Target Resolution Times by Priority

	Incident	
Priority	**Notification**	**TRT***
Priority 1	15 min	4 hr
Priority 2	15 min	8 hr
Priority 3	15 min	16 hr
Priority 4	15 min	32 hr
Priority 5	15 min	48 hr

Incident Priority Notes

Event Urgency is determined by either:

- **System Alarm Events** - The urgency is pre-determined in the "Incident Management Services" tables. See applicable Service Offering Attachment.
- **Service Call Events –** Event urgency is determined by the situation described by the caller.

SLA Penalties and Refunds

If any Target Resolution Times (TRT) from Table B-2 are not met the following SLA penalties as calculated below shall apply:

Table B-1: Service Level Penalties

Incident Priority	**Penalty %**
Priority 1 (P1)	45%
Priority 2 (P2)	35%
Priority 3 (P3)	25%
Priority 4 (P4)	20%
Priority 5 (P5)	10%

Penalty Payments are calculated as follows:
E (Exceeded Hours) x P (Penalty %) x V (CI Value) = Penalty paid per Incident incurring a missed TRT

"Exceeded Hours" The total number of incident resolution elapsed hours beyond the Target Resolution Time. This is for "Closed" incidents in the given month and excludes pause conditions, i.e., waiting on vendor, waiting on Customer or other causes beyond the reasonable control of Strategic and/or Logicalis. Example: A P1 incident has 4 TRT hours, if the valid elapsed time = 5.5 hours, Exceeded Hours = 1.5 hours.

"Penalty %" This is derived from Table B-1 above. Each incident has a priority and each priority has a related Penalty %.

"CI Value" This is the amount the Customer pays Strategic each month for the device / Configuration Item (CI) associated with the incident that missed the TRT.

Penalty Notes

- The penalty paid per incident is limited to the monthly value of the Cl, i.e., the value of the amount the Customer pays Strategic for the service associated with the Cl each month.
- Penalties will be calculated monthly and paid quarterly as a credit issued on Customer's account.
- A missed SLA will not be considered a penalty if the missed SLA is caused by reasons beyond the reasonable control of Strategic and/or Logicalis. In this situation, the incident will be flagged with "Invalid Missed SLA" and will not be counted toward a penalty payment.
- All Customer terms in this SOW must be met for an incident to be counted toward a penalty calculation. For example, if a service offering is disabled due to customer changes in the environment. Any device with an associated term out of compliance with this SOW will be excluded from any penalty payments.

SLA and Incident Handling Notes:

- A Problem ticket will be opened and will be linked to all related Incidents if:
    - The issue is of a repetitive nature.
    - The cause or resolution of an Incident, or multiple Incidents, is unknown.
- If an Incident becomes a Problem, any related Incidents will be set to a “pending” status until resolution of the Problem but the SLA Timers on the incidents will not pause unless another pause condition is met. The Incidents will be closed when the related Problems are closed.
- Incidents related to system or service availability are considered resolved, and the TRT achieved, when the service is restored even if in a workaround state. Related problems will however continue to be addressed toward resolution.
- “Notification” referred to in Table B-2 is delivered in the form of an automatic system generated message.
- In addition to the automatic notification message, Priority 1 issues will receive a phone call within 15 minutes of the Incident being logged. Customer is responsible for maintaining correct escalation and contact information.
- SLA Timers are paused when the Incident or Problem resolution is beyond the reasonable control of Logicalis (e.g., when awaiting vendor or Customer response).
- SLA Timers are paused when Incidents or Problems require a Change to be executed. The timers will pause from the initiation of the Change Request to the Completion or Cancellation of the Change Process.
- If Logicalis does not manage or monitor a device(s) that is preventing its ability to detect necessary events, then the situation is considered outside of Logicalis’ control.
- Strategic and/or Logicalis reserves the right to adjust ticket priority levels based on urgency and impact information gathered throughout the ticket life-cycle. For example, if initial information provided by the caller is discovered to be inaccurate.

The penalties and/or credits provided under this Schedule B are Customer’s sole and exclusive remedy with respect to any failure by Strategic / Logicalis to meet the availability standard described herein.

Schedule C – Assumptions

For Assumptions, only items checked below apply to this SOW.

LEC	Managed Services	Implementation Services	Assumptions
			Software applications and services not specifically listed in this SOW or the QAD proposal are excluded.
✓			***Note: Linux is supported via the hosting agreement. MDBA agreement covers the support of QAD and related software***
✓			Client side network connectivity setup and configuration is the responsibility of the Customer unless Logicalis is specifically contracted for this work.
✓			Customer's responsibilities for timely and proper completion of the transition and integration project will be discussed and agreed upon prior to project initiation. In order to ensure timely and proper completion of the transition and integration project and unless otherwise mutually agreed, Customer will be provided a 5-day turn-around time for required integration data. Logicalis will follow up, by phone or email, after the 5-day period to attempt to gather outstanding data. If Logicalis does not receive the data within the time period above, Logicalis will send a consultant to Customer's site, at standard T&M and travel rates, to gather the outstanding integration data.
✓			Customer Standard Maintenance Window: Customer will reserve day of the month, from AM to AM US Eastern Time (4 hours) for Maintenance Activities. During this time frame, Service Level Agreements may, at the sole discretion of Logicalis, be suspended while maintenance is performed on Customer's equipment and applications. Logicalis will give Customer forty-eight (48) hour advance notice if it intends to utilize the Customer Standard Maintenance Window and how such maintenance impacts services provided to Customer.
✓			Standard Maintenance Window: Logicalis reserves the second Saturday of each month, from 1:00 AM to 5:00 AM US Eastern Time for maintenance activities of their monitoring and management tools. During this time frame, Service Level Agreements may be suspended while maintenance is performed on Logicalis equipment and applications. Logicalis will give Customer five (5) days advance notice if it intends to utilize the Standard Maintenance Window and how such maintenance impacts services provided to Customer.
			All equipment is housed on Customer's premises unless stated otherwise in this SOW.
			Logicalis provides remote monitoring or management services for IT Configuration Items owned by Customer. Customer owns and will continue to own all software and hardware being monitored or managed.
			Connectivity between the Logicalis Operations Center and Customer facility will be via a VPN Connection.
			Logicalis reserves the right to limit performance metrics in the event the primary connectivity fails and Customer has not established backup network connectivity.
			VPN Client Setup remains the responsibility of Customer unless Logicalis is specifically contracted for this work.

	All Customer WAN devices will be available for instrumentation and monitoring via one Customer site router, unless otherwise noted. Customer must maintain on-site support if it does not have qualified staff for hardware replacement.
	Customer will be directly responsible for all vendor hardware and software maintenance contracts.
	Customer will grant Logicalis employees access to support contracts and vendor information to grant Logicalis the ability to place support calls on behalf of Customer.
	Customer servers under Managed Services require remote console access such as KVM, Console cards, or RILO cards to establish remote communications. These devices must be purchased by Customer.
	Instrumentation tools, as well as monitoring agents, probes and smart plug-ins (SPIs) placed on Customer systems are, and will be, owned by Logicalis unless otherwise noted in this SOW.
	Any hardware or software deployment is the responsibility of Customer, unless specifically stated herein and agreed upon by both parties.
	Service pricing is based on a fully-deployed, functional, tested, and production-ready environment available at contract commencement. All parts of Customer's systems are subject to operational review. Logicalis reserves the right to adjust the pricing based on information found during due diligence or integration.
	Only vendor supported hardware and software (at the time of the incident) are covered by this SOW. Customer is required to maintain a valid hardware support contract for each device for the duration of this SOW. Hardware external to the managed / monitored device enclosure is excluded from this Service Level Agreement. Software applications not specifically listed in the Service Level Agreement are excluded.
	Host names or IP Addresses changed without notification to Logicalis will result in temporary discontinued monitoring/management and will require a T&M effort to reconfigure.
✓	Logicalis assumes Strategic Information Group will procure and have readily available appropriate hardware, licenses for software products, and features that are applicable to this project.
✓	Strategic Information Group shall provide all necessary access to facilities, equipment and IT personnel for the completion of the tasks.

Attachments

Attachment 1 – Service Offering

Virtual Server / Linux Services Management

Introduction

Linux Services Management provides proactive 24x7 monitoring and management of Linux servers and operating systems. The Management service includes but is not limited to: Polling network devices; Event detection and notification for devices that do not answer polls; Event and syslog monitoring; User account management; Add, change, and deletion of user accounts; User account password management; File system management; Security Patch Management; Kernel management; Unix Services Reporting and Service Delivery Reviews.

Supported Devices/Software

The following types of devices / software are included in this service offering:

		Service Summary										
Device / Software Type	Limits / Exclusions	Node Availability	OS Availability	CPU & memory Utilization	File System Utilization	File System Availability	Process Availability	System Log Monitoring	Login Failure	Print Queue	OS Backup	Change Management
Linux OS	Limited to: RedHat Enterprise:	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

Incident Management Services

Service	Description / Threshold	Limit / Exclusions	Polling (Minutes)	Urgency			Monitor
				High	Med	Low	
Node Availability	ICMP / SNMP Service Testing. Tests include: ICMP to device, SNMP poll device for system availability. **Threshold:** Availability*		5	✓			✓
OS Availability	Test for the ability to start a logon session **Threshold:** Unable to start a logon session. Session failure.	OS session only. Excludes application sessions.	15	✓			✓
CPU Utilization	Monitor CPU Utilization. **Threshold:** >=95% CPU Util for 2 hrs		5	✓			

Memory Utilization	Monitor virtual memory utilization and alert when the amount of free memory drops below the threshold. **Threshold:** Utilization exceeds 85% of physical memory		5	✓			
File System Utilization	Monitor file system utilization thresholds and alarm when thresholds are exceeded. Note: (for larger files systems these thresholds can be altered to monitor free space in GB). **Threshold:** 90%, 95%, and 99%		5	99%	95%		✓
File System Availability	File system availability for file systems listed in fstab or NFS mounted file systems. **Threshold:** File system cannot be accessed.		5	✓			✓
Process Availability	System process availability: NFS, Cron, DNS, Inetd, NTP, Portmap, Print, SNMP, SSH, Syslog and Mail. **Threshold:** Process unavailable		5	✓			✓
System Log Monitoring	Server hardware or OS resource errors or failures identified within the default system logs. **Threshold:** Error or failure identified in: rc log, messages log, syslog, boot log or warn log		15	✓			✓
Login Failures	Multiple login failure attempts. **Threshold:** 3 Failed attempts on the same account within 5 minutes or failed su login not corrected within 1 minute	Linux account login only	5		✓		✓
Print Queue	Print queue entries. **Threshold:** Number of entries exceeds 40		5			✓	✓
OS Backup Completion	Ensure OS system is protected by standard tools. **Threshold:** OS Backup Critical failures	Excludes: Media rotation & Limited to Maintenance of existing Backup Scripts.	5		✓		✓

Incident Management Notes

- **System Log Monitoring –** Strategic will work with Customer to remediate false errors due to script issues.
- **File System Changes –** Strategic will work with Customer to provide necessary disk resources to maintain required free space for growth.
- **Operating System** – Separately licensed products or 3rd party applications are excluded from Operating System Management. Operating System Failures are categorized as a “Problem” and will be remedied via a Change.
- **Virtual Servers** – Each virtual partition is treated as a separate Cl and is priced individually.

Change Management Services

Service	Description	Limit / Exclusions	Change Type High	Med	Low
User Account Administration	Add, Delete or Change Unix User Accounts and Passwords. For example: • Delete Linux user logon as maintained in the server password files and home directories. • Reset passwords to resolve access denial due to lost/forgotten passwords. • Remove requested user or reset the password.				✓
Patching	Quarterly patch review with customer or application administrators to determine supported OEM and application patch levels. If patches are necessary, test patch bundle with the customer or application administrators for assessment. Testing will be performed if the customer has a test environment for this purpose. Apply customer approved patch set.			✓	
Patching – Incident & Security	Service affecting and security patches will be applied as recommended by the vendor.			✓	
Kernel Parameter Changes	Apply the required kernel parameters or modules as specified by the application and/or database administrators to maintain correct OS resource operating levels. Logicalis will schedule a maintenance window with the customer contact to allow for kernel parameter changes.				✓
File System Changes	Monitor file system space and annually increase size to allow for at minimum 12 month growth based upon past statistics. Increase/decrease disk sizes, add/remove disks			✓	
DNS Change	Add/delete DNS server or updated local host file to maintain correct name resolution. Logicalis will add required DNS server entries or servers to local hosts file.				✓
Volume Group Creation	Expansion of currently configured volume groups through addition of physical disks. Logicalis will review the requirements for the volume group and available hardware and present recommendation to customer for approval.			✓	
Reboot / Restart	A scheduled reboot or restart Virtual server. This does not apply to rebooting or restarting for Incident resolution of a system that is non-functional.				✓

Change Management Notes

- **DNS Changes –** IP address, name and domain name are required.
- **Volume Group Changes –** Client needs to provide Volume group, lvol and file system parameters.
- **Patching –** Patches will be first applied to test/dev servers where applicable test/dev servers are covered under appropriate Logicalis Managed Service levels.

Time & Materials

All change requests not listed above will be handled on a Time and Materials basis, including, but not limited to:

- **Upgrades –** Operating System upgrade to a different revision level or firmware upgrades.
- **Volume Groups –** Creation of new volume groups and associated file systems.

Reports

The following reports will be available to the customer upon request from Strategic.

Service	Description	Limit / Exclusions	Data Frequency	Report Frequency	Delivery Method
Average virtual server memory utilization	Shows the virtual server memory utilization over time to trend usage and determine bottlenecks. This report is sorted starting with the system that has the highest memory usage.		24 hrs	Daily, weekly, monthly, quarterly	Portal
System disk utilization (space)	Shows the disk utilization of all drives in the system to trend usage and assist with capacity planning. This report is sorted starting with the system with drives that have the least amount of space.		24 hrs	Daily, weekly, monthly, quarterly	Portal
Average virtual server CPU utilization	Shows the virtual server CPU utilization over time to trend usage and determine bottlenecks. This report is sorted starting with the system that has the highest CPU usage.		24 hrs	Daily, weekly, monthly, quarterly	Portal
Virtual Server availability	Shows virtual server uptime and downtime.		24 hrs	Daily, weekly, monthly, quarterly	Portal
Total incidents open	Shows the total number of incidents for each virtual server. This report is sorted by virtual server and by service.		24 hrs	Daily, weekly, monthly, quarterly	Portal
Total service calls open	Shows the total number of service calls by virtual server. This report is sorted by server and by service.		24 hrs	Daily, weekly, monthly, quarterly	Portal
System inventory	Show all of the systems being monitoring and provide basic system information such as server make/model, serial number and service level.		Quarterly	Quarterly	Email

Service Delivery Reviews

The following information will be reviewed at a mutually convenient time.

Service	Description	Limit / Exclusions	Format
File Systems space	Growth and available free space		Portal
Performance data	Past quarters performance data for CPU. Memory, Network interface, swap and analysis report		Portal
Environment review	Suggested enhancement or changes based on the above data		Portal
Patch Analysis Report	Review patch analysis recommendations where applicable.		Portal
Capacity Planning	Discuss customer's planned growth and changes and discuss hardware and software changes to support the future environment.		Portal

Attachment 2 – LEC Infrastructure

Cloud Connectivity and Load Balancing

ISP Bandwidth

- The solution includes redundant Internet access from geographic disperse Internet POPs. Redundant edge routers, firewalls and switches support the bandwidth.
- This is provided in 1Mbps increments with bursting capability up to 100Mbps. 95th percentile reporting is used to determine monthly usage and accurate billing.

IP addressing & TCP/UDP Services

- Public IPs are provided to your hosts in blocks of 6
    - Extra public IPs are negotiable based on availability and need
    - You will direct your DNS records to these IPs or have Logicalis advertise it on your behalf
- TCP/UDP ports can be opened to the Internet or a specific network (ex. SSH, FTP, HTTP/HTTPS)
    - There is a one-time setup for implementing the firewall rules to open and secure your public/private services. Changes will use your change credits and/or be billed at Time and Material rates.

Remote Access Connectivity

- End user/developers who require access to the environment from time to time will use one of the three options below
    - SSH and/or RDP can be opened to specific hosts/networks for remote server management
    - Legacy Cisco Client based VPN using a .PCF file can be used for connectivity if your users are on XP/Vista. This is on a one time setup fee charge with T&M changes
    - Cisco Any connect SSL VPN can be provided for network connectivity for end users or for remote server management on a per user fee basis

LAN to LAN VPN based Remote Connectivity

- For always on connectivity to the Virtual environment a LAN to LAN VPN can be provided and designed for your needs
    - A Cisco router will be provided, configured and shipped to your HQ. You will assist in installation by providing IP addressing, routing information, rack/shelf space and ISP connectivity
        - Redundant connectivity can be designed and discussed as needed
        - This router will be monitored and managed by Logicalis for a standard monthly fee.
    - Establishing a LAN to LAN tunnel to your existing VPN appliance or firewall can be considered as an option
        - SLAs may not be offered for remote availability in that scenario

Virtual Data Center Load Balancing

Our LEC network can distribute your VM service workload evenly in order to get optimal resource utilization, maximize throughput, minimize response time, and avoid overload.

- Load balancing can be designed into the network with one time setup/licensing fees. Changes will use your change credits and/or be billed at Time and Material rates.
    - This solution will provide Virtual IP addresses and secure VLANs through our redundant load balancing appliances to ensure your service load is evenly distributed. This can result in better performance for high traffic services.

General

Managed Services is for the specified support of 1 x QAD Linux Server (mfg, hlp, adm), one (1) SIG/Connects database, one (1) SIG/Alerts database and 1 QMS database.

Additional custom or third party Integration Software if not specified in the quote above will require additional fees.

Any changes or support for any test-level environment if not specified in the quote above will require additional fees.

The monthly rate quoted above assumes user counts and integrations remain within the stated parameters. If the user counts or integrations fluctuate, Strategic will adjust the monthly rate accordingly to accommodate.

Description

Scope of Services

The scope of the Managed Services includes the following:

- Verify daily Progress database backups run.
- Observe and tune the Progress database and make minor adjustments as needed to optimize performance. This includes performance bottlenecks and internal database issues.

- Research and fix minor database problems as they arise. For the purpose of this agreement, minor problems are defined as those that can be resolved in 30 minutes or less.
- Perform up to two (2) databases refreshes when requested per month.
- Monitoring of all integrated software if specified in the quote.
- Monitoring Progress:
    - Admin Server
    - Name Server
    - All Databases:
        - Availability
        - Bl File Growth and file size
        - Database Extent sizing
        - User record locks
        - Record locking statistics and performance metrics
        - Log file errors
        - App Servers and Webspeed
        - Availability
        - Agent locking
        - Load
        - Log file errors
- Monitoring Operating System/Server
    - Disk IO
    - Disk space
    - Service availability
    - Connectivity
    - Memory utilization/swapping
    - Load
    - Ping times (if applicable)
- Monitoring Tomcat
    - Availability
    - Memory utilization
    - Web-app availability

Infrastructure Management

Monitoring of Infrastructure Management, Patching, Updates and escalation is included in the Hosting Price. Monitoring of Infrastructure Management, Patching and Updates are included in the quote above.

Installation and Setup

For all new Clients, the scope of the Managed Services Installation & Setup services includes the following:

- Install and configure the database monitoring software.
- Establish and document a Managed Services Communications Plan.
- Setup VPN for remote access.
- Verify access to required servers and disks to be managed.
- Create written documentation of installation and infrastructure related to QAD database to be managed.

Monitoring and Reporting

During the term of this Agreement, Strategic, at its discretion, may download and install one or more modules or tools from Strategic's Managed Services monitoring software (the "Modules") onto Client server, computers or other equipment (collectively, the "Client Equipment)"). By installing the Modules on the Client's Equipment, Strategic grants to Client a non-exclusive, non-transferable limited license to utilize any Module installed on the Client Equipment for the exclusive use of activities related to and authorized by Strategic for this Managed Services service agreement. Authorization to utilize installed monitoring utilities terminates at the completion of this agreement.

Strategic warrants that it has all right, title, and interest in and to the Modules and the right to license the Modules. Strategic reserves the right to revoke any Limited License, whether one or more, at any time and without notice for any reason or no reason, including, but not limited to, termination of this Agreement, termination of any SOW or Appendix thereunder, or any material breach of the Managed Services Agreement or SOW by Client. Upon termination of any Limited License, Strategic shall take all reasonable steps, and Client shall grant Strategic the access to Client's Equipment and to Client's premises, which Strategic reasonably deems necessary to uninstall, delete, or otherwise remove any Module from the Client's Equipment. Upon Strategic's request, Client shall return the Modules along with any and all manuals, specifications, source code or other information related to the Modules that are in Client's possession (collectively the "Program Information") to Strategic, regardless of whether such Program Information is in electronic or any other medium; confirm in writing to Strategic that Client has destroyed and disposed of any and all Program Information.

Client shall not: transfer, sub-license, copy, reproduce, modify, alter, adapt, translate, decompile, disassemble, reverse engineer or create any derivative works of the Modules or the Program Information while the Modules are installed on the Client's Equipment, or the Program Information is in the Client's possession, or at any time thereafter.

Proactive Monitoring and Reporting will occur with the assistance of Strategic Proprietary Tools what will be installed on Client's Equipment (updates may also be installed as needed). Client approves the installation and updates of Strategic's Tools and necessary network configuration.

Ad Hoc Services / Remediation Services

Strategic will provide Ad Hoc Consulting Services for work performed outside the scope of the above Managed DBA Services description. Ad Hoc Consulting services Support Services over the retainer will be billed on a time and materials basis at the Ad Hoc Consulting Services rate shown above. For all Incident tickets, the Client agrees to pre-approval of up to 4 hours per instance for problem resolution. Written pre-approval from the Client project manager is required to authorize Ad Hoc Consulting Services task above the pre-approved amount.

On-Boarding Process

For new Clients, the initial Setup fee of server covers installation and configuration of the "Dormant" (Monitoring Software, Managed Services Monitoring Communications Plan), Setup of VPN for remote access and initial documentation.

Upon completion of Onboarding and Remediation of the environment, Strategic will turn on the Monitoring Software.

Based on the assessment and agreed plan, a scope will be put in place with the supporting documentation to remediate the environment. Strategic will bill for any hourly Ad hoc issues and remediation prior to Monitoring Go-Live at the full rate described above.

Upon completion of the On-boarding meeting, Strategic will email the on-boarding document to the client for signature and signoff to commence the service. Strategic will only commence the monitoring service upon receipt and signature of the on-boarding process.

Services Availability

The service per this agreement for the Production Database will be performed based on the SLA in quote above.

Payment Terms and Taxes

Client will pay for set up fees upon initiation of engagement. All services will be billed one month in advance of the service period on the 15th of the prior month. Payment terms are Net 10 and payments must to be received before the month of service begins to avoid interruption of service. All sales, VAT, and import taxes and duties are the responsibility of the buyer, and payment for same must be reflected in the accompanying purchase order.

Term

The term of this Agreement *is 12 months* from the date of signature. This agreement shall automatically renew for one year, unless the Client notifies SIG in writing at least thirty (30) days prior to the end date of this Agreement or any subsequent renewal term. Rates for renewal term are subject to change upon contract renewal. SIG will notify the Client of any rate change for renewal term at least thirty (30) days from the start date of the renewal term. If the customer cancels this agreement prior to the end of the term, the Client will owe the full amount due through the end of the term plus a cancellation penalty of $3,500.

Termination for Cause

Either party may terminate this Agreement upon the occurrence of a material breach of this Agreement provided the non-breaching party first gives the other party thirty (30) days to remedy such breach. If a breach is incapable of being remedied, or if a party is adjudicated as bankrupt under any applicable law or if a receiver, liquidator, administrator, custodian or similar official is appointed to manage the financial affairs of a party, termination can take place without providing the thirty-day period notice, unless such (earlier) termination is not permitted by law. Termination, either voluntary or involuntary, shall not entitle Client to any refund for any fees paid nor shall it relieve Client of the obligation to pay any outstanding amounts due to Strategic, unless provision is made to the contrary in this Agreement.

Periodic Status Calls with Client

Strategic will be responsible for scheduling, managing and performing periodic status calls of 30 – 60 minute duration with the Client team. At minimum, status calls will be held quarterly, but may be scheduled more frequently as needed. The agenda will be flexible and tailored to Client's stated needs so that known incidents and issues are managed with the goal of providing a close working relationship between Strategic and Client. A short summary report will be written by Strategic and distributed to Client and Strategic teams. Each summary report will be completed and distributed in advance of the following status call.

Client Responsibilities

(a) Client will provide Strategic with remote access and onsite access to Client facilities as needed to assist with delivery of the Managed DBA Services.
(b) Client will designate a Project Manager. All communications will be addressed to the Project Manager and such person shall have the authority to act for Client. In addition, the Project Manager will:

- Attend status calls and serve as the interface between Strategic and all Client departments and any third-party participants participating in the Services.
- Help resolve Managed DBA Services issues and escalate issues (including to Client's executive management as necessary) within the Client organization and any third-party participants, as necessary.
- Arrange for all necessary clearances, access to all systems that are to be managed, access codes, passwords, badges, etc. to be provided to Strategic to enable them to perform the Services, including if onsite visits are required.

Terms and Conditions on attached Professional Service Agreement. In the event of a conflict between this Agreement and the Professional Services Agreement, the terms of this Agreement shall govern.

CLOUD SERVICES AGREEMENT

This Cloud Services Agreement is made effective on **May 28, 2021** between:

QAD Inc., having its principal place of business at 100 Innovation Place, CA 93108 Santa Barbara, United States (hereinafter "Vendor"), and

RxSight, Inc. having its principal place of business at 100 Columbia, Aliso Viejo, CA 92656 (hereinafter "Customer").

WHEREAS Vendor makes its enterprise applications and related offerings available to customers in a hosted environment that is maintained by Vendor; and

WHEREAS this Agreement outlines the terms and conditions under which Customer can purchase such services from Vendor,

NOW THEREFORE, the parties agree as follows:

Article 1 Definitions

1.1 Affiliate means a legal entity in which the undersigned Customer a) directly or indirectly holds more than 50% of the nominal value of the issued share capital, or b) has more than 50% of the voting power at general meetings; or c) has the power to appoint a majority of the directors; or d) otherwise maintains core control of such entity.

1.2 Agreement means this Cloud Services Agreement together with any amendments hereto as well as any Order Documents (including the referenced Program Documents) and Work Orders (and amendments thereto) entered into under this Cloud Services Agreement.

1.3 Cloud Applications means the software applications identified in an Order Document that are made available by Vendor to Customer as part of the Cloud Services.

1.4 Cloud Services means access to the Cloud Applications in a hosted Environment, together with support for the Cloud Applications, as detailed in the applicable Order Document.

1.5 Customer means the customer entity that is the signatory to this Agreement. With respect to each Order Document and Work Order executed under this Agreement, "Customer" also means an Affiliate which executes such Order Document or Work Order.

1.6 Documentation means Vendor's published user manuals and other technical and functional documentation of the Services made available to Customer by Vendor.

1.7 Environment means the infrastructure used to deliver the Cloud Services (i.e. network, hardware, operating system and Cloud Applications, all hosted in a data center, up until where the Internet Protocol data packets leave the data center either via a private or public connection).

1.8 Invoice Period means the period as indicated in an Order Document, for which Vendor shall invoice Customer for the Cloud Services.

1.9 Order Document means a document executed by Customer and Vendor that provides for the purchase and delivery of Cloud Services under the terms of this Agreement, as further defined by one or more Program Documents incorporated into the Order Document by reference.

1.10 Personal Data means any information related to any identified or identifiable person and any other additional data deemed as personal data under the applicable personal data protection laws.

1.11 Program Document means a document incorporated into an Order Document for the purpose of defining the Cloud Services to be purchased and delivered under that Order Document. The Program Documents documenting the various available Cloud Services are available on http://www.qad.com/legal.html.

1.12 Services means Cloud Services provided under an Order Document and project-based services provided under a Work Order.

1.13 Vendor Group of Companies means QAD Inc., with an address of 100 Innovation Place, Santa Barbara, CA 93108 USA, and any directly or indirectly held subsidiaries of QAD Inc.

1.14 Work Order means a document describing the project-based services provided under the terms of this Agreement.

Article 2 Services

2.1 Ordering Services. Customer and Affiliates may elect to purchase Services under the terms of this Agreement by executing one or more Order Documents or Work Orders prepared by Vendor. The Order Document or Work Order becomes effective once fully executed by both parties. Cloud Services purchased under an Order Document shall be as defined in one or more Program Documents incorporated into the Order Document by reference. Vendor shall deliver the Services to Customer for use solely for Customer's own business purposes.

2.2 Use of the Services. Customer shall not interfere with or disrupt Vendor's operation of the systems used to host the Services or other equipment or networks connected to the Services. Customer shall follow Vendor's reasonable instructions on how to use the Services.

2.3 Cooperation. Customer acknowledges that the timely provision of, and access to, assistance, cooperation, complete and accurate information from its officers, agents, and employees are required to enable Vendor to provide the Services.

2.4 Development Tools. Vendor may provide certain development tools which Customer may use subject to the following conditions: (i) Customer may use the resulting developments exclusively for Customer's own business purposes and only together with the Cloud Applications made available to Customer hereunder; (ii) Customer shall not make the developments available to any other person; (iii) Customer shall follow instructions and guidelines published by Vendor for using the development tools and for promoting developments into the cloud Environment; (iv) Customer acknowledges and agrees that Vendor makes no warranty with respect to developments created by Customer, and that Vendor is not responsible for any adverse impact on Cloud Services performance caused by such developments; and (v) the Progress Software Corporation development tools may be used only to install, support, localize or customize the Cloud Applications made available to Customer hereunder.

2.5 Responsible for Affiliates. Customer shall be responsible for compliance with this Agreement by any Affiliate that receives Services hereunder.

Article 3 Acceptance

3.1 Procedure. If Customer and Vendor have agreed that a certain project-based Service or a specific deliverable under project-based Services is subject to an acceptance test, then the Service or the deliverable, as the case may be, shall be deemed to have been accepted by Customer upon the first to occur of the following: (a) Customer's first production use of the Service or deliverable; or (b) the completion of a formal acceptance test

which formal acceptance test shall be conducted on the following terms: (i) Vendor shall notify Customer in writing that the Service or the deliverable is ready for acceptance; (ii) upon receipt of such notice, Customer shall test the Service or the deliverable for a maximum of two weeks and in a manner consistent with acceptance criteria, which criteria shall be jointly developed and mutually agreed between Vendor and Customer; (iii) upon the expiration of such two-week period, Customer shall either certify to Vendor that the Service or the deliverable is accepted or deliver to Vendor a written description of any specific claimed defects in the Service or the deliverable, which defects shall be limited to the failure of the Service or the deliverable to conform to the applicable specifications, or in the absence of such written description of any bona fide defects within two weeks of notification by Vendor that the Service or the deliverable is ready for acceptance, the Service or the deliverable shall be deemed accepted by Customer; and (iv) upon receipt of such written description, Vendor shall determine whether any of such claimed defects are bona fide defects, and if so, shall proceed to remedy the same, whereupon the Service or the deliverable shall be retested in accordance with the above procedure. For the avoidance of doubt, no “acceptance” terms shall apply to Cloud Services.

Article 4 Warranties

4.1 Cloud Services Warranty. Vendor warrants that, for the period during which Cloud Services are provided, the Cloud Services shall function in accordance with the applicable Cloud Program Documents and that the Cloud Applications shall be free from material program errors and shall function substantially in accordance with the Documentation. Vendor does not warrant that the Cloud Applications are completely error free and Vendor does not warrant that the Cloud Applications conform to or satisfy any particular federal, national, state or local laws. If Vendor is unable, after reasonable efforts following receipt of Customer’s detailed warranty claim, to make the Cloud Applications perform as warranted, Customer’s sole remedy shall be to terminate the use of the Cloud Applications and in such event Vendor shall refund to Customer the fees paid for the affected Cloud Services for the period during which the defect existed (not to exceed 90 days of fees) plus any prepaid and unused fees for such affected Cloud Services. This warranty shall not apply to any malfunction or error resulting from improper use of the Cloud Applications by Customer or to malfunctions or errors caused by Customer-provided or Customer-developed software or other materials. This warranty shall apply to the extent that Customer permits the installation of all fixes, new releases, hardware and software updates recommended by Vendor. The warranties concerning availability of the Environment are documented in the relevant Cloud Program Documents.

4.2 Project-Based Services Warranty. Vendor warrants for a period of 90 days after the acceptance date, or in case no acceptance test applies then for a period of 90 days after delivery, that the project-based Services provided by Vendor under the Agreement shall be performed in a professional and workmanlike manner consistent with industry standards and that any deliverables provided as part of the project-based Services shall be substantially free from material program errors and shall function substantially in accordance with the applicable Work Order or other specifications agreed in writing by the parties. Any warranty claim by Customer must be detailed in writing and must be delivered to Vendor within the 90-day warranty period. If Vendor delivers a fix in response to a warranty claim by Customer, then an extended warranty period shall apply for the 30 days after the fix is delivered. If Vendor is unable, after reasonable efforts following receipt of Customer’s detailed warranty claim, to make the project-based Services or the deliverable comply with this warranty, Customer’s sole remedy shall be to terminate the use of the project-based Services or the deliverable and in such event Vendor shall refund to Customer the fees paid by Customer for the affected portion of the project-based Services.

4.3 Security. Vendor will implement and maintain appropriate technical and organizational measures that will ensure the continued confidentiality, integrity and availability of the Environment and any data contained therein. As part of this commitment Vendor shall maintain the certifications identified in the relevant Program Document. Vendor shall, upon request, provide to Customer evidence of such certifications.

4.4 Content. Vendor may provide as part of the Services third-party content, such as trade or compliance content. This content is provided “as is”, and Vendor makes no warranty as to the accuracy or completeness of such content. Customer uses such content at its own risk, and Vendor shall have no liability to Customer or any third party based on Customer’s use of or reliance on such content.

4.5 Limitations. The limited warranties provided in this Agreement are in lieu of all other warranties, express or implied. To the maximum extent permitted by applicable law, no other warranty is made hereunder by Vendor and all other warranties and conditions (including merchantability and fitness for a particular purpose), either express or implied, are excluded.

Article 5 Fees and Payment

5.1 Invoicing.

a) Beginning on the Start Date of the term specified in an Order Document and continuing thereafter for each Invoice Period during the term of the Order Document, Vendor shall invoice Customer for the Cloud Services specified in the Order Document. Invoices for the Cloud Services shall be issued at least 30 days in advance of the start of the Invoice Period.

b) In the event an Order Document automatically renews under this Agreement, then for each renewal term the Cloud Services fee rates shall be the same as the rates for the previous term, plus an increase equal to the percentage by which the Consumer Price Index for All Urban Consumers (CPI-U, as published by the US Department of Labor) increased over the previous term.

c) If in any calendar month the Disk Space used by Customer exceeds the limitations set forth in an applicable Program Document then Customer shall pay an additional true-up fee for such excess usage at Vendor's then-current list price. Vendor shall issue invoices for these true-up fees after the end of each quarterly period, and no separate purchase order from Customer shall be required.

d) Invoices for project-based Services provided on a time and materials basis shall be issued twice monthly in arrears. Invoices for fixed-fee project-based Services provided under an Order Document (such as Setup) shall be issued upon execution of the Order Document. Invoices for fixed-fee project-based Services provided under a Work Order shall be issued as provided in the Work Order.

5.2 Expenses. Customer shall reimburse Vendor for documented and reasonable travel and out-of-pocket expenses incurred in conjunction with project-based Services. Vendor's standard policies concerning travel and living shall apply.

5.3 Payment. Payments for all fees due under the Agreement shall be due within 30 days of the invoice date. In the event of payment default lasting more than 30 days the service levels documented in the applicable Program Document shall no longer apply and Customer shall not be eligible to receive service credits as provided under the Program Document. Additionally, Vendor may, upon written notice providing 15 days to remedy the default, suspend delivery of the Services and/or declare the entire unpaid sum of Cloud Services fees for the full initial term (or renewal term as applicable) immediately due and payable.

5.4 Interest. Any amounts due to Vendor under this Agreement which are not paid within the agreed payment term shall incur interest at the rate of one-and-one-half percent (1½%) per month or any part of the month, or the maximum permitted by law, whichever is less. The interest shall be due only after a first notice of late payment has been issued by Vendor and shall then be calculated from the date payment is originally due under the Agreement until the date payment is made in full. Customer shall pay such interest, with all payments first being applied to interest and then to principal. Reasonable legal costs incurred by Vendor in enforcing its rights in relation to any overdue payment (including reasonable attorney fees) shall be paid by Customer to Vendor.

5.5 Taxes. Services fees are exclusive of all taxes, duties and fees. Customer shall make no deductions for taxes, duties or fees of any kind from any payment to Vendor under this Agreement. If Customer is required by law to withhold taxes, duties or fees, then Customer shall pay Vendor a gross amount of money, such that the net amount received by Vendor (after deducting or withholding the required taxes, duties or fees) is equal to the amount of the fee originally owed before subtracting such taxes, duties or fees. Taxes on the net income of Vendor are the responsibility of Vendor.

5.6 Vendor Group of Companies. Vendor reserves the right to assign the invoicing and/or the collection of payments to other entities in the Vendor Group of Companies.

Article 6 Confidentiality

6.1 Confidential Information. Both parties agree that any information obtained directly or indirectly, from the other party in connection with the Agreement and marked as "confidential" or "proprietary" or some similar legend, or made known to the other party as being confidential or proprietary is the confidential or proprietary property of such party (hereinafter "Confidential Information"). Information shall not be deemed Confidential Information, and the receiving party shall have no obligation with respect to any such information, which the receiving party can prove by written records:

- is already in the public domain other than by a breach of this Agreement on the part of the receiving party; or
- is rightfully disclosed to recipient by a third party which has the right to disclose the information and transmits it to the receiving party without any obligation of confidentiality; or
- is rightfully known to the receiving party without any limitation on use or disclosure prior to receipt of the same from the disclosing party; or
- is independently developed by personnel of the receiving party who have not had, either directly or indirectly, access to, or knowledge of, Confidential Information received from the disclosing party; or
- is generally made available to third parties by the disclosing party without any restriction concerning use or disclosure; or
- is approved for release by written authorization of the disclosing party; or
- is required to be disclosed by a court or governmental entity with jurisdiction over the receiving party, and the receiving party gives the disclosing party prompt written notice sufficient to allow the disclosing party to seek a protective order or other appropriate remedy, and the receiving party discloses only such information as is legally required and uses reasonable efforts to obtain confidential treatment of any information so disclosed.

6.2 Treatment of Confidential Information. It is agreed that Confidential Information under the Agreement shall: (a) be kept confidential by the receiving party; (b) be treated by the receiving party in the same way as the receiving party treats Confidential Information generated by itself; (c) not be used by the receiving party otherwise than in connection with the Agreement; and (d) not be divulged by the receiving party, except to its personnel who have a need to know and have undertaken to keep the Confidential Information confidential.

6.3 Disclosure by Employees. Both parties shall use all reasonable steps to ensure that Confidential Information received under the Agreement is not disclosed by its employees or agents in violation of this Article.

Article 7 Personal Data

7.1 Processing and Use of Personal Data. Vendor may process and use the Personal Data only to perform its obligations or exercise its rights under the Agreement and may disclose them only to Vendor's employees and agents that have a need to know and are bound by appropriate confidentiality obligations. When processing Personal Data Customer and Vendor will each observe all Personal Data protection laws applicable to their respective roles of data controller and data processor.

7.2 Additional Obligations. Vendor agrees (a) to maintain reasonable security measures for the protection of Personal Data, as further outlined in this Agreement and in the applicable Program Document; (b) to act only on instruction from Customer in connection with protecting, collecting, storing, transferring and otherwise processing of Personal Data (Customer's instructions may be implied or of a general nature); (c) not to copy or reproduce any Personal Data without the express written permission of Customer, except as technically necessary to comply with this Agreement; and (d) to inform Customer promptly in writing if it becomes aware of any unauthorized use or disclosure of Personal Data by itself or others.

7.3 Export of Personal Data. To the extent Vendor initiates the export of Personal Data in the context of the provision of the Services, Vendor is responsible for ensuring that appropriate arrangements are in place to cover

such export (e.g. contractual arrangements, such as the EU standard contractual clauses). Customer acknowledges that Vendor does not control nor has knowledge of to whom Customer provides access to the Environment and that providing access to the Environment to persons located in other countries may constitute export of Personal Data by Customer. Customer is responsible for ensuring that appropriate arrangements are in place to cover such export.

7.4 Intended Use. Customer is aware and acknowledges that the Services offered by Vendor are focused on use in the context of manufacturing. As such, Vendor has the reasonable expectance that Customer only enters personal data into the Environment that is relevant in such a context; typically, such information is limited to contact information. Customer understands that records related to access to and use of the Environment (e.g. user names and usage logs) are maintained by Vendor. Customer acknowledges that Vendor does not check and takes no responsibility for any data entered by Customer into the Environment.

7.5 Assistance. Vendor shall render reasonable assistance to Customer to help Customer comply with applicable personal data protection laws. If such assistance falls outside of the definition of the contracted Services, such assistance shall be charged by Vendor at the normal Services rates.

7.6 Audits. Customer shall have the right to audit Vendor's compliance with its obligations with regard to the processing of Personal Data. Accordingly, Vendor shall make available certificates providing evidence of independent audits of Vendor's security practices and related activities. If Customer wishes to conduct an additional audit, Customer and Vendor shall agree on the date and the process in writing. In any event, an audit shall be limited to the Services provided for Customer. Customer acknowledges that access to data centers and other secure environments is not possible as such access would not be permitted under the applicable procedures required to be followed by Vendor or its suppliers to maintain certain certifications (e.g. ISO certifications). Any costs incurred by Vendor to facilitate a Customer audit shall be charged to Customer at Vendor's normal Services rates. Customer shall be fully liable for any damages caused by Customer during the conduct of an audit.

Article 8 Intellectual Property

8.1 Ownership. Vendor or its licensors shall retain all intellectual property rights in and to the Cloud Applications, the Services and anything developed or delivered by Vendor under the Agreement. Vendor shall not obtain any intellectual property rights in or to the Confidential Information or Personal Data of Customer. Vendor shall not obtain any intellectual property rights in or to developments created by Customer using development tools provided by Vendor, provided that Customer shall not through such development obtain any intellectual property rights to materials owned by Vendor or its licensors.

8.2 Customer Data. Customer grants to Vendor the non-exclusive right to use anonymized Customer data for the sole purpose of and only to the extent necessary for Vendor to provide, improve and develop the Services.

Article 9 Indemnification for Intellectual Property Infringement

9.1 Vendor Intellectual Property Indemnification. Vendor shall defend, at its expense, any action brought against Customer based on the claim that the use of the Services, when used within the scope of this Agreement, infringes any intellectual property rights. Vendor shall indemnify Customer for any damages finally awarded against Customer which are attributable to such claim, provided a) Customer promptly notifies Vendor of any suit or claim, b) Customer permits Vendor to defend, compromise, or settle the claim, and c) Customer gives Vendor the requested information and fully cooperates in defending, compromising or settling the claim.

9.2 Remedies. Vendor shall, in addition to indemnification, a) procure for Customer the right to use the Services, orb) replace or modify the infringing Services to make them non-infringing, or c) if the foregoing alternatives are not commercially reasonable, terminate the access to relevant parts of the Services and provide a refund of Services fees paid for the relevant part of the Services with respect to the 90 days prior to the date of termination or provide a refund of the fees paid for the deliverables, as the case may be.

9.3 Customer Intellectual Property Indemnification. Customer shall defend, at its expense, any action brought against Vendor based on a claim that any software or information provided by Customer or stored by Customer in the Environment infringes any intellectual property rights or is otherwise unlawful, provided that Vendor notifies Customer promptly in writing of the claim. Customer shall indemnify Vendor for any damages finally awarded against Vendor which are attributable to such claim, provided a) Vendor promptly notifies Customer of any suit or claim, b) Vendor permits Customer to defend, compromise, or settle the claim, and c) Vendor gives Customer the requested information and fully cooperates in defending, compromising or settling the claim.

9.4 Entire Liability. THIS ARTICLE STATES THE ENTIRE LIABILITY OF PARTIES WITH RESPECT TO INFRINGEMENT OF COPYRIGHTS, TRADE SECRETS, PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS ARISING FROM THE USE OF THE SERVICES.

Article 10 Limitation of Liability

10.1 DAMAGES LIMITATION. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS OR REVENUE.

10.2 MONETARY LIMITATION. A PARTY'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THE AGREEMENT OR THE SERVICES, WHETHER IN CONTRACT OR TORT OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE FEES CUSTOMER PAID TO VENDOR OVER THE PREVIOUS TWELVE CALENDAR MONTHS UNDER THE ORDER DOCUMENT OR WORK ORDER GIVING RISE TO THE LIABILITY, AND IF SUCH DAMAGES RESULT FROM CUSTOMER'S USE OF A PARTICULAR SERVICE, SUCH LIABILITY SHALL BE LIMITED TO THE FEES CUSTOMER PAID VENDOR OVER THE PREVIOUS TWELVE CALENDAR MONTHS FOR SUCH SERVICE. THE FOREGOING MAXIMUM LIABILITY LIMIT SHALL NOT APPLY TO (1) DAMAGES ARISING FROM DEATH OR PERSONAL INJURY; OR (2) UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION CAUSED BY A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; OR (3) A PARTY'S INDEMNIFICATION OBLIGATIONS IN RELATION TO INTELLECTUAL PROPERTY INFRINGEMENT AS PROVIDED UNDER THE AGREEMENT.

Article 11 Term and Termination

11.1 Term. This Agreement shall remain in effect until terminated as provided herein. Either party may terminate this Agreement for convenience with 30 days' notice at any time while no Order Document or Work Order is in effect. Each Order Document shall be non-cancellable through the term stated therein and it shall thereafter automatically renew for subsequent non-cancellable one-year renewal terms unless terminated by either party effective as of the end date of the term (or any subsequent anniversary thereof) by delivering notice 90 days prior to the permitted termination date. Non-renewal notices to be given to Vendor shall be delivered by email to renewal@qad.com.

11.2 Termination for Cause. Either party may terminate this Agreement or any Order Document or Work Order upon the other party's material breach thereof, provided the breaching party fails to remedy such breach within 30 days of receiving the terminating party's breach notice. If this Agreement is terminated for cause under this section then any and all Order Documents and Work Orders hereunder shall be automatically terminated simultaneously.

11.3 Effect of Termination. Termination of this Agreement or any Order Document or Work Order shall not, by itself, entitle Customer to any refund for any fees paid nor shall it impair any warranty or other remedy available to either party under the Agreement.

11.4 Return of Materials. Upon termination of this Agreement for any reason or upon Customer's request Vendor shall promptly return to Customer all data and other materials owned by Customer.

11.5 Exit Services. In the event of any expiration or termination of this Agreement, Vendor shall provide such assistance as agreed by parties to enable Customer to transition the provision of the Services provided by Vendor either in-house or to a third party. The scope and costs of such transitional assistance shall be agreed by Vendor and Customer in writing in a Work Order.

Article 12 Miscellaneous

12.1 Law Applicable to this Agreement. This Agreement shall be subject to and construed, interpreted, and applied in accordance with the laws of the State of California, United States of America. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, shall be determined by arbitration in Los Angeles California USA before a single arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. The language of the arbitration shall be English. The arbitral award, which shall be final and binding on both parties, may be enforced in any court having jurisdiction thereof Any discovery as part of the arbitration process shall include the right to subpoena. Parties acknowledge and agree that the U.N. Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act shall not apply to this Agreement.

12.2 Audit. Vendor may audit Customer's use of the Services to verify that such usage is in accordance with the Agreement. Customer shall provide reasonable cooperation with such audits as Vendor may request.

12.3 Insurance.

(a) Required Coverage. At all times during the term of this Agreement Vendor shall procure and maintain, at its sole cost and expense, insurance coverage in the following types and amounts:

- Commercial General Liability with limits no less than $1,000,000 per occurrence and $2,000,000 in the aggregate, such policy will include coverage for 3rd party bodily injury and property damage and also include contractual liability coverage; and
- Worker's Compensation and employers' liability insurance with limits no less than the minimum amount required by applicable law for each accident, including occupational disease coverage; and
- Cyber Liability Insurance, including third party coverage, with limits no less than $1,000,000 per occurrence and $2,000,000 in the aggregate for all claims each policy year; and
- Errors and Omissions/Professional Liability with limits no less than $1,000,000 per claim and $2,000,000 in the aggregate for all claims each policy year.

(b) Policies. All insurance required to be provided under this contract shall be issued by an insurance company that is AM Best rated A-VII or better.

(c) Certificates of Insurance. Certificates of insurance evidencing all coverages described in this section shall be furnished to Customer on written request.

(d) Non-waiver. This section is not intended to and shall not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Agreement (including any provisions hereof requiring a party to indemnify, defend and hold harmless the other party).

12.4 Legal Construction. To the extent that any law, statute, treaty, or regulation by its terms as determined by a court, tribunal, or other government authority of competent jurisdiction, is in conflict with this Agreement, the conflicting terms of this Agreement shall be superseded only to the extent necessary by the terms required by such law, statute, treaty, or regulation. lf any portion of this Agreement shall be otherwise unlawful, void, or for any reason unenforceable, then that provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties. In either case, the remainder of this Agreement shall continue in full force and effect.

12.5 Purchase Order Terms and Conditions. Additional or different terms or conditions appearing on Customer's purchase order shall be deemed null and void.

12.6 Segmentation and Priority. Purchases of Services under an Order Document or Work Order are each separate and independent from other purchases of Services. Customer's obligation to pay for Services fees is not contingent on performance of any separately purchased Services. The following order of priority shall apply to the documents comprising the Agreement: first, the Order Documents with respect to the Cloud Services and the Work Orders with respect to project-based services; second, the Program Documents; and third, this Agreement.

12.7 Assignment. Neither party shall assign or transfer its interest in the Agreement or any Order Document or Work Order to a third patty without the other party's prior written consent. Notwithstanding the foregoing, Vendor may assign this Agreement and any Order Documents or Work Orders to a member of the Vendor Group of Companies under any conditions or to an unrelated company pursuant to the sale, merger or other consolidation of Vendor or any of its operating divisions.

12.8 Staffing and Subcontracting. Vendor will, at its sole discretion, decide which staff is used to perform the Services. Vendor may subcontract the Services in whole or in part provided that Vendor will continue to warrant the Services under the terms and conditions of the Agreement. At the request of Customer, Vendor will provide information on the subcontractors used by Vendor (e.g. the data centers used by Vendor). Customer shall have the opportunity to object, providing reasonable arguments, to the use of certain subcontractors. In case of an objection, parties shall act in good faith to address and resolve the objection. Customer acknowledges and is aware that multiple companies that form part of the Vendor Group of Companies may be involved in the provision of the Services.

12.9 Personnel. Customer shall not hire any employee of Vendor or of Vendor's subcontractors during the term of the Agreement and for 180 days after termination of the Agreement unless Customer pays to Vendor an amount equal to twelve months of such employee's then-current compensation.

12.10 Publicity. With prior written approval from Customer, Vendor is permitted to incorporate Customer's name in the customer reference list of Vendor and in any public filings required by law and to issue a press release concerning the arrangement provided under this Agreement.

12.11 Force Majeure. Neither party shall be liable for delays or non-performance if such delays or non-performance are beyond such party's reasonable control provided the party takes reasonable steps to remedy the delay or non-performance promptly. Customer acknowledges that adverse physical security conditions prevailing in a location where services are to be provided on-site shall constitute a condition of Force Majeure for Vendor. Customer further acknowledges that cloud environments are inherently subject to hacking and viruses and other malicious behavior, and that Vendor shall not be liable for damages arising from such behavior except to the extent Vendor has failed to fulfill its obligations under this Agreement.

12.12 Waiver. The waiver by any party of a breach or default by the other party of any provision of this Agreement shall not be construed as a waiver by such party of any succeeding breach or default by the other party of the same or another provision.

12.13 Notices. Any notices required or permitted to be given pursuant to this Agreement shall be in writing, addressed to the addresses noted on page one of this Agreement. These written communications shall be in such a manner that proof of delivery can be verified. Each party shall notify the other in writing in the event of any address change. Notwithstanding the above, non-renewal notices to be given to Vendor shall be delivered by email to renewal@qad.com.

12.14 Language. The original of this Agreement has been written in the English language. Customer hereby waives any right Customer may have under the laws of the country in which the Services are provided to have this Agreement written in another language. The Documentation is provided in English and, when available, in other languages.

12.15 Compliance with Laws. The parties shall comply with all laws and regulations applicable in the context of this Agreement. Customer is aware that Vendor is or is owned by a U.S. company and that U.S. export laws and regulations apply to the use, export or re-export of its products. The Software is not to be used in any government and/ or defense related activity unless approved under U.S. Export Law and Regulation.

12.16 Entire Agreement. The Agreement contains the entire agreement between the parties with respect to the subject matter hereof and shall supersede any and all prior communications, representations, minutes, agreements, and/or undertakings, either verbal or written, between the parties regarding the said subject matter. Any modification of any of the terms and provisions of the Agreement must be in writing and signed by duly authorized representatives of the parties. Customer acknowledges that Vendor makes no representations regarding the availability of any specific future Services.

12.17 Survival. The clauses of this Agreement which are by their nature intended to survive the expiry termination of this Agreement shall survive the expiry or termination of this Agreement. Such provisions include, but are not limited to, the provisions on Confidentiality, Personal Data, Indemnification for Intellectual Property Right Infringement, Limitation of Liability and Compliance with Laws.

12.18 Counterparts and Valid Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Electronic copies of documents (scans) and electronic signatures shall be acceptable as originals.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

QAD Inc.	**RxSight, Inc.**
/s/ Michael Brunnick	/s/ Patrick M. Cullen
Authorized Signature:	Authorized Signature:
Michael Brunnick	Patrick M. Cullen
Printed Name:	Printed Name:
Senior Vice President	Vice President
Title:	Title:
May 28, 2021	May 28, 2021
Date:	Date:

Legal Review:

May 28, 2021

Exhibit 10.11

COMMERCIAL LEASE AGREEMENT

BETWEEN

ACCURIDE INTERNATIONAL, INC.
a California corporation

as Landlord

and

Calhoun Vision, Inc.
a California corporation

as Tenant

Dated: October 27, 2015

Columbia Corporate Center
Aliso Viejo, California

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EXHIBITS AND RIDERS

COMMERCIAL LEASE AGREEMENT

This Commercial Lease Agreement (hereinafter called this "Lease") is made this 31st day of August, 2015 between ACCURIDE INTERNATIONAL, INC., a California corporation (hereinafter called "Landlord") and Calhoun Vision, Inc. ("Tenant").

ARTICLE 1
BASIC LEASE PROVISIONS AND DEFINITIONS

1. Building:

a.	**Name:**	Columbia Corporate Center
b.	**Address:**	100-150 Columbia Aliso Viejo, CA 92656
c.	**Project Area:**	128,110 square feet

2. Premises:

a.	**Suite Number:**	Building 100 Suite 200
b.	**Agreed Rentable Area:**	21,498 rentable square feet

3. Term:

a.	**Initial Term:**	62 months
b.	**Option to Extend:**	With seven (7) months' prior written notice, Tenant shall have the option to extend the Lease for one (1) additional five (5) year term at the then fair market value for similar space in the area, however the rent shall not be less than the last month's rent.

4. Commencement Date: Later of December 1, 2015 or the date that Landlord causes the Tenant Improvements (excluding the Clean Room Work) to be substantially complete as evidence by receipt of a Temporary Certificate of Occupancy from the City of Aliso Viejo.

Tenant shall be granted early access to the Premises to install fixtures in the Premises during the construction process, provided Tenant's vendors do not interfere with Landlord's contractor.

5. Expiration Date: 62 months from the date of commencement.

6. Base Rent:

Rental Period	Base Monthly Rent
Months 1	$25,367.64 per month plus NNN
Months 2-3	Base Rent Abated/NNN is Due
Months 4-12	$25,367.64 per month plus NNN
Months 13-24	$26,128.67 per month plus NNN
Months 25-36	$26,912.53 per month plus NNN
Months 37-48	$27,719.91 per month plus NNN
Months 49-62	$28,551.50 per month plus NNN

7. Tenant's Pro Rata Share Percentage:	Tenant shall be responsible for it's pro rata share of Operating Expenses (16.78%) per the Lease Agreement estimated to be $0.32/SF/mo There shall be no expense stop.
8. Letter of Credit:	Within fourteen (14) days after lease execution, Tenant shall provide a Letter of Credit in the amount $500,000 in favor of the Landlord from a financial institution acceptable to Landlord. The irrevocable letter of credit shall cover the Initial Term of the Lease. Provided Tenant is not in default, the Letter of Credit will be decreased by 20% at the end of the 14th, 26th, 38th and 50th months. Form of the Letter of Credit is attached as Exhibit F.
9. Security Deposit:	Upon Lease execution by Tenant, Tenant shall provide Landlord a check for the first month's rent and a Security Deposit equal to the last month's rent.
10. Permitted Use:	The Premises shall be used for general office, light manufacturing, clinical lab, storage, and distribution.
11. First Right of Notice:	Landlord shall notify Tenant of any availability of the adjacent space within 100 Columbia.
12. Building Warranty:	Landlord shall deliver the operating systems of the building in good working order upon Lease Commencement and warranty for the initial ninety (90) days of the Lease Term.
13. Signage:	Tenant shall have the right to install signage on the entrance to the Premises provided it complies with the City and the Project Sign Programs. Tenant shall be responsible for the cost to remove said signage at the termination of the lease.
14. Tenant Improvements:	Landlord shall provide a $500,000 Tenant Improvement Allowance ("TIA") to complete improvements per a mutually agreeable space plan (exhibit D) the attached plans. Said TIA should be inclusive of all Title 24 work, code compliance and the relocation cost of the 1st floor restrooms. Any cost in excess of the $500,000 TIA, shall be paid per the attached Work Letter.
15. Landlord's Broker:	**CB Richard Ellis**

Landlord's Broker represented by: Gregg Haly

16. Tenant's Broker: **Lee and Associates**
Tenant's Broker represented by: Guy LaFerrara

17. Payments: All payments shall be sent to Landlord at the address below, or such other place as Landlord may designate from time to time:

ACCURIDE INTERNATIONAL INC.
12311 Shoemaker Ave.
Santa Fe Springs, CA 90670

18. Notices: Addresses for notices under this Lease:

LANDLORD:	TENANT:
Accuride International, Inc. 12311 Shoemaker Avenue Santa Fe Springs, California 90670 Attention: Property Manager Tel: (562) 903-0270 Fax: (562 903-0216	Prior to commencement date: Calhoun Vision, Inc. 171 N Altadena Dr # 201 Pasadena, CA 91107 Tel:(626) 685-2000

ARTICLE 2
TERM AND POSSESSION

SECTION 2.1 LEASE OF PREMISES, COMMENCEMENT AND EXPIRATION

2.1.1 Lease of Premises. In consideration of the mutual covenants herein, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, subject to all the terms and conditions of this Lease, the portion of the Building (as described in Item 1 of Article 1) described as the Premises in Item 2 of Article 1 and that is more particularly described on Exhibit A attached hereto (hereinafter called the "Premises"), The agreed rentable area of the Premises is hereby stipulated to be the "Agreed Rentable Area" of the Premises set forth in Item 2b of Article 1, irrespective of whether the same should be more or less. The agreed rentable area of the Building is hereby stipulated to be the "Project Area" of the Building set forth in Item 1c of Article 1, irrespective of whether the same should be more or less. The Building, the land on which the Building is situated, and all improvements and appurtenances to the Building and the land are referred collectively herein as the "Property".

2.1.2 Initial Term and Commencement. The initial term of the Lease shall be the period of time specified in Item 3a of Article 1. The initial term shall commence on the Commencement Day (herein so called) as set forth in Item 4 of Article 1 and, unless sooner terminated pursuant to the terms of this Lease, the initial term of this Lease shall expire, without notice to Tenant, on the Expiration Date (herein so called) set forth in Item 5 of Article 1 (as such Commencement Date and/or Expiration Date may be adjusted pursuant to Exhibit B attached hereto). Notwithstanding anything to the contrary contained herein, the lease will expire in the last day of the last month of the Term.

SECTION 2.2 INSPECTION AND DELIVERY OF PREMISES, CONSTRUCTION OF LEASE IMPROVEMENTS AND POSSESSION

2.2.1 Delivery and Completion. Tenant hereby acknowledges that Tenant has inspected the Common Area (as hereinafter defined) and the Premises, and hereby (i) accepts the Common Area in "AS IS" condition for all purposes and (ii) accepts the Premises for all purposes (including the suitability of the Premises for the Permitted Use).

Landlord will use best efforts to substantially perform or cause to be performed the work and/or construction of Tenant Improvements as outlined in a Work Letter attached as Exhibit D and will use commercially reasonable efforts to Substantially Complete (as defined in the Work Letter) the Tenant Improvements by the Commencement Date. Such work will be mutually agreed upon by Landlord and Tenant in writing prior to commencement of the work and will be substantially as described in Article 1, Section 4 of the Lease. The Premises shall be delivered to Tenant on the Commencement Date.

2.2.2 Common Area. "Common Areas" will mean all areas, spaces, facilities, and equipment (whether or not located within the Building) made available by Landlord for the common and joint use of Landlord, Tenant and others designated by Landlord using or occupying space in the Building or at the Property, as applicable, to the extent same are not expressly made a part of the Premises, and are made available for use of all tenants in the Building. Tenant is hereby granted a nonexclusive right to use the Common Areas during the term of this Lease for its intended purposes, in common with others designated by Landlord, subject to the terms and conditions of this Lease, including, without limitation, the Rules and Regulations. The Common Areas will be at all times under the exclusive control, management and operation of the Landlord.

2.2.3 Acceptance of Premises Memorandum. No later than the Commencement Date, Landlord and Tenant shall execute the Acceptance of Premises Memorandum (herein so called) attached hereto as Exhibit B. If Tenant occupies the Premises without executing an Acceptance of Premises Memorandum, Tenant shall be deemed to have accepted the Premises for all purposes and Substantial Completion shall be deemed to have occurred on the earlier to occur of: (i) actual occupancy, (ii) the Commencement Date set forth in Item 4 of Article 1, or (iii) the date Tenant commences doing business at the Premises if Landlord consents to an early occupancy as set forth in Section 2.2.1.

SECTION 2.3 REDELIVERY OF THE PREMISES.

Upon the expiration or earlier termination of this Lease, or upon the exercise by Landlord of its right to reenter the Premises without terminating the Lease, Tenant shall immediately deliver to Landlord the Premises in a safe, "broom clean", neat, sanitary and operational condition, normal wear and tear excepted, together with all keys and parking and access cards. Tenant shall, by the Expiration Date or the date this Lease is earlier terminated in accordance with the terms hereof, remove from the Premises, at the sole expense of Tenant: (i), any equipment, machinery, trade fixtures and personalty installed or placed in the Premises by or on behalf of Tenant and (ii) if requested by Landlord, all or any part of the improvements made to the Premises by or on behalf of Tenant. All removals described above shall be accomplished in a good and workmanlike manner so as not to damage the Premises or the primary structure or structural qualities of the Building or the plumbing, electrical lines or other utilities. Tenant shall, at its expense, promptly repair any damage caused by such removal, provided that in the case of improvements that Tenant is required to remove, Tenant shall restore the Premises to the condition existing prior to the installation of such improvements. If Tenant fails to deliver the Premises in the condition aforesaid, then Landlord may restore the Premises to such a condition at Tenant's expense. All property required to be removed pursuant to this Section not removed within the time period required hereunder shall thereupon be conclusively presumed to have been abandoned by Tenant, and Landlord may, at its option, take over possession of such property and either (a) declare the same to be the property of the Landlord or (b) at the sole cost and expense of Tenant, remove and store and/or dispose of the same or any part thereof in any manner that Landlord shall choose without incurring liability to Tenant or any other person. In no event shall Tenant be required to remove the Tenant Improvements at the expiration or earlier termination of this Lease.

SECTION 2.4 HOLDING OVER.

In the event Tenant, or any party under Tenant claiming rights to this Lease, retains possession of the Premises after the expiration or earlier termination of this Lease, such possession shall constitute and be construed as a tenancy at will only, subject, however, to all of the terms, provisions, covenants and agreements on the part of Tenant hereunder; such parties shall be subject to immediate eviction and removal, and Tenant or any such party covenants and agrees to pay Landlord as rent for the period of

such holdover an amount equal to one hundred and fifty percent (150%) of the Base Monthly Rent and Additional Rent (as hereinafter defined) in effect immediately preceding expiration or termination, as applicable, prorated on a daily basis. Tenant covenants and agrees to also pay any and all damages sustained by Landlord as a result of such holdover. The rent during such holdover period shall be payable to Landlord from time to time on demand; provided, however, if no demand is made during a particular month, holdover rent accruing during such month shall be paid in accordance with the provisions of this Section 2.4. Tenant will vacate the Premises and deliver same to Landlord immediately upon Tenant's receipt of notice form Landlord to so vacate. No holding over by Tenant whether with or without consent of Landlord, shall operate to extend the term of this Lease. No payments of money by Tenant to Landlord after expiration or earlier termination of this Lease shall reinstate, continue or extend the term of this Lease. No payments of money by Tenant, other than the holdover rent accruing during such holdover period paid in accordance with the provisions of this Section 2.4, to Landlord after the expiration or earlier termination of this Lease shall constitute full payment of rent under the terms of this Lease, and Tenant further agrees that any such payment(s), other than the holdover rent accruing in accordance with the provisions of this Section 2.4, to Landlord shall constitute a default or breach of this Lease by Tenant pursuant to Article 14 herein. No extension of this Lease after the expiration or earlier termination thereof shall be valid unless and until the same shall be evidenced by a writing signed by both Landlord and Tenant.

ARTICLE 3
RENT

SECTION 3.1 BASE RENT.

Tenant shall pay as rent for the Premises the applicable Base Monthly Rent shown in Item 6 of Article 1. The Base Monthly Rent shall be payable in monthly installments equal to the applicable Base Monthly Rent shown in Item 6 of Article 1 in advance, without notice, demand, offset or deduction. The required monthly installments shall commence on the Commencement Date and shall continue on the first (1st) day of each calendar month thereafter until the Expiration Date; provided, however, that the Base Monthly Rent for the second and third months of the Lease shall be abated. If the Commencement Date is specified to occur or otherwise occurs on a day other than the first day of a calendar month, the Base Monthly Rent for such partial month shall be prorated. Tenant hereby agrees to pay an amount equal to the Base Monthly Rent for one full month directly to Landlord concurrently with the execution of this Lease which will be applied to the first month of the initial Term.

SECTION 3.2 ADDITIONAL RENT.

3.2.1 Definitions: For purposes of this Lease, the following definitions shall apply:

(a) "Additional Rent", for a particular year, shall equal the product of Tenant's Pro Rata Share Percentage (as set forth in Item 7 of Article 1), multiplied by the sum of (I) the amount of all Operating Expenses for the applicable calendar year plus (ii) the amount of Real Estate Taxes for the applicable calendar year. The budgeted operating expenses, insurance and Real Estate taxes schedule for the 2015 calendar year is attached as Exhibit H.

(b) "Operating Expenses" shall mean (without duplication of any costs and expenses of which Tenant is responsible under Section 6.1 or subsection 7.2.1 below) (i) all of the costs and expenses Landlord incurs, pays or becomes obligated to pay in connection with operating, managing, maintaining, repairing and insuring the Property for a particular calendar year or portion thereof as determined by Landlord in accordance with generally accepted accounting practices, (ii) wages, salaries, employee benefits and taxes for personnel working full or part-time in connection with the operation, maintenance and management of the Building and the Common Areas (iii) costs of maintenance, repair and care of rail spur areas, if any, shared with other tenants of the Building, (iv) the cost of any capital improvements made to the Building by Landlord after the date of this Lease that is required under any governmental law or regulation, amortized over the useful life thereof, together with an amount equal to interest at the rate of 12% per annum (the "Amortization Rate") on the unamortized balance thereof, (v) the cost of any capital improvement made to the Common Areas of the Building after the date of this Lease that is

required under the interpretations of regulations issued from time to time under the provisions of the Americans With Disabilities Act of 1990, 42 U.S.C. Sections 120101-12213 or comparable California and local agency laws (collectively, the "Disability Acts"), amortized over the useful life thereof, together with an amount equal to interest at the Amortization Rate on the unamortized balance thereof, (vi) the cost of any labor-saving or energy-saving device or other equipment installed in the Building after the date hereof, amortized over the useful life thereof, together with an amount equal to interest at the Amortization Rate on the unamortized balance hereof, (vii) the charges assessed against the Property pursuant to any contractual covenants or recorded declaration of covenants or the covenants, conditions and restrictions of any other similar instrument affecting the Property, and (viii) all other costs and expenses which would generally be regarded as operating, maintenance, repair and management costs and expenses, including those which would normally be amortized over the useful life thereof. In addition, Operating Expenses shall exclude (a) insurance deductibles; (b) costs incurred in connection with the presence of any hazardous material, except to the extent caused by the release or emission of the hazardous material in question by Tenant; and (c) costs which could properly be capitalized under generally accepted accounting principles, except to the extent amortized over the useful life of the capital item in question. Operating Expenses shall not include Real Estate Taxes (hereinafter defined).

(c) "Real Estate Taxes" shall mean all real estate taxes and other taxes or assessments, which are levied with respect to the Property or any portion thereof for each calendar year and shall include any tax, surcharge or assessment which shall be levied in addition to or in lieu of real estate taxes, the cost and expenses of a consultant, if any, and/or of contesting the validity or amount of such real estate tax or other taxes, and shall also include rental, excise, sales, transaction, privileged, or other tax or levy, however denominated, imposed upon or measured by the rental payable hereunder or on Landlord's business of leasing the Premises, any non-progressive tax on or measured by gross rentals received from the rental of space in the Building, and any tax in this transaction or any documents to which Tenant is a party creating or transferring an interest in the Premises, excepting only Landlord's net income taxes (collectively, "Real Estate Taxes").

3.2.2 Payment Obligation. In addition to the Base Rent specified in this Lease, Tenant shall pay to Landlord the Additional Rent, in each calendar year or partial calendar year, payable in monthly installments as hereinafter provided. On or prior to the Commencement Date and at least thirty (30) days prior to each calendar year thereafter (or as soon thereafter as is reasonably possible), Landlord shall give Tenant written notice of Tenant's estimated Additional Rent for the applicable calendar year and the amount of the monthly installment due for each month during such year. Tenant shall pay to Landlord on the Commencement Date and on the first day of each month thereafter the amount of the applicable monthly installment, without notice, demand, offset or deduction, provided, however, if the applicable installment covers a partial month, then such installment shall be prorated on a daily basis. If Landlord fails to give Tenant notice of its estimated payments of Additional rent in accordance with this subsection for any calendar year, then Tenant shall continue making monthly estimated payments in accordance with the estimate for the previous calendar year until a new estimate is provided by Landlord. If Landlord determines that, because of unexpected increases in Operating Expenses or other reasons, Landlord's estimate of Operating Expenses was too low, then landlord shall have the right to give a new statement of the estimated Additional Rent due from Tenant for the applicable calendar year or the balance thereof and to bill Tenant for any deficiency which may have accrued during such calendar year or portion thereof, and Tenant shall thereafter pay monthly installments of Additional Rent based on such new statement. Within a reasonable time after the end of each calendar year and the Expiration Date, Landlord shall prepare and deliver to Tenant a statement showing Tenant's actual Additional Rent for the applicable calendar year, provided that with respect to the calendar year in which the Expiration Date occurs, (x) that calendar year shall be deemed to have commenced on January 1 of that year and ended on the Expiration Date (the "Final Calendar Year") and (y) Landlord shall have the right to estimate the actual Operating Expenses allocable to the final Calendar Year. If Tenant's total monthly payments of Additional Rent for the applicable calendar year are less than Tenant's actual Additional Rent, then Landlord shall bill Tenant for the difference. If Tenant's total monthly payments of Additional Rent exceed actual Additional Rent, then Landlord shall credit the amount of such overpayment to Tenant, provided, however, with respect to the Final Calendar Year, Landlord shall pay to Tenant the amount of such excess payments, less any additional amounts then owed to Landlord. Unless Tenant takes written exception to any item within (60) sixty days after the furnishing of an annual statement, such statement shall be considered as final and accepted by Tenant. Any amount due Landlord as shown on any such

statement shall be paid by Tenant within twenty (20) days after it is furnished to Tenant. Tenant or its authorized representative shall have the right to inspect the books of Landlord, for the purpose of verifying the information contained in the statement.

SECTION 3.3 RENT DEFINED AND NO OFFSETS.

The Base Monthly Rent, the Additional Rent and all other sums required to be paid to Landlord by Tenant under this Lease, including any sums due under the Work Letter, shall constitute rent and are sometimes collectively referred to as "Rent". Tenant shall pay each payment of rent when due, without prior notice or demand therefore and without deduction or offset.

SECTION 3.4 LATE CHARGES.

If any installment of Base Monthly Rent or Additional Rent or any other payment of Rent under this Lease shall not be paid when due, a "Late Charge" of ten percent (10%) of the amount overdue may be charged by Landlord to defray Landlord's administrative expense incident to the handling of such overdue payments. The Rent and Additional Rent shall be late if it is not received by the fifth (5th) day of the month. The parties agree that (a) it would be impractical and extremely difficult to fix the actual damage Landlord will suffer in the event of Tenant's late payment, (b) such late charge represents a fair and reasonable estimate of the detriment that Landlord will suffer by reason of late payment by Tenant, and (c) the payment of interest as provided in Section 16.9 hereof and late charges pursuant to this Section 3.4 are distinct and separate in that payment of interest is to compensate Landlord for the use of Landlord's money by Tenant, while the payment of late charges is to compensate Landlord for Landlord's processing, administrative and other costs incurred by Landlord as a result of Tenant's delinquent payments. Acceptance of any such interest and late charges will not constitute a waiver of Tenant's default with respect to the overdue amount, or prevent Landlord from exercising any other rights and remedies available to Landlord. Each Late Charge shall be payable by Tenant on demand of Landlord.

ARTICLE 4
LETTER OF CREDIT/SECURITY DEPOSIT

Tenant will provide Landlord on the date this Lease is executed by Tenant an irrevocable letter of credit as set forth in Item 8 of Article 1 as security for the performance of the terms hereof by Tenant. It is expressly understood and agreed that the Letter of Credit is not an advance payment of Rent or a measure of Landlord's damages in case of default by Tenant. If Tenant defaults beyond applicable notice and cure periods with respect to any provisions of this Lease, Landlord may, but shall not be required to, from time to time, without prejudice to any other remedy, apply or retain all or any part of the letter of credit for the payment of any Rent or any other sum in default, or for the payment of any other amount which Landlord may spend or become obligated to spend by reason of Tenant's default, or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default, including, without limitation, costs and attorneys' fees incurred by Landlord to recover the possession of the Premises. Upon the occurrence of any event of default by Tenant beyond applicable notice and cure periods, 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. Should Landlord exhaust the funds available per the Letter of Credit prior to its designated drawn down dates, Tenant shall pay to Landlord on demand the amount so applied in order to restore the available credit to its original amount relevant to the schedule set forth in Item 8 of Article 1. If Tenant is not then in default of this Lease, the Letter of Credit shall be reduced in a manner as set forth in Item 8 of Article 1. The Security deposit shall be returned to Tenant within the "Applicable Period" after the date Landlord receives possession of the Premises from Tenant at the completion of the lease term. The "Applicable Period" is fourteen (14) days where Landlord has no claim upon the Security Deposit or the claim of Landlord upon the Security Deposit is only for defaults in the payment of Rent or any other charges payable by Tenant under this Lease, and thirty (30) days where the claim of Landlord includes amounts reasonably necessary to repair damages to the Premises caused by Tenant. Tenant agrees that it will not assign or encumber or attempt to assign or encumber the monies deposited with Landlord as the Security

Deposit and that Landlord and its successors and assigns shall not be bound by any such actual or attempted assignment or encumbrance.

ARTICLE 5
OCCUPANCY AND USE

SECTION 5.1 USE OF PREMISES

5.1.1 General. The Premises shall, subject to the remaining provisions of this Section, be used solely for the purpose specified in Item 10 of Article 1. Prior to commencement of any work pursuant to the Work Letter (or if no work is to be performed pursuant to a Work Letter, then prior to Tenant's occupancy of the Premises), Tenant shall satisfy itself and Landlord that the Permitted Use will comply with all applicable zoning ordinances, rules and regulations. Without in any way limiting the foregoing, Tenant shall not use any part of the Premises for sleeping quarters, or for the generation of hazardous or toxic chemicals or materials except as disclosed by the Tenant in the Environmental Questionnaire and approved by the Landlord, and will not use, occupy or permit the use or occupancy of the Premises for any purpose which is forbidden by or in violation of any zoning ordinance law, rule or regulation or any other law, ordinance, or governmental or municipal regulation, order, or certificate of occupancy, or which may be dangerous to life, limb or property; or permit the maintenance of any public or private nuisance; or do or permit any other thing which may disturb the quiet enjoyment of any other tenant of the Building; or keep any substance or carry on or permit any operation which might emit offensive odors or conditions from the Premises; or commit, suffer or permit any waste in or upon the Premises, or at any time, sell, purchase or give away or permit the sale, purchase or gift of food in any form by or to any of Tenant's agents or employees or other parties in the Premises except through vending machines in employees' lunch or rest areas within the Premises for use by Tenant's employees only; or use an apparatus which might make undue noise or set up vibrations in the Building; or permit anything to be done which would increase the fire and extended coverage insurance rate on the Building or contents, and if there is any increase in such rate by reason of acts of Tenant, then Tenant agrees to pay such increase upon demand therefor by Landlord. Payment by Tenant of any such rate increase shall not be a waiver of Tenant's duty to comply herewith. TENANT SHALL INDEMNIFY AND HOLD LANDLORD HARMLESS FROM ANY AND ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS FEES), CLAIMS AND CAUSES OF ACTION ARISING FROM TENANT'S FAILURE TO COMPLY WITH SECTION 5.1. Outside storage, including without limitation, storage in non-operative or stationary trucks, trailers and other vehicles, and vehicle maintenance or repair is prohibited without Landlord's prior written consent. Tenant shall keep the Premises neat and clean at all times. Tenant shall promptly comply with any direction of any governmental authority having jurisdiction which imposes any duty upon Tenant or Landlord with respect to the Premises, or with respect to the occupancy or use thereof and shall comply with all matters of record affecting the Premises which may impose additional restrictions and/or obligations on Landlord or the Tenant.

5.1.2 Hazardous and Toxic Materials.

(a) Tenant shall not incorporate into, use, release, or otherwise place or dispose of at, in, on, under or near the Premises, the Building or the Property any hazardous or toxic materials except that Tenant may use and temporarily store cleaning and office supplies and other materials used in the ordinary course of Tenant's business and then only if (i) such materials are in limited quantities required to conduct Tenant's business, properly labeled and contained, (ii) notice of and a copy of the current material safety data sheet is first delivered to and written consent is obtained from Landlord for each such hazardous or toxic material and (iii) such materials are used, transported, stored, handled and disposed off-site at properly authorized facilities in accordance with the highest accepted industry standards for safety, storage, use and disposal in accordance with all applicable governmental laws, rules and regulations, including without limitation applicable Environmental Laws. Landlord shall have the right to periodically inspect, take samples for testing and otherwise investigate the Premises for the presence of hazardous or toxic materials. Landlord shall not knowingly dispose of at the Premises, in the Building or the Property any hazardous or toxic materials and shall otherwise deal with all hazardous or toxic materials at the Premises, Building or Property in a manner that will not materially and adversely affect Tenant's access, use or occupancy of the Premises. If Landlord or Tenant ever has knowledge of the

presence in the Premises or the Building or the Property of hazardous or toxic materials which affect the Premises, the party having knowledge shall notify the other party thereof in writing promptly after obtaining such knowledge. For purposes of this Lease, hazardous or toxic materials shall mean asbestos containing materials ("ACM") and all other materials, substances, wastes and chemicals classified, defined, listed, or regulated as, or containing, a "hazardous substance," "hazardous waste," "toxic substance," "pollutant," "contaminant," "hazardous material," "solid waste," and/or "regulated substance," under any Environmental Law. As used herein, the term "Environmental Law or Laws" shall mean any and all statutes, rules, regulations, ordinances, orders, permits, licenses, and other applicable legal requirements, relating directly or indirectly to human health or safety or environment, or the presence, handling, treatment, storage, disposal, recycling, reporting, remediation, investigation, or monitoring of hazardous or toxic materials.

(b) Prior to commencement of any tenant finish work to be performed by Landlord, Tenant shall have the right to make such studies and investigations and conduct such non-destructive or non-invasive environmental tests and surveys of the Premises as Tenant deems necessary or appropriate, subject to the conditions that all such studies and investigations shall be completed prior to the commencement of any tenant finish work to be performed by Landlord. **TENANT SHALL RESTORE THE PREMISES AND HOLD LANDLORD HARMLESS FROM AND INDEMNIFY LANDLORD AGAINST ALL LOSS, DAMAGES, AND CLAIMS RESULTING FROM OR RELATING TO TENANT'S STUDIES, TESTS AND INVESTIGATIONS.** If such study, test, investigation or survey evidences hazardous or toxic materials which affect the Premises, Tenant shall have the right to terminate this Lease provided such right shall be exercised, if at all, prior to the commencement of any tenant finish work to be performed by Landlord and within five (5) days after Tenant receives the evidence of hazardous or toxic materials. If Tenant takes occupancy of the Premises prior to exercising such right, Tenant's right to terminate this Lease shall be null and void and of no further force and effect.

(c) If Tenant or its employees, agents, contractors, invitees, or visitors shall ever violate the provisions of paragraph (a) of this subsection 5.1.2 or otherwise contaminate the Premises or the Property, then Tenant shall promptly, diligently, and expeditiously investigate, clean up, remove and dispose of the material causing the violation, in compliance with all applicable governmental standards, laws, rules and regulations including without limitation applicable Environmental Laws and then prevalent industry practice and standards and shall repair any damage to the Premises or the Building or the Property as soon as practicable. Tenant shall notify Landlord in advance of its method, time and procedure for any investigation, remediation or monitoring of hazardous or toxic materials and Landlord shall have the right to require reasonable changes in such method, time or procedure as Landlord considers appropriate to prevent interference with any use, occupancy, care, appearance or maintenance of the Property or the Building, or the rights of other tenants, or to require the same to be done after normal business hours. Under no circumstances shall any remediation by Tenant leave any hazardous or toxic materials at, in, on, or under the Premises, the Property, or the Building without first obtaining the prior written consent of Landlord. Tenant's obligations under this subsection 5.1.2(c) shall survive the termination of this Lease. If Tenant does not properly perform its obligations hereunder and such deficiency is not cured to Landlord's satisfaction within thirty days after notice from Landlord of such deficiency, Landlord shall have the right, but not the obligation, to perform such work and all costs and expenses associated therewith shall be due and payable by Tenant upon demand. Tenant represents to Landlord that, except as has been disclosed to Landlord in writing, Tenant, or any of its owners, partners, managers, members, shareholders, or venturers shall have never been cited for or convicted of any violations under applicable laws, rules and regulations, including without limitation Environmental Laws.

(d) **TENANT AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS LANDLORD, ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS FROM AND AGAINST ALL OBLIGATIONS (INCLUDING REMOVAL AND REMEDIAL ACTIONS), LOSSES, CLAIMS, SUITS, JUDGMENTS, LIABILITIES (INCLUDING WITHOUT LIMITATION STRICT LIABILITIES), PENALTIES, DAMAGES (INCLUDING CONSEQUENTIAL DAMAGES AND PUNITIVE DAMAGES), COSTS AND EXPENSES (INCLUDING ATTORNEYS' AND CONSULTANT'S 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, THE ACTUAL OR ALLEGED PRESENCE OR RELEASE OF HAZARDOUS OR TOXIC MATERIALS ON, AT, IN, UNDER, FROM OR NEAR THE**

PREMISES WHICH IS CAUSED BY TENANT, OR ITS LICENSEES OR INVITEES OR ANY PERSON ACTING UNDER, ON BEHALF OF, OR AT THE DIRECTION OR PERMISSION OF TENANT. THE PROVISIONS OF THIS SECTION 5.1.2(d) SHALL SURVIVE THE EXPIRATION OR SOONER TERMINATION OF THIS LEASE.

5.1.3 Monitoring, Inspecting and Remediating Mold. Tenant, at its sole cost and expense shall:

(a) Tenant, at its sole cost and expense, shall (i) regularly monitor the Premises for the presence of mold or for any conditions that reasonable can be expected to give rise to mold (the "Mold Condition"), including but not limited to, observed or suspected instances of water damage, mold growth, repeated complaints of respiratory ailment or eye irritation by Tenant's employees or any other occupants in the Premises, or any notice from a governmental agency of complaints regarding the indoor air quality at the Premises; and (ii) promptly notify Landlord in writing if Tenant suspects mold or Mold Conditions at the Premises.

(b) In the event of suspected mold or Mold Conditions at the Premises, Tenant, at its sole cost and expense, shall promptly cause an inspection of the Premises to be conducted, during such time as Landlord may designate, to determine if mold or Mold Conditions are present at the Premises, and shall (i) notify Landlord, in writing, at least three (3) days prior to the inspection, of the date on which the inspection shall occur, and which portion of the Premises shall be subject to the inspection; (ii) retain an industrial hygienist certified by the American Board of Industrial Hygienists ("CIH") or an otherwise qualified mold consultant (generally, "Mold Inspector") to conduct the inspection; and (iii) cause such Mold Inspector to: (A) obtain or maintain errors and omissions insurance coverage with terms and limits customarily maintained by Mold Inspector, adding Landlord as an additional insured with respect to Landlord's vicarious liability, and provide to Landlord evidence of such coverage and a copy of the endorsement granting Landlord additional insured status; (B) perform an inspection in a manner that is strictly confidential and consistent with the duty of care exercised by a Mold Inspector; and (C) prepare an inspection report, keep the results of the inspection report confidential, and promptly provide a copy to Landlord.

(c) In the event the inspection required by (b) above determines that mold or Mold Conditions are present at the Premises, then (I) Tenant, at its sole cost and expense shall promptly: (A) hire trained and experienced mold remediation contractors to prepare a remediation plan and to remediate the mold or Mold Conditions at the Premises; (B) send Landlord notice, in writing, with a copy of the remediation plan, at least 3 days prior to the mold remediation, stating: (1) the date on which the mold remediation shall start; (2) which portion of the Premises shall be subject to remediation; (3) the name, address, and telephone number of the certified mold remediation contractors performing the remediation; (4) the remediation procedures and standards to be used at the Premises; (5) the clearance criteria to be employed at the conclusion of the remediation; and (6) the date the remediation will conclude; (C) notify, in accordance with any applicable state or local health or safety requirements, its employees as well as occupants and visitors of the Premises of the nature, location, and schedule for the planned mold remediation; (D) ensure that the mold remediation is conducted in accordance with the relevant provisions of the document Mold Remediation in Schools and Commercial Buildings (EPA 402-K-01-001, March 2001) ("EPA Guidelines"), published by the U.S. Environmental Protection Agency, as may be amended or revised from time to time, or any other applicable, legally binding federal, state, or local laws, regulatory standards or guidelines: and (E) provide Landlord with a draft of the mold remediation report and give Landlord a reasonable opportunity to review and comment thereon, and when such report is finalized, promptly provide Landlord with a copy of the final remediation report.

(d) Tenant acknowledges and agrees that Landlord shall have a reasonable opportunity to inspect the remediated portion of the Premises after the conclusion of the mold remediation. If the results of Landlord's inspection indicate that the remediation does not comply with the final remediation report or any other applicable federal, state, or local laws, regulatory standards or guidelines, including without limitation, the EPA Guidelines, then Tenant, at its sole cost and expense, shall immediately take all further actions necessary to ensure such compliance.

ARTICLE 6
UTILITIES AND SERVICES

SECTION 6.1 UTILITIES.

Except for Landlord's obligation under the last two sentences of this Section 6.1, Tenant shall be responsible for providing all utilities to the Premises. Tenant shall directly pay for all utilities used on the Premises which are separately metered, and reimburse Landlord for sub-metered utilities (if any) together with any maintenance charges for utilities. The cost of any utilities which are not separately metered or sub-metered to the Premises shall be an Operating Expense and charged to Tenant in accordance with Article 3. Tenant's use of electric current shall at no time exceed the capacity of the feeders or lines to the Building or the risers or wiring installation of the Building or the Premises. Landlord shall in no event be liable for any interruption or failure of, and Tenant shall not be entitled to any abatement or reduction of Rent by reason of, any interruption or failure of utilities or other services to the Premises, nor shall any such interruption or failure in any such utility or service be construed as an eviction (constructive or actual) of Tenant or as a breach of the implied warranty of suitability, or relieve Tenant from the obligation to perform any covenant or agreement herein, and in no event shall Landlord be liable for damage to persons or property (including, without limitation, business interruption), or in default hereunder, as a result of any such interruption or failure. However, if any such interruption is caused by a break or other damage to any utility lines located on the Property and outside of the Building that are under the exclusive control of Landlord, upon receipt of written notice of such interruption Landlord shall use reasonable efforts to perform or cause to be performed the necessary repairs within such time frame as may be reasonable under the circumstances in order to restore the affected service to the Premises. In addition, if any such interruption is caused by a break or other damage to any utility line located on the Property and controlled by a governmental, private or public utility, Landlord will cooperate with such utility so that the interrupted service is restored to the Premises as soon as it is reasonably possible.

SECTION 6.2 SERVICES.

Landlord shall be under no obligation to provide any services to the Building or Premises, except that Landlord shall provide maintenance and cleaning in the Common Areas and utility service lines and hookups to the Building.

ARTICLE 7
MAINTENANCE, REPAIRS, ALTERATIONS AND IMPROVEMENTS

SECTION 7.1 LANDLORD'S OBLIGATION TO MAINTAIN AND REPAIR.

Landlord shall (subject to Section 8.1, Section 8.4, Article 9 and Landlord's rights under Section 3.2, and except for ordinary wear and tear) maintain load bearing walls and foundation and repair or replace the roof of the Building when necessary (with the cost of roof repairs an Operating Expense, and charged to Tenant pursuant to Section 3.2.1(b)). Except for maintaining the structural soundness of the load bearing walls and foundation of the Building located within the Premises, Landlord shall not be required to maintain or repair any other portion of the Premises. Tenant hereby waives, so far as permitted by law, the right to make repairs at Landlord's expense under any law, statute, ordinance, rule, regulation, order or ruling (including, without limitation, the provisions of California Civil Code Sections 1941 and 1942 and any successor statutes or laws of a similar nature).

Basic Elements of the facility which include (i) boiler and pressure vessels, (ii) fire extinguishing systems, including fire alarm and/or smoke detection, (iii) roof membrane and drains, (iv) driveways and parking lots, (v) clarifiers, (vi) basic utility feeds to the perimeter of the Building, and (vii) any other equipment, if reasonably required by Landlord will be directly paid by the tenant or subject to Additional Rent expense recoveries in accordance with Section 3.2 of this Lease. Without relieving Tenant of liability resulting from Tenant's failure to exercise and perform good maintenance practices, if the Basic Elements described above cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such Basic Elements, then such Basic Elements shall be replaced by Landlord, and the cost thereof shall be prorated between the Parties and Tenant shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, and amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is the number of months of the useful life of such replacement as such useful life is specified pursuant to Federal income tax regulations or guidelines for depreciation thereof (including

interest on the unamortized balance as is then commercially reasonable in the judgment of Landlord's accountants), with Tenant reserving the right to prepay its obligation at any time.

SECTION 7.2 TENANT'S OBLIGATIONS TO MAINTAIN AND REPAIR.

7.2.1 Tenant's Obligations. Subject to Sections 7.1, 8.1 and 8.4 and Article 9, Tenant shall, at Tenant's sole cost and expense, and with Landlord's supervision, repair and, as appropriate, replace any damage or injury done to the Premises caused by Tenant, Tenant's agents, employees, licensees, invitees or visitors and shall otherwise keep and maintain in good condition, appearance and repair (including replacements), the Premises, which obligation shall include, but not be limited to, the maintenance, repair and, as appropriate, replacement of (a) all security, fire (including fire sprinkler), heating and air conditioning systems and fixtures serving the Premises, (b) all plumbing, sewage, mechanical and electrical systems and fixtures serving the Premises, (c) all fixtures, walls, ceilings, floors, doors, overhead and dock loading doors, windows, plate glass, skylights, lamps, fans and all other appliances and equipment of every kind and nature located in, upon or about the Premises and (d) the rail spur(s), if any, exclusively serving the Premises. **TENANT SHALL INDEMNIFY AND HOLD LANDLORD HARMLESS FROM ANY AND ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES), CLAIMS AND CAUSES OF ACTION ARISING FROM OR INCURRED BY AND/OR ASSERTED IN CONNECTION WITH ANY SUCH MAINTENANCE, REPAIRS, REPLACEMENTS, DAMAGE OR INJURY OR TENANT'S BREACH OF ITS OBLIGATIONS UNDER THIS SECTION 7.2** All repairs and replacements performed by and on behalf of Tenant shall be performed in a good and workmanlike manner acceptable in all aspects to Landlord, and in accordance with Landlord's standards applicable to alterations or improvements performed by Tenant. Tenant shall continue to pay Rent, without abatement, during any period that repairs or replacements are performed or required to be performed by Tenant under this Section 7.2. Tenant shall make no repairs to or penetrations of the roof of the Premises without Landlord's consent. The Landlord warrants the HVAC, plumbing and other systems from the commencement of the lease to a date 90 days thereafter (the "Warranty Period"). Said warranty will cover all materials and labor on repairs during the Warranty Period unless caused by Tenant misuse. In the event a replacement of the system is required during the Warranty Period, any months of amortization of the new asset will be abated if they fall within the Warranty Period.

7.2.2 Rights of Landlord. Any maintenance, repairs or replacements to be performed by Tenant under Section 7.2.1 above and any service which Tenant is required to provide under Section 6.1 above may, upon written notice from Landlord to Tenant, be performed by Landlord for Tenant's benefit, in which event Tenant shall reimburse Landlord for all expenses and costs incurred by Landlord in performing same plus an additional five percent (5%) of such amount to compensate Landlord for Landlord's overhead and administrative costs relating to such work. Landlord shall have the same rights with respect to repairs performed by Tenant as Landlord has with respect to improvements and alterations performed by Tenant under subsection 7.3.3. In the event Tenant fails, in the reasonable judgment of Landlord, to maintain the Premises in good order, condition and repair, or otherwise satisfy its repair and replacement obligations under subsection 7.2.1 or fails to provide the services required under Section 6.1 above, and such failure continues beyond a reasonable period of time, Landlord shall have the right to perform such maintenance, repairs and replacements or provide such services, at Tenant's sole cost and expense. Tenant shall pay to Landlord on demand any such expense incurred by Landlord plus an additional five percent (5%) of such amount to compensate Landlord for Landlord's overhead and administrative costs relating to such work, together with interest thereon at the rate specified in Section 16.9 from the date of demand until paid. All such amounts owing pursuant to this Section 7.2.2 shall be deemed Rent hereunder.

SECTION 7.3 IMPROVEMENTS AND ALTERATIONS

7.3,1 Landlord's Construction Obligations. Landlord's sole construction obligation under this Lease is as set forth in the Work Letter attached hereto as Exhibit D.

7.3.2 Alteration of Building by Landlord; New Construction. Landlord hereby reserves the right and at all times shall have the right to repair, change, redecorate, alter, improve, modify, renovate, enclose or make additions to any part of the Property (including structural elements and load bearing elements within the Premises), to enclose and/or change the arrangement and /or location of driveways or parking areas or landscaping or other Common Areas of the Property, and to construct new improvements on adjacent parcels of land, all without having committed an actual or constructive eviction of Tenant or breach of the implied warranty of suitability and without an abatement of Rent (the "Reserved Rent"). When exercising the Reserved Right, Landlord will use reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises.

7.3.3 Alterations, Additions, Improvements and Installations by Tenant. Tenant shall not, without the prior written consent of Landlord, make any changes, modifications, alterations, additions or improvements (other than Tenant's Improvements under the Work Letter) to, nor install any equipment or machinery (other than office equipment and unattached personal property) on, the Premises (all such changes modifications, alterations, additions, improvements other than Tenant's Improvements under the Work Letter and installations approved by Landlord are herein collectively referred to as "Installations") if any such Installations would (i) affect structural or load bearing portions of the Premises, (ii) result in a material increase of electrical usage above the normal type and amount of electrical current to be provided by Landlord, (iii) result in an increase of Tenant's usage of heating or air conditioning, (iv) impact mechanical, electrical or plumbing systems in the Premises or the Building, (v) affect areas of the Premises which can be viewed from Common Areas, (vi) require greater or more difficult cleaning work (e.g., kitchens, reproduction rooms, and interior glass partitions) or (vii) violate any provision in Article 5 or Exhibit B attached hereto. All installations shall be at Tenant's sole cost and expense. Tenant's trade fixtures, furniture, equipment and other personal property installed in the Premises, including Tenant's clean room, manufacturing equipment and related equipment ("Tenant's Property") shall at all times be and remain Tenant's property and may be removed without Landlord's consent. The Tenant shall be responsible for repairing any damage caused by such removal. None of these items are construed to include any parts of the electrical, plumbing, mechanical or other building systems. Without in any way limiting Landlord's consent rights, Landlord's consent shall be conditioned on (a) Landlord approving the contractor or person making such Installations and approving such contractor's insurance coverage to be provided in connection with the work, (b) Landlord's supervision of the work, (c) Landlord's approving final and complete plans and specifications for the work and (d) the appropriate governmental agency, if any, having final and complete plans and specifications for such work. All work performed by Tenant or its contractor relating to the Installations shall conform to applicable governmental laws, rules and regulations, including, without limitation, the Disability Acts. Upon completion of the Installations, Tenant shall deliver to Landlord "as built" plans. All Installations that constitute improvements constructed within the Premises shall be surrendered with the Premises at the expiration or earlier termination of this Lease, unless Landlord requests that same be removed pursuant to Section 2.3 of this Lease. **TENANT SHALL INDEMNIFY AND SAVE LANDLORD HARMLESS FROM ANY AND ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS), DEMANDS, CLAIMS, CAUSES OF ACTION AND LIENS ARISING FROM OR IN CONNECTION WITH ANY INSTALLATIONS PERFORMED BY OR ON BEHALF OF TENANT.** All Installations performed by or on behalf of Tenant shall be performed diligently and in a first-class workmanlike manner, and in compliance with all applicable laws, ordinances, regulations and rules of any public authority having jurisdiction over the Building and/or Tenant's and Landlord's insurance carriers. Landlord will have the right, but not the obligation, to inspect periodically the work on the Premises and may require changes in the method or quality of the work.

7.3.4. Approvals. Any approval by Landlord (or Landlord's architect and/or engineers) of any of Tenant's contractors or Tenant's drawings or plans or specifications which are prepared in connection with any construction of improvements (including without limitation, Tenant's Improvements) in the Premises shall not in any way be construed as or constitute a representation or warranty of Landlord as to the abilities of the contractor or the adequacy or sufficiency of such drawings, plans or specifications or the improvements to which they relate, for any use, purpose or condition.

ARTICLE 8
INSURANCE, FIRE AND CASUALTY

SECTION 8.1 TOTAL OR PARTIAL DESTRUCTION OF THE BUILDING OR THE PREMISES.

Tenant covenants and agrees to immediately give Landlord telephonic and written notice of any fire or other casualty affecting the Premises or Building. In the event that the Building should be totally destroyed by fire or other casualty or in the event the Building (or any portion thereof) should be so damaged that rebuilding or repairs cannot be completed, in Landlord's reasonable opinion, within two hundred seventy (270) days of Landlord's becoming aware of the applicable fire or casualty, either Landlord or Tenant may, at its option, terminate this Lease, by written notice to the other, with Tenant's notice to be given within ten (10) days after being advised by Landlord that the rebuilding or repairs cannot be completed within two hundred seventy (270) days of Landlord's becoming aware of the applicable fire or casualty, or if the damage should be more serious but neither Landlord nor Tenant elect to terminate this Lease pursuant to this Section, Landlord shall within sixty (60) days after the date of receipt of notice of such damage, commence to rebuild or repair the Building and the Premises (including Tenant's Improvements, but only to the extent of insurance proceeds actually received by Landlord for the repair of Tenant's Improvements), and shall pursue with reasonable diligence the repair and restoration of the Building and the Premises to substantially the same condition which existed immediately prior to the happening of the casualty, except that Landlord shall not be required to rebuild, repair or replace any part of the furniture, equipment, fixtures, inventory, supplies or any other personalty or any other improvements (except Tenant's Improvements, but only to the extent of insurance proceeds actually received by Landlord for the repair of Tenant's Improvements which shall be first utilized by Landlord before any proceeds of Landlord's insurance) which may have been placed by Tenant or other tenants within the Building or at the Premises. Landlord shall allow Tenant a proportionate diminution of Base Rent and Additional Rent as may be fair and reasonable under the circumstances during any period of reconstruction or repair of the Premises due to an occurrence contemplated in this Section 8.1; provided, that Base Rent and Additional Rent shall be abated only to the extent Landlord is compensated for such Base Rent and Additional Rent by loss of rents insurance, if any. Notwithstanding Landlord's restoration obligation, in the event any mortgage under a deed of trust, security agreement or mortgage on the Building should require that the insurance proceeds be used to retire or reduce the mortgage debt or if the insurance company issuing Landlord's fire and casualty insurance policy fails or refuses to pay Landlord the proceeds under such policy, Landlord shall have no obligation to rebuild and this Lease shall terminate upon notice by Landlord to Tenant. Any insurance which may be carried by Landlord or Tenant against loss or damage to the Building or to the Premises shall be for the sole benefit of the party carrying such insurance and under its sole control. Upon termination of the Lease pursuant to this Section, Base Rent and Additional Rent shall be abated from the date of the fire or casualty. Landlord and Tenant agree that the foregoing provisions of this Section 8.1 are to govern their respective rights and obligations in the event of any damage or destruction and supersede and are in lieu of the provisions of any applicable law, statute, ordinance, rule, regulation, order or ruling mow or hereafter in force which provide remedies for damage or destruction of leased premises (including, without limitation, the provisions of California Civil code Section 1932, Subsection 2, and Section 1933, Subsection 4 and any successor statute or laws of a similar nature).

SECTION 8.2 TENANT'S INSURANCE

8.2.1 Types of Coverage. Tenant covenants and agrees that from and after the date of delivery of the Premises from Landlord to Tenant, Tenant will carry and maintain, at its sole cost and expense, the insurance set forth below:

(a) Liability Insurance. Commercial General Liability Insurance covering the Premises Tenant's use thereof against claims for personal or bodily injury or property damage occurring upon, in or about the Premises (including contractual indemnity and liability coverage), such insurance to insure both Tenant and, as additional named insureds, Landlord and its subsidiaries, directors, agents and employees and the Property Manager, with limits of not less than $1,000,000 per occurrence and $2,000,000 in the aggregate, combined single limit, with respect to injury to any number of persons and all property damage without a deductible. Tenant's liability insurance policy shall include a Waiver of Subrogation Endorsement. If the Agreed Rentable Area of the Premises is more than 20,000 square feet, then, in addition to and not in lieu of the above-stated coverage, Tenant shall carry umbrella or so-called excess coverage in the amount of not less than $1,000,000 over Tenant's base coverage amount with no deductible.

This insurance coverage shall extend to any liability of Tenant arising out of the indemnities provided for in this Lease.

(b) Property Damage. Property insurance on an "special form" coverage covering all fixtures, equipment and personalty located in the Premises, in an amount not less than one hundred percent (100%) of full replacement cost thereof, with a deductible not to exceed $5,000. Such policy will be written in the name of Tenant, and Landlord shall be added as Loss Payee with respect to its interests in Tenant's Improvements and Betterments.

(c) Workers Compensation Insurance. Worker's compensation insurance including Employer's Liability Insurance with limits in amounts not less than $500,000 per individual, and $500,000 per policy-disease. Tenant's worker's compensation insurance policy shall include a Wavier of Subrogation Endorsement. Said policy shall insure against and satisfy Tenant's obligations and liabilities under the worker's compensation laws of the state of California.

(d) Other. Such other insurance as Landlord may reasonable require from time to time.

8.2.2 Other Requirements of Insurance. All such insurance will be issued and underwritten by companies with an A.M. Best Rating of not less than A-VIII licensed to do business in California and will contain endorsements that (a) such insurance may not lapse with respect to Landlord or Property Manager or be canceled or amended with respect to Landlord or Property Manager without the insurance company giving Landlord and Property Manager at least thirty (30) days prior written notice of such cancellation (except 10 days for nonpayment of premium), (b) Tenant will be solely responsible for payment of premiums, (c) in the event of payment of any loss covered by such policy, Landlord or Landlord's designees will be paid first by the insurance company for Landlord's loss and (d) Tenant's insurance is primary in the event of overlapping coverage which may be carried by Landlord.

8.2.3 Proof of Insurance. Tenant shall deliver to Landlord duplicate originals of certificates and endorsements as applicable (policies at Landlord's request) of insurance by this Section 8.2 prior to the Commencement Date and duly executed originals of binders of such insurance evidencing in-force coverage, within ten (10) days prior to the commencement of construction of Tenant's Improvements. Further, Tenant shall deliver to Landlord renewals thereof at least thirty (30) days prior to the expiration of the respective policy terms.

SECTION 8.3 LANDLORD'S INSURANCE

8.3.1 Types of Coverage. Landlord covenants and agrees that from the date of delivery of the Premises from Landlord to Tenant, Landlord will carry and maintain the insurance set forth below:

(a) Liability Insurance. Commercial General Liability Insurance covering the Building and all Common Areas against claims for personal or bodily injury or property damage occurring upon, in or about the Building or Common Areas with limits of not less than $1,000,000 per occurrence and $2,000,000 in the aggregate, combined single limit, with respect to injury to any number of persons and property damage. This insurance coverage shall extend to any liability of Landlord arising out of the indemnities provided for in this Lease.

(b) Property Insurance. Landlord shall at all times during the term hereof maintain in effect a policy or policies covering the Building (excluding property required to be insured by Tenant) on an "all risk" basis in such amounts as Landlord may from time to time determine, providing protection against perils included within the standard form of "all risk" insurance policy promulgated in California, and such other risks as Landlord may from time to time determine and with any such deductibles as Landlord may from time to time determine.

8.3.2 Self-Insurance. Tenant shall have no rights in any policy or policies maintained by Landlord.

SECTION 8.4. WAIVER OF SUBROGRATION

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE, LANDLORD AND TENANT EACH HEREBY WAIVE ANY RIGHTS THEY MAY HAVE AGAINST THE OTHER (INCLUDING, BUT NOT LIMITED TO, A DIRECT ACTION FOR DAMAGES) ON ACCOUNT OF ANY LOSS OR DAMAGE OCCASIONED TO LANDLORD OR TENANT, AS THE CASE MAY BE (WHETHER OR NOT SUCH LOSS OR DAMAGE IS CAUSED BY THE FAULT, NEGLIGENCE OR OTHER TORTIOUS CONDUCT, ACTS OR OMISSIONS OF LANDLORD OR INVITEES), to their respective property, the Premises, its contents or to any other portion of the Building or the Property arising from any risk covered by the current form of property insurance and fire and extended coverage insurance promulgated by the applicable insurance board or commission in California and required to be carried by Tenant and Landlord, respectively under subsections 8.2.1 and 8.3.1 of this Lease. If a party waiving rights under this Section is carrying an "all-risk" coverage insurance policy in the promulgated form used in California and an amendment to such promulgated form is passed, such amendment shall be deemed not a part of such promulgated form until it applies to the policy being carried by the waiving party. The parties hereto each, on behalf of their respective officers, directors, employees, agents or invitees and all rights of their respective insurance companies based upon an assignment from its insured. Each party to this Lease agrees immediately to give to each such insurance company written notification of the terms of the mutual waivers contained in this Section, and to have said insurance coverage by reason of said waivers. The following waiver shall be effective whether or not the parties maintain the required insurance.

SECTION 8.5 INDEMNITY

8.5.1 Tenant's Indemnity. **TENANT COVENANTS AND AGREES TO INDEMNIFY AND HOLD LANDLORD, PROPERTY MANAGER AND THEIR RESPECTIVE PARTNERS, TRUST MANAGERS, OFFICERS, DIRECTORS, EMPOYEES AND AGENTS HARMLESS FROM ALL CLAIMS, DEMANDS, ACTIONS, DAMAGES, LOSS, LIABILITIES, JUDGMENTS, COSTS AND EXPENSES, INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND COURT COSTS (EACH A "CLAIM" AND COLLECTIVELY THE "CLAIMS") WHICH (i) ARE SUFFERED BY, RECOVERED FROM OR ASSERTED AGAINST LANDLORD, (ii) ARE NOT PAID BY INSURANCE CARRIED BY TENANT OR LANDLORD (WITHOUT IN ANY WAY AFFECTING THE REQUIREMENTS OF OR LANDLORD'S RIGHTS UNDER SECTION 8.2) AND (iii) ARISE FROM OR IN CONNECTION WITH (a) THE USE OR OCCUPANCY OF THE PREMISES AND/OR ANY ACCIDENT, INJURY OR DAMAGE OCCURRING IN OR AT THE PREMISES CAUSED BY TENANT OR (b) ANY BREACH BY TENANT OF ANY REPRESENTATION OR COVENANT OF THIS LEASE; PROVIDED, HOWEVER, SUCH INDEMNIFICATION OF LANDLORD BY TENANT SHALL NOT INCLUDE ANY CLAIM WAIVED BY LANDLORD UNDER SECTION 8.4 HEREOF, ANY CLAIM TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR ANY CLAIM RELATING TO HAZARDOUS OR TOXIC MATERIALS EXCEPT TO THE EXTENT SUCH CLAIM ARISES OUT OF A BREACH BY TENANT OF ANY OF THE PROVISIONS OF SUBSECTION 5.1.2.**

8.5.2 Landlord's Indemnity. **LANDLORD WILL INDEMNIFY AND HOLD TENANT AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS HARMLESS FROM ALL CLAIMS, DEMANDS, ACTIONS, DAMAGES, LOSS, LIABILITIES, JUDGMENTS, COSTS AND EXPENSES INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND COURT COSTS (EACH A "CLAIM" AND COLOLECTIVELY THE "CLAIMS") WHICH ARE SUFFERED BY, RECOVERED FROM OR ASSERTED AGAINST TENANT AND WHICH ARE NOT PAID BY PROCEEDS OF INSURANCE CARRIED BY LANDLORD OR TENANT AND WHICH ARISE FROM OR IN CONNECTION WITH (a) THE USE OF THE COMMON AREAS AND/OR ANY ACCIDENT, INJURY OR DAMAGE OCCURRING IN OR ON THE COMMON AREAS OR (b) ANY BREACH BY LANDLORD OF ANY REPRESENTATION OR COVENANT IN THIS LEASE; PROVIDED, HOWEVER, SUCH INDEMNIFICATION OF TENANT BY LANDLORD SHALL NOT INCLUDE ANY CLAIM WAIVED BY TENANT UNDER SECTION 8.4 HEREOF, ANY CLAIM TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF TENANT OR ANY CLAIM RELATING TO HAZARDOUS OR TOXIC MATERIALS EXCEPT TO THE EXTENT SUCH CLAIM ARISES OUT OF A BREACH BY LANDLORD OF ANY OF THE PROVISIONS OF SUBSECTION 5.1.2 OR (c) RESULTING FROM TOXIC OR HAZARDOUS WASTE CONTAMINATION EXISTING PRIOR TO THE COMMENCEMENT DATE OR RESULTING FROM THE DIRECT ACTIONS OF THE LANDLORD.**

ARTICLE 9

SECTION 9.1 CONDEMNATION OF THE PROPERTY.

If the Property or any portion thereof that, in Landlord's reasonable opinion, is necessary to the continued efficient and/or economically feasible use of the Property shall be taken or condemned in whole or in part for public purpose, or sold to a condemning authority in lieu of taking, then the term of this Lease shall, at the option of Landlord upon written notice to Tenant, forthwith cease and terminate.

SECTION 9.2 CONDEMNATION OF PREMISES.

In the event that all or substantially all of the Premises are taken or condemned or sold in lieu thereof or Tenant will be unable to use a substantial portion of the Premises for a period exceeding two hundred seventy (270) consecutive days by reason of a temporary taking, either Landlord or Tenant may terminate this Lease by delivering written notice thereof to the other within ten (10) business days after the taking, condemnation or sale in lieu thereof.

SECTION 9.3 CONDEMNATION WITHOUT TERMINATION.

If upon a taking or condemnation or sale in lieu of the taking of all or less than all of the Property which gives either Landlord or Tenant the right to terminate this Lease pursuant to Section 9.1 or 9.2 and neither Landlord nor Tenant elect to exercise such termination right, then this Lease shall continue in full force and effect, provided that, if the taking, condemnation or sale includes any portion of the Premises or the Building, the Base Rent and Additional Rent shall be redetermined on the basis of the remaining square feet of Agreed Rentable Area of the Premises or the Building. Landlord, at Landlord's sole option and expense, shall restore and reconstruct the Building to substantially its former condition to the extent that the same may be reasonable feasible, but such work shall not be required to exceed the scope of the work done by Landlord in originally constructing the Building, nor shall Landlord in any event be required to spend for such work in an amount in excess of the amount received by Landlord as compensation or damages (in excess of the amounts retained by the mortgagee of the Property relating to the property taken) for the part of the Building or the Premises so taken.

SECTION 9.4 CONDEMNATION PROCEEDS.

Landlord shall receive the entire award (which shall include sales proceeds) payable as a result of a condemnation, taking or sale in lieu thereof. Tenant hereby expressly assigns to Landlord any and all right, title and interest of Tenant now or hereafter arising in and to any such award. Tenant shall, however, have the right to recover from such authority through a separate award which does not reduce the Landlord's award, any compensation as may be awarded to Tenant on account of moving and relocation expenses and depreciation to and removal of Tenant's physical property. Landlord and Tenant agree that the foregoing provisions of this Article 9 are to govern their respective rights and obligations in the event of any condemnation of the Property or the Premises and supersede and are in lieu of the provisions of any applicable law, statute, ordinance, rule, regulation, order or ruling now or hereafter enforced which provide remedies for condemnation of leased premises (including, without limitation, the provisions of California Code of Civil Procedure Sections 1265.110 through 1265.160 and any successor statutes or laws of a similar nature).

ARTICLE 10
LIENS

Tenant shall keep the Premises free from all liens arising out of any work performed, materials furnished or obligations by or for Tenant and **TENANT SHALL INDEMNIFY AND HOLD LANDLORD HARMLESS FROM ANY AND ALL CLAIMS, CAUSES OF ACTION, DAMAGES, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS), ARISING FROM OR IN CONNECTION WITH ANY SUCH LIENS,** in the event that Tenant shall not, within ten (10) days following notification to Tenant of

the imposition of any such lien, cause the same to be released of record by payment or the posting of a bond in amount, form and substance acceptable to Landlord, Landlord shall have, in addition to all other remedies provided herein and by law, the right but not the obligation, to cause the same to be released by such means as it shall deem proper, including payment of or defense against the claim giving rise to such lien. All amounts paid or incurred by Landlord in connection therewith shall be paid by Tenant to Landlord on demand and shall bear interest from the date of demand until paid at the rate set forth in Section 16.9. Nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or furnishing of any materials for any specific improvement, alteration or repair of or to the Building or Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanic's or other liens against the interest of Landlord in the Property or the Premises.

ARTICLE 11
TAXES ON TENANT'S PROPERTY

Tenant shall be liable for and shall pay, prior to their becoming delinquent, any and all taxes and assessments levied against, and any increases in Real Estate Taxes as a result of, any personal property or trade or other fixtures placed by Tenant in or about the Premises and any improve-ments (excluding Tenant's Improvements) constructed in the Premises by or on behalf of Tenant. In the event Landlord, at its sole election, pays any such additional taxes or increases, Tenant will, within ten (10) days after demand, reimburse Landlord for the amount thereof. Such amounts shall bear interest from the date paid by Landlord until reimbursed by Tenant at the rate set forth in Section 16.9.

ARTICLE 12
SUBLETTING AND ASSIGNING

SECTION 12.1 SUBLEASE AND ASSIGNMENT.

Tenant shall not assign this Lease, or allow it to be assigned, in whole or in part, by operation of law or otherwise (it being agreed that for purposes of this Lease, assignment shall include, without limitation, the transfer of a majority interest of stock, partnership or other forms of ownership interests of Tenant (a "Change of Control") or mortgage or pledge the same, or sublet the Premises or any part thereof or permit the Premises to be occupied by any firm, person, partnership or corporation or any combination thereof, other than Tenant without the prior written consent of Landlord which consent shall not be unreasonably withheld. In no event shall any assignment or sublease ever release Tenant from any obligation or liability hereunder. No assignee or sublessee of the Premises or any portion thereof may assign or sublet the Premises or any portion thereof. 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/or sublettings All reasonable legal fees and expenses incurred by Landlord in connection with any assignment or sublease proposed by Tenant will be the responsibility of Tenant and will be paid by Tenant within twenty (20) days of receipt of an invoice from Landlord. In addition, Tenant will pay to Landlord an administrative overhead fee of $500 plus reasonable attorneys cost not to exceed $1,500.00, in consideration for Landlord's review of any requested assignment or sublease. Notwithstanding the foregoing, Tenant may, without Landlord's prior written consent and without constituting an assignment or sublease hereunder, (i) engage in a Change of Control or (ii) sublet the Premises or assign this Lease to (a) an entity controlling, controlled by or under common control with Tenant, (b) an entity related to Tenant by merger, consolidation or reorganization, or (c) a purchaser of a substantial portion of Tenant's assets; provided, however, that, as a result of any of the foregoing transactions (including a Change of Control), the Tenant under this Lease (including any assignee resulting from any such transaction) must then have sufficient credit to perform all remaining obligations of Tenant under this Lease.

SECTION 12.2 LANDLORD'S RIGHTS RELATING TO ASSIGNEE OR SUBTENANT.

If this Lease or any part hereof is assigned or the Premises or any part thereof are sublet, fifty percent (50%) of any rent received by Tenant in excess of the rent payable hereunder shall be paid to Landlord, for Landlord's sole benefit. Tenant hereby authorizes and directs any such assignee or sublessee to make such payments of rent directly to Landlord upon receipt of notice from Landlord of Tenant's default beyond applicable notice and cure periods, and Tenant agrees that any such payments made by an assignee or sublessee to Landlord shall, to the extent of the payments so made, be a full and complete release and discharge of rent owed to Tenant by such assignee or sublessee. No direct collection by Landlord from any such assignee or sublessee shall be construed to constitute a novation or a release of Tenant or any guarantor of Tenant from the further performance of its obligations hereunder. Receipt by Landlord of rent from any assignee, sublessee or occupant of the Premises or any part thereof shall not be deemed a waiver of the above covenant in this Lease against assignment and subletting or a release of Tenant under this Lease. In the event that, following an assignment or subletting, this Lease or the rights and obligations of Tenant hereunder are terminated for any reason, including without limitation in connection with default by or bankruptcy of Tenant (which, for the purposes of this Section 12.2, shall include all persons or entities claiming by or through Tenant), Landlord may, at its sole option, consider this Lease to be thereafter a direct lease to the assignee or subtenant of Tenant upon the terms and conditions contained in this Lease.

ARTICLE 13
SUBORDINATION AND
TENANT'S ESTOPPEL CERTIFICATE

SECTION 13.1 SALE OF PROPERTY.

In the event of a sale or conveyance by Landlord of the Property, the same shall operate to release Landlord from any and all liability of this Lease arising after the date of such sale, provided that it a Security Deposit has been paid by Tenant, Landlord shall not be released from liability with respect thereto unless Landlord transfers or credits the Security Deposit to the applicable purchaser.

SECTION 13.2 SUBORDINATION, ATTORNMENT AND NOTICE.

This Lease is subject and subordinate to any lease wherein Landlord is the tenant and to the liens of any and all mortgages or deeds of trust, regardless of whether such lease, mortgages or deeds of trust now exist or may hereinafter be created with regard to all and any part of the Property, and to any and all advances to be made thereunder, and to the interest thereon, and all modification, consolidations, renewals, replacements and extensions thereof. Tenant also agrees that any lessor, mortgage or trustee may elect (which election shall be revocable) to have this Lease superior to any lease or lien of its mortgage or deed of trust, and in the event of such election and upon notification by such lessor, mortgagee or trustee to that effect, this Lease shall be deemed superior to the said lease, mortgage or deed of trust, whether this Lease is dated prior to or subsequent to the date of said lease, mortgage or deed of trust. Tenant shall, in the event of the sale or assignment of Landlord's interest in the Premises (except in a sale-leaseback financing transaction), or in the event of a termination of any lease in a sale-leaseback transaction wherein Landlord is the lessee, attorn to and recognize such purchaser, assignee or mortgagee as Landlord under this Lease. Tenant shall, in the event of any proceedings brought for the foreclosure of, or in the event of the exercise of power of sale under, any mortgage or deed of trust covering the Premises, attorn to and recognize purchaser at such sale, assignee, or mortgagee, as the case may be, as Landlord under this Lease. Tenant shall not seek to enforce any remedy it may have for any default on the part of Landlord without giving written notice specifying the default in reasonable detail to any lessor, mortgagee or trustee whose address has been delivered to Tenant, and affording such lessor, mortgagee or trustee a reasonable opportunity to perform and/or cure Landlord's default. Tenant further agrees that any lessor, mortgagee, trustee or purchaser at foreclosure shall not be liable for any acts of Landlord, shall not be liable for the Security Deposit if not actually received by any such party, be bound by any amendments of this Lease which it did not consent to in writing or be obligated to recognize Tenant's payment of any Rent which is paid to Landlord more than thirty (30) days in advance of its due date. The above subordination and attornment clauses shall be self-operative and no further instruments of subordination or attornment need be required by any mortgages, trustee, lessor, purchaser or assignee. In confirmation thereof, Tenant agrees that, upon the request of Landlord, or any such lessor,

mortgagee, trustee, purchaser or assignee, Tenant shall execute and deliver whatever instruments may be required for such purposes and to carry out the intent of this Section 13.2.

SECTION 13.3 TENANT'S ESTOPPEL CERTIFICATE.

Tenant shall, within ten (10) days of the receipt of a request of Landlord or any mortgagee of Landlord, without additional consideration, deliver an estoppel certificate, consisting of reasonable statements required by Landlord, any mortgagee or purchaser of any interest in the Property, which statements may include but shall not be limited to the following: the commencement date of this Lease; the amount of any security deposit; that this Lease is in full force and effect, with rental paid through the current date specified by Tenant and that Tenant is not in default; that this Lease has not been modified or amended; that Landlord is not in default and has fully performed all of its obligations hereunder If Tenant is unable to make any of the statements contained in the estoppel certificate because the same is untrue, Tenant shall with specificity state the reason why such statement is untrue.

Tenant shall, if reasonably requested by Landlord or any such mortgagee, deliver to Landlord a fully executed instrument in form reasonable satisfactory to Landlord evidencing the agreement of tenant to the mortgage or other hypothecation by Landlord of the interest of Landlord hereunder.

ARTICLE 14
DEFAULT

SECTION 14.1 DEFAULTS BY TENANT.

The occurrence of any of the events described in subsections 14.1.1 through 14.1.6 shall constitute a default and breach of this Lease by Tenant.

14.1.1 Failure to Pay Rent. The failure by Tenant to make any payment of Rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure continues for a period of three (3) days after written notice thereof from Landlord to Tenant; provided, however, that any such notice will be in lieu of, and not in addition to, any notice required under applicable law (including, without limitation, the provisions or California Code of Civil Procedure Section 1161 regarding unlawful detainer actions or any successor statute or law of a similar nature).

14.1.2 Failure to Perform. Except for failure covered by subsection 14.1.1, any failure by Tenant to observe and perform any provision of this Lease (including but not limited to the payments due for the Tenant share of construction under the Work Letter-Exhibit D) to be observed or performed by Tenant where such failure continues for fifteen (15) (or such other shorter or longer period of time as may otherwise be specified in this Lease as to any particular provision hereof) days after written notice to Tenant; provided that if such failure cannot be cured within said period, Tenant shall not be in default hereunder so long as Tenant commences curative action within such period, diligently and continuously pursues the curative action, and fully and completely cures the failure within sixty (60) days after such written notice to Tenant. The provisions of any such notice will be in lieu of, and not in addition to, any notice required under applicable aw (including without limitation, California Code of Civil Procedure Section 1161 regarding unlawful detainer actions and any successor statute or similar law).

14.1.3 Bankruptcy, Insolvency, etc. Tenant or any Guarantor of Tenant's obligations hereunder, cannot meet its obligations as they become due; or is declared insolvent according to any law; or an assignment of Tenant's or Guarantor's property is made for the benefit of creditors; or a receiver or trustee is appointed for Tenant or Guarantor or their respective properties; or the interest of Tenant or Guarantor under the Lease is levied on under execution or under other legal process; or any petition is filed by or against Tenant or Guarantor to declare Tenant or Guarantor bankrupt or to delay, reduce or modify Tenant's or Guarantor's debts or obligations; or any petition is filed or other action taken to reorganize or modify Tenant's or Guarantor's capital structure if either Tenant or Guarantor be a corporation or other entity (provided that no such levy, execution, legal process or petition filed against Tenant or Guarantor shall constitute a breach of this Lease if Tenant or Guarantor shall vigorously contest the same by appropriate proceedings and shall remove or vacate the same within sixty (60) days from the date of its creation, service or filing).

14.1.4 Abandonment; Vacation. The abandonment of the Premises by Tenant, or the vacating of the Premises by Tenant without providing a sufficient level of repair, maintenance and security to the Premises, or, if Tenant shall fail to move into or take possession of the Premises within thirty (30) days after the date on which Rent is to commence under the terms of this Lease.

14.1.5 Loss of Right to do Business. If Tenant fails to maintain its right to do business or fails to pay any applicable annual franchise or other applicable taxes or assessments as and when the same become finally due and payable.

14.1.6 Dissolution or Liquidation. Tenant dissolves or liquidates or otherwise fails to maintain its corporate or partnership structure, as applicable.

SECTION 14.2 REMEDIES OF LANDLORD.

Upon the occurrence of any default by Tenant specified in Section 14.1, Landlord, at its option, may in addition to all other rights and remedies provided herein or at law or in equity, exercise one or more of the remedies set forth in subsections 14.2.1, 14.2.2 or 14.2.3.

14.2.1 Termination of Lease. Upon the occurrence of a default hereunder, Landlord may terminate this Lease and Tenant's right of possession of the Premises (whereupon all obligations and liabilities of Landlord hereunder shall terminate) and, without further notice and without liability, repossess the Premises. Upon any such termination, Landlord shall be entitled to recover:

(a) The worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus

(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 Rent loss that Tenant proves could have been reasonably avoided; plus

(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 Rent loss that Tenant proves could be reasonably avoided; plus

(d) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, results therefrom including, but not limited to: attorneys' fees and costs; brokers' commissions; the costs of refurbishment, alterations, renovation and repair of the Premises, and removal (including the repair of any damage caused by such removal) and storage (or disposal) of Tenant's personal property, equipment, fixtures, alterations and any other items which Tenant is required under this Lease to remove but does not remove, as well as the unamortized value of any free rent, reduced rent, free parking, reduced rate parking and any tenant improvement allowance or other costs or economic concessions provided, paid, granted or incurred by Landlord pursuant to this Lease. The unamortized value of such concessions shall be determined by taking the total value of such concessions and multiplying such value by a fraction, the numerator of which is the number of months of the Lease Term not yet elapsed as of the date on which this Lease is terminated, and the denominator of which is the total number of months of the Lease Term.

As used in Subsections 14.2.1(a) and (b) above, the "worth of the time of award" is computed by allowing interest at the rate prescribed in Section 16.9 hereof. As used in Subsection 14.2.1(c) above, the "worth at the time of the 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%).

14.2.2 Collect Rent as it Becomes Due. Landlord also has the remedy in California Civil Code Section 1951.4, providing that Landlord may continue this 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, subject only to reasonable limitations.

14.2.3 Cure of Default. Landlord may enter upon the Premises, without having any liability therefor, and do whatever Tenant is obligated to do under the terms of this Lease and Tenant agrees to reimburse Landlord on demand for any expenses which Landlord may incur in effecting compliance with Tenant's obligations under this Lease and Tenant further agrees that Landlord shall not be liable for any damages resulting to Tenant from such action, **WHETHER CAUSED BY THE NEGLIGENCE OF LANDLORD OR OTHERWISE.**

14.2.4 Continuing Obligations. No re-entering upon the Premises or any part thereof pursuant to subsection 14.2.3 of this Section or otherwise shall relieve Tenant or any Guarantor of its liabilities and obligations hereunder, all of which shall survive such re-entering. In the event of any such re-entering upon the Premises or any part thereof by reason of the occurrence of a default, Tenant will continue to pay to Landlord Rent required to be paid by Tenant.

14.2.5 Waiver of Rights to Claim Forfeiture. Tenant hereby waives, so far as permitted by law, any right it may have under California Code of Civil Procedure Section 1179 to apply to the Court to relieve Tenant from forfeiture of this Lease following a judgment for possession of the Premises.

14.2.6. Cumulative Remedies. No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute. In addition to the other remedies provided in this Lease, Landlord shall be entitled, to the extent permitted by applicable law, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the covenants, agreements, conditions or provisions of this Lease, or to a decree compelling performance of any of the covenants, agreements, conditions or provisions of this Lease, or to any other remedy allowed to Landlord at law or in equity.

SECTION 14.3 DEFAULTS BY LANDLORD.

Landlord shall be in default under this Lease if Landlord fails to perform any of its obligations hereunder and said failure continues for a period of thirty (30) days after Tenant delivers written notice thereof to Landlord (to each of the addresses required by this Section) and each mortgagee who has a lien against any portion of the Property and whose name and address has been given to Tenant, provided that if such failure cannot reasonably be cured within said thirty (30) day period, Landlord shall not be in default hereunder if the curative action is commenced within said thirty (30) day period and is thereafter diligently pursued until cured. In no event shall (l) Tenant claim a constructive or actual eviction or that the Premises have become unsuitable hereunder or (ii) a constructive or actual eviction or breach of the implied warranty of suitability be deemed to have occurred under this Lease, prior to the expiration of the notice and cure periods provided under this Section 14.3. Any notice of a failure to perform by Landlord shall be sent to Landlord at the addresses and to the attention of the parties set forth in Item 14 of Article 1. Any notice of a failure to perform by Landlord not sent to Landlord at all addresses and/or to the attention of all parties required under this Section and to each mortgagee who is entitled to notice and not sent in compliance with Article 15 shall be of no force or effect.

SECTION 14.4 LANDLORD'S LIABILITY.

14.4.1 Limitation of Recourse. Tenant is granted no contractual right of termination by this Lease, except to the extent and only to the extent set forth in Sections 8.1 and 9.2, or in any Rider which may be attached hereto If Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the right, title and interest of Landlord in the Property as the same may then be encumbered and Landlord, its trust managers, partners, officers, employees and shareholders shall not be liable to Tenant for consequential or special damages by reason of a failure to perform (or a default) by Landlord hereunder or otherwise.

14.4.2 Limitations on Landlord's Liability. Unless covered by Section 8.5.2, Landlord shall not be liable to Tenant for any claims, actions, demands, costs, expenses or damage or liability of any kind

arising from (i) the use, occupancy or enjoyment of the Premises by Tenant or any person therein or holding under Tenant or by or through the acts or omissions of any of their respective employees, officers, agents, invitees, or contractors; (ii) fire, explosion, falling sheet rock, gas, electricity, water, rain, or snow, or dampness or leaks in any part of the Premises, (iii) the pipes, appliances or plumbing works or from heating, ventilation or air conditioning equipment, the roof, street, or subsurface, or (iv) tenants or any person either in the Premises or elsewhere in the Building (other than Common Areas), or by occupants of Property adjacent to the Building or Common Areas, or by the public or by the construction of any private, public, or quasi-public work. In no event shall Landlord be liable to Tenant for any loss of or damage to property of Tenant or others located in the Premises or the Building by reason of theft or burglary.

ARTICLE 15
NOTICES

Any notice required or permitted in this Lease shall be given in writing, sent by (a) personal delivery, or (b) Federal Express of similar overnight carrier with proof of delivery, or (c) United States mail, postage prepaid, addressed as provided in Item 14 of Article 1 and Subsection 14.3 hereof, or to such other address or to the attention of such other person as shall be designated from time to time in writing by the applicable party and sent in accordance herewith. Notice also may be given by telex or fax, provided each transmission is confirmed (and such confirmation is supported by documented evidence) as received and further provided a telex or fax number, as the case may be, is set forth in Item 14 of Article 1. Any such notice or communication shall be deemed to have been given either at the time of receipt of personal delivery or, in the case of overnight courier service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of telegram or telex or fax, upon receipt.

ARTICLE 16
MISCELLANEOUS PROVISIONS

SECTION 16.1 BUILDING NAME AND ADDRESS.

Tenant shall not, without the prior written consent of Landlord, use the name of the Building for any purpose other than as the address of the business to be conducted by Tenant in the Premises, and in no event shall Tenant acquire any rights in or to such names. Landlord shall the right at any time to change the name, address, or designation by which the Building is known.

SECTION 16.2 SIGNAGE.

Tenant shall not without the prior written consent of Landlord erect, inscribe, paint, affix or display anything or place other insignia upon any part of the Property or any portion of the Premises. Without in any way limiting the foregoing, any signs erected by Tenant shall conform to all laws, ordinances, statutes, rules, regulations or other governmental or quasi- governmental or restrictive covenant requirements and Standard Signage Criteria that Landlord has prescribed for the Property. Once approved by Landlord and erected by Tenant, Tenant shall keep and maintain such signs in good repair and remove the same and restore the Premises (and/or Property) prior to the Expiration Date (as set forth in Item 5 of Article 1) to their original condition. Tenant, at Tenant's expense will have the right to install a sign at the entrance to the Premises that meets the requirements of the sign program.

SECTION 16.3 NO WAIVER.

No waiver by Landlord or by Tenant of any provisions of this Lease shall be deemed to be a waiver by either party of any other provision of this Lease. No waiver by Landlord or Tenant of any breach by the other shall be deemed a waiver of any subsequent breach by such party of the same or any other provision. The failure of Landlord or Tenant to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power, or remedy contained in this Lease shall not be construed as a waiver or a relinquishment thereof for the future. Landlord's or Tenant's consent to or approval of any act by the other party requiring the other party's consent or approval shall not be

deemed to render unnecessary the obtaining consent to or approval of any subsequent act of the other party. 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 Premises, unless done in writing signed by Landlord. The delivery of the keys or access cards to any employee or agent of Landlord shall not operate as a termination of this Lease or a surrender of the Premises. The acceptance of any Rent by Landlord following a breach of this Lease by Tenant shall not constitute a waiver by Landlord such breach or any other breach, other than the failure of Tenant to pay the particular Rent so accepted. No waiver by Landlord or Tenant of any provision of this Lease shall be deemed to have been made unless such waiver is expressly stated in writing signed by the waiving party. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly installment of Rent due under this Lease shall be deemed to be other than on account of the earliest Rent due hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy which may be available to Landlord.

SECTION 16.4 APPLICABLE LAW.

This Lease shall be governed by and construed in accordance with the laws of the State of California. Any litigation between the parties hereto concerning this Lease shall be initiated in the County of Orange, State of California. This Lease shall not be construed against either party more or less favorably by reason of authorship or origin of language.

SECTION 16.5 SUCCESSORS AND ASSIGNS.

Subject to Article 12 hereof, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representative successors and assigns.

SECTION 16.6 BROKERS.

Tenant warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, except only the broker named in Item 15 & 16 of Article 1 and that it knows of no other real estate brokers or agents who are or might be entitled to a commission in connection with this Lease. **TENANT AGREES TO INDEMNIFY AND HOLD HARMLESS LANDLORD FROM AND AGAINST ANY LIABILITY OR CLAIM, WHETHER MERITORIOUS OR NOT, ARISING IN RESPECT TO BROKERS AND/OR AGENTS NOT SO NAMED.** Landlord has agreed to pay the fees of the brokers (but only the brokers) names in Items 10 and 11 of Article 1 to the extent that Landlord has agreed to do so pursuant to a written agreement with such brokers. Landlord agrees to pay Lee and Associates a commission equal to three percent (3%) of the total Lease consideration for years one through five (1-5) Broker Shall not be entitled to a commission for renewals, extensions, enlargements etc.

SECTION 16.7 SEVERABILITY.

If any provision of this Lease or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the application of such provision to other persons or circumstances and the remainder of this Lease shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

SECTION 16.8 EXAMINATION OF LEASE.

Submission by Landlord of this instrument to Tenant for examination or signature does not constitute a reservation of or option for lease. This Lease will be effective as a lease or otherwise only upon execution by and delivery to both Landlord and Tenant.

SECTION 16.9 INTEREST ON TENANT'S OBLIGATIONS.

In addition to the late charges specified in Section 3.4, any amount due from Tenant to Landlord which is not paid on or before the date due shall bear interest at the lower of (i) eighteen percent (18%) per annum or (ii) the highest rate from time to time allowed by applicable law, from the date such payment is due until paid, but the payment of such interest shall not excuse or cure the default.

SECTION 16.10 TIME.

Time is of the essence in this Lease and in each and all of the provisions hereof. Whenever a period of days is specified in the Lease, such period shall refer to calendar days unless otherwise expressly stated in the Lease.

SECTION 16.11 DEFINED TERMS AND MARGINAL HEADINGS.

The words Landlord and Tenant as used herein shall include the plural as well as singular. If more than one person is named as Tenant, the obligations of such persons are joint and several. The headings and titles to the articles, sections and subsections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease.

SECTION 16.12 AUTHORITY OF TENANT.

If Tenant executes this Lease as a corporation or partnership, then Tenant represents and warrants that such entity is duly qualified and in good standing to do business in California and that the individuals executing this Lease on Tenant's behalf are duly authorized to execute and deliver this Lease on its behalf, and in the case of a corporation, in accordance with a duly adopted resolution of the board of directors of Tenant and in accordance with the by-laws of Tenant, and in the case of a partnership, in accordance with the partnership agreement and the most current amendments thereto, if any, copies of which are to be delivered to Landlord on execution hereof, if requested by Landlord, and that this Lease is binding upon Tenant in accordance with its terms.

SECTION 16.13 FORCE MAJURE.

Whenever a period of time is hereby prescribed for action to be taken by Landlord or Tenant, the party taking the action 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; provided, however, in no event shall the foregoing apply to the financial obligations of either Landlord or Tenant to the other under this Lease, including Tenant's obligation to pay Base Monthly Rent, Additional Rent or any other amount payable to Landlord hereunder or delay the Commencement Date.

SECTION 16.14 RECORDING.

This Lease shall not be recorded. However, Landlord shall have the right to record a short form or memorandum hereof, at Landlord's expense, at any time during the terms hereof, and, if required, Tenant agrees (without charge to Landlord) to join in the execution thereof.

SECTION 16.15

NO REPRESENTATIONS. LANDLORD AND LANDLORD'S AGENTS HAVE MADE NO ORAL OR WRITTEN WARRANTIES, REPRESENTATIONS OR PROMISES (EXPRESS OR IMPLIED) WITH

RESPECT TO THE PREMISES, THE BUILDING OR ANY OTHER PART OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, THE CONDITION, USE OR SUITABILITY OF THE PREMISES, THE BUILDING OR THE PROPERTY), EXCEPT AS HEREIN EXPRESSLY SET FORTH AND NO RIGHTS, EASEMENTS OR LICENSES ARE ACQUIRED BY TENANT BY IMPLICATION OR OTHERWISE EXCEPT AS EXPRESSLY SET FORTH IN THE PROVISIONS OF THIS LEASE.

SECTION 16.16 PARKING.

The parking areas and any parking structures shall be designated for automobile parking on a nonexclusive basis for all Property tenants (including Tenant) and their respective employees, customers, invitees and visitors. Notwithstanding the foregoing, Tenant shall be granted 3:1,000 parking ratio (i.e. 65 parking spaces) free and in-common during normal business hours, Monday through Friday, national holidays excluded, for the term of the Lease. Parking and delivery areas for all vehicles shall be in accordance with parking regulations established from time to time by Landlord with whom Tenant agrees to conform. Tenant shall only permit parking by its employees, customers and agents of appropriate vehicles in appropriate designated parking areas. Landlord reserves the right at any time to grant similar non-exclusive use to other tenants, to promulgate reasonable rules and regulations regarding the use of such parking areas, including reasonable restrictions on parking by tenants and employees, to reasonably designate specific spaces for the use of any tenant, to make changes in the parking layout from time to time, and to establish reasonable time limits on parking. Overnight parking is prohibited and any vehicle violating this or any other vehicle regulation adopted by Landlord is subject to removal at the owner’s expense.

SECTION 16.17 ATTORNEYS’ FEES.

In the event of any legal action or proceeding brought by either party against the other arising out of this Lease, the prevailing party shall be entitled to recover reasonable attorneys’ fees and costs incurred in such action (including, without limitation, all costs of appeal) and such amount shall be included in any judgment rendered in such proceeding.

SECTION 16.18 NO LIGHT, AIR OR VIEW EASEMENT.

Any diminution or shutting off of light, air or view by any structure which may be erected on the Property or lands adjacent to the Property shall in no way affect this Lease or impose any liability on Landlord (even if Landlord is the adjacent land owner).

SECTION 16.19 SURVIVAL OF INDEMNITIES.

Each indemnity agreement and hold harmless agreement contained herein shall survive the expiration or termination of the Lease.

SECTION 16.20

WAVIER OF TRIAL BY JURY. Tenant and Landlord each: **(1) AGREE NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS TENANT AND LANDLORD THAT IS TRIABLE OF RIGHT BY A JURY; AND (2) WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

SECTION 16.21 ENTIRE AGREEMENT.

This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreement, understanding or representation pertaining to any such

matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.

SECTION 16.22 INTENTIONALLY DELETED.

SECTION 16.23 LEASE CONTENTS. This Lease consists of sixteen Articles and Exhibits "A" through "H" and Rider 1.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Lease as of the date specified in the introductory paragraph of this Lease.

LANDLORD

ACCURIDE INTERNATIONAL, INC.

By: /s/ Jeffrey A. Dunlap
Name: Jeffrey A. Dunlap
Title: CFO

TENANT

CALHOUN VISION, INC.

By: /s/ Ron Kurtz
Name: Ron Kurtz
Title: COO

Exhibit A

Columbia Corporate Center -Aliso Viejo 92656

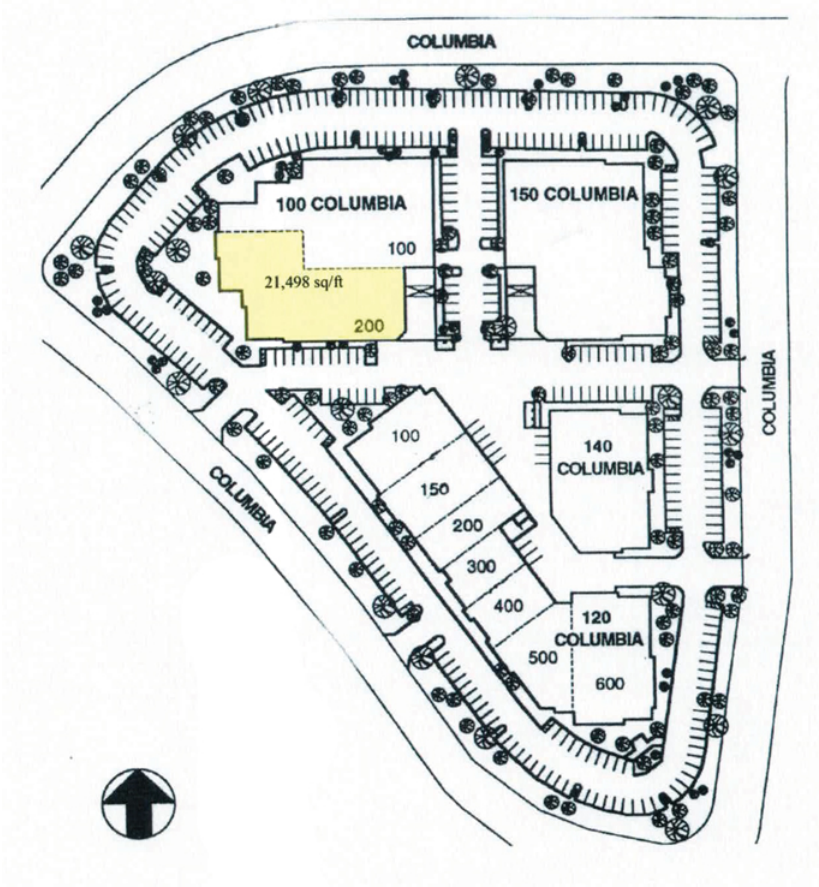


EXHIBIT B

ACCEPTANCE OF PREMISES MEMORANDUM

This Acceptance of Premises Memorandum is being executed pursuant to that certain Commercial Lease Agreement (the "Lease"), dated the 29lh day of October, 2015, between ACCURIDE INTERNATIONAL, INC. ("Landlord") and CALHOUN VISION, INC. ("Tenant"), pursuant to which Landlord leased to Tenant and Tenant leased from Landlord certain space in the building located at 100 COLUMBIA, SUITE 200, ALISO VIEJO, CA. Landlord and Tenant hereby agree as follows:

1. Landlord has fully completed the construction work required under the terms of the Lease, except for the Punch List Items (as may be shown on the attached Punch List).

2. The Premises are tenantable, Landlord has no further obligation for construction (except with respect to Punch List Items), and both Tenant and Landlord acknowledge that the Building, the Premises and Tenant Improvements are satisfactory in all respects, except for the Punch List Items, and are suitable for the Permitted Use.

3. The Commencement Date of the Lease is the day of , 2015. If the date set forth in Item 4 of Article 1 of the Lease is different than the date set forth in the preceding sentence, then Item 4 of Article 1 of the Lease is hereby amended to the Commencement Date set forth in the preceding sentence.

4. The Expiration Date of the Lease is the day of , 2015. If the date set forth in Item 5 of Article 1 of the Lease is different than the date set forth in the preceding sentence, then Item 5 of Article 1 of the Lease is hereby amended to be the Expiration Date set forth in the preceding sentence.

5. Tenant represents to Landlord that Tenant has obtained a Certificate of Occupancy covering the Premises, a copy of which is attached hereto as Exhibit B-1. Tenant shall determine whether or not a Certificate of Occupancy is required from the City of Aliso Viejo. All decisions and any fines, legal disputes, issues or discussions with the City of Aliso Viejo are the responsibility of the Tenant and will be undertaken at their sole expense.

6. Tenant acknowledges that it has been given the opportunity to inspect the Premises and has conducted such inspections and investigations of the Premises as it deems necessary and appropriate and accepts Premises in an "AS IS, WHERE IS" condition, that the building and improvements comprising the Premises are suitable for the purpose for which the Premises are being leased hereby and that Landlord makes no warranty as to the habitability, fitness or suitability of the Premises for a particular purpose nor as to the absence of any toxic or otherwise hazardous substances.

7. All capitalized terms are not defined herein shall have the following meaning assigned to them in the Lease,

The parties agree to and execute this Exhibit B this day of , 2015.

LANDLORD:	TENANT:
Accuride International. Inc	Calhoun Vision, Inc.
By: _____	By: _____
Name:	Name:
Title:	Title:

EXHIBIT C

RULES AND REGULATIONS

Stated below are the Rules and Regulations of the Building and leased Premises. The Rules and Regulations stated below are applicable unless otherwise addressed in your Lease. Landlord has the right to modify the Rules and Regulations from time to time.

1. No loud speakers, television, phonographs, radios or other devices shall be used in a manner so as to be heard or seen outside the Premises without the consent of Landlord.
2. Tenant shall not use the Common Areas for business purposes.
3. Tenant shall not place displays or decorations in front of the Premises or any Common Areas.
4. Tenant and Tenant's employees and agents shall not distribute any handbills or other advertising material to automobiles parked in the parking area or in any other Common Areas.
5. No entries or passageways shall be obstructed, nor shall any material of any nature be placed in these areas, or such areas be used at any time except for access or egress by Tenant, Tenant's agents, employees or invitees.
6. No portion of Tenant's area or any other part of the Building shall be used or occupied as sleeping or lodging quarters.
7. Landlord shall not be responsible for lost or stolen personal property from Tenant's area or Common Areas regardless of whether such loss occurs when the area is locked against entry or not.
8. No draperies, shutters, or other window coverings shall be installed on exterior walls or windows, or doors and windows facing pubic corridors without Landlord's written approval.
9. No signs, placards, pictures, names, or advertisements will be allowed in any form on the exterior of the Building or windows inside or out, and no signs (except in uniform location and uniform styles fixed by Landlord) will be permitted in the public corridors or on corridor doors or entrances to Tenant's space.
10. Tenant will refer all contractors, contractor's representatives and installation technicians, rendering any service on or to the Premises for Tenant, to Landlord for Landlord's approval and supervision before performance of any contractual service. This provision shall apply to all work performed in the Building including installation of telephones, telegraph equipment, electrical devices and attachments and installation of any nature affecting floors, walls, woodwork, trim, windows, ceilings, and any other physical portion of the Building.
11. Tenant shall not place, install or operate on the Premises or in any part of the Building, any engine, stove or machinery, or conduct mechanical operations or cook thereon or therein, or place or use in or out of the Premises any explosives, gasoline, kerosene, oil, acids, caustics, or any inflammable, explosive or hazardous material without written consent of Landlord.
12. The movement of furniture, equipment, merchandise or materials within, into or out of the Building shall be restricted in time, method and routing of movement as determined by Landlord upon request from Tenant and Tenant shall assume all liability and risk in such movement. Safes and other heavy equipment shall be moved into the Premises only with Landlord's written consent and placed where directed by Landlord. Any damage done to the Building or Premises by taking

in or removing any safe, or from overloading any floor in any way, shall be the responsibility and at the expense of Tenant.

13. Landlord shall provide all locks for doors in each Tenant's premises, at the cost of such Tenant, and no additional locks shall be placed on any door in the Building without the prior written consent of Landlord. A reasonable number of keys to the Premises will be furnished by Landlord and neither Tenant, nor its agents, nor employees, shall have any duplicate keys made. Landlord may at all times keep a pass key to the Premises. All keys shall be returned to Landlord promptly upon termination of this Lease.
14. Tenant shall have the non-exclusive use in common with Landlord, other tenants, their guests and invitees, of the uncovered automobile surface parking areas, subject to reasonable rules and regulations for the use as prescribed from time to time by Landlord. Landlord shall have the right to designate parking areas for the use of the Building's Tenant and their employees.
15. All alterations or miscellaneous job orders shall at all times be directed to the Property Manager so processing of such work may be done in accordance with any covenants of the Lease Agreement applicable thereto.
16. Corridor doors, when not in use, shall be kept closed.
17. No birds, fowls, or animals shall be brought into or kept in or about the Building.
18. Tenant shall cooperate with Landlord's employees in keeping its leased Premises neat and clean.
19. The toilets and other water fixtures shall not be used for any purpose other than those for which they are constructed, and any damage to them from misuse, or by the defacing or injury of any part of the Building shall be borne by the person who shall have caused it. No person shall waste water by interfering with the faucets or otherwise.
20. Agents of the Landlord shall at all reasonable times be allowed admittance to said leased Premises.
21. No smoking shall be allowed in any area of the Building including common areas, restrooms, and Tenant premises.
22. Landlord may amend or add new rules and regulations from time to time.

EXHIBIT D

WORK LETTER
(Landlord's Buildout to Tenant Specifications)
100 Columbia, Suite 200, Aliso Viejo, CA

1. TENANT IMPROVEMENTS

The tenant improvement work ("Tenant Improvements") shall consist of the work required to complete certain improvements to the Premises pursuant to Article 1, Section 14 and this Exhibit D of the Lease based on a working floor drawing attached as Exhibit E ("Approved Drawings"). Landlord shall contract with an architect and a general contractor, which general contractor shall be chosen as the result of a competitive two bid process described below to construct the Tenant Improvements. The Tenant Improvements work shall be undertaken and prosecuted in accordance with the following requirements:

A. It is understood that except as provided below, the Tenant Improvements shall only include actual improvements to the Premises approved by Landlord as provided in Article 1, Section 14 and Exhibit E, and shall exclude (but not by way of limitation) Tenant's furniture, trade fixtures, partitions, equipment and signage improvements, if any. Further, the Tenant Improvements shall incorporate Landlord's building standard materials and specifications ("Standards"). No deviations from the Standards may be requested by Tenant with respect to doors and frames, finish hardware, entry graphics, the ceiling system, light fixtures and switches, mechanical systems, life and safety systems, and/or window coverings. All other non-standard items ("Non-Standard Improvements") shall be subject to the prior approval of Landlord, which may be withheld in Landlord's reasonable discretion. Landlord shall in no event be required to approve any Non-Standard Improvement if Landlord determines that such improvements (i) is of a lesser quality than the corresponding Standard, (ii) fails to conform to applicable governmental requirements, (iii) requires building services beyond the level Landlord has agreed to provide Tenant under this Lease, or (iv) would have an adverse aesthetic impact from the exterior of the Premises. The Tenant will be responsible for the technical design and the ultimate acceptability of any clean room and related equipment.

B. Landlord shall use a licensed general contractor (selected by competitive bidding by at least two licensed general contractors) and that contractor's selected subcontractors to construct the Premises. Landlord shall enter into a "lump sum" construction contract (the "TI Contract") with the TI Contractor for construction of the Tenant Improvements. Landlord shall cause the Tenant Improvements to be constructed in a good and workmanlike manner in accordance with Exhibit E.

C. The TI Contractor and each of its subcontractors shall comply with Landlord's requirements as generally imposed on third party contractors, including without limitation all insurance coverage requirements and the obligation to furnish appropriate certificates of insurance to Landlord, prior to commencement of construction or the Tenant Improvements work.

A construction schedule shall be provided to Landlord and Tenant prior to commencement of the construction of the Tenant Improvements work, and weekly updates shall be supplied during the progress of the work.

D. The Tenant Improvements work shall be prosecuted at all times in accordance with all state, federal and local laws, regulations and ordinance, including without limitation all OSHA and other safety laws, the Americans with Disabilities Act ("ADA") and all applicable governmental permit and code requirements.

E. Tenant hereby designates Eric D'ippolilo, Telephone No [***]. as its representative, agent and attorney-in-fact for the purpose of receiving notices,

approving submittals and issuing requests for Changes and Landlord shall be entitled to rely upon authorizations and directives of such persons as if given directly by Tenant. Tenant may amend the designation of its construction representative(s) at any time upon delivery of written notice to Landlord.

II. COST OF THE TENANT IMPROVEMENTS WORK

J. S. Shafer & Associates, Inc.
General Contractor Construction & Project Management Owner Representation

Summary of Estimated Costs
Accuride International and Calhoun Vision
100 Columbia, Suite 200
Aliso Viejo, CA

All pricing is based upon the floor plans A-2 and A-3 of DRA Architects dated 10-09-2015.

The spaces listed below are to be constructed by American Cleanroom Systems

Rooms 117 and 118
Full clean room construcion to ISO-07 and ISO-08

Room 115

Constructed as envelope for future completion as clean room.
Comfort cooling only is included.
Ceiling heights are at 10-feet.

The spaces listed below are to be standard construction metal frame & drywall with standard t-bar ceilings

Rooms 109, 116, 119, 120, 123,124, 125 and 126
Ceiling heights are at 10 feet.

The cost estimates below include allowances for plan check and building permit fees.

Date	S&A Job No.	Description	Cost Estimate
10/19/15	2337	1st Floor Improvements-Calhoun	$ 955,050.49
10/19/15	2338	2nd Floor Improvements-Calhoun	178,451.55
10/19/15	2339	Rest Room Improvements-1st & 2nd Floors-Accuride	171,381.46
		Total	$1,304,883.50

P.O. Box 729 Claremont CA 9171-0729 909 256 3398 Fax 909-256-4729 License No 699041

1601 Dove Street, Suite 190
Newport Beach CA 92660
T: 949.833.3800
F: 949.833.3800
www.dra-architects.com
A California Corporation

PROPOSAL / AGREEMENT
Estimate No. 231

Client Company Name and Contact	**Project**
Accuride International. Inc. Jeff Dunlap 12311 Shoemaker Avenue Santa Fe Springs. CA 90670	100 Columbia Suite 120 Aliso Viejo. California 92656 US
Telephone 562-903-0407 **Email**	**Date** 10/6/2015 **Job No.** 15051-010

SCOPE OF SERVICES

SCOPE	Architectural Design. Construction Documents. Government City Processing and Construction Administration for 18,000 s.f. of Office, R&D and Warehouse Tenant improvements	
DESIGN	DESIGN SERVICES	
*** Meetings**	4 - Design Meetings with Client	1,320.00
*** Space Planning**	Complete New Space Plan for the First Floor and Partial Space Plan for the second Floor	1,980.00
	DESIGN SERVICES SUBTOTAL	3,300.00
CDS	CONSTRUCTION DOCUMENT SERVICES	990.00
***Meetings**	2 - Corrdination Meetings	9,900.00
***Interior Documents**	Architectural Construction Documents	
	CONSTRUCTION DOCUMENT SERVICES SUBTOTAL	10,890.00
GOVT. PERMIT PROC.	GOVERNMENT PERMIT PROCESSING - INCLUDED	1,000.00
	CDS GOVT PERMIT PROCESSING SERVICES SUBTOTAL	1,000.00
CONSTRUCTION ADMIN.	CONSTRUCTION ADMINISTRATION - Billed Hourly	
	CONST. ADMIN. SERVICES SUBTOTAL	0.00

Client and Architect agree that the Terms and conditions attached as Exhibit “A”, are hereby incorporated by reference and shall be part of this proposal

Total Fee

Carrie M. Hoshino, AIA **Date**
President
CA License No.: C 21177
DRA ARCHITECTS
A California Corporation

APPROVED & ACCEPTED **Date**

PRINT NAME

A. Set forth above is the current estimate for the cost of the Tenant Improvements as of the date of the Lease. The costs have been estimated based on a mutually agreed floor plan dated 10/9/2015 and included herein in Exhibit E. Landlord shall cause to be prepared, as quickly as reasonably possible, final plans, specifications and working drawings of the Tenant Improvements ("Construction Plans"), as well as an estimate of the total cost for the Tenant Improvements ("Cost Estimate"), all of which conform to or represent logical evolutions of or developments from the mutually agreed floor plan dated 10/9/2015 and included herein in Exhibit E. Landlord shall deliver such Construction Plans and Cost Estimate to Tenant for its approval, which approval shall not be unreasonably withheld or delayed. After the Construction Plans and Cost Estimate have been approved by Landlord and Tenant as provided above, neither party shall have the right to require extra work or change orders with respect to the construction of the Tenant Improvements without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed, and the mutual execution and delivery of a written Change Order (defined below). The Construction Plans and Cost Estimate finally approved by the parties shall be referred to herein as the "Final Plans" and the "Final Estimate".

B. The Tenant Improvements shall include the above-referenced work. Landlord shall provide a $500,000 Tenant Improvement Allowance ("TIA") to complete the Tenant Improvements. All costs relating to the Tenant Improvements in excess of the Allowance (collectively, "**Over-Allowance Amounts**"), shall be the sole responsibility of Tenant and paid by Tenant as set forth below. In no event shall Landlord be obligated to make disbursements pursuant to this Agreement in the event that Tenant fails to pay any portion of any Over-Allowance Amount when due, nor shall Landlord be obligated to pay a total amount for the Tenant Improvements which exceeds the Allowance, it being understood that Tenant shall be solely responsible for any costs relating to 'the Tenant Improvements in excess of the Allowance, If an Over-Allowance Amount exists after determination of the Final Estimate, then Tenant shall pay the Over-Allowance Amount in three equal installments (the "**Over-Allowance Payments**"), as follows: one-third (1/3) within ten (10) business days following the determination of the Over-Allowance Amount, one third (1/3) within ten (10) business days after Tenant's receipt from the Architect of confirmation that construction of the Tenant Improvements are fifty-percent (50%) complete (as determined by the Architect), and one third (1/3) within ten (10) business days after Tenant's receipt from the Architect of confirmation that construction of the Tenant Improvements are Substantially Complete; provided, however that ten percent (10%) of each of the Over-Allowance Payments shall be withheld by Tenant as a retention amount. The final 10% retention amount shall be paid when all punch-list items have been completed and Landlord has obtained (and delivered copies thereof to Tenant) lien releases from all contractors, subcontractors and material suppliers providing services or materials in connection with the Tenant Improvements. Such payments by Tenant of the Over-Allowance Payments shall be a condition to Landlord's obligation to pay any amounts from the Allowance. Tenant shall pay the Over-Allowance Payments to Landlord (or at the direction and sole election of Landlord, directly to the General Contractor) at the times described above. Any failure by Tenant to deliver any such Over-Allowance Payment within the specified time periods shall constitute a Tenant Delay, in the event that after the Final Estimate has been determined, the costs relating to the design and construction of the Tenant Improvements shall change pursuant to an approved written Change Order, any additional costs specified in such Change Order necessary for such design and construction in excess of the previously determined Final Estimate shall be added to the Over-Allowance Amount and the Final Estimate, and the applicable Over-Allowance Payments and the retention payment shall be recalculated in accordance with the terms of this Section II.B. Notwithstanding the foregoing, the payment of the Over-Allowance Payments by Tenant pursuant to this Section II.B shall not relieve Tenant from its obligation to pay any and all costs relating to the Tenant Improvements in excess of the Allowance, and, if after paying the

Over-Allowance Payments, there shall remain any unpaid balance of costs in excess of the Allowance, Tenant shall pay such unpaid balance of excess costs to Landlord within ten (10) business days after receipt of invoice from Landlord.

Notwithstanding the foregoing or anything to the contrary in the Lease, Tenant shall have no responsibility to pay or reimburse Landlord for (and Landlord may not use the TIA to fund) any of the following costs: (i) costs for improvements which are not shown on or described in the Final Plans unless otherwise approved by Tenant; (ii) costs incurred due to the presence of hazardous materials in the Premises or the surrounding area; and (iii) construction costs in excess of the Final Estimate, except for increases set forth in approved Change Orders.

C. Change Orders. Tenant may request any change, addition or alteration to the Final Plans (a "Change Order") by delivering to Landlord a written request therefor. Following receipt of such request, Landlord shall cause to be prepared a written description of modifications or revisions required in order to approve the Change Order, and an itemized non-binding estimate of the cost of implementing the Change Order. Within ten (10) days after receipt of such description and estimate, Tenant shall deliver to Landlord a written notice either granting or withholding authorization to proceed with the performance of the work shown on the requested Change Order. If no such authorization is received by Landlord within this ten (10) day period, Tenant shall be deemed to have withheld authorization to proceed with the performance of the work shown on the Change Order. If the cost of the work set forth in the Change Order results in an increase in the cost of the Tenant Improvements over and above the TIA (or such additional amounts then paid to Landlord) upon and a condition precedent to the effectiveness of Landlord's written approval of the Change Order, Tenant shall pay that difference to Landlord. Upon receipt of a Change Order request, Landlord shall be entitled to stop the Tenant Improvement construction if, in Landlord's reasonable judgment, it is necessary to halt construction to accommodate the Change Order request.

D. Tenant Delays. For purposes of this Agreement, "Tenant Delays" shall mean any delay in substantial completion of the Tenant Improvements resulting from any or all of the following:

(1) Tenant's failure to timely perform any of its obligations pursuant to this Agreement, including any failure to complete on or before the due date therefor any action item which is Tenant's responsibility pursuant to any schedule delivered by Landlord to Tenant pursuant to this Agreement;

(2) Tenant's changes to the Final Plans, including any requested Change Orders and any Tenant request for materials, finishes or installations not included in the Final Plans;

(3) any delay of Tenant in making payment to Landlord for Tenant's share of costs relating to the Tenant Improvements, including any Over-Allowance Payments; or

(4) any other act or failure to act by Tenant, Tenant's employees, agents, architects, independent contractors, consultants and/or any other person performing or required to perform services on behalf of Tenant that persists after reasonable notice (which may be oral or by email) from Landlord of such delay.

If Substantial Completion of the Tenant Improvements is delayed as a result of any Tenant Delays, at Landlord's election, the Commencement Date shall be accelerated to the date that the Tenant Improvements would have been substantially completed but for such Tenant Delays.

III. DISPUTE RESOLUTION

A. All claims of disputes between Landlord and Tenant arising out of, or in relation to, this Work Letter shall be decided by the JAMS/ENDISPUTE ("JAMS"), or its successor, with such

arbitration to be held in Orange County, California, unless the parties mutually agree otherwise. Within ten (10) business days following submission to JAMS, JAMS shall designate three arbitrators and each party may, within five (5) business days thereafter, veto one of the three persons so designated. If two different designated arbitrators have been vetoed, the third arbitrator shall hear and decide the matter. If less than two (2) arbitrators are timely vetoed, JAMS shall select a single arbitrator from the non-vetoed arbitrators originally designated by JAMS, who shall hear and decide the matter. Any arbitration pursuant to this section shall be decided within thirty (30) days of submission to JAMS. The decision of the arbitrator shall be final and binding on the parties. All costs associated with the arbitration shall be awarded to the prevailing party as determined by the arbitrator.

B. Notice of the demand for arbitration by either party to the Work Letter shall be filed in writing with the other party to the Work Letter and with and shall be made within a reasonable time after the dispute has arisen. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Except by written consent of the person or entity sought to be joined, no arbitration arising out of or relating to this Work Letter shall include, by consolidation, joinder or in any other manner, any person or entity not a party to the Work Letter unless (1) such person or entity is substantially involved in a common question of fact of law, (2) the presence of such person or entity is required if complete relief is to be accorded in the arbitration, or (3) the interest or responsibility of such person or entity in the matter is not insubstantial.

C. The agreement herein among the parties to arbitrate shall be specifically enforceable under prevailing law. The agreement to arbitrate hereunder shall apply only to disputes arising out of, or relating to, this Work Letter, and shall not apply to other matters of dispute under the Lease except as my be expressly provided in the Lease.

LANDLORD'S REPRESENATIVE	TENANT'S REPRESENTATIVE:
Name: Address:	Name: Address:
Phone:	Phone:

IV PROVISIONS REGARDING CLEAN ROOM WORK

A. Notwithstanding anything to the contrary in the Lease or this Work Letter, the following provisions shall apply to that portion of the Tenant Improvements relating to the three (3) clean rooms spaces (the "Clean Room Work") that is being performed by American Cleanroom Systems ("ACS"):

(1) Although the scope of the Tenant Improvements includes the Clean Room Work, and, ACS will be under contract to either Landlord or Landlord's general contractor to perform the Clean Room Work, ACS and Tenant shall have sole responsibility for the design, function criteria and suitability of the Clean Room Work and neither Landlord nor Landlord's architect nor general contractor shall have any responsibility or liability for the design, function criteria and suitability of the Clean Room Work. All design, function criteria and suitability of the Clean Room Work shall be determined and agreed to solely by Tenant and ACS.

(2) ACS will prepare complete shop drawings of all aspects of the Clean Room Work and Tenant will review and approve all technical and suitability/compliance aspects of the shop drawings.

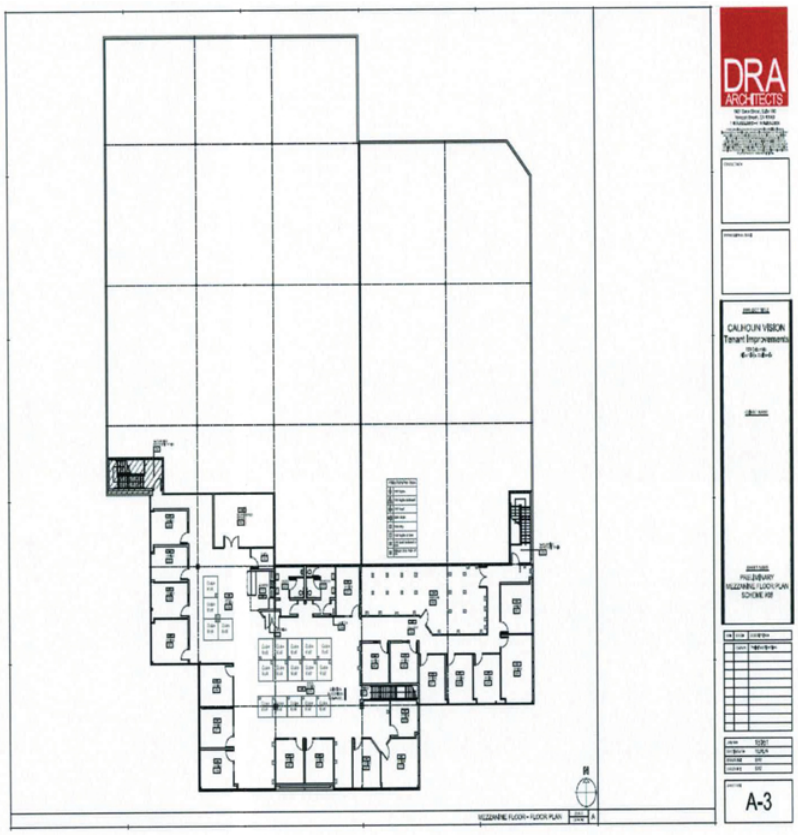
(3) Landlord's general contractor will review and acknowledge the dimensions of the perimeters of the ACS Clean Room Work designs for their fit within the Premises and for points of connection of utilities serving the clean room spaces. Landlord will review the ACS shop drawings relative only to the clean rooms becoming an acceptable component of the Building, subject to all other terms of the Lease.

(4) ACS will process their shop drawings through the plan check and permit issuance processes with any authority having jurisdiction and will perform the Clean Room Work. At completion of the Clean Room Work, ACS will test the Clean Room Work to confirm its compliance with design criteria. Upon achieving satisfactory test results, ACS will certify that the Clean Room Work is in compliance with the respective criteria (i.e. ISO-07 and ISO-08).

(5) Landlord shall provide, and cause its general contractor to provide, ACS and its subcontractors with access to the Premises as soon as feasible (including during the construction of the Tenant Improvements) for purposes of constructing the Clean Room Work. Landlord, its general contractor, Tenant and ACS shall mutually cooperate so as to complete the Tenant Improvements and Clean Room Work as quickly and efficiently as possible.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement simultaneously with the execution and delivery of the Lease.

LANDLORD:	TENANT:
ACCURIDE INTERNATIONAL, INC.	CALHOUN VISION, INC.
By: /s/ Jeffrey A. Dunlap	By: /s/ Ron Kurtz
Name: Jeffrey A. Dunlap	Name: Ron Kurtz
Title: CFO	Title: COO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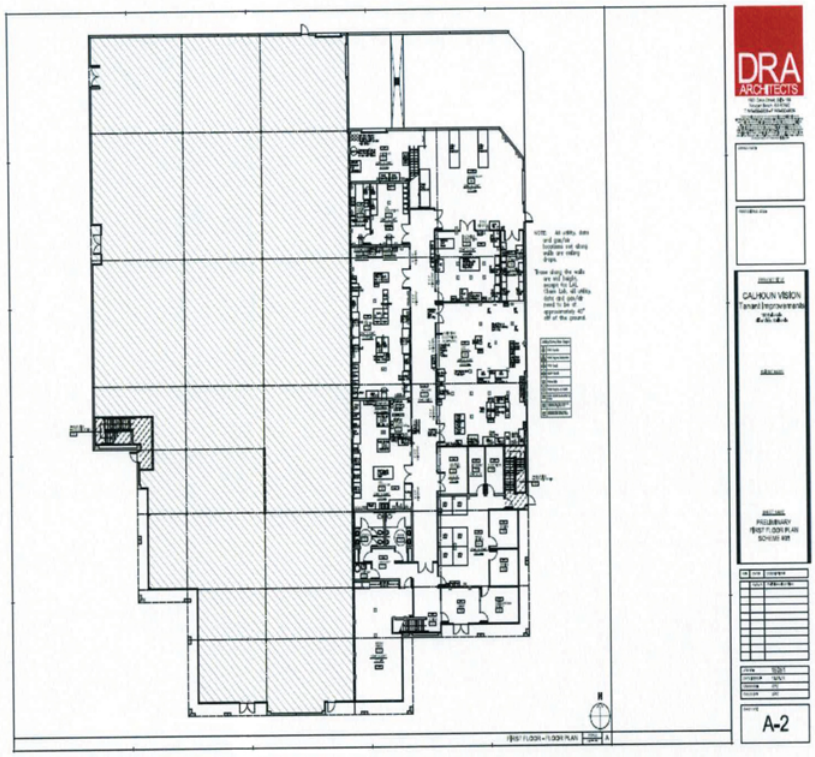
ARCHITECTS
CALHOUN VISION
Tenant Improvements
A-3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ARCHITECTS
CALHOUN VISION
Tenant Improvements
A-2

EXHIBIT "F"
FORM OF LETTER OF CREDIT

BANK OF AMERICA - CONFIDENTIAL PAGE: 1

DATE: [***]

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: [***]

ISSUING BANK
BANK OF AMERICA, N.A.
ONE FLEET WAY
PA6-580-02-30
SCRANTON, PA 18507-1999

BENEFICIARY
ACCURIDE INTERNATIONAL INC.
12311 SHOEMAKER AVE.
SANTA FE SPRINGS, CA 90670

APPLICANT
CALHOUN VISION, INC.
100 COLUMBIA, SUITE 200
ALISO VIEJO, CA 92656

AMOUNT
NOT EXCEEDING USD 500,000.00
NOT EXCEEDING FIVE HUNDRED THOUSAND AND 00/100'S US DOLLARS

EXPIRATION
JANUARY 31, 2017 AT OUR COUNTERS

AT THE REQUEST OF CALHOUN VISION, INC., ("ACCOUNT PARTY"), WE HEREBY ESTABLISH AND ISSUE IN FAVOR OF ACCURIDE INTERNATIONAL INC., ("BENEFICIARY") OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. [***] FOR UP TO AN AGGREGATE AMOUNT OF $500,000.00.

WE ARE ADVISED FOR INFORMATIONAL PURPOSES ONLY THAT THIS IRREVOCABLE STANDBY LETTER OF CREDIT (THE "ISLC") IS ISSUED WITH RESPECT TO THAT CERTAIN COMMERCIAL LEASE AGREEMENT DATED OCTOBER 29 2015 BETWEEN BENEFICIARY AS LESSOR AND ACCOUNT PARTY AS LESSEE (THE "LEASE") WHEREIN BENEFICIARY LEASES TO ACCOUNT PARTY THE PREMISES COMMONLY KNOWN AS SUITE 200, 100 COLUMBIA, ALISO VIEJO, CA 92656 (THE "PREMISES" FOR BOTH THE LEASE AND THIS ISLC). OUR OBLIGATIONS UNDER THIS ISLC ARE SOLELY AS SET FORTH HERE IN AND ARE COMPLETELY INDEPENDENT OF THE OBLIGATIONS OF ACCOUNT PARTY UNDER THE LEASE. WE DO NOT UNDERTAKE ANY OBLIGATION UNDER THE LEASE, NOR DO WE UNDERTAKE ANY RESPONSIBILITY TO ASCERTAIN ANY FACTS, OR TO TAKE ANY OTHER ACTION WITH RESPECT TO THIS LEASE. THE REFERENCES TO THE LEASE IN THIS ISLC ARE SOLELY TO DESCRIBE THE REQUIRED CONTENTS OF THE SIGHT DRAFT AND OF THE BENEFICIARY'S "CERTIFICATE". (AS DEFINED BELOW).

FUNDS UNDER THIS ISLC ARE AVAILABLE TO THE BENEFICIARY AGAINST PRESENTATION OF THE FOLLOWING DOCUMENTS AT OUR OFFICE LOCATED AT ONE FLEET WAY. SCRANTON PA 18507 PRIOR TO THE CLOSE OF BUSINESS AT SAID OFFICE ON THE EXPIRATION DATE SET FORTH BELOW.

1. THE ORIGINAL OF THIS ISLC AND ANY SUBSEQUENT AMENDMENTS: AND

DRAFT

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: [***]

2. A SIGHT DRAFT(S) IN AN AMOUNT NOT EXCEEDING THE AMOUNT OF THIS ISLC, IN THE FORM OF EXHIBIT A ATTACHED; AND

3. A CERTIFICATE ON BENEFICIARY'S LETTERHEAD (THE "CERTIFICATE") EXECUTED BY AN AUTHORIZED SIGNATORY OF THE BENEFICIARY STATING THAT THE ACCOUNT PARTY IS IN DEFAULT UNDER ARTICLE 14 OF THE LEASE, AND AS A RESULT OF SUCH DEFAULT THE AMOUNT OF THE DRAFT PRESENTED CONCURRENTLY WITH THE CERTIFICATE IS DUE, OWING AND UNPAID FROM ACCOUNT PARTY TO BENEFICIARY.

PARTIAL DRAWINGS ARE PERMITTED.

THIS LETTER OF CREDIT IS TRANSFERABLE ONE OR MORE TIMES, IN FULL AND NOT IN PART. ANY TRANSFER MADE HEREUNDER MUST CONFORM STRICTLY TO THE TERMS HEREOF AND TO THE CONDITIONS OF RULE 6 OF THE INTERNATIONAL STANDBY PRACTICES (ISP98) FIXED BY THE INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 590.

SHOULD YOU WISH TO EFFECT A TRANSFER UNDER THIS CREDIT, SUCH TRANSFER WILL BE SUBJECT TO THE RETURN TO US OF THE ORIGINAL CREDIT INSTRUMENT, ACCOMPANIED BY OUR FORM OF TRANSFER, PROPERLY COMPLETED AND SIGNED BY AN AUTHORIZED SIGNATORY OF YOUR FIRM, BEARING YOUR BANKERS STAMP AND SIGNATURE AUTHENTICATION. SUCH TRANSFER FORM IS AVAILABLE UPON REQUEST. TRANSFER CHARGES ARE FOR THE ACCOUNT OF THE APPLICANT.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT IS DEEMED TO BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR PERIOD(S) OF ONE YEAR EACH FROM THE CURRENT EXPIRATION DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO ANY EXPIRATION DATE, WE NOTIFY YOU IN WRITING BY REGISTERED MAIL OR OVERNIGHT COURIER AT THE ABOVE LISTED ADDRESS THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT EXTENDED FOR ANY SUCH ADDITIONAL PERIOD. IN NO EVENT WILL THIS LETTER OF CREDIT BE EXTENDED BEYOND THE FINAL EXPIRATION DATE OF JANUARY 31, 2021.

ANY SUCH NOTICE SHALL BE EFFECTIVE WHEN SENT BY US AND UPON SUCH NOTICE TO YOU, YOU MAY DRAW AT ANY TIME PRIOR TO THE THEN CURRENT EXPIRATION DATE, UP TO THE FULL AMOUNT THEN AVAILABLE HEREUNDER, IRRESPECTIVE OF THE DEFAULT REQUIREMENT OF SECTION 3 ABOVE, AGAINST YOUR DRAFT(S) DRAWN ON US AT SIGHT AND THE ORIGINAL OF THIS LETTER OF CREDIT AND ALL AMENDMENTS THERETO, ACCOMPANIED BY YOUR STATEMENT, SIGNED BY AN AUTHORIZED SIGNATORY, ON YOUR LETTERHEAD STATING THAT YOU ARE IN RECEIPT OF BANK OF AMERICA, N.A. 'S NOTICE OF NON-EXTENSION UNDER LETTER OF CREDIT NO. [***] AND THE APPLICANT'S OBLIGATION TO YOU REMAINS.

DRAFT(S) MUST STATE: "DRAWN UNDER BANK OF AMERICA, N.A. STANDBY LETTER OF CREDIT NO. [***] DATED ."

DRAFT

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: [***]

DRAFT (S) AND DOCUMENTS MUST BE PRESENTED AT OUR OFFICE ADDRESSED: BANK OF AMERICA, N.A., 1 FLEET MAY, SCRANTON, PA 18507-1999, ATTN: GLOBAL TRADE OPERATIONS - STANDBY DEPARTMENT. AT THE OPTION OF THE BENEFICIARY, DRAWINGS MAY BE MADE ON THE IRREVOCABLE STANDBY LETTER OF CREDIT BY ELECTRONIC PRESENTATION TO OUR FACSIMILE NUMBER 800-755-8743 (IF PRESENTED BY FAX IT MUST BE FOLLOWED UP BY A PHONE CALL TO US AT 800-370-7519, OPTION 1 TO CONFIRM RECEIPT). IN THE EVENT OF FACSIMILE PRESENTATION THE ORIGINAL DOCUMENTS ARE NOT REQUIRED TO BE DELIVERED. WE HEREBY AGREE WITH YOU THAT DRAFT (S) DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT SHALL BE DULY HONORED UPON DUE PRESENTATION TO US.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, THIS ISLC IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, 2007 REVISION, THE INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 600.

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS TRANSACTION, PLEASE CALL 800-370-7519 OPT 1.

AUTHORIZED SIGNATURE
THIS DOCUMENT CONSISTS OF 3 PAGE(S).

DRAFT COPY

FOR DISCUSSION AND REVIEW PURPOSES ONLY
PLEASE SIGNIFY YOUR ACCEPTANCE AND
APPROVAL TO ISSUE THIS FORM:

APPLICANT'S AUTHORIZED SIGNATURE (S) (DATE)

DRAFT

EXHIBIT A

Face of the draft

$ Date:

At Sight
Pay to the order of _____

(**AMOUNT IN WORDS)** U.S. Dollars

"Drawn under Bank of America, N.A., Standby Letter of Credit Number dated , 201 ."

To: Bank of America
1 Fleet Way
Scranton, PA 18507-1999
Attn: Global Trade Operations

Beneficiary Name (Fill in)

Authorized Signature

* If so stated in the LC. form of this phrase must be identical to language specified in LC

Back of draft

Beneficiary Name (Fill in)

Authorized Signature

EXHIBIT G

TENANT ENVIRONMENTAL QUESTIONNAIRE

The purpose of this form is to obtain information regarding the use or proposed use of hazardous materials at the Premises. Prospective tenants should answer the questions in light of their proposed operations on the Premises. Existing tenants should answer the questions as they relate to ongoing operations on the Premises and should update any information previously submitted. If additional space is needed to answer the questions, you may attach separate sheets of paper to this form.

Your cooperation in this matter is appreciated.

1. GENERAL INFORMATION

Name of Responding Company: Calhoun Vision Inc

Check the Applicable Status: Prospective Tenants ☒ Existing Tenants ☐

Mailing Address: 1701 South Altadena. Pasadena CA

Contact Person and Title: Ron Kurtz, COO

Telephone Number: (949) 922-3866

Address of Leased Premises: 100 Columbia Suite 200, Aliso Viejo CA

Length of Lease Term: 63 months

Describe the proposed operations to take place on the Premises, including principal products manufactured or services to be conducted. Existing tenants should describe any proposed changes to ongoing operations.

Manufacturing and Corporate Operation for medical equipment and devices, including optical devices and intraocular lenses.

2. STORAGE OF HAZARDOUS SUBSTANCES

2.1 Will any hazardous substances be used or stored on-site?

Wastes Yes ☒ No ☐

Chemical Products Yes ☒ No ☐

2.2 Attach a list of any hazardous substances to be used or stored, the quantities that will be on-site at any given time, and the location and method of storage (e.g., 55-gallon drums on concrete pad).

See attachment

3. STORAGE TANKS AND SUMPS

3.1 Is any above or below ground storage of gasolline, diesel, or other hazardous substances in tanks or sumps proposed or currently conducted at the Premises?

Yes ☐ No ☒

If yes, describe the materials to be stored and the type, size, and construction of the sump or tank. Attach copies of any permits obtained for the storage of such substances.

_____

_____

3.2 Have any of the tanks or sumps been inspected or tested for leakage?

Yes ☐ No ☐ **Not Applicable**

If so, attach results.

3.3 Have any spills or leaks occurred from such tanks or sumps?

Yes ☐ No ☐ **Not Applicable**

If so, describe.

_____

_____

3.4 Were any regulatory agencies notified of the spill or leak?

Yes ☐ No ☐ **Not Applicable**

If so attach copies of any spill reports filed, any clearance letters or other correspondence from regulatory agencies relating to the spill or leak.

3.5 Have any underground storage tanks or sumps been taken out of service or removed?

Yes ☐ No ☐ **Not Applicable**

If yes, attach copies of any closure permits and clearance obtained from regulatory agencies relating to closure and removal of such tanks.

4. SPILLS

4.1 During the past year, have any spills occurred at the Premises?

Yes ☐ No ☐ **Not Applicable**

If yes, please describe the location of the spill.

_____

_____

4.2 Were any agencies notified in connection with such spills?

Yes ☐ No ☐ Not Applicable

If yes, attach copies of any spill reports or other correspondence with regulatory agencies.

4.3 Were any clean-up actions undertaken in connection with the spills?

Yes ☐ No ☐ Not Applicable

Attach copies of any clearance letters obtained from any regulatory agencies Involved and the results of any final soil or groundwater sampling done upon completion of the clean-up work.

5. WASTE MANAGEMENT

5.1 Has your company been issued an EPA Hazardous Waste Generator I.D. Number?

Yes ☒ No ☐

5.2 Has your company filed a biennial report as a hazardous waste generator?

Yes ☐ No ☒

If so, attach a copy of the most recent report filed.

5.3 Attach a list of the hazardous wastes, if any, generated or to be generated at the Premises, its hazard class and the quantity generated on a monthly basis

5.4 Describe the method(s) of disposal for each waste. Indicate where and how often disposal will take place.

_____ On-site treatment or recovery _____

_____ Discharged to sewer _____

☒ Transported and Disposal of off-site Monthly

_____ Incincerator _____

5.5 Indicate the name of the person(s) responsible for maintaining copies of hazardous waste manifests completed for off-site shipments of hazardous waste.

Ron Kurtz

5.6 Is any treatment of processing of hazardous wastes currently conducted or proposed to be conducted at the Premises:

Yes ☐ No ☒

If yes, please describe any existing or proposed treatment methods. _____

5.7 Attach copies of any hazardous waste permits or licenses issued to your company with respect to its operations at the Premises.

6. WASTEWATER TREATMENT / DISCHARGE

6.1 Do you discharge wastewater to: NO

_____ Storm drain? _____ sewer?

_____ surface water? _____ no industrial discharge

6.2 Is your wastewater treated before discharge? Not Applicable

Yes ☐ No ☐

If yes, describe the type of treatment conducted _____

_____

6.3 Attach copies of any wastewater discharge permits issued to your company with respect to its operations at the Premises.

7. AIR DISCHARGES

7.1 Do you have any air filtration systems or stacks that discharge into the air?

Yes ☒ No ☐

7.2 Do you operate any of the following types of equipment or any other equipment requiring an air emissions permit?

_____ spray booth _____ dip tank

_____ drying oven _____incinerator

_____ other (please describe)

_____

_____ no equipment requiring air permits

☒ Laboratory Chemical Hood

7.3 Are air emissions from your operations monitored?

Yes ☐ No ☒

If so, indicate the frequency of monitoring and a description of the monitoring results. __

_____

_____

7.4 Attach copies of any air emissions permits pertaining to your operations at the Premises.

8. HAZARDOUS SUBSTANCES DISCLOSURES

8.1 Does your company handle hazardous materials in a quantity equal to or exceeding an aggregate of 500 pounds, 55 gallons, or 200 cubic feet per month?

Yes ☐ No ☒

8.2 Has your company prepared a hazardous materials management plan pursuant to any applicable requirements of a local fire department or governmental agency?

Yes ☐ No ☒

If so, attach a copy of the business plan.

8.3 Has your company adopted any voluntary environmental, health, or safety program?

Yes ☐ No ☐ Pending

If so, attach a copy of the program.

9. ENFORCEMENT ACTIONS, COMPLAINTS

9.1 Has your company ever been subject to any agency enforcement actions, administrative orders, lawsuits, or consent decrees regarding environmental compliance or health and safety?

Yes ☐ No ☒

If so, describe the actions and any continuing compliance obligations imposed as a result of these actions. _____

9.2 Has your company ever received requests for information, notice or demand letters, or any other inquiries regarding environmental compliance or health and safety?

Yes ☐ No ☒

9.3 Has an environmental audit ever been conducted at your company's current facility?

Yes ☐ No ☒

9.4 If you answered ''yes'' to any question in this section, describe the environmental action or complaint and any continuing compliance obligation imposed as a result of same.

_____

_____

_____

_____

Calhoun Vision, Inc. a California Corporation

By: /s/ Ron Kurtz

Title: Chief Operating Officer

Date: 10-20-15

Attachment

List of Calhoun Chemicals 9/23/15

Chemical	Amount on Hand	Storage
Sodium Thiosulfate Solution	1 pint	In bottle in Chemical Storage Cabinet
Activated Charcoal	4 Kg	In bottle in Chemical Storage Cabinet
Silicone	20 Gallons	Chemical Storage Refrigerator/Cabinet
Silicone Catalyst	200 gm	In bottle in Chemical Storage Cabinet
Chloronated Organic and Organic Solvents (including ispropanol, hexane, tolulene and tetrahydrofuran, dichloromethane and chloroform	14 Gallons	In bottles in Flammable Storage Cabinet
Wijs Solution	1 pint	In bottle in Chemical Storage Cabinet

List of Calhoun Wastes 9/23/15

Waste Material	Amount on Hand	Storage
Chloronated Organic Waste	15 gallons	In bottle in Chemical Storage Cabinet
Organic Waste	15 gallons	In bottle in Chemical Storage Cabinet

EXHIBIT H

2015 Estimated Operating Budget

Category	Amount	$/Total SF/Mo.
Cleaning	$ 38,510.00	
Repair & Maintenance	$ 42,215.19	
Utilities	$ 16,468.86	
Security	$ 11,636.95	
Landscape	$ 36,849.66	
Association Fees	$ 21,497.84	
Reserve - Asphalt	$ 7,500.00	
Reserve - Tree Removal/Replacement	$ 5,000.00	
Common Area Charges	$179,678.50	$ 0.11
Property Manager Fees 4%	$ 68,830.48	$ 0.05
Property Insurance:	$ 14,420.08	$0.009
Property Taxes:	$229,304.88	$ 0.15
Total	$492,233.93	$ 0.32

RIDER 1

RENEWAL OPTION

1. If, and only if, on the Expiration Date and the date Tenant notifies Landlord of its intention to renew the term of this Lease (as provided below), (i) Tenant is not in default under this Lease, (ii) Tenant then occupies the Premises consisting of at least all of the original Premises, and (iii) this Lease is in full force and effect, then Tenant, but not any assignee or subtenant of Tenant, shall have and may exercise an option to renew this Lease for one (l) additional term of five (5) years (the "Renewal Term") upon the same terms and conditions contained in this Lease with the exceptions that (x) this Lease shall not be further available for renewal, and (y) the rental for the Renewal Term shall be the "Renewal Rental Rate", but in no event will the Base Monthly Rent be less than the Base Monthly Rent for the last twelve (12) calendar months of the initial term of the Lease. The Renewal Rental Rate is hereby defined as the then fair market value (including, without limitation, those similar to the Base Monthly Rent and Additional Rent) for similar spaces in the area as determined by Landlord.

2. If Tenant desires to renew this lease, Tenant must notify Landlord in writing of its intention to renew on or before the date which is at least six (6) months but no more than nine (9) months prior to the Expiration Date. Landlord shall, within the next sixty (60) days, notify Tenant in writing of Landlord's determination of the Renewal Rental Rate and Tenant shall, within the next twenty (20) days following receipt of Landlord's' determination of the Renewal Rental Rate, notify Landlord in writing of Tenant's acceptance of Landlord's determination of the Renewal Rental Rate. If Tenant timely notifies Landlord of Tenant's acceptance of Landlord's determination of the Renewal Rental Rate, this Lease shall be extended as provided herein and Landlord and Tenant shall enter into an amendment to this Lease to reflect the extension of the term and changes in Rent in accordance with this Rider I. If (x) Tenant timely notified Landlord in writing of Tenant's rejection of Landlord's determination of the Renewal Rental Rate or (y) Tenant does not notify Landlord in writing of Tenant's acceptance or rejection of Landlord's determination of the Renewal Rental Rate within such twenty (20) day period, this Lease shall end on the Expiration Date and Landlord shall have no further obligation or liability hereunder.

First Amendment to Lease

THIS INSTRUMENT (hereinafter referred to as the "FIRST Amendment") dated the 23rd day of November 2015, is entered into by Accuride International Inc. (hereinafter referred to as "Landlord"), a California Corporation and Calhoun Vision, Inc., a California Corporation (hereinafter referred to as "Tenant". The parties agree as follows:

A. **Identification of Lease.** Reference is made to that certain Lease ("Original Lease"), dated August 31, 2015, between Tenant and Landlord, covering certain Premises containing approximately 21,498 rentable square feet of space in a building located at 100 Columbia. Suite 200, Aliso Viejo. CA.

B. **Context of the First Amendment.** Regarding change orders, our contract with Shafer and Associates. Inc., (the "General Contractor") is "open book" and Landlord and Tenant agree to the following methodology for approving change orders:

Landlord is responsible for a Tenant Improvement Allowance of $500,000 which was based on the General Contractor's bid (Exhibit D, Section II of the Original Lease). The General Contractor's bid included any Title 24 and Americans with Disabilities Act modifications expected to be required by the City of Aliso Viejo as a result of undertaking the project and also included estimated costs for certain long-term improvements to the Premises such as the bathroom move. These are the Landlord's financial responsibility in the Tenant Improvements Allowance. Tenant requires additional modifications including movements of walls, construction of specialized operations areas and the insertion of clean rooms into the premises. These are the Tenant's financial responsibility and payment therefore is outlined in Exhibit D. Section II (a) of the Original Lease.

Landlord is managing the construction project and has contracted with the General Contractor except that the Landlord is making no decisions on the clean room construction areas and the related clean room connections (e.g. for HVAC and electrical service) to the remainder of the Premises.

As change orders occur, the Landlord and Tenant agree that the General Contractor will present all change order to both the Landlord and Tenant. If the Landlord deems the change order outside the initial scope of the Landlord's responsibility, the Landlord will approve the work to proceed under the contract only after the signature on the change order by the Tenant.

Additionally, the work letter has a provision requiring a Second General Contractors bid. Tenant specifically agrees to waive this provision as they have agreed to use Shafer and Associates, Inc. and do not require a second bid.

"Landlord":

Accuride International Inc
A California Corporation

By: /s/ Jeffrey A. Dunlap
Name: Jeffrey A. Dunlap
Title: CFO

"Tenant":

Calhoun Vision, Inc.
A California Corporation

By: /s/ Ron Kurtz
Name: Ron Kurtz
Title: COO

SECOND AMENDMENT (EXPANSION TO THE LEASE)

THIS INSTRUMENT (hereinafter referred to as the "Second Amendment"), dated the 22nd day of December 2015, is entered into by ACCURIDE INTERNATIONAL INC., a California corporation (hereinafter referred to as "Landlord") and CALHOUN VISION, INC., a Delaware corporation, (hereinafter referred to as "Tenant"). The parties agree as follows:

A. Identification of Lease. Reference is made to that certain Commercial Lease Agreement dated August 31st, 2015 (the "Original Lease"), as amended by that certain **First Amendment** to the Lease dated November 23rd, 2015 (The Original Lease, as so amended, is herein collectively referred to as the "Lease") for certain premises containing approximately 21,498 rentable square feet located at 100 Columbia Suite 200, Aliso Viejo Ca, as more particularly described in the Lease as the Premises.

B. Context of Second Amendment. The parties have agreed to expand the Tenant's leased Premises to include approximately 20,608 rentable square feet located at 100 Columbia, **Suite 100,** Aliso Viejo, California 92656. Together, 100 Columbia, Suites 100 and 200 make up the entire 100 Building and shall together be heretofore known as the "Amended Premises". This Second Amendment is being entered into for that purpose.

C. Term. The term for 100 Columbia, Suite 100 Shall be for approximately 56 months. It shall commence on August 1st 2016 ("Second Amendment Commencement Date") and will be coterminous with the Lease of 100 Columbia Suite 200. Should the Original Lease result in an occupancy of greater than 56 months, the additional months up to 60 months will be at the same rate as months 49-56. If additional months are required to co-terminate the leases due to occupancy delays on Suite 100, the rent will increase in month 61 by 3% and will continue at that rate until the Amended Premises termination occurs.

D. Rent For 100 Columbia, Suite 100. The base rent payable for 100 Columbia, Suite 100 shall be the amount called for by the following:

Suite 100	Rate Per month
Months 1-12	$21,638.40 NNN
Months 13-24	$22,287.55 NNN
Months 25-36	$22,956.18 NNN
Months 37-48	$23,644.86 NNN
Months 49-56	$24,354.21 NNN

Base Rent for months 2 and 3 will be abated. NNN fees as specified in the Original Lease will still be due.

Base and Additional Rent for Suite 200 will continue as agreed in the Original Lease.

E. Deposit: Upon Second Amendment execution, Tenant shall pay the First month's rent, NNN fees and a Security Deposit equal to the last month's rent.

F. Letter of Credit: Within 14 days of the execution of this Second Amendment, Tenant shall provide an Irrevocable Standby Letter of Credit (the "2nd ISLC") for the additional space at 100 Columbia, Suite 100 in the amount of $300,000 in favor of the Landlord from Bank of America. This 2nd ISLC shall conform to the format issued under the

ISLC for the Original Lease. Should tenant not default on any terms of the lease, the Irrevocable Letter of Credit shall be decreased by 20% on every 12 month anniversary date from the Second Amendment Commencement Date (August 1,2016).

G. Tenant Improvements. Tenant shall Lease the building in its "as is" condition.

a. Tenant will be allowed to create entry points from Suite 100 to Suite 200 at Tenant's own expense. Landlord shall require the appropriate permitting and structural work prior to commencement of any Construction.

b. Tenant at Tenant's expense, may build out or modify some existing improvements including adding clean rooms with Landlord's prior approval. The approval of Tenant to build out improvements shall not be unreasonably withheld by Landlord. Depending on the additions, Landlord will specify whether there will be a requirement to remove the improvement or not prior to construction.

H. Conditions of the Premises: Prior to Occupancy, Landlord shall warrant that all Operating Systems, including the HVAC, Plumbing and Electrical systems shall be in proper working condition upon occupancy. Landlord shall warranty the Operating Systems for the initial ninety (90) days of the Lease. Additionally, the property shall be presented in clean "move in" condition.

I. Commission. Lee & Associates-Irvine and CBRE shall each receive one and a half percent (1.5%) commission based on the total lease consideration.

J. Tenant Represented by: Guy La Ferrara of Lee & Associates-Irvine

K. Landlord Represented by; Gregg Haly of CBRE

L. Miscellaneous. Any term used in this Second Amendment, which is defined in the Lease, shall have the same meaning herein, unless the context indicates that another meaning is intended. The Lease is intended to be and is supplemented and amended by the provisions of this Second Amendment, and hereafter the Lease shall be considered and construed together. All of the terms, provisions, conditions, and covenants of the Lease, as modified by this Second Amendment, shall be and remain in full force and effect.

M. Parking. Tenant shall be permitted to utilize parking at the Property at the rate of 3:1000 at no charge to Tenant during the entire Lease Term and any extension thereof. This will represent a total of 62 spaces for Suite 100 and 64 spaces for suite 200.

N. Signage. Tenant shall have the right, at its sole cost and expense, to install signage on the exterior of the Building and suite signage within the Premises, subject to compliance with Landlord's sign program and City of Aliso Viejo ordinances. Tenant shall be responsible for the cost to remove said signage at the termination of the lease.

THIRD AMENDMENT (EXPANSION TO THE LEASE)

THIS INSTRUMENT (hereinafter referred to as the "Third Amendment"), dated the 18th day of January 2016, is entered into by ACCURIDE INTERNATIONAL INC., a California corporation (hereinafter referred to as "Landlord") and CALHOUN VISION, INC., a Delaware corporation, (hereinafter referred to as "Tenant"). The parties agree as follows:

A. Identification of Lease. Reference is made to that certain Commercial Lease Agreement dated August 31st, 2015 (the "Original Lease"), as amended by that certain **First Amendment** to the Lease dated November 23rd, 2015, as amended by that certain **Second Amendment** to the Lease dated December 22nd, 2015, (The Original Lease, as so amended, is herein collectively referred to as the "Lease") for certain premises containing approximately 21,498 rentable square feet located at 100 Columbia Suite 200, Aliso Viejo Ca and 20,608 rentable square feet located at 100 Columbia Suite 100, Aliso Viejo Ca as more particularly described in the Lease as the Premises.

B. Context of Third Amendment. The parties have agreed to the following:

1. Landlord and Tenant agree to proceed with the "Ceiling work" as described in Shafer and Associates estimate "Accuride-CV-2nd Floor/Request for Change l" (See Attachment A)
2. Landlord agrees to abate the Base Rent for Months four (4) and five (5) for 100 Columbia, Suite 200.
3. Landlord agrees to abate the Base Rent for Month four (4) for 100 Columbia, Suite 100.
4. Landlord shall extend the Lease by an additional three (3) months for each the two units, suite 100 and 200 of 100 Columbia, Aliso Viejo, Ca.. Both suites under this amendment shall remain coterminous.
5. Any additional cost incurred for this additional work, above the cost estimated under B1 above shall be paid by the tenant and will be paid as per the instructions within the "Lease".

C. Commission. None

D. Tenant Represented by: None

E. Landlord Represented by: None

F. Miscellaneous. Any term used in this Third Amendment, which is defined in the Lease, shall have the same meaning herein, unless the context indicates that another meaning is intended. The Lease is intended to be and is supplemented and amended by the provisions of this Third Amendment, and hereafter the Lease shall be considered and construed together. All of the terms, provisions, conditions, and covenants of the Lease, as modified by this Third Amendment, shall be and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to be executed on or as of the day and year above written.

"Landlord":	"Tenant":
ACCURIDE INTERNATIONAL INC. a California Corporation	CALHOUN VISION, INC. a Delaware/Corporation
By:	By: /s/ Ron Kurtz

G: Leases and Amendments/Aliso/Calhoun Third Amendment

THIRD AMENDMENT (EXPANSION TO THE LEASE)

THIS INSTRUMENT (hereinafter referred to as the "Third Amendment"), dated the 18th day of January 2016, is entered into by ACCURIDE INTERNATIONAL INC., a California corporation (hereinafter referred to as "Landlord") and CALHOUN VISION, INC., a Delaware corporation, (hereinafter referred to as "Tenant"). The parties agree as follows:

A. Identification of Lease. Reference is made to that certain Commercial Lease Agreement dated August 31st, 2015 (the "Original Lease"), as amended by that certain **First Amendment to the** Lease dated November 23rd, 2015, as amended by that certain **Second Amendment** to the Lease dated December 22nd, 2015, (The Original Lease, as so amended, is herein collectively referred to as the "Lease") for certain premises containing approximately 21,498 rentable square feet located at 100 Columbia Suite 200, Aliso Viejo Ca and 20.608 rentable square feet located at 100 Columbia Suite 100, Aliso Viejo Ca as more particularly described in the Lease as the Premises.

B. Context of Third Amendment. The parties have agreed to the following:

1. Landlord and Tenant agree to proceed with the "Ceiling work" as described in Shafer and Associates estimate "Accuride-CV-2nd Floor/Request for Change l"(See Attachment A)
2. Landlord agrees to abate the Base Rent for Months four (4) and five (5) for 100 Columbia, Suite 200.
3. Landlord agrees to abate the Base Rent for Month four (4) for 100 Columbia, Suite 100.
4. Landlord shall extend the Lease by an additional three (3) months for each the two units, suite 100 and 200 of 100 Columbia, Aliso Viejo, Ca.. Both suites under this amendment shall remain coterminous.
5. Any additional cost incurred for this additional work, above the cost estimated under B1 above shall be paid by the tenant and will be paid as per the instructions within the "Lease".

C. Commission. None

D. Tenant Represented by: None

E. Landlord Represented by: None

F. Miscellaneous. Any term used in this Third Amendment which is defined in the Lease, shall have the same meaning herein, unless the context indicates that another meaning is intended. The Lease is intended to be and is supplemented and amended by the provisions of this Third Amendment, and hereafter the Lease shall be considered and construed together. All of the terms, provisions, conditions, and covenants of the Lease, as modified by this Third Amendment, shall be and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to be executed on or as of the day and year above written.

"Landlord":	"Tenant":
ACCURIDE INTERNATIONAL INC. a California Corporation	CALHOUN VISION, INC. a Delaware Corporation
By: /s/ Jefferey Dunlap	By: /s/ Ron Kurtz

G: Leases and Amendments/Aliso/Calhoun Third Amendment

Attachment A

J. S. Shafer & Associates, Inc.
Job Number 2338 - Request for Change 1

Project: Attachment C-2 - Accuride-Shafer Agreement
Lease Improvements-2nd Floor Only-Calhoun Vision
100 Columbia, Suite 200
Aliso Viejo, CA 92656

Change Order Date 12/29/15
Contract for: Accuride-CV-2nd Floor
Contract Date: 10/29/15

To: J. S. Shafer & Associates, Inc.
P.O. Box 729
Claremont, CA 91711

You are directed to make the following changes in the contract:
Open ceilings-all systems exposed-all 2nd Floor areas

	Count	Unit	Unit Cost	Item Values
The following applies to all areas of 2nd Floor except Rooms 212. 213. 215 & 223				—
				—
Demo existing, ceilings & lay-in insulation - 4 man crew	32.00	Crew Hours	164.32	5,258.24
Demo ductwork, supports foil insulation etc - 4 man crew	12.00	Crew Hours	164.32	1,971.84
Demo draft stop header framings & misc supports/diagonal bracing etc.	8.00	Crew Hours	164.32	1,314.56
Detail out beams, purlins, etc. for exposed finish conditions	32.00	Crew Hours	164.32	5,258.24
Debris disposal - 40 cu. yd. bins	2.00	Each	750.00	1,500.00
Framing & drywall-extend existing walls to roof install diagonal bracing	1.00	Lot	14,700.00	14,700.00
Additional electrical & light fixture install costs (no fixture upgrade-installation only)	1.00	Lot	13,600.00	13,600.00
Additional lighht fixture costs-upgrade to LED direct/indirect liner types-Allowance	120.00	Each	200.00	24,000.00
Install R-19 black faced batts in roof	1.00	Lot	12,140.00	12,140.00
HVAC-exposed ductwork modify existing plenumns, etc. - Allowance	7600.00	Sq.Ft.	2.25	17,100.00
Fire sprinkler-adjust all heads in area	7600.00	Sq.Ft.	1.45	11,020.00
Painting-all extended wall surfaces	6842.00	Sq.Ft.	1.10	7,526.20
Painting-exposed ceiling	7600.00	Sq.Ft.	1.20	9,120.00
Painting-conduit piping & details, cleaning ductwork	48.00	Crew Hours	113.89	5,466.72
Painting-materials for pipework & details-gallons	10.00	Each	48.00	480.00
Additional supervision	30.00	Man Hours	50.43	1,512.90
Contingency	1.00	Lot	3.000.00	3,000.00
				—
				—
		Direct cost subtotal		134,968.70
		Overhead & Profit		10,797.50
		Insurance		1,822.08
		Change Order Total		147,588.27
Not valid until signed by both the Owner and Contractor				
Signatur of the Contractor indicates his agreement herien, including any adjustment in the Contract Sum or Contract Time.				
The original Contact Sum was				178,451.55
Net Change by previously authorized Change Orders is				0.00
The Contract Sum prior to this Change Order was				178,451.55
The Contract Sum increase or (deacrease) by this Change Order amount will be				147,588.27
The new Contract Sum including this Change Order will be				326,039.83
The Project Duration is adjusted by and increase (decrease) of			Days	0
The projected Project completion date exclusive of rain days is				3/31/2016

CONTRACTOR
J.S. Shafer & Associates, inc.
P.O. Box 729
Claremont. CA 91711

By: _____

OWNER
Accuride Internaional, Inc.
12311 Shoemaker Avenue
Santa Fe Springs. CA 90670
blank

By: _____

G: Leases and Amendments/Aliso/Calhoun Third Amendment

O. Option to Extend. The Renewal Option in Rider 1 to the Lease shall apply to both 100 Columbia, Suite 200 and 100 Columbia, Suite 100.

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be executed on or as of the day and year above written.

"Landlord":	"Tenant":
ACCURIDE INTERNATIONAL INC. a California Corporation	CALHOUN VISION, INC. a Delaware Corporation
By: /s/ Jefferey Dunlap	By: /s/ Ron Kurtz

G: Leases and Amendments/Aliso/Calhoun Second Amendment

FOURTH AMENDMENT (EXTENSION TO THE LEASE)

THIS INSTRUMENT (hereinafter referred to as the "Fourth Amendment"), dated the 12th day of November 2016, is entered into by ACCURIDE INTERNATIONAL INC., a California corporation (hereinafter referred to as "Landlord") and RXSIGHT, Inc. (formerly known as CALHOUN VISION, INC.), a California corporation, (hereinafter referred to as "Tenant"). The parties agree as follows:

A. Identification of Lease. Reference is made to that certain Commercial Lease Agreement dated August 31st, 2015 (the "Original Lease"), as amended by that certain **First Amendment** to the Lease dated November 23rd, 2015, as amended by that certain **Second Amendment** to the Lease dated December 22nd, 2015 , as amended by that certain **Third Amendment** to the Lease dated January 18th, 2016, (The Original Lease, as so amended, is herein collectively referred to as the "Lease") for certain premises containing approximately 21,498 rentable square feet located at 100 Columbia Suite 200, Aliso Viejo Ca and 20,608 rentable square feet located at 100 Columbia Suite 100, Aliso Viejo Ca as more particularly described in the Lease as the Premises.

B. Context of Fourth Amendment. The parties have agreed to the following:

1. Landlord and Tenant agree to extend the Lease for an additional 36 months for the total 42,106 square feet.
2. The Lease extension period shall be from October 1, 2021 to September 30, 2024.
3. Landlord shall provide a Tenant Allowance in the amount of $400,000 to be used for improvement related to the 100 suite at 100 Columbia. The allowance will be provided as a cash payment of $400,000 on the later of December 15, 2016 or upon presentation by Tenant to Landlord of documentation to demonstrate at least 80% completion of total improvements identified in Attachment A.
4. Tenant agrees to issue an additional, or increase the existing, Irrevocable Standby Letter of Credit ("ISLC") by an additional $400,000. This additional $400,000 shall decrease each September 30 anniversary of the lease by a pro-rata amount until October 1, 2023 when the ISLC will be converted to $50,000 plus the amount required under earlier portions of the Lease. The remaining $50,000 will secure the restoration of the lobby and related changes in the window line rooms of Suite 100. Areas of restoration are shown on Attachment B to this amendment. In the event that Calhoun completes a financing in excess of $40,000,000 prior to December 15, 2016, the additional ISLC will be reduced to $200,000 and shall decrease as described above until September 30th, 2023 when the ISLC will be converted to $50,000 plus the amount required under earlier portions of the Lease. The remaining $50,000 will secure the restoration of the lobby and related changes in the window line rooms of Suite 100 as described above.
5. Calhoun shall provide a work letter defining what work will be covered under the $400,000 tenant improvement allowance. (See Attachment A).
6. Calhoun Vision has provided updated, unaudited financials for the nine months ended September 30, 2016. (See Attachment C)

"This section left intentionally blank"

C. Rent During Fourth Extension Period. During the Fourth Extension Period, the base rent payable shall be the amount called for by the following:

Period of Time	Base Monthly Rent	
Months 1-12	$55,235.88	Plus NNN
Months 13-24	$56,892.96	Plus NNN
Months 25-36	$58,599.75	Plus NNN

D. Commission. ½ percent for each broker

E. Tenant Represented by: Guy La Ferrara, Lee & Associates

F. Landlord Represented by: Gregg Haly, CBRE

G. Miscellaneous. Any term used in this Fourth Amendment, which is defined in the Lease, shall have the same meaning herein, unless the context indicates that another meaning is intended. The Lease is intended to be and is supplemented and amended by the provisions of this Fourth Amendment, and hereafter the Lease shall be considered and construed together. All of the terms, provisions, conditions, and covenants of the Lease, as modified by this Fourth Amendment, shall be and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Fourth Amendment to be executed on or as of the day and year above written.

"Landlord":	"Tenant":
ACCURIDE INTERNATIONAL INC. a California Corporation	RXSIGHT, Inc. a California Corporation
By: /s/ Jefferey Dunlap	By: /s/ Ron Kurtz

"This section left intentionally blank"

Attachment A

WORK LETTER
(Tenant Improvements)
100 Columbia, Suite 100, Aliso Viejo, CA

1. TENANT IMPROVEMENTS

The tenant improvement work ("Tenant Improvements") shall consist of the work required to complete certain improvements to the Premises based on a working floor drawing attached as Exhibit B. Tenant shall contract with a general contractor, identified as J.S. Shafer & Associates, Inc. to construct the Tenant Improvements. The Tenant Improvements work shall be undertaken and prosecuted in accordance with the following requirements:

A. It is understood that except as provided below, the Tenant Improvements shall only include actual improvements to the Premises approved by Landlord identified in Attachments A and B and shall exclude (but not by way of limitation) Tenant's furniture, trade fixtures, partitions, equipment and signage improvements, if any. Further, the Tenant Improvements shall incorporate Landlord's building standard materials and specifications ("Standards"). No deviations from the Standards may be requested by Tenant with respect to doors and frames, finish hardware, entry graphics, the ceiling system, light fixtures and switches, mechanical systems, life and safety systems, and/or window coverings; provided that Landlord may, in its sole discretion, authorize in writing one or more of such deviations, in which event, unless Landlord otherwise agrees in its sole discretion, Tenant shall be solely responsible for the cost of replacing same with the applicable Standard item(s) upon the expiration or termination of this Lease. All other non-standard items ("Non-Standard Improvements") shall be subject to the prior approval of Landlord, which may be withheld in Landlord's sole discretion. Landlord shall in no event be required to approve any Non-Standard Improvement if Landlord determines that such improvements (i) is of a lesser quality than the corresponding Standard, (ii) fails to conform to applicable governmental requirements, (iii) requires building services beyond the level Landlord has agreed to provide Tenant under this Lease, or (iv) would have an adverse aesthetic impact from the exterior of the Premises.

B. Tenant shall use a licensed general contractor (Identified as J.S. Shafer & Associates) and that contractor's selected subcontractors to construct the Premises.

C. The TI Contractor and each of its subcontractors shall comply with Landlord's requirements as generally imposed on third party contractors, including without limitation all insurance coverage requirements and the obligation to furnish appropriate certificates of insurance to Landlord, prior to commencement of construction or the Tenant Improvements work.

D. A construction schedule shall be provided to Landlord and Tenant prior to commencement of the construction of the Tenant Improvements work, and weekly updates shall be supplied

E. The Tenant Improvements work shall be prosecuted at all times in accordance with all state, federal and local laws, regulations and ordinance, including without limitation all OSHA and other safety laws, the Americans with Disabilities Act ("ADA") and all applicable governmental permit and code requirements.

F. Tenant hereby designates Richard Drinkward, Telephone No. (949) 521-7833, as its representative, agent and attorney-in-fact for the purpose of receiving notices, approving submittals and issuing requests for Changes and Landlord shall be entitled to rely upon authorizations and directives of such persons as if given directly by Tenant. Tenant may amend the designation of its construction representative(s) at any time upon delivery of written notice to Landlord.

"This section left intentionally blank"

2. COST OF TENANT IMPROVEMENTS

Tenant Improvement-CV-2A Attachment C
100 Columbia, Suite 100
Aliso Viejo, CA 92656
blank

J. S. Shafer & Associates, Inc.
Schedule of Values
Job No. 2362
08/29/16

CSI	Item Description	Count	Unit	Unit Cost	Item Values
01030	General Conditions				70,048.80
01000	Building Permit Fees	1	Allowance	12,500.00	12,500.00
01027	Electrical Engineering	1	Lot	18,000.00	18,000.00
01028	Mechanical Engineer	1	Lot	8,000.00	8,000.00
01032	Printing & copying	1	Allowance	750.00	750.00
01523	Scissor / boom lifts-rentals	1	Each	1,200.00	1,200.00
01560	Dispose 4-ft flourescent tubes removed	1	Lot	496.32	496.32
01566	Debris disposal-dumpsters	3	Each	800.00	2,400.0
02070	Demo-walls 254’ @ 9.5’	3,420	Sq. Ft.	2.00	6,840.00
02070	Demo-additional per 09/14 plan-130 In.ft.	1,260	Sq. Ft.	2.00	2,520.00
02070	Demo wall cladding of X-frame, remove nailer	6	Man hours	39.48	236.8
02071	Demo-acoustic ceilings	5,384	Sq. Ft.	0.75	4,038.00
02072	Demo-existing 2x4 flourescent fixtures	117	Each	9.00	1,053.00
02073	Demo-existing carpet, vet-break rm, wall base	8,493	Sq. Ft.	0.45	3,821.85
02074	Demo sheet vinyl & cove base-rest rooms	475	Sq. Ft.	1.00	475.00
02075	Demo existing toilet partitions	1	Lot	200.00	200.00
02076	Demo & abandon existing plumbing drains	12	Man hours	47.53	570.36
02080	Conc cut, demo & dispose - sink installs	60	Sq. Ft.	13.00	780.00
02081	Conc cut, demo-undergound elect & piping	14	Sq. Ft.	13.00	182.00
03030	Replace concrete-sink install	60	Sq. Ft.	18.00	1,080.00
03031	Replace concrete-underground elect &piping	14	Sq. Ft.	18.00	252.00
03034	Conc slab crack-grind open & fill w/ Sika	280		2.35	658.00
06200	Install mid-span support-Chem Lab ceiling	1	Lot	488.15	488.15
06400	Cabinetry-relocate/modify existing	1	Allowance	2,000.00	2,000.00
06410	Cabinetry-new Saron counter top	28	Sq. Ft.	48.00	1,344.00
07210	Insulation-R19 faced-Existing @ mezz-repair	1	Lot	1,638.5	1,638.25
07211	Insulation - R11	1	Lot	1,098.25	1,098.25
07212	Insulation-R-30 at roof of CV-2A only	1	Lot	13,650.00	13,650.00
07215	Insulation-R13-in partition walls	3,360	Sq. Ft	1.15	3,864.00
07216	R-19 insulation in 6” walls-Chem Lab	1,080	Sq. Ft	1.45	1,566.00
07217	R-30 insulation in ceiling of Chem Lab	900	Sq. Ft.	1.85	1,665.00
07700	Roof repair work	4	Lot	750.00	3,000.00
08331	Repair 2 roll-up doors at Warehouse	2	Each	1,208.00	2,416.00
08500	Metal window frame & install-5-0x4-0 ea	6	Each	392.20	2,353.20
08501	Window w/ Pyran fire safety glass-1-hr rating	1	Allowance	750.00	750.00
08801	Door-stain birch-frame-side lite-8 ft-hrdwre-ins	4	Lot	950.00	3,800.00
08802	Doors-6-0x8-0, stain grade, hardware,install	4	Each	1,100.00	4,400.00
08803	Install doors saved for re-use	14	Lot	150.00	2,100.00
08804	Door-3-0x8-0, stain grade, hardware, installed	4	Lot	800.00	3,200.00
08805	Replace door access hardware to match CV1	22	Each	130.00	2,860.00
08806	Kick plates-stainless-installed	14	Each	44.57	623.98
08807	Door closers-installed	8	Each	155.00	1,240.00
09104	Frame & drywall - H=10-ft, per 9/14 plan	1	Lot	28,600.00	28,600.00
09105	Frame & drywall-ceiling Chem Lab-9/14 plan	900	Sq. Ft.	11.12	10,008.00
09107	Drywall-recessed boxes for lights 1-hr	16	Each	95.00	1,520.00
09108	Frame & drywall-combo fire/smoke dampers	7	Each	250.00	1,750.00
09109	Drywall furring & details at A-frame exposed	1	Allowance	975.00	975.00
09110	Drywall-cut-patch-finish-T24 outlets	9	Each	375.00	3,375.00

CSI	Item Description	Count	Unit	Unit Cost	Item Values
09115	Backing supports-2 rows-in walls-Rm 154	60	Ln. Ft.	5.50	330.00
09512	T-bar grid-new-office area-standard tile	2,564	Sq. Ft.	3.74	9,589.36
09513	T-bar & Gridstone-148,148,150,153,154,155	2,000	Sq. Ft.	4.65	9,300.00
09514	Replace ceiling tile w/ matching CV-1 tile	2,976	Sq. Ft.	1.56	4,642.56
09515	Install hard washable ceiling tile in Rest Rms	500	Sq. Ft.	2.65	1,325.00
09666	Vinyl ESD flooring - Rm 153 Hardware Dev	580	Sq. Ft.	7.92	4,593.60
09675	Sheet vinyl-Rm 154 - Upgraded material	900	Sq. Ft.	9.34	8,406.00
09676	Sheet vinyl-Rest Rooms-Coved-Upgrade mtl	500	Sq. Ft.	8.20	4,100.00
09677	VCT flooring - NIC - by others	1	Lot	1.00	1.00
09678	Carpet tile - NIC - by others	1	Lot	1.00	1.00
09678	Vinyl-rubber wall base - NIC - by others	1	Lot	1.00	1.00
09910	Finish new & existing doors-stain-clear coat	29	Each	75.00	2,175.00
09966	Vinyl ESD floor-buff & polish-ESD procedure	1	Lot	575.00	575.00
09970	FRP-replace in rest rooms	1	Lot	2,100.00	2,100.00
09990	Painting-interior-walls-all except Rm 154	18,324	Sq. Ft.	0.88	16,125.12
09991	Painting-interior-Rm 152-Epoxy	1,080	Sq. Ft.	1.70	1,836.00
09992	Painting-ceiling of Rm 152-Epoxy	900	Sq. Ft	1.97	1,773.00
09995	Paint west stair shaft & drywall repair	1	Allowance	750.00	750.00
09996	Detail painting-A frame exposed	1	Lot	400.00	400.00
10400	Signage-code required only	1	Lot	420.00	420.00
10520	Fire extinguisher cabinets	4	Each	262.00	1,048.00
10600	Toilet partitions-new-stainless	1	Lot	9,017.00	9,017.00
10800	Toilet accessories-new	1	Lot	4,887.00	4,887.00
11000	Assist CV installations of equipment-Allow	40	CrewHours	90.51	3,620.40
12512	Louver blinds-installed	76	Each	131.00	9,956.00
12526	Remove & replace window films	1	Lot	1.00	1.00
15310	Nitrogen-extend existing & 5 points of service	1	Allowance	4,500.00	4,500.00
15315	Compressed air-extend exist-10 points svc	1	Allowance	6,500.00	6,500.00
15316	Clean water-extend to sinks in labs	1	Allowance	1,800.00	1,800.00
15401	New condensate piping	1	Allowance	1,000.00	1,000.00
15405	Dig trenches & backfill-sink drains, electrical	1	Lot	1,000.00	1,000.00
15449	Underground sewer pipe explore & video	1	Lot	750.00	750.00
15450	Plumbing per plans P-1 & P-2 dated 7/20/16	1	Allowance	17,500.00	17,500.00
15451	Install CV's sink &disposer-ice mkrCoffee Bar	1	Allowance	1,500.00	1,500.00
15455	Replace toilets, lavs, urinals-install hands free	1	Lot	10,629,00	10,629.00
15456	Repair trap primers-R/Rs	1	Allowance	1,400.00	1,400.00
15620	Hvac-air balance & report-per unit	1	Lot	4,995.00	4,995.00
15650	Hvac-pads for new compressors	2	Each	1,500.00	3,000.00
15800	Hvac-Rm 154-Chem Lab-negative press-16x	1	Allowance	30,000.00	30,000.00
15801	Hvac-Rm 128-Optics Lab-positive pressure	1	Allowance	10,000.00	10,000.00
15802	Hvac-Balance of areas - 5 existing machines	1	Allowance	20,000.00	20,000.00
15803	Install 2 Labconco exhaust fans & systems	1	Allowance	25,000.00	25,000.00
15865	Combo fire & smoke dampers-Rm 154 1-hr	7	Each	650.00	4,550.00
15883	Install HEPA filter units, HEPA units NIC	6	Allowance	800.00	4,800.00
15900	Fire sprinklers-adjust head locations	1	Lot	12,644.00	12,644.00
16400	Electricl-demo safe-off	1	Lot	2,000.00	2,000.00
16401	Electrical-distributed power outlets & data	1	Lot	31,055.35	31,055.35
16408	Electrical-add 2 -120-208 panels w/ feeders	1	Lot	2,471.65	2,471.65

Cost of Tenant Improvements (Continued)

Tenant Improvement-CV-2A Attachment C
100 Columbia, Suite 100
Aliso Viejo, CA 92656
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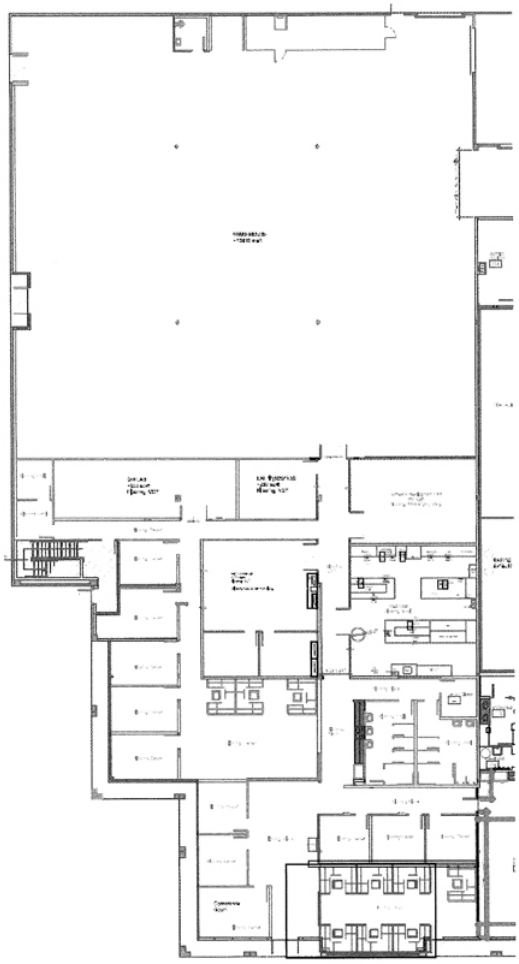
J. S. Shafer & Associates, Inc.
Schedule of Values
Job No. 2362
08/29/16

CSI	Item Description	Count	Unit	Unit Cost	Item Values
16413	Emergency power-175 amp transfer switch	1	Lot	2,532.60	2,532.60
16414	Emer power-panel, xfmr, disconnect, feeders	1	Allowance	6,737.55	6,737.55
16415	Install grounding buss in CV-2A IT room	1	Lot	455.00	455.00
16416	Power to 2 new hvac units-H-8 & H-25	1	Lot	2,863.85	2,863.85
16417	Power to 2 Labconco exhaust hoods & fans	1	Lot	5,747.17	5,747.17
16474	Replace deteriorated seal-tite-roof hvac units	1	Lot	2,876.98	2,876.98
16475	Install power/data/video in concfloor-Rm 130	1	Assembly	1,593.83	1,593.83
16476	Install power & data in floor box	1	Lot	887.00	887.00
16511	Light fixtures-Exit	9	Each	125.00	1,125.00
16512	Light fixtures-2×4 LED	105	Each	131.00	13,755.00
16514	Install 2×4 LED fixtures on Emer circuit	23	Lot	211.27	4,859.21
16515	Install 2×4 LED fixtures	98	Lot	270.20	26,479.60
16600	Install overhead quad outlets on flex cords	6	Allowance	270.00	1,620.00
16650	Install power to HEPA filter units	6	Allowance	300.00	1,800.00
16720	Fire alarm system-B occupancy	1	Lot	18,983.00	18,983.00
16721	Fire alarm system 1-hr conditions & ducts	1	Lot	9,704.00	9,704.00
16723	Fire alarm system-conduit install	1	Allowance	2,500.00	2,500.00
16930	Title 24 contol zones-lighting only	1	Lot	23,478.85	23,478.85
16931	T-24 power outlets & controls	1	Lot	9,467.35	9,467.35
					667,921.07
17100	Contractors Contingency			2.00%	13,358.42
17200	Contractors Overhead & Profit			8.00%	54,502.36
17300	Contractor’s Insurance			1.50%	11,036.73
Total Cost Per Agreement and Plans					746,818.58

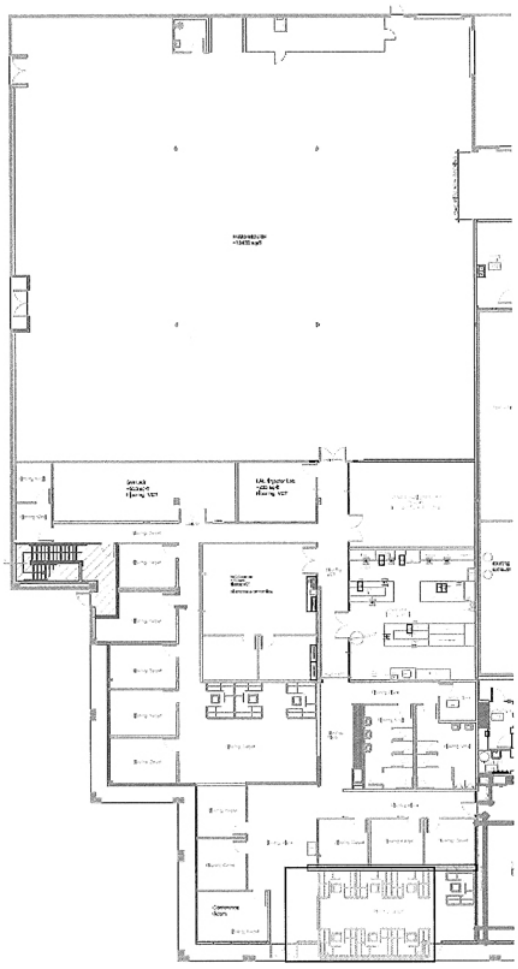
3 of 3

Attachment B



- **Yellow highlighted area to be put back to its original configuration At the termination of the lease**

Attachment B



- **Yellow highlighted area to be put back to its original configuration At the termination of the lease**

CONFIDENTIAL

Calhoun Vision, Inc.
Statement of Cash Flows
For the Period Ended

	Audited Year Ending 31-Dec-15	Unaudited Month 30-Sep-16	Unaudited YTD as of 30-Sep-16
Cash Flows From Operating Activities:			
Net loss	$(19,810,954)	$ (1,859,886)	$(16,503,122)
Adjustments to reconcile net loss to net cash used in operating activities			
Depreciation and amortization	390,846	107,736	635,737
Amortization of deferred loan costs and debt discount	85,626	—	1,229
Revaluation of convertible preferred stock warrant liability	(207,442)	—	—
Bad debt expense	16,119	—	—
Stock-based compensation	2,400,260	165,000	1,485,000
Impairment of long-lived assets	1,834,461	—	—
Change in operating assets and liabilities			
Accounts receivable	(90,730)	—	—
Inventory, net	(297,199)	(122,791)	(290,748)
Prepaid expenses and other assets	(235,489)	3,340	(273)
Accounts payable	509,238	(30,420)	(759,086)
Accrued expenses and other current liabilities	509,936	335,734	(128,153)
Deferred rent	(5,133)	47,963	95,147
Other non current liability	—	(6,204)	461,538
Net cash used in operating activities	(14,900,461)	(1,359,528)	(15,002,731)
Cash Flows From Investing Activities:			
Purchases of property and equipment	(1,075,426)	(401,981)	(4,223,082)
Additions to construction in progress	(284,863)	—	—
Purchase of short-term investments	(22,964,313)	(14,142,686)	(16,134,686)
Maturity of short-term investments	—	16,996,000	22,990,915
Increase in restricted cash	(800,037)	(24)	(218)
Increase in security deposits	(87,133)	—	—
Net cash used in investing activities	(25,211,772)	2,451,309	2,632,929
Cash Flows From Financing Activities:			
Proceeds from issuance of convertible notes	5,660,000	—	—
Proceeds from issuance of convertible preferred stock, net of issuance costs	50,783,752	—	11,474
Proceeds from exercise of warrants	—	102,500	102,500
Notes receivable issued to related party	(4,715)	(1,793)	(251,097)
Proceeds from stock options exercised	256,747	7,350	842,086
Net cash provided by financing activities	56,695,784	108,057	704,963
Net increase in cash	16,583,551	1,199,838	(11,664,839)
Cash and cash equivalents - beginning of period	2,844,570	6,563,444	19,428,121
Cash and cash equivalents - end of period	$ 19,428,121	$ 7,763,282	$ 7,763,282
Cash including ST investments and restricted cash, beginning of period	2,844,570	26,358,019	43,151,418
Cash including ST investments and restricted cash - end of period	$ 43,151,418	$ 24,696,755	$ 24,696,756

G: Leases and Amendments/Aliso/Calhoun Fourth Amendment

CONFIDENTIAL

Calhoun Vision, Inc.
Balance Sheet

	Audited 12/31/2015	Unaudited 9/30/2016
Assets		
Current Assets		
Cash and cash equivalents	$ 19,428,121	$ 7,763,282
Short-term investments	22,923,260	16,133,219
Inventory, net	113,424	404,172
Accounts receivable	—	—
Prepaid expenses and other assets	507,809	482,112
Total current assets	42,972,614	24,782,785
Property and equipment, net	1,755,471	5,342,817
Restricted cash	800,037	800,254
Other assets	108,606	134,511
Total assets	$ 45,636,728	$ 31,060,367
Liabilities, convertible preferred stock and stockholders' deficit		
Current liabilities		
Accounts payable	$ 1,199,912	$ 440,826
Accrued expenses and other current liabilities	1,234,255	1,106,102
Convertible notes	1,998,837	
Total current liabilities	4,433,004	1,546,928
Other liabilities	858,248	1,414,933
Total liabilities	5,291,252	2,961,861
Commitments and contingencies		
Convertible preferred stock		
Series A - G, convertible preferred stock	140,732,667	142,846,641
Stockholders' deficit		
Common Stock	20,321	22,482
Additional paid-in capital	8,745,179	11,070,102
Accumulated other comprehensive loss	(41,053)	25,135
Accumulated deficit	(108,684,153)	(125,187,273)
Due from related party	(427,485)	(678,581)
Total stockholders' deficit	(100,387,191)	(114,748,134)
Total liabilities, convertible preferred stock and stockholders' deficit	$ 45,636,728	$ 31,060,367

G: Leases and Amendments/Aliso/Calhoun Fourth Amendment

LEASE AGREEMENT
(INDUSTRIAL/COMMERCIAL SINGLE-TENANT)

1. Basic Provisions ("Basic Provisions").

1.1. **Parties**. This Lease ("**Lease**"), dated for reference purposes only March 27, 2020, is made by and between Pacific Park Investments, Inc., a California corporation ("**Lessor**") and RxSight, Inc., a California corporation ("**Lessee**"), (collectively the "**Parties**," or individually a "**Party**").

1.2. **Premises:** That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known as (street address, city, state, zip): 75 Columbia, Aliso Viejo, CA 92656 ("**Premises**"). The Premises are located in the County of Orange and are generally described as (describe briefly the nature of the property and, if applicable, the "**Project**," if the property is located within a Project): an approximate 48,036 square foot free-standing industrial building. (See also Paragraph 2)

1.3. **Term**: five (5) years and ten (10) months ("**Original Term**") commencing April 1, 2020 ("**Commencement Date**") and ending January 31, 2026 ("**Expiration Date**"). (See also Paragraph 3)

1.4. **Base Rent**: $32,056.50 per month ("**Base Rent**"), payable on the first (1st) day of each month commencing April 1, 2020. (See also Paragraph 4)

1.4.1. **Fixed Rental Adjustment(s) (FRA)**: The Base Rent shall be adjusted to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Dates)	The New Base Rent shall be:
April 1, 2020 – June 30, 2020	$32,056.50 per month
July 1, 2020 – June 30, 2021	$61,562.68 per month
July 1, 2021 – January 31, 2022	$70,612.92 per month
February 1, 2022 – January 31, 2023	$72,731.31 per month
February 1, 2023 – January 31, 2024	$74,913.25 per month
February 1, 2024 – January 31, 2025	$77,160.64 per month
February 1, 2025 – January 31, 2026	$79,475.46 per month

1.5. **Other Monies Paid:**

1.5.1. Security Deposit: $32,056.50. Lessee paid $24,268.50 on January 16, 2018; balance of Security Deposit due: $7,788.00.

1.6. **Agreed Use**: General office, distribution, research and development, lab area, storage, and manufacture of optical medical products. (See also Paragraph 6)

1.7. **Insuring Party.** Lessor is the "Insuring Party" unless otherwise stated herein. (See also Paragraph 8)

1.8. **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

1.8.1. Roof Evaluation Report (EXHIBIT A)

1.8.2. Plot plan depicting the Premises (EXHIBIT B)

2. **Premises.**

2.1. **Letting**. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. NOTE: Lessee is advised to verify the actual size prior to executing this Lease.

2.2. **Condition.** Lessor shall deliver the Premises to Lessee broom clean and free of debris on the Commencement Date ("**Start Date**"), and, so long as the required service contracts described in Paragraph 7.1.2 below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("**HVAC**"), loading doors, sump pumps, if any, and all other such elements in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation, exterior walls, windows, structural condition of the interior bearing walls and exterior of any buildings on the Premises (the "**Building**") shall be in good condition and free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a noncompliance with said warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such noncompliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: 12 months as to the foundation, exterior walls, windows, structural condition of interior walls. Within fourteen (14) days after Commencement Date, Lessee shall provide Lessor with a list of systems/elements that are damaged or not in operable condition, and Lessor shall repair the systems to the satisfaction of Lessee. Upon Lessee's satisfactory approval, these repaired systems shall be excluded from any warranty periods. If Lessee does not give Lessor the required notice within the warranty period, correction of any such noncompliance, malfunction, or failure shall be the obligation of Lessee at Lessee's sole cost and expense. Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

2.2.1. Lessor acknowledges that the roof has exceeded its serviceable life and will pay for roof repairs outlined on the Roof Evaluation Report attached as EXHIBIT A up to $150,000.00. Lessee will be responsible for selecting and managing roofing contractors and use commercially reasonable efforts to minimize the roof refurbishment costs. Lessee will provide itemized receipts and invoice Lessor for reimbursement/payment to Lessee for such amounts not to exceed $150,000.00. In the event Lessor does not reimburse/pay Lessee within thirty (30) days of invoice date, Lessee shall be able to deduct such amounts from the monthly Base Rent.

2.2.2. The Parties understand and agree that the current warehouse on the Premises shall be leased without air conditioning.

2.3. **Compliance**. Lessor warrants that to the best of its knowledge the improvements on the Premises comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("**Applicable Requirements**") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use, or to any Alterations or Utility Installations (as defined in Paragraph 7.3.1) made or to be made by Lessee. NOTE: Lessee is responsible for determining whether the Applicable Requirements, and especially the zoning, are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed. If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such noncompliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a noncompliance with this warranty within 12 months following the Start Date, correction of that noncompliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("**Capital Expenditure**"), Lessor and Lessee shall allocate the cost of such work as follows:

2.3.1. Subject to Paragraph 2.3.3 below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital Expenditure is required during the last 6 months of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and an amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall deliver to Lessor a written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

2.3.2. If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 180 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

2.3.3. Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to nonvoluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not, however, have any right to terminate this Lease.

2.4. **Acknowledgements**. Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) it has been advised by Lessor to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Lessor, and (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein.

3. **Term.**

3.1. **Term**. The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2. **Delay in Possession**. Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not be obligated to perform its obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10-day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

4. **Rent.**

4.1. **Rent Defined**. All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("**Rent**").

4.2. **Payment**. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating.

5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease. The Security Deposit shall not be used by Lessee in lieu of payment of the last month's rent.

6. **Use.**

6.1. **Use**. Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements on the premises or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Premises. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2. **Hazardous Substances**.

6.2.1. **Reportable Uses Require Consent**. The term "**Hazardous Substance**" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, byproducts or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. With the exception of the listed items in Paragraph 50, "**Reportable Use**" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor.

6.2.2. **Duty to Inform Lessor**. If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

6.2.3. **Lessee Remediation**. Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

6.2.4. **Lessee Indemnification**. Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that

Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

6.2.5. **Lessor Indemnification**. Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

6.2.6. **Investigations and Remediations**. Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "**Alterations**", as defined in paragraph 7.3.1 below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

6.2.7. **Lessor Termination Option**. If a Hazardous Substance Condition (see Paragraph 9.1.5) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2.4 and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 90 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the difference of the additional amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent. Lessee shall reimburse Lessor within 30 days from receipt of an itemized bill and copies of proof of remediation from Lessor. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible. If Lessee does not give such notice, this Lease shall terminate 90 days following the date of Lessor's notice of termination.

6.3. **Lessee's Compliance with Applicable Requirements**. Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau which relate in any manner to the Premises, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall give written notice to Lessor within 5 days after discovery of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises. In addition, Lessee shall provide copies of all relevant material safety data sheets (**MSDS**) to Lessor within 10 days of the receipt of a written request therefor. In addition, Lessee shall provide Lessor with copies of its business license, certificate of occupancy and/or any similar document within 10 days of the receipt of a written request therefor.

6.4. **Inspection; Compliance**. Lessor and Lessor's "**Lender**" (as defined in Paragraph 28.1) and consultants authorized by Lessor shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting and/or testing the condition of the Premises and/or for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination by Lessee. In addition, Lessee shall provide copies of all relevant material safety data sheets (**MSDS**) to Lessor within 10 days of the receipt of a written request therefor.

7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.

7.1. **Lessee's Obligations.**

7.1.1. **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair, including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), foundations, ceilings, roofs, roof drainage systems, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises in a condition consistent with the condition at the time of Lessee's possession. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1.2 below. Lessee shall, during the term of this

Lease, keep the exterior appearance of the Building (including, e.g. graffiti removal) consistent with the condition at the time of Lessee's possession and the exterior appearance of other similar facilities of comparable age and size in the vicinity.

7.1.2. **Service Contracts.** Subject to the provisions of Paragraph 2.2, Lessee shall, at Lessee's sole expense, procure and maintain contracts in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler, and pressure vessels, (iii) fire extinguishing systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, (v) roof covering and drains, and (vi) clarifiers.

7.1.3. **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 100% of the cost thereof.

7.1.4. **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1.2 cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (i.e.. 1/144th of the cost per month).

7.2. **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 9 (Damage or Destruction) and 14 (Condemnation), it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of the Lessee. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises.

7.3. **Utility Installations; Trade Fixtures; Alterations.**

7.3.1. **Definitions**. The term "**Utility Installations**" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "**Trade Fixtures**" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "**Alterations**" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "**Lessee Owned Alterations** and/or **Utility Installations**" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4.1.

7.3.2. **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make nonstructural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof (except as provided in Paragraph 2.2) or any existing walls, will not affect the electrical, plumbing, and/or life safety systems, do not trigger the requirement for additional modifications and/or improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24. Notwithstanding the foregoing, except as provided in Paragraph 2.2, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Any Alterations or Utility Installations that Lessee shall desire to make, and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as built plans and specifications.

7.3.3. **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days' notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof.

7.4. **Ownership; Removal; Surrender; and Restoration**.

7.4.1. **Ownership**. Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4.2 hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

7.4.2. **Removal**. By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

7.4.3. **Surrender; Restoration**. Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair at least as good as at the time of Lessee's possession, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4.3 without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 24.

8. **Insurance; Indemnity.**

8.1. **Payment for Insurance**. Lessee shall pay for all insurance required under Paragraph 8 except to the extent of the cost attributable to liability insurance carried by Lessor under Paragraph 8.2.2 in excess of $2,000,000 per occurrence. Premiums for policy periods commencing prior to or extending beyond the Lease term shall be prorated to correspond to the Lease term. Payment shall be made by Lessee to Lessor within 10 days following receipt of an invoice.

8.2. **Liability Insurance**.

8.2.1. **Carried by Lessee**. Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon 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 $1,000,000 per occurrence with an annual aggregate of not less than $2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's Additional Insured Managers or Lessors of Premises" Endorsement. 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 Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

8.2.2. **Carried by Lessor**. Lessor shall maintain liability insurance as described in Paragraph 8.2.1, in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3. **Property Insurance Building, Improvements and Rental Value.**

8.3.1. **Building and Improvements**. The Lessor shall obtain and keep in force a policy or policies in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed $10,000 per occurrence, and Lessor shall be liable for such deductible amount in the event of an Insured Loss.

8.4. **Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance**.

8.4.1. **Property Damage**. Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property,Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed $10,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

8.4.2. **Business Interruption**. Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

8.4.3. **Worker's Compensation Insurance**. Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

8.4.4. **No Representation of Adequate Coverage**. Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5. **Insurance Policies.** Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. The Parties shall, prior to the Start Date, deliver to the other Party certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days' prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6. **Waiver of Subrogation**. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7. **Indemnity**. Except for Lessor's gross negligence or willful misconduct, or any claim relating to hazardous or toxic materials except to the extent such claim arises out of a breach by Lessee, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, a Breach of the Lease by Lessee and/or the use and/or occupancy of the Premises and/or Project by Lessee and/or by Lessee's employees, contractors or invitees. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified. Except for Lessee's gross negligence or willful misconduct, or any claim relating to hazardous or toxic materials to the extent such claim arises out of a breach by Lessee, Lessor shall indemnify, protect, defend, and hold harmless Lessee and its agents, Lessee's master or ground lessee, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, a Breach of the Lease by Lessor and/or the use and/or occupancy of the Premises and/or Project by Lessor and/or by Lessor's employees, contractors or invitees. If any action or proceeding is brought against Lessee by reason of any of the foregoing matters, Lessor shall upon notice defend the same at Lessor's expense by counsel reasonably satisfactory to Lessee and Lessee shall cooperate with Lessor in such defense. Lessee need not have first paid any such claim in order to be defended or indemnified.

8.8. **Exemption of Lessor and its Agents from Liability**. Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

9. **Damage or Destruction.**

9.1. **Definitions**.

9.1.1. "**Premises Partial Damage**" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

9.1.2. "**Premises Total Destruction**" shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

9.1.3. "**Insured Loss**" shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3.1, irrespective of any deductible amounts or coverage limits involved.

9.1.4. "**Replacement Cost**" shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

9.1.5. "**Hazardous Substance Condition**" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

9.2. **Partial Damage – Insured Loss**. If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which

is $10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10-day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate upon 90 days' notice. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3. **Partial Damage – Uninsured Loss**. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 90 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4. **Total Destruction**. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5. **Damage Near End of Term**. If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds 1 month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 90 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6. **Abatement of Rent; Lessee's Remedies**.

9.6.1. **Abatement**. In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

9.6.2. **Remedies**. If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "**Commence**" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7. **Termination; Advance Payments**. Upon termination of this Lease pursuant to Paragraph 6.2.7 or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. **Real Property Taxes.**

10.1. **Definition**. As used herein, the term "**Real Property Taxes**" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises or the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing,

by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Building address. Real Property Taxes shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease not including a change in the ownership of the Premises, and (ii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease. In the event of the sale of the Premises by Lessor, Lessee shall not be responsible for the increase in Real Property Taxes.

10.2. **Payment of Taxes.** In addition to Base Rent, Lessee shall pay to Lessor Real Property Tax in an amount equal to (v) the amount of the Real Property Tax bill; (w) minus the increase in the Real Property Taxes in the event of sale of the Premises by Lessor; (x) the sum of v-w divided by 12; (y) times the percentage of the Premises occupied by Licensee; (z) multiplied by the number of months that percentage of occupancy (y) applies. For illustrative purposes only: if (v) equals $140,000, (w) equals $20,000 and (y) equals 6 months at 50% and 6 months at 100% the formula results would be (v) $140,000 – (w) $20,000O = (x) $ 120,000 divided by 12 = (y) $10,000 , then z = $10,000 (y) times 50% times 6 plus $10,000 (y) times 100% times 6 = $30,000 + $60,000 = $90,000 of the Real Property Tax Bill would be paid by the Lessee. Lessee shall be occupying 44% of the Premises from April 1 to August 31, 2020. 100% occupancy of the Premises shall commence on September 1, 2020. Payment to the Lessor by Lessee will be made within 30 days from receipt of an invoice from Lessor accompanied by a copy of the Real Property Tax installment bill. In the event Lessor does not pay the Real Property installment by the due date, Lessee shall not be responsible for any late payment fees. In the event the Real Property Taxes are not paid by Lessor, Lessee may pay the Real Property installment and deduct the monthly Base Rent until fully paid. If any such installment shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such installment shall be prorated.

10.3. **Personal Property Taxes**. Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon Lessee Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. **Utilities and Services**. Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions. Within fifteen days of Lessor's written request, Lessee agrees to deliver to Lessor such information, documents and/or authorization as Lessor needs in order for Lessor to comply with new or existing Applicable Requirements relating to commercial building energy usage, ratings, and/or the reporting thereof.

12. Assignment and Subletting.

12.1. **Lessor's Consent Required**.

12.1.1. Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "**assign** or **assignment**") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent. Notwithstanding the foregoing, Lessor's consent shall not be required for an assignment by Lessee in connection with a merger, consolidation, reorganization, change of control, or sale of all or substantially all of Lessee's assets.

12.1.2. An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1.4, or a non-curable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a non-curable Breach, Lessor may either: (i) terminate this Lease upon 90 days' notice, or (ii) upon 30 days written notice, increase the monthly Base Rent to 105% of the Base Rent then in effect.

12.1.3. Notwithstanding the foregoing, allowing a de minimis portion of the Premises, i.e. 100 square feet or less, to be used by a third-party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2. **Terms and Conditions Applicable to Assignment and Subletting.**

12.2.1. Regardless of Lessor's consent, no assignment or subletting shall : (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

12.2.2. Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

12.2.3. Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

12.2.4. In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

12.2.5. Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 34)

12.2.6. Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed 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 Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

12.3. **Additional Terms and Conditions Applicable to Subletting**. The following terms and conditions shall apply to any subletting by Lessee 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:

12.3.1. Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

12.3.2. In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

12.3.3. Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

12.3.4. No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

12.3.5. Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. **Default; Breach; Remedies.**

13.1. **Default; Breach**. A "**Default**" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "**Breach**" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

13.1.1. The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

13.1.2. The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues fora period of 3 business days following written notice to Lessee. The acceptance by Lessor of a partial payment of Rent or Security Deposit shall not constitute a waiver of any of Lessor's rights, including Lessor's right to recover possession of the Premises.

13.1.3. The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue fora period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

13.1.4. The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate, (v) a requested subordination, (vi) material safety data sheets (MSDS), or (vii) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues fora period of 10 days following written notice to Lessee.

13.1.5. A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease other than those described in subparagraphs 13.1.1, 13.1.2, 13.1.3, or 13.1.4, above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

13.1.6. The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) 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 Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

13.2. **Remedies**. If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 100% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may,

with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

13.2.1. Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate, and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (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 that the Lessee proves could have been reasonably avoided; (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 the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this 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 reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

13.2.2. Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

13.2.3. Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3. **Breach by Lessor.**

13.3.1. **Notice of Breach**. Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 15 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 15 day period and thereafter diligently pursued to completion.

13.3.2. **Performance by Lessee on Behalf of Lessor**. In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent(s) the actual and reasonable cost to perform such cure.

14. **Condemnation**. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the Building is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 30 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee 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 shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. **Estoppel Certificates**.

15.1. Each Party (as "**Responding Party**") shall within 10 days after written notice from the other Party (the "**Requesting Party**") execute, acknowledge and deliver to the Requesting Party a statement in writing plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

15.2. If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been

paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

15.3. If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

16. **Definition of Lessor**. The term "**Lessor**" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

17. **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.

18. **Days**. Unless otherwise specifically indicated to the contrary, the word "**days**" as used in this Lease shall mean and refer to calendar days.

19. **Limitation on Liability**. The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

20. **Time of Essence**. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

21. **No Prior or Other Agreements**. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective.

22. **Notices**.

22.1. **Notice Requirements**. All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 22. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

22.2. **Date of Notice**. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

22.3. **Options**. Notwithstanding the foregoing, in order to exercise any Options (see paragraph 36), the Notice must be sent by Certified Mail (return receipt requested), Express Mail (signature required), courier (signature required) or some other methodology that provides a receipt establishing the date the Notice was received by the Lessor.

23. **Waivers**.

23.1. No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

23.2. The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

23.3. The Parties agree that the terms of this Lease shall govern with regard to all matters related thereto and hereby waive the provisions of any present or future statute to the extent that such statute is inconsistent with this Lease.

24. **No Right to Holdover**. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 120% of the Base Rent applicable immediately preceding the expiration or termination. Holdover Base Rent shall be calculated on monthly basis. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

25. **Cumulative Remedies**. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

26. **Covenants and Conditions; Construction of Agreement**. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

27. **Binding Effect; Choice of Law**. This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located. Signatures to this Lease accomplished by means of electronic signature or similar technology shall be legal and binding.

28. **Subordination; Attornment; Non- Disturbance**.

28.1. **Subordination**. This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "**Security Device**"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "**Lender**") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

28.2. **Attornment**. In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 28.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior Lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior Lessor, or (c) be bound by prepayment of more than one month's rent.

28.3. **Non-Disturbance**. With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "**Non-Disturbance Agreement**") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any preexisting Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non- Disturbance Agreement.

28.4. **Self-Executing**. The agreements contained in this Paragraph 28 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

29. **Attorneys' Fees**. If any Party brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, 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 or resulting Breach ($200 is a reasonable minimum per occurrence for such services and consultation).

30. **Lessor's Access; Showing Premises; Repairs**. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

31. **Auctions**. Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent.

32. **Signs**. Tenant shall have full signage rights (within city code). Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "for sublease" signs, Lessee shall not place any sign upon the Premises without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

33. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing sub-tenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

34. **Consents**. All requests for consent shall be in writing. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall

be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

35. **Quiet Possession**. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

36. **Options**. If Lessee is granted any Option, as defined below, then the following provisions shall apply.

36.1. **Definition**. "**Option**" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

36.2. **Multiple Options**. In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

36.3. **Effect of Default on Options**.

36.3.1. Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), or (iii) during the time Lessee is in Breach of this Lease.

36.3.2. The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 36.3.1.

36.3.3. An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

36.4. **OPTION(S) TO EXTEND**: Lessor hereby grants to Lessee the option to extend the term of this Lease for 3 additional 60-month periods commencing when the prior term expires upon each and all of the following terms and conditions:

36.4.1. In order to exercise an option to extend, Lessee must give written notice of such election to Lessor and Lessor must receive the same at least 6 but not more than 9 months prior to the date that the option period would commence, time being of the essence. If proper notification of the exercise of an option is not given and/or received, such option shall automatically expire. Options (if there are more than one) may only be exercised consecutively.

36.4.2. The provisions of paragraph 36, including those relating to Lessee's Default set forth in paragraph 36.3 of this Lease, are conditions of this Option.

36.4.3. Except for the provisions of this Lease granting an option or options to extend the term, all of the terms and conditions of this Lease except where specifically modified by this option shall apply.

36.4.4. The monthly rent for each month of the option period shall be calculated as follows, using the method indicated below:

36.4.4.1. **Fixed Rental Adjustment(s) (FRA)**: The Base Rent shall be adjusted to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Dates)	The New Base Rent shall be:
February 1, 2026 - January 31, 2027	$81,859.73 per month
February 1, 2027 - January 31, 2028	$84,315.52 per month
February 1, 2028 - January 31, 2029	$86.844.98 per month
February 1, 2029 - January 31, 2030	$89,450.33 per month
February 1, 2030 - January 31, 2031	$92,133.84 per month
February 1, 2031 - January 31, 2032	$94,897.86 per month
February 1, 2032 - January 31, 2033	$97,744.80 per month
February 1, 2033 - January 31, 2034	$100,677.14 per month
February 1, 2034 - January 31, 2035	$103,697.45 per month
February 1, 2035 - January 31, 2036	$106,808.38 per month
February 1, 2036 - January 31, 2037	$110,012.63 per month
February 1, 2037 - January 31, 2038	$113,313.01 per month
February 1, 2038 - January 31, 2039	$116,712.40 per month
February 1, 2039 - January 31, 2040	$120,213.77 per month
February 1, 2040 - January 31, 2041	$123,820.18 per month

36.5. NOTICE: Unless specified otherwise herein, notice of any rental adjustments, other than Fixed Rental Adjustments, shall be made as specified in Paragraph 22 of the Lease.

37. **Security Measures**. Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

38. **Reservations**. Lessor reserves to itself the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, 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 Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

39. **Performance Under Protest**. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have

the right to make payment “under protest” and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid “under protest” within 6months shall be deemed to have waived its right to protest such payment.

40. **Authority; Multiple Parties; Execution**.

40.1. If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

40.2. If this Lease is executed by more than one person or entity as “Lessee”, each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

40.3. This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

41. **Conflict**. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

42. **Offer**. Preparation of this Lease by either Party and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

43. **Amendments**. This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee’s obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

44. **Waiver of Jury Trial**. The Parties hereby waive their respective rights to trial by jury in any action or proceeding involving the property or arising out of this agreement.

45. **Arbitration of Disputes.**

45.1. **ARBITRATION OF DISPUTES**: Except as provided in Paragraph 45.2 below, the Parties agree to resolve any and all claims, disputes or disagreements arising under this Lease, including, but not limited to any matter relating to Lessor’s failure to approve an assignment, sublease or other transfer of Lessee’s interest in the Lease under Paragraph 12 of this Lease, any other defaults by Lessor, or any defaults by Lessee by and through arbitration as provided below and irrevocably waive any and all rights to the contrary. The Parties agree to at all times conduct themselves in strict, full, complete and timely accordance with the terms hereof and that any attempt to circumvent the terms of this Arbitration Agreement shall be absolutely null and void and of no force or effect whatsoever.

45.2. **DISPUTES EXCLUDED FROM ARBITRATION**: The following claims, disputes or disagreements under this Lease are expressly excluded from the arbitration procedures set forth herein: 1. Disputes for which a different resolution determination is specifically set forth in this Lease, 2. All claims by either party which (a) seek anything other than enforcement or determination of rights under this Lease, or (b) are primarily founded upon matters of fraud, willful misconduct, bad faith or any other allegations of tortious action, and seek the award of punitive or exemplary damages, 3. Claims relating to (a) Lessor’s exercise of any unlawful detainer rights pursuant to applicable law or (b) rights or remedies used by Lessor to gain possession of the Premises or terminate Lessee’s right of possession to the Premises, all of which disputes shall be resolved by suit filed in the applicable court of jurisdiction, the decision of which court shall be subject to appeal pursuant to applicable law 4. Any claim or dispute that is within the jurisdiction of the Small Claims Court and 5. All claims arising under Paragraph 36 of this Lease.

45.3. **APPOINTMENT OF AN ARBITRATOR**: All disputes subject to this Arbitration Agreement, shall be determined by binding arbitration as may be otherwise mutually agreed by Lessor and Lessee (the “**Arbitrator**”). In the event that the parties elect to use an arbitrator other than one affiliated with JAMS or AAA then such arbitrator shall be obligated to comply with the Code of Ethics for Arbitrators in Commercial Disputes (see: http://www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTG_003867). Such arbitration shall be initiated by the Parties, or either of them, within 10 days after either party sends written notice (the “**Arbitration Notice**”) of a demand to arbitrate by registered or certified mail to the other party and to the Arbitrator. The Arbitration Notice shall contain a description of the subject matter of the arbitration, the dispute with respect thereto, the amount involved, if any, and the remedy or determination sought. If the Parties have agreed to use JAMS, they may agree on a retired judge from the JAMS panel. If they are unable to agree within 10 days, JAMS will provide a list of 3 available judges and each party may strike 1. The remaining judge (or if there are 2, the 1 selected by JAMS) will serve as the Arbitrator. If the Parties have elected to utilize AAA or some other organization, the Arbitrator shall be selected in accordance with said organization’s rules. In the event the Arbitrator is not selected as provided for above for any reason, the party initiating arbitration shall apply to the appropriate Court for the appointment of a qualified referred judge to act as the Arbitrator.

45.4. **ARBITRATION PROCEDURE**:

45.4.1. **PREHEARING ACTIONS**. The Arbitrator shall schedule a prehearing conference to resolve procedural matters, arrange for the exchange of information, obtain stipulations, and narrow the issues. The Parties will submit proposed discovery schedules to the Arbitrator at the prehearing conference. The scope and duration of discovery will be within the sole discretion of the Arbitrator. The Arbitrator shall have the discretion to order a prehearing exchange of information by the Parties, including, without limitation, production of requested documents, exchange of summaries of testimony of proposed witnesses, and examination by deposition of parties and third-party witnesses. This discretion shall be exercised in favor of discovery reasonable under the circumstances. The Arbitrator shall issue subpoenas and subpoenas duces tecum as provided for in the applicable statutory or case law (e.g., in California Code of Civil Procedure Section 1282.6).

45.4.2. **THE DECISION**. The arbitration shall be conducted in the city or county within which the Premises are located at a reasonably convenient site. Any Party may be represented by counsel or other authorized representative. In rendering a decision(s), the Arbitrator shall determine the rights and obligations of the Parties according to

the substantive laws and the terms and provisions of this Lease. The Arbitrator's decision shall be based on the evidence introduced at the hearing, including all logical and reasonable inferences therefrom. The Arbitrator may make any determination and/or grant any remedy or relief that is just and equitable. The decision must be based on, and accompanied by, a written statement of decision explaining the factual and legal basis for the decision as to each of the principal controverted issues. The decision shall be conclusive and binding, and it may thereafter be confirmed as a judgment by the court of applicable jurisdiction, subject only to challenge on the grounds set forth in the applicable statutory or case law (e.g., in California Code of Civil Procedure Section 1286.2). The validity and enforceability of the Arbitrator's decision is to be determined exclusively by the court of appropriate jurisdiction pursuant to the provisions of this Lease. The Arbitrator may award costs, including without limitation, Arbitrator's fees and costs, attorneys' fees, and expert and witness costs, to the prevailing party, if any, as determined by the Arbitrator in his discretion.

45.4.3. Whenever a matter which has been submitted to arbitration involves a dispute as to whether or not a particular act or omission (other than a failure to pay money) constitutes a Default, the time to commence or cease such action shall be tolled from the date that the Notice of Arbitration is served through and until the date the Arbitrator renders his or her decision. Provided, however, that this provision shall NOT apply in the event that the Arbitrator determines that the Arbitration Notice was prepared in bad faith.

45.4.4. Whenever a dispute arises between the Parties concerning whether or not the failure to make a payment of money constitutes a default, the service of an Arbitration Notice shall NOT toll the time period in which to pay the money. The Party allegedly obligated to pay the money may, however, elect to pay the money "under protest" by accompanying said payment with a written statement setting forth the reasons for such protest. If thereafter, the Arbitrator determines that the Party who received said money was not entitled to such payment, said money shall be promptly returned to the Party who paid such money under protest together with Interest thereon as defined in Paragraph 13.4. If a Party makes a payment "under protest" but no Notice of Arbitration is filed within thirty days, then such protest shall be deemed waived. (See also Paragraph 38 or 39)

46. Accessibility; Americans with Disabilities Act.

46.1. The Premises: have not undergone an inspection by a Certified Access Specialist (CASp). Note: A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or Lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the Lessee or tenant, if requested by the Lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction related accessibility standards within the premises.

46.2. Since compliance with the Americans with Disabilities Act (ADA) and other state and local accessibility statutes are dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in compliance with ADA or other accessibility statutes, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

47. **Right of First Refusal to Purchase**.

47.1. Lessor shall not, at any time prior to the expiration of the term of this Lease, or any extension thereof, sell the Premises, or any interest therein, without first giving written notice thereof to Lessee, which notice is hereinafter referred to as "**Notice of Sale**".

47.2. The Notice of Sale shall include the exact and complete terms of the proposed sale and shall have attached thereto a copy of the bona fide offer and counteroffer, if any, duly executed by both Lessor and the prospective purchaser.

47.3. For a period of 12 calendar days after receipt by Lessee of the Notice of Sale, Lessee shall have the right to give written notice to Lessor of Lessee's exercise of Lessee's right to purchase the Premises, the interest therein proposed to be sold, or the property of which the Premises are a part, on the same terms, price and conditions as set forth in the Notice of Sale. In the event that Lessor does not receive written notice of Lessee's exercise of the right herein granted within said 12 day period, there shall be a conclusive presumption that Lessee has elected NOT to exercise Lessee's right hereunder, and Lessor may complete the sale to the prospective purchaser, on the same terms set forth in the Notice of Sale.

47.4. In the event that Lessee declines to exercise its right of first refusal after receipt of the Notice of Sale, and, thereafter, Lessor and the prospective purchaser modify by more than 5%, (i) the sales price, or (ii) the amount of down payment, or if there is a material change in any seller financing offered, or in the event that the sale is not consummated within 180 days of the date of the Notice of Sale, then Lessee's right of first refusal shall reapply to said transaction.

47.5. In the event that Lessee declines to exercise its right of first refusal after receipt of the Notice of Sale, and, thereafter, the proposed transfer or sale is not consummated, the Lessee's right of first refusal shall apply to any subsequent transaction. If, however, said transfer or sale is, in fact, completed, then said right shall be extinguished and shall not apply to any subsequent transactions.

47.6. Notwithstanding the above, this right of first refusal is intended to apply only to voluntary transfers involving third party transferees. This right of first refusal shall not, therefore, apply: where the Premises are taken by eminent domain or sold under threat of condemnation, to intra-family or intra-ownership transfers, to transfers by Lessor to a trust created by Less or, if Lessor is a trust, to transfers to a trust beneficiary.

47.7. NOTE: This right of first refusal cannot be exercised: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the right of first refusal.

48. **Tenant Specific Improvements**. Tenant, at Tenant's expense, may build out and/or modify existing improvements as reflected in the preliminary plan attached as EXHIBIT B, including adding bathrooms and upgrading the power. Any request

by Tenant to build out additional improvements shall not be unreasonably withheld by Landlord. All work shall be completed by a licensed and insured contractor as well as properly permitted by all city and local government agencies.

49. **Parking**. Tenant shall have complete access to all parking spaces on the main lot throughout the lease term and option periods. Parking on the separate side lot (adjacent to the left side of Premises) is not included.

50. **Chemicals and Materials**. The chemicals and items below will be used in the building: dynalene, isopropyl alcohol (IPA and sterile 70% and IPA 99%), liquid nitrogen (tank), silicone primer, reagent alcohol, sodium dodecyl sulfate, waste solvent.

51. **Lessee's Equipment**. Per Paragraph 7.4 of this Lease, below are the items that shall remain as the possession of the Lessee and removed upon Lease expiration and Lessee vacancy: generator, humidifier and controller, chiller, security system, IT servers and equipment, appliances, any Lessee installed compressor, and clean room equipment.

52. **Security Monitor**. Lessee shall maintain a building alarm solution to protect the perimeter of the building and monitor the sprinkler system.

53. **Prior Lease**. The prior lease entered into between the Parties dated as of December 26, 2017, as amended from time to time (the "**Prior Lease**"), shall remain in full force and effect up through March 31, 2020. As of April 1, 2020, the Prior Lease shall be superseded in its entirety by this Lease dated as of March 27, 2020, and the Prior Lease shall have no further force or effect.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE 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 LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The Parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: Vista	Executed at: Irvine CA
On: 3/27/2020	On: 3/27/2020
By LESSOR: /s/ Rainer Moegling	BY LESSEE: /s/ Ron Kurtz
Pacific Park Investments, Inc.	RxSight, Inc.
Rainer Moegling, CEO	Ron Kurtz, CEO

Orchard Roofing & Waterproofing Consultants

March 5, 2020 (Revised 3/11/20)

RxSIGHT Inc.
c/o BURTON CONSTRUCTION, INC.
Attn: Paul Burton
501 N. Smith St., Suite 101
Corona, California 92880

Re: Commercial Building - 75 Columbia, Aliso Viejo, CA 92656
Subject: Roof Evaluation Report

1.0 SUMMARY

1.1 Retention:

Orchard Roofing & Waterproofing Consultants was retained by Burton Construction, Inc., through the office of Paul Burton on or about Monday, March 2nd, 2020 to provide roofing and waterproofing consulting services for this assignment.

1.2 Assignment:

Perform a visual inspection of the interior and roof of the commercial building located at 75 Columbia St., Aliso Viejo, California (the project) in order to evaluate the current conditions of the roof system and provide recommendations for repair/replacement as needed.

1.3 Dispatch:

ORWC Consultants Mike Madson and Alan Ice were dispatched to the subject property on the morning of Thursday, March 5th, 2020 to perform the field inspection portion of this report.

1.4 Project Location:

The project is located in close proximity to the major intersection of Aliso Viejo Parkway and Aliso Creek Road in Aliso Viejo, California.

1.5 Project Description:

The commercial building is a one and two story combination office/warehouse building with concrete tilt-up walls and covered with a low slope roof system. **Ref. Photos 1-8**

1.6 Background:

1.6.1 Upon our arrival on site we were met by Paul Burton and after introductions he reported that:

1.6.1.1 He believes the building was built in the late 1980s.

1.6.1.2 RXSight leases approximately half of the building but now wants to occupy the entire building and they need to know the condition of the roof.

1.6.1.3 There are a few leaks at site specific locations in the interior.

1.6.1.4 A few A/C units were recently added on the roof.

1.7 Findings:

1.7.1 Interior:

1.7.1.1 A visual inspection of the interior shows water stains on some of the drop ceilings. **Ref. Photos 56-59**

1.7.1.2 The bottom of the roof deck has batt insulation that is in fair to good condition, but does need minor repairs. **Ref. Photo 59**

1.7.1.3 The roof deck is approximate ½" thick 5-ply plywood. **Ref. Photo 54**

1.7.2 Roof:

1.7.2.1 A visual inspection of the roof shows the assembly consists of a hot asphalt applied built up roof membrane (BUR) with cap sheet surfacing and a restoration coating with polyester fabric and white Title 24 coating. **Ref. Photos 3-15**

1.7.2.2 Drainage is provided by roof slope from the center of the building towards internal drains and adjacent overflows in sumps at the front of the building, or internal drain and adjacent overflow scupper at the back of the building. **Ref. Photos 18, 26-27, 42-43**

1.7.2.3 There is major ponding in a few locations on the front half of the building approximately 30ft. upslope of the parapet wall at the roof break transition. **Ref. Photos 22, 25, 34**

1.7.2.4 There is minor ponding at the back/lower roof elevation approximately 30ft. up from the back parapet wall and upslope of the roof slope change. **Ref. Photos 36, 39, 44**

1.7.2.5 There are several curb mounted HVAC units with direct drop plenums and counter flashings around the perimeter. **Ref. Photos 5-8, 10, 16-17, 25**

1.7.2.6 There are several A/C units set on 4 x 4 wood blocks with side discharge and side plenums.
Ref. Photos 23-24, 26

1.7.2.7 The restoration coating is showing evidence of cracks, splits, alligatoring, blistering and peeling and has reached the end of its serviceable lift. **Ref. Photos 13-15, 21, 24, 33, 53**

1.7.2.8 There is point load damage throughout the roof and evidence of roof repairs at site specific locations.
Ref. Photos 16-17, 20, 39, 41, 43, 47, 50

1.7.2.9 The roof is terminated with a surface mounted counter flashing to the concrete parapet walls.
Ref. Photos 11-12, 18

1.7.2.10 At the front parapet wall over the entrance, the interior wall is covered with fiberglass and asphalt 3-tab shingles that are lifting and curling due to age, wear and tear. **Ref. Photos 6-7, 28-31**

1.8 Opinions & Conclusions:

1.8.1 The in-service roof has reached the end of its cost effective serviceable life and should be either removed and replaced with new, or have a recover membrane installed following minor deck repairs to some of the major ponding areas.

The roof measures approximately 37,000 sf

1.9 Recommendations:

1.9.1 Review the lease for the building to determine if the owner or the tenant is responsible for roof membrane repair/ replacement.

1.9.2 The existing membrane should be removed so the underlying roof deck can be corrected where there are low spots to resolve the ponding water issues.

1.9.3 The roof system is a candidate for a second Restoration Coating, so should it be determined that roof membrane replacement is not feasible at this time then this is a viable option.

1.9.4 A second option would be a single ply re-cover membrane.

1.9.5 Regardless of the type of repair, a specification should be developed to outline the scope of work, guarantee requirements, terms and conditions.

1.9.6 An allowance of approximately $5.75 sf should be allocated for removal and replacement (R&R) of the roof membrane, $4.75 sf for single ply recover and $3.50 sf for a restoration coating.

Removal and replacement entails removing the existing membrane, repairing the roof deck and installing a new 20-year type single ply or asphalt based built-up membrane, which is similar to the existing system. This option includes replacement of the sheet metal flashings.

Recover entails cleaning the surface of the existing membrane and installing a mechanically attached single ply membrane directly over the top. Most of the sheet metal flashings would be replaced.

Restoration entails the cleaning of the existing membrane and the spray application of emulsified asphalt that is reinforced with the embedment of one (1) or two (2) plies of polyester fabric and finished with a White Acrylic top coat. Most of the

sheet metal flashings will be left in place and covered with the coatings.

The approximate costs for each option are:

- R&R: $5.75 x 37,000 sf = $212,750 + 15% = $244,663
- Recover: @ $4.75 = $175,750 + 15%= $202,113
- Restoration: @ $3.50 = $129,500 + 15% = $148,925

1.9.7 The Removal and Replacement option is the best repair and allows for permanent correction of the roof deck and the installation of a 20-year type membrane that will only require minimal maintenance over the years.

The re-cover option is a good repair and eliminates an open roof during the repair project. This system is also a 20-year type membrane, but will require more maintenance over the years and leaks are harder to locate.

The restoration coating is also a good repair that can have a 20- year serviceable life, provided there is an annual maintenance program and it will require a new Top Coat to be applied every 7 to 10 years. The new Top Coat (maintenance coat) will cost approximately $50,000 per application.

1.9.8 By the end of the service life all three (3) options will have cost about the same due to the added maintenance/ service costs and each option has some benefits and drawbacks that are important considerations.

Example: If the facility is to be used to store construction equipment then an occasional roof leak is not as big an issue as if the facility houses a clean room.

Should you agree with these recommendations, ORWC would be pleased to develop Performance Specifications for the system that is selected.

The conditions that are reported herein are based on the findings that were observed during the Thursday, March 5, 2020 site inspection. All representations are believed to be true and correct and are based upon Industry Standards and the experience of this consultant.

Should you have questions regarding the information contained herein, or require our services further, please do not hesitate to contact us at (714) 835-4672.

Thank you for allowing ORWC to be of assistance in this matter.

Respectfully submitted,

ORCHARD ROOFING & WATERPROOFING CONSULTANTS

Mike Madson
Consultant

75 Columbia 3-5-20 rpt.mm

Photo 1

Photo 2


Photo 3
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Photo 13

Photo 14

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Photo 20


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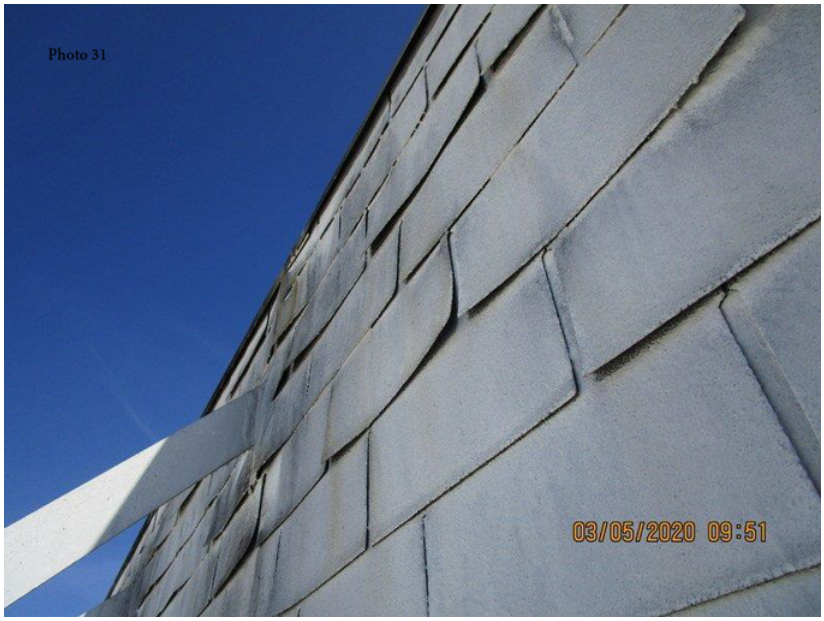
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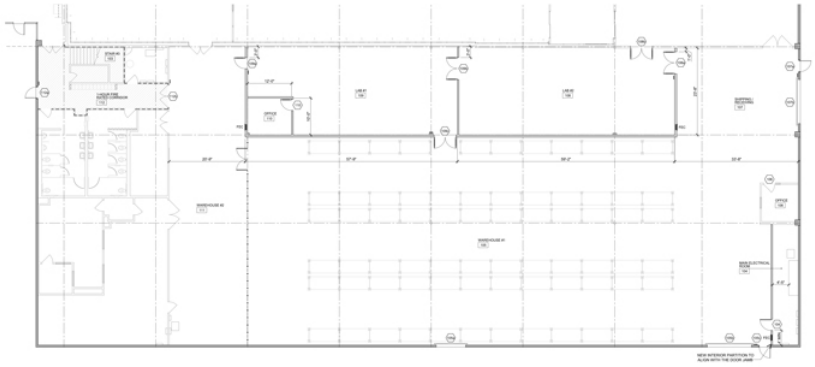

AIRCRE

STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE - NET
(DO NOT USE THIS FORM FOR MULTI-TENANT BUILDINGS)

1. Basic Provisions ("Basic Provisions").

1.1 **Parties.** This Lease **("Lease"),** dated for reference purposes only January 10, 2018. is made by and between Clifford D, Downs ("**Lessor**") and RxSight, Inc., a California corporation ("**Lessee**"), (collectively the "**Parties**," or individually a **"Party").**

1.2 **Premises:** That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known as (street address, city, state, zip): 5 Columbia, Aliso Viejo, CA 92656 **("Premises")**. The Premises are located in the County of Orange, and are generally described as (describe briefly the nature of the property and, if applicable, the **"Project,"** if the property is located within a Project): an approximate 19,680 square foot free-standing industrial building. (See also Paragraph 2)

1.3 **Term:** Five (5) years and zero (0) months **("Original Term")** commencing March 1, 2018 **("Commencement Date")** and ending February 28, 2023 **("Expiration Date").** (See also Paragraph 3)

1.4 **Early Possession:** If the Premises are available Lessee may have non-exclusive possession of the Premises commencing February 1, 2018 **("Early Possession Date").** (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** $22,238.00 per month **("Base Rent"),** payable on the first (1st) day of each month commencing March 1, 2018. (See also Paragraph 4)

☒ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 51.

1.6 **Base Rent and Other Monies Paid Upon Execution:**

(a) **Base Rent:** $22,238.00 for the period March 1 - 31, 2018.

(b) **Security Deposit:** $25,269.12 **("Security Deposit").** (See also Paragraph 5)

(c) **Association Fees:** $225.77 for the period March 1-31, 2018.

(d) **Other:** $1,494.74 for March 1-31, 2018 (for Property Tax).

(e) **Total Due Upon Execution of this Lease:** $49,227.63 .

1.7 **Agreed Use:** General office, distribution, research and development and manufacture of optical products . (See also Paragraph 6)

1.8 **Insuring Party.** Lessor is the **"Insuring Party"** unless otherwise stated herein. (See also Paragraph 8)

1.9 **Real Estate Brokers.** (See also Paragraph 15 and 25)

(a) **Representation:** The following real estate brokers (the **"Brokers")** and brokerage relationships exist in this transaction (check applicable boxes):

☒ Pacific Realty Consultants represents Lessor exclusively **("Lessor's Broker");**

☒ Lee & Associates, Inc. - Irvine (LaFerrara) represents Lessee exclusively **("Lessee's Broker");** or

☐ represents both Lessor and Lessee **("Dual Agency").**

(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to Lee & Associates the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of or 3.5 % of the total Base Rent) for the brokerage services rendered by the Brokers.

1.10 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by N/A **("Guarantor").** (See also Paragraph 37)

1.11 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

☒ an Addendum consisting of Paragraphs 51 through 57;

☐ a plot plan depicting the Premises;

☐ a current set of the Rules and Regulations;

☐ a Work Letter;

☒ other (specify): Option (s) to Extend (Paragraph 58); Arbitration Agreement (Paragraph 59); Exhibit "A" - Existing Floor Plan; Exhibit "B" - Proposed Improvements; Disclosure Regarding Real Estate Agency Relationship.

2. Premises.

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **NOTE: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver the Premises to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs **("Start Date"),** and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("**HVAC**"), loading doors, sump pumps, if any, and all other such elements in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of any buildings on the Premises (the **"Building")** shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with said warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Building. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense. Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances **("Applicable Requirements")** that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning, are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building **("Capital Expenditure"),** Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital Expenditure is required during

the last 6 months of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and an amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to l/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay Interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not, however, have any right to terminate this Lease.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 **Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

3. Term.

3.1 **Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 **Early Possession.** Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 **Delay In Possession.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. Rent.

4.1 **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent **("Rent").**

4.2 **Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of $25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent, Insurance and Real Property Taxes, and any remaining amount to any other outstanding charges or costs.

4.3 **Association Fees.** In addition to the Base Rent, Lessee shall pay to Lessor each month an amount equal to any owner's association or condominium fees levied or assessed against the Premises. Said monies shall be paid at the same time and in the same manner as the Base Rent.

5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease. THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.

6. Use.

6.1 **Use**. Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will

not impair the structural integrity of the improvements on the premises or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Premises. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 **Hazardous Substances.**

(a) **Reportable Uses Require Consent.** The term **"Hazardous Substance"** as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. **"Reportable Use"** shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. **No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.**

(e) **Lessor Indemnification.** Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13). Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent ~~g~~ive written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the difference of the additional amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent**,** Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall, within two (2) days after discovery, give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises. In addition, Lessee shall provide copies of all relevant material safety data sheets **(MSDS)** to Lessor within 10 days of the receipt of a written request therefor. In addition, Lessee shall provide Lessor with copies of its business license, certificate of occupancy and/or any similar document within 10 days of the receipt of a written request therefor.

6.4 **Inspection; Compliance.** Lessor and Lessor's **"Lender"** (as defined in Paragraph 30) and consultants authorized by Lessor shall have the right to enter into Premises at anytime, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting and/or testing the condition of the Premises and/or for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (**MSDS**) to Lessor within 10 days of the receipt of a written request therefor. Lessee acknowledges that any failure on its part to allow such inspections or testing will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to allow such inspections and/or testing in a timely fashion the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or $100, whichever is greater for the remainder to the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to allow such inspection and/or testing. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to such failure nor prevent the exercise of any of the other rights and remedies granted hereunder.

7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.

7.1 **Lessee's Obligations.**

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment,

electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), foundations, ceilings, roofs, roof drainage systems, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall, during the term of this Lease, keep the exterior appearance of the Building in a first-class condition (including, e.g. graffiti removal) consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity, including, when necessary, the exterior repainting of the Building.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler, and pressure vessels, (iii) fire extinguishing systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, (v) roof covering and drains, and (vi) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (ie. l/144th of the cost per month). Lessee shall pay Interest on the unamortized balance but may prepay its obligation at anytime.

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 9 (Damage or Destruction) and 14 (Condemnation), it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of the Lessee. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises.

7.3 **Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions.** The term **"Utility Installations"** refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term **"Trade Fixtures"** shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. **"Lessee Owned Alterations and/or Utility Installations"** are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require. Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 **Ownership; Removal; Surrender; and Restoration.**

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at anytime of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if the Lessee occupies the Premises for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity.

8.1 **Payment For Insurance.** Lessee shall pay for all insurance required under Paragraph 8 except to the extent of the cost attributable to liability insurance carried by Lessor under Paragraph 8.2(b) in excess of $3,000,000.00 per occurrence. Premiums for policy periods commencing prior to or extending beyond the Lease term shall be prorated to correspond to the Lease term. Payment shall be made by Lessee to Lessor within 10 days following receipt of an invoice.

8.2 **Liability Insurance.**

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon 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 $1,000,000 per occurrence with an annual aggregate of not less than $3,000,000,00. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. 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 Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

8.3 **Property Insurance - Building, Improvements and Rental Value.**

(a) **Building and Improvements.** The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor, with loss payable to Lessor,

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any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed $5,000 per occurrence, and Lessee shall be liable for such deductible amount in the event of an Insured Loss.

(b) **Rental Value.** The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period. Lessee shall be liable for any deductible amount in the event of such loss.

(c) **Adjacent Premises.** If the Premises are part of a larger building, or of a group of buildings owned by Lessor which are adjacent to the Premises, the Lessee shall pay for any increase in the premiums for the property insurance of such building or buildings if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

8.4 **Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.**

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed $10,000.00 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 **Insurance Policies.** Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may increase his liability insurance coverage and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 **Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 **Indemnity.** Except for Lessor's gross negligence or willful misconduct, or any claim relating to hazardous Or toxic materials except to the extent such claim arises out of a breach by Lessee, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, a Breach of the Lease by Lessee and/or the use and/or occupancy of the Premises and/or Project by Lessee and/or by Lessee's employees, contractors or invitees. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified. Except for Lessee's gross negligence or willful misconduct or any claim relating to hazardous or toxic materials to the extent such claim arises out of a breach by Lessee, Lessor shall indemnify, protect, defend, and hold harmless Lessee and its agents, Lessee's master or ground lessee, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, a Breach of the Lease by Lessor and/or the use and/or occupancy' of the Premises and/or Project by' Lessor and/or by Lessor's employees, contractors or invitees. If any' action or proceeding is brought against Lessee by reason of any of the foregoing matters, Lessor shall upon notice defend the same at Lessor's expense by' counsel reasonably' satisfactory to Lessee and Lessee shall cooperate with Lessor in such defense. Lessee need not have first paid any such claim in order to be defended or indemnified.

8.8 **Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 **Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or $100. whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. Damage or Destruction.

9.1 **Definitions.**

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is $10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 **Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 **Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 **Damage Near End of Term.** If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 **Abatement of Rent; Lessee's Remedies.**

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue. Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 **Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. Real Property Taxes.

10.1 **Definition.** As used herein, the term **"Real Property Taxes"** shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises or the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Building address. Real Property Taxes shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Premises, and (ii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

10.2 **Payment of Taxes.** In addition to Base Rent, Lessee shall pay to Lessor an amount equal to the Real Property Tax installment due at least 20 days prior to the applicable delinquency date. If any such installment shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such installment shall be prorated. In the event Lessee incurs a late charge on any Rent payment, Lessor may estimate the current Real Property Taxes, and require that such taxes be paid in advance to Lessor by Lessee monthly in advance with the payment of the Base Rent. Such monthly payments shall be an amount equal to the amount of the estimated installment of taxes divided by the number of months remaining before the month in which said installment becomes delinquent. When the actual amount of the applicable tax bill is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable taxes. If the amount collected by Lessor is insufficient to pay such Real Property Taxes when due, Lessee shall pay Lessor, upon demand, such additional sum as is necessary. Advance payments may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any such advance payments may be treated by Lessor as an additional Security Deposit.

10.3 **Joint Assessment.** If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be conclusively determined by Lessor from the respective valuations assigned in the assessor's worksheets or such other information as may be reasonably available.

10.4 **Personal Property Taxes.** Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon Lessee Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. Utilities and Services. Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered or billed to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered or billed. There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental requestor directions.

12. Assignment and Subletting.

12.1 **Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, **"assign or assignment")** or sublet all or any part, of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

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Lessor shall expressly consent an assignment by Lessee if there is a merger, consolidation, reorganization, or change of control of Lessee.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 **Terms and Conditions Applicable to Assignment and Subletting.**

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of $500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed 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 Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 **Additional Terms and Conditions Applicable to Subletting.** The following terms and conditions shall apply to any subletting by Lessee 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) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. Default; Breach; Remedies.

13.1 **Default; Breach.** A **"Default"** is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A **"Breach"** is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 42, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40 here of, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) 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 Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

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(h) If the performance of Lessee's obligations under this Lease is 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 basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 **Remedies.** If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (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 that the Lessee proves could have been reasonably avoided; (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 the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this 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 reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 **Inducement Recapture.** Any agreement for free or abated rent or other charges, the cost of tenant improvements for Lessee paid for or performed by Lessor, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as **"Inducement Provisions,"** shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 **Late Charges.** Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or $100, whichever is greater. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 **Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest **("Interest")** charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 **Breach by Lessor.**

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided, however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively **"Condemnation"),** this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the Building, or more than 25% of that portion of the Premises not occupied by any building, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee 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 shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. Brokerage Fees.

15.1 **Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.9 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires any rights to the Premises or other premises owned by Lessor and located within the same Project, if any, within which the Premisesis located, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a brokerage fee to be determined at that time.

15.2 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.9,15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

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15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. Estoppel Certificates.

(a) Each Party (as "**Responding Party**") shall within 10 days after written notice from the other Party (the "**Requesting Party**") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "**Estoppel Certificate**" form published BY AIR CRE, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or $100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. Definition of Lessor. The term "**Lessor**" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. 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.

19. Days. Unless otherwise specifically indicated to the contrary, the word "**days**" as used in this Lease shall mean and refer to calendar days.

20. Limitation on Liability. The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. No Prior or Other Agreements; Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. Notices.

23.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. Waivers.

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. Disclosures Regarding The Nature of a Real Estate Agency Relationship.

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) *Lessor's Agent.* A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: *To the Lessor:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. *To the Lessee and the Lessor:* (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) *Lessee's Agent.* An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. *To the Lessee:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. *To the Lessee and the Lessor:* (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) *Agent Representing Both Lessor and Lessee.* A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee.

In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. (b) Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated

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in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. No Right To Holdover. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Holdover Base Rent shall be calculated on monthly basis. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. Covenants and Conditions; Construction of Agreement. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. Binding Effect; Choice of Law. This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. Subordination; Attornment; Non-Disturbance.

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, **"Security Device"),** now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as **"Lender")** shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a **"Non-Disturbance Agreement")** from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. Attorneys' Fees. If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, **"Prevailing Party"** shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, 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 or resulting Breach ($200 is a reasonable minimum per occurrence for such services and consultation).

32. Lessor's Access; Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. Auctions. Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. Signs. Lessor may place on the Premises ordinary "For Sale" signs at anytime and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "for sublease" signs, Lessee shall not place any sign upon the Premises without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. Termination; Merger. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue anyone or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. Consents. All requests for consent shall be in writing. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. Guarantor.

37.1 **Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published BY AIR CRE, and each such Guarantor shall have the same obligations as Lessee under this Lease.

INITIALS

INITIALS

37.2 Default. It shall constitute Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. Options. If Lessee is granted any Option, as defined below, then the following provisions shall apply.

39.1 **Definition. "Option"** shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 **Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 **Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 **Effect of Default on Options**.

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. Multiple Buildings. If the Premises are a part of a group of buildings controlled by Lessor, Lessee agrees that it will abide by and conform to all reasonable rules and regulations which Lessor may make from time to time for the management, safety, and care of said properties, including the care and cleanliness of the grounds and including the parking, loading and unloading of vehicles, and to cause its employees, suppliers, shippers, customers, contractors and invitees to soabide and conform. Lessee also agrees to pay its fair share of common expenses incurred in connection with such rules and regulations.

41. Security Measures. Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

42. Reservations. Lessor reserves to itself the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, 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 Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

43. Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

44. Authority; Multiple Parties; Execution.

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that anyone of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease maybe executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

45. Conflict. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. Offer. Preparation of this Lease by either Party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

47. Amendments. This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

48. Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

49. Arbitration of Disputes. An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease is ☒ is not ☐ attached to this Lease.

50. Accessibility; Americans with Disabilities Act.

(a) The Premises:

☒ have not undergone an inspection by a Certified Access Specialist (CASp). Note: A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

☐ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code $55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential.

☐ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code $55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential except as necessary to complete repairs and corrections of violations of construction related accessibility standards.

In the event that the Premises have been issued an inspection report by a CASp the Lessor shall provide a copy of the disability access inspection certificate to Lessee within? days of the execution of this Lease.

(b) Since compliance with the Americans with Disabilities Act (ADA) and other state and local accessibility statutes are dependent upon Lessee's specific

use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in compliance with ADA or other accessibility statutes, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE 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 LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY AIR CRE OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at:	Newport Beach	Executed at:	Aliso Viejo, CA
On:	Feb 14, 2018	On:	February 8, 2018
By LESSOR:		**By LESSEE**	
Clifford D. Downs		RxSinght, Inc., a Californoia corporation	
By:	/s/ Clifford D. Downs , DDS	By:	/s/ Ron Kurtz
Name Printed:		Name Printed:	Ron Kurtz
Title:		Title:	CEO
Phone:		Phone:	
Fax:		Fax:	
Email:		Email:	
By:		By:	
Name Printed:		Name Printed:	
Title:		Title:	
Phone:		Phone:	
Fax:		Fax:	
Email:		Email:	
Address:		Address:	
Federal ID No.:		Federal ID No.:	
BROKER		**BROKER**	
Pacific Realty Consultants		Lee & Associates, Inc. - Irvine	
Attn:	David Massie	Attn:	Guy LaFerrara
Title:		Title:	Senior Vice President
Address:	P.O. Box 2881, Costa Mesa, CA 92628	Address:	9838 Research Drive, Irvine, CA 92618
Phone:	949-702 - 4334	Phone:	949-727-1200
Fax:		Fax:	949-727-1299
Email:		Email:	
Federal ID No.:		Federal ID No.:	
Broker/Agent BRE License#:	00950939	Broker/Agent BRE License#:	01012355

ADDENDUM TO
STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE - NET
DATED JANUARY 10, 2018
by and between
CLIFFORD D. DOWNS (LESSOR)
and
RxSIGHT, INC., A CALIFORNIA CORPORATION (LESSEE)

This Addendum ("**Addendum**") to Standard Industrial/Commercial Single-Tenant Lease – Net dated as of January 10, 2018, amends, modified, supplements and supersedes that certain Standard Industrial/Commercial Single-Tenant Lease — Net of even date herewith (the "**Contract**") by and between CLIFFORD D. DOWNS ("**Lessor**") and RxSIGHT, INC., A CALIFORNIA CORPORATION ("**Lessee**") for the Premises located at 5 Columbia, Aliso Viejo, California 92656. This Addendum and the Contract are hereinafter collectively referred to as the "**Lease**." Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Contract.

51. Monthly Rent. The monthly base rent shall be as follows:

Months	Monthly Rental Rate
01	$22,238.00 per month
02-09	$ 11,119.20 per month
10-12	$22,238.00 per month
13-24	$22,966.56 per month
25-36	$23,714.40 per month
37-48	$24,481.20 per month
49-60	$25,269.12 per month

In addition to the base rent, Lessee shall be responsible for it's the triple net (NNN) expenses currently totaling $1,720.51 per month for Property taxes and Association and any other related expenses per the Lease Agreement.

52. Condition of Premises. Condition of the Premises is "As Is" with the 10 day inspection period and Lessee responsible for all improvements, permits, approvals, and any ADA requirements. As far as the Lessor knows, all systems are working but will not warranty anything beyond an "as is condition".

53. Lessee Specific Improvements. Lessee shall lease the building in its "As-ls" condition. Lessee at Lessee's expense may buildout and/or modify some existing improvements including adding bathrooms, and upgrading the power with Lessor's prior approval. Lessee shall provide a preliminary plan and proposed facility modifications letter (see attached Exhibit "B") for Lessor's review. The request by Lessee to build out improvements shall not be unreasonably withheld by Lessor. All work shall be completed by a licensed and insured contractor as well as properly permitted by all city and local government agencies

54. Option to Extend: Attached.

55. Arbitration Agreement. Attached.

56. Lessee's Property. Per Paragraph 74 of this lease, below are the items that shall remain as the possessions of the Lessee and removed upon lease expiration and Lessee vacancy:

Security System
IT Servers and Equipment
Appliances
Compressor

AGREED & ACCEPTED:

LESSOR: **CLIFFORD D. DOWNS**

By: /s/ Clifford D. Downs, DDS
Name: Clifford D. Downs, DDS
Title: Owner

LESSEE: **RxSIGHT, INC., a California corporation**

By: /s/ Ron Kurtz
Name: Ron Kurtz
Title: President & CEO

AIRCRE

OPTION(S) TO EXTEND
STANDARD LEASE ADDENDUM

Dated:	January 20, 2018
By and Between	
Lessor:	Clifford D. Downs
Lessee:	RxSight, Inc., a California corporation
Property Address:	5 Columbia, Aliso Viejo, CA 92656 (street address, city, state, zip)

Paragraph: 58

A. OPTION(S) TO EXTEND:

Lessor hereby grants to Lessee the option to extend the term of this Lease for two (2) additional sixty (60) month period(s) commencing when the prior term expires upon each and all of the following terms and conditions:

(i) In order to exercise an option to extend, Lessee must give written notice of such election to Lessor and Lessor must receive the same at least six (6) but not more than nine (9) months prior to the date that the option period would commence, time being of the essence. If proper notification of the exercise of an option is not given and/or received, such option shall automatically expire. Options (if there are more than one) may only be exercised consecutively.

(ii) The provisions of paragraph 39, including those relating to Lessee's Default set forth in paragraph 39.4 of this Lease, are conditions of this Option.

(iii) Except for the provisions of this Lease granting an option or options to extend the term, all of the terms and conditions of this Lease except where specifically modified by this option shall apply.

(iv) This Option is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and without the intention of thereafter assigning or subletting.

(v) The monthly rent for each month of the option period shall be calculated as follows, using the method(s) indicated below:

(Check Method(s) to be Used and Fill in Appropriately)

☐ **I. Cost of Living Adjustment(s) (COLA)**

a. On (Fill in COLA Dates): the Base Rent shall be adjusted by the change, if any, from the Base Month specified below, in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for (select one): ☐ CPI W (Urban Wage Earners and Clerical Workers) or ☐ CPI U (All Urban Consumers), for (Fill in Urban Area): . All Items (1982-1984 = 100), herein referred to as "CPI".

b. The monthly Base Rent payable in accordance with paragraph A.I.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.I.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one): ☐ the first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or ☐ (Fill in Other "Base Month"): . The sum so calculated shall constitute the new monthly Base Rent hereunder, but in no event, shall any such new monthly Base Rent be less than the Base Rent payable for the month immediately preceding the rent adjustment.

c. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. In the event that the Parties cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said Association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitration shall be paid equally by the Parties.

☒ **II. Market Rental Value Adjustment(s) (MRV)**

a. On (Fill in MRV Adjustment Date(s)) March 1, 2023 and March 1, 2028 the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:

1) Four months prior to each Market Rental Value Adjustment Date described above, the Parties shall attempt to agree upon what the new MRV will be on the adjustment date. If agreement cannot be reached, within thirty days, then:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30 days. Any associated costs will be split equally between the Parties, or

(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in writing, to arbitration in accordance with the following provisions:

(i) Within 15 days thereafter, Lessor and Lessee shall each select an independent third party ☐ appraiser or ☒ broker ("Consultant" - check one) of their choice to act as an arbitrator (Note: the parties may not select either of the Brokers that was involved in negotiating the Lease). The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

(ii) The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, ie. the one that is NOT the closest to the actual MRV.

2) When determining MRV, the Lessor, Lessee and Consultants shall consider the terms of comparable market transactions which shall include, but not limited to, rent, rental adjustments, abated rent, lease term and financial condition of tenants.

3) Notwithstanding the foregoing, the new Base Rent shall not be less than the rent payable for the month immediately preceding the rent adjustment.

b. Upon the establishment of each New Market Rental Value:

1) the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and

2) the first month of each Market Rental Value term shall become the new "Base Month" for the purpose of calculating any further Adjustments.

☐ **III. Fixed Rental Adjustment(s) (FRA)**

The Base Rent shall be increased to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Date(s)):	The New Base Rent shall be:
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

☐ **IV. Initial Term Adjustments**

The formula used to calculate adjustments to the Base Rate during the original Term of the Lease shall continue to be used during the extended term.

B. NOTICE:

Unless specified otherwise herein, notice of any rental adjustments, other than Fixed Rental Adjustments, shall be made as specified in paragraph 23 of the Lease.

C. BROKER'S FEE:

The Brokers shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the Lease or if applicable, paragraph 9 of the Sublease.

INITIALS INITIALS

AIRCRE

ARBITRATION AGREEMENT
STANDARD LEASE ADDENDUM

Dated:	January 10, 2018
By and Between	
Lessor:	Clifford D. Downs
Lessee:	RxSight, Inc., a California corporation
Property Address:	5 Columbia, Aliso Viejo, CA 92656 (street address, city, state, zip)

Paragraph: 59

A. **ARBITRATION OF DISPUTES:**

Except as provided in Paragraph B below, the Parties agree to resolve any and all claims, disputes or disagreements arising under this Lease, including, but not limited to any matter relating to Lessor's failure to approve an assignment, sublease or other transfer of Lessee's interest in the Lease under Paragraph 12 of this Lease, any other defaults by Lessor, or any defaults by Lessee by and through arbitration as provided below and irrevocably waive any and all rights to the contrary. The Parties agree to at all times conduct themselves in strict, full, complete and timely accordance with the terms hereof and that any attempt to circumvent the terms of this Arbitration Agreement shall be absolutely null and void and of no force or effect whatsoever.

B. **DISPUTES EXCLUDED FROM ARBITRATION**:

The following claims, disputes or disagreements under this Lease are expressly excluded from the arbitration procedures set forth herein: 1. Disputes for which a different resolution determination is specifically set forth in this Lease, 2. All claims by either party which (a) seek anything other than enforcement or determination of rights under this Lease, or (b) are primarily founded upon matters of fraud, willful misconduct, bad faith or any other allegations of tortious action, and seek the award of punitive or exemplary damages, 3. Claims relating to (a) Lessor's exercise of any unlawful detainer rights pursuant to applicable law or (b) rights or remedies used by Lessor to gain possession of the Premises or terminate Lessee's right of possession to the Premises, all of which disputes shall be resolved by suit filed in the applicable court of jurisdiction, the decision of which court shall be subject to appeal pursuant to applicable law 4. Any claim or dispute that is within the jurisdiction of the Small Claims Court and 5. All claims arising under Paragraph 39 of this Lease.

C. **APPOINTMENT OF AN ARBITRATOR:**

All disputes subject to this Arbitration Agreement, shall be determined by binding arbitration before: ☒ a retired judge of the applicable court of jurisdiction (e.g., the Superior Court of the State of California) affiliated with Judicial Arbitration & Mediation Services, Inc. ("JAMS"), ☐ the American Arbitration Association ("AAA") under its commercial arbitration rules, ☐ , or as may be otherwise mutually agreed by Lessor and Lessee (the "Arbitrator"). In the event that the parties elect to use an arbitrator other than one affiliated with JAMS or AAA then such arbitrator shall be obligated to comply with the Code of Ethics for Arbitrators in Commercial Disputes (see: http://www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTG_003867). Such arbitration shall be initiated by the Parties, or either of them, within ten (10) days after either party sends written notice (the "Arbitration Notice") of a demand to arbitrate by registered or certified mail to the other party and to the Arbitrator. The Arbitration Notice shall contain a description of the subject matter of the arbitration, the dispute with respect thereto, the amount involved, if any, and the remedy or determination sought. If the Parties have agreed to use JAMS they may agree on a retired judge from the JAMS panel. If they are unable to agree within ten days, JAMS will provide a list of three available judges and each party may strike one. The remaining judge (or if there are two, the one selected by JAMS) will serve as the Arbitrator. If the Parties have elected to utilize AAA or some other organization, the Arbitrator shall be selected in accordance with said organization's rules. In the event the Arbitrator is not selected as provided for above for any reason, the party initiating arbitration shall apply to the appropriate Court for the appointment of a qualified retired judge to act as the Arbitrator.

D. **ARBITRATION PROCEDURE:**

1. **PRE-HEARING ACTIONS.** The Arbitrator shall schedule a pre-hearing conference to resolve procedural matters, arrange for the exchange of information, obtain stipulations, and narrow the issues. The Parties will submit proposed discovery schedules to the Arbitrator at the pre-hearing conference. The scope and duration of discovery will be within the sole discretion of the Arbitrator. The Arbitrator shall have the discretion to order a pre-hearing exchange of information by the Parties, including, without limitation, production of requested documents, exchange of summaries of testimony of proposed witnesses, and examination by deposition of parties and third-party witnesses. This discretion shall be exercised in favor of discovery reasonable under the circumstances. The Arbitrator shall issue subpoenas and subpoenas duces tecum as provided for in the applicable statutory or case law (e.g., in California Code of Civil Procedure Section 1282.6).

2. **THE DECISION.** The arbitration shall be conducted in the city or county within which the Premises are located at a reasonably convenient site. Any Party may be represented by counsel or other authorized representative. In rendering a decision(s), the Arbitrator shall determine the rights and obligations of the Parties according to the substantive laws and the terms and provisions of this Lease. The Arbitrator's decision shall be based on the evidence introduced at the hearing, including all logical and reasonable inferences therefrom. The Arbitrator may make any determination and/or grant any remedy or relief that is just and equitable. The decision must be based on, and accompanied by, a written statement of decision explaining the factual and legal basis for the decision as to each of the principal controverted issues. The decision shall be conclusive and binding, and it may thereafter be confirmed as a judgment by the court of applicable jurisdiction, subject only to challenge on the grounds set forth in the applicable statutory or case law (e.g., in California Code of Civil Procedure Section 1286.2). The validity and enforceability of the Arbitrator's decision is to be determined exclusively by the court of appropriate jurisdiction pursuant to the provisions of this Lease. The Arbitrator may award costs, including without limitation, Arbitrator's fees and costs, attorneys' fees, and expert and witness costs, to the prevailing party, if any, as determined by the Arbitrator in his discretion.

Whenever a matter which has been submitted to arbitration involves a dispute as to whether or not a particular act or omission (other than a failure to pay money) constitutes a Default, the time to commence or cease such action shall be tolled from the date that the Notice of Arbitration is served through and until the date the Arbitrator renders his or her decision. Provided, however, that this provision shall NOT apply in the event that the Arbitrator determines that the Arbitration Notice was prepared in bad faith.

Whenever a dispute arises between the Parties concerning whether or not the failure to make a payment of money constitutes a default, the service of an Arbitration Notice shall NOT toll the time period in which to pay the money. The Party allegedly obligated to pay the money may, however, elect to pay the money "under protest" by accompanying said payment with a written statement setting forth the reasons for such protest. If thereafter, the Arbitrator determines that the Party who received said money was not entitled to such payment, said money shall be promptly returned to the Party who paid such money under protest together with Interest thereon as defined in Paragraph 13.5. If a Party makes a payment "under protest" but no Notice of Arbitration is filed within thirty days, then such protest shall be deemed waived. (See also Paragraph 42 or 43)

EXHIBIT "A

BUILDING PLAN

5 Columbia
Aliso Viejo, CA

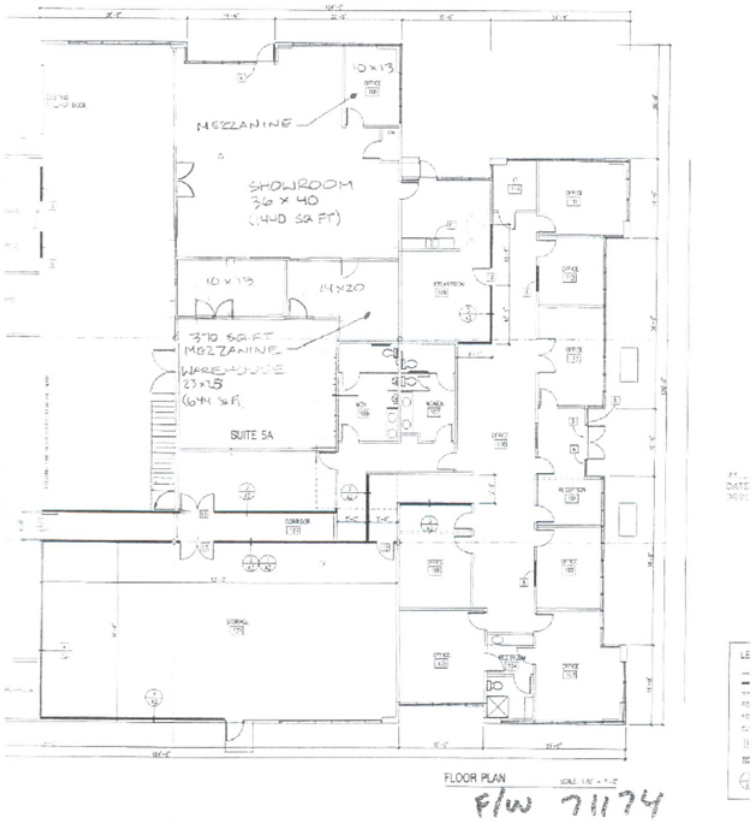
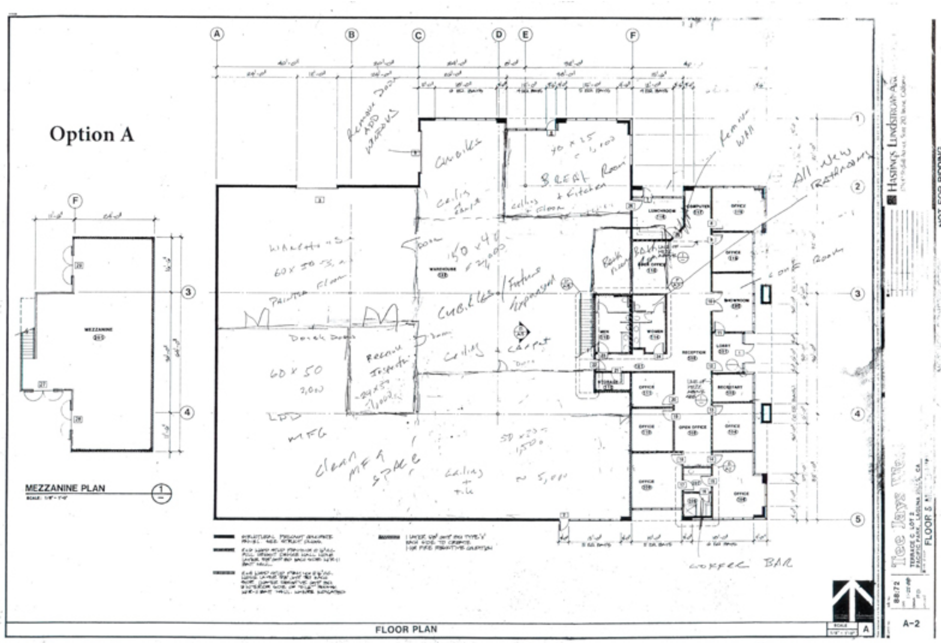


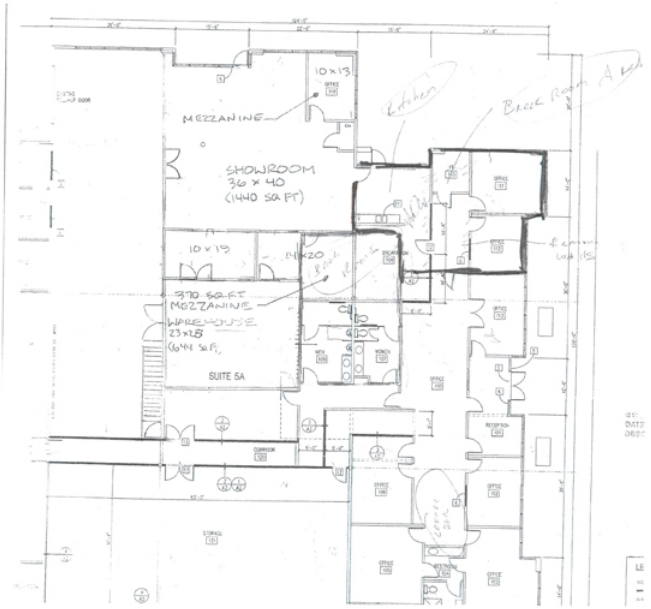
EXHIBIT “B”

PROPOSED BUILDING IMPROVEMENTS

5 Columbia
Aliso Viejo, CA


Option A
MEZZANINE PLAN
MEZZANINE
WAREHOUSE
LUNCHROOM
COMPUTER
OFFICE
MEN
WOMEN
RECEPTION
LOBBY
SHOWROOM
SECRETARY
OPEN OFFICE
STORAGE
FLOOR PLAN
Hastings Lundstrom
Tee Jays
TERRACE C, LOT 2
PACIFIC PARK, LAGUNA
FLOOR &
A-2
NOT FOR BIDDING

Option B


10x13
MEZZANINE
SHOWROOM
36 x 40
(1440 SQ FT)
10 x 19
14x20
370 SQ FT
MEZZANINE
WAREHOUSE
23x18
(644 SQ FT)
SUITE 5A
Kitchen
Break Room
RECEPTION
OFFICE
STORAGE

LEE & ASSOCIATES

COMMERCIAL REAL ESTATE SERVICES

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP
(As required by the California Civil Code)

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT (including a lessor's agent)

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller.

To the Buyer and the Seller:

(a) Diligent exercise of reasonable skill and care in performance of the agent's duties.

(b) A duty of honest and fair dealing and good faith.

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT (including a lessee's agent)

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

(a) Diligent exercise of reasonable skill and care in performance of the agent's duties.

(b) A duty of honest and fair dealing and good faith.

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER (including lessor and lessee)

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

(a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.

(b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. **This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on the reverse hereof. Read it carefully**.

DISCLOSURE MADE BY:
Lee & Associates Commercial Real Estate Services, Inc. – Irvine
BRE License # 01044791

Associate Licensee-BRE Lie. # _____
Date: , 20

DISCLOSURE RECEIVED BY:

/s/ Ron Kurtz

(check one: ☐ buyer / ☐ seller / ☐lessor / ☒ lessee)
Date: February 8, 2018

(check one ☐ buyer / ☐ seller /☐ lessor / ☐ lessee)
Date: , 20

NOTE:

— If the listing brokerage company also represents buyer/lessee, then the Listing Agent shall have one Agency Disclosure form signed by seller/lessor and a separate Agency Disclosure form signed by buyer/lessee.

— If seller/lessor and buyer/lessee are represented by different brokerage companies, then: (i) the Listing Agent shall have one Agency Disclosure form signed by seller/lessor; and (ii) the buyer's/lessee's Agent shall have one Agency Disclosure form signed by buyer/lessee and either that same or a different Agency Disclosure form presented to-seller/lessor for signature prior to presentation of the offer. **If the same form is used, seller/lessor may sign here:**

/s/ Clifford D. Downs DDS
(Check one ☐ Seller / ☒ Lessor)

Date: 2-14-18, 2018

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP
CALIFORNIA CIVIL CODE SECTIONS 2079.13 THROUGH 2079.24

2079.13. As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. **(b)** "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. **(c)** "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee. **(d)** "Commercial real property" means all real property in the state, except single-family residential real property, dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, mobilehomes, as defined in Section 798.3, or recreational vehicles, as defined in Section 799.29. **(e)** "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. **(f)** "Listing agreement" means a contract between an owner of real property and an agent by which the agent has been authorized to sell the real property or to find or obtain a buyer. **(g)** "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation. **(h)** "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent. **(i)** "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. **(j)** "Offer to purchase" means a written contract executed by a buyer acting through a selling agent that becomes the contract for the sale of the real property upon acceptance by the seller. **(k)** "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property that constitutes or is improved with one to four dwelling units, any commercial real property, any leasehold in these types of property exceeding one year's duration, and mobilehomes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. **(l)** "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase. **(m)** "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. **(n)** "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor. **(o)** "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller. **(p)** "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

2079.14. Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgment of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows: **(a)** The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. **(b)** The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a). **(c)** Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgment of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgment of receipt is required. **(d)** The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

2079.15. In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for an agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16. Reproduced on the reverse side of this form.

2079.17. **(a)** As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. **(b)** As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller. **(c)** The confirmation required by subdivisions (a) and (b) shall be in the following form:

[***EXAMPLE ONLY*** --- ***DO NOT FILL OUT OR SIGN***]	_____ is the agent of (check one): () the seller exclusively; or () both the buyer and seller. *(Name of Listing Agent)* _____ is the agent of (check one): () the buyer exclusively; or () the seller exclusively; *(Name of Selling Agent if not the same as the Listing Agent)* or () both the buyer and seller.

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14.

2079.18. No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

2079.19. The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20. Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21. A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer. This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22. Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

2079.23. **(a)** A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship. **(b)** A lender or an auction company retained by a lender to control aspects of a transaction of real property subject to this part, including validating the sales price, shall not require, as a condition of receiving the lender's approval of the transaction, the homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company. Any clause, provision, covenant or agreement purporting to impose an obligation to defend or indemnify a lender or an auction company in violation of this subdivision is against public policy, void, and unenforceable.

2079.24. Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

RxSight, Inc. **02/12/2018** **Check: 0000035378**

998 Clifford Downs

Invoice	Invoice Date	Gross Amount	Discount	Net Amount
5 Columbia Deposit	2/8/2018	25,269.12	0.00	25,269.12
5 Columbia Rent	2/8/2018	23,958.51	0.00	23,958.51
	Check Totals	**49,227.63**	**0.00**	**49,227.63**

AIR CRE

COMMENCEMENT DATE MEMORANDUM

Date:	February 22, 2018
By and Between	
Lessor:	Clifford D. Downs
Lessee:	RxSight, Inc., a California corporation
Property Address:	5 Columbia, Aliso Viejo, CA 92656 (street address, city, state, zip)

THIS MEMORANDUM, made as of February 22, 2018 by and between Clifford D. Downs ("Lessor") and RxSight, Inc., a California corporation **("Lessee").**

Recitals:

Lessor and Lessee are parties to that certain Lease, dated for reference purposes January 1, 2018 (the "Lease") for certain premises (the "Premises") commonly known as (street address, city, state, zip) 5 Columbia, Aliso Viejo, CA 92656**.**

Lessee is now in possession of the Premises and the Term of the Lease has commenced.

Lessor and Lessee desire to enter into this Memorandum confirming the Commencement Date, the Expiration Date and other matters under the Lease.

NOW, THEREFORE, Lessor and Lessee agree as follows:

1. The actual Commencement Date is April 1, 2018**.**
2. The actual Expiration Date is March 31, 2023**.**
3. The Base Rent shall be adjusted on the dates indicated as follows: Per Paragraph 51 of the Lease, *(strike if not applicable)*
4. Other: Lessee releases ten (10) day contingency as stated in Paragraph 52 of the lease, *(strike if not applicable)*
5. Capitalized terms not defined herein shall have the same meaning as set forth in the Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first above written.

By Lessor Clifford D. Downs		**By Lessee** RxSight, Inc., a California corporation	
By:	/s/ Clifford D. Downs DDS	By:	/s/ Ron Kurtz
Name Printed:		Name Printed:	Ron Kurtz
Title:		Title:	CEO
Phone:		Phone:	
Fax:		Fax:	
Email:		Email:	
By:		By:	
Name Printed:		Name Printed:	
Title:		Title:	
Phone:		Phone:	
Fax:		Fax:	
Email:		Email:	
Address:		Address:	
Federal ID No:		Federal ID No:	

July 8, 2021

Ron Kurtz
c/o RxSight, Inc.
100 Columbia,
Aliso Viejo, CA 92656

Re: Confirmatory Employment Letter

Dear Ron:

This letter agreement (the "**Agreement**") is entered into between Ron Kurtz ("**you**") and RxSight, Inc. (the "**Company**" or "**we**"). This Agreement is effective as of July 16, 2021. The purpose of this Agreement is to confirm the terms and conditions of your employment.

1. **Position.** Your position will continue to be President & Chief Executive Officer, and you will continue to report to the Company's Board of Directors or to such other person as the Company subsequently may determine. This is a full-time position. You will perform the duties and have the responsibilities and authority customarily performed and held by an employee in your position or as otherwise may be assigned or delegated to you by the Company. While you render services to the Company, you will not engage in any other employment, consulting or other business activity (whether full time or part-time) that would create a conflict of interest with the Company. By signing this Agreement, you reconfirm to the Company that you have no contractual commitments or other legal obligations that would prohibit you from performing your duties for the Company.

2. **Cash Compensation.** Your current annual base salary is $500,000, which will be payable, less applicable withholdings and deductions, in accordance with the Company's normal payroll practices. Your annual base salary will be subject to review and adjustment based upon the Company's normal performance review practices.

3. **Annual Bonus.** You are eligible to earn an annual cash bonus with a target value of 75% of your base salary, based on achieving the Company's achievement of corporate performance objectives established by the Company's Board of Directors or an authorized committee thereof (the "Committee") and payable upon achievement of the corporate objectives as determined by the Committee. If any portion of such bonus is earned, it will be paid when practicable after the Committee determines it has been earned, subject to you remaining employed with the Company through the payment date. Your annual bonus opportunity will be subject to review and adjustment based upon the Company's normal performance review practices.

4. **Equity Awards.** You will be eligible to receive awards of stock options, restricted stock units or other equity awards pursuant to any plans or arrangements the Company may have in effect from time to time. The Committee will determine in its discretion whether you will be granted any such equity awards and the terms of any such award in accordance with the terms of any applicable plan or arrangement that may be in effect from time to time. Upon the effectivity of the Company's initial public offering (IPO) you will be granted stock options with a value of $3,100,000 based upon a Black-Scholes model on the closing price of the Company's common stock on the date of the IPO.

5. **Employee Benefits.** As a regular full-time employee of the Company, you will continue to be eligible to participate in Company-sponsored benefits in accordance with the terms of the Company's policies and benefits plan. Information regarding coverage, eligibility, and other information regarding these benefits is set forth in more detailed documents that are available from the Company. With the exception of the Company's at-will employment policy, discussed below, the Company may, from time to time, in its sole discretion, modify or eliminate its policies and/or benefits offered to employees.

6. **Severance.** You will be eligible to enter into a Change in Control and Severance Agreement (the "**Severance Agreement**") applicable to you based on your position with the Company. The Severance Agreement will specify the severance payments and benefits you would be eligible to receive in connection with certain terminations of your employment with the Company. These protections will supersede all other severance payments and benefits you would otherwise currently be eligible for to, or would become eligible for in the future, under any plan, program or policy that the Company may have in effect from time to time.

7. **Proprietary Information and Inventions Agreement.** As an employee of the Company, you will continue to have access to certain confidential information of the Company and you may, during the course of your employment, develop certain information or inventions that will be the property of the Company. To protect the interests of the Company, your acceptance of this Agreement confirms that the terms of the Company's Proprietary Information and Inventions Agreement you previously signed on (date) with the Company (the "**PIIA**") still apply.

8. **Employment Relationship.** Employment with the Company will continue to be for no specific period of time. Your employment with the Company will continue to be "at will," meaning that either you or the Company may terminate your employment at any time and for any reason, with or without cause. Any contrary representations that may have been made to you are superseded by this Agreement. This is the full and complete agreement between you and the Company on this term. Although your job duties, title, compensation and benefits, as well as the Company's personnel policies and procedures, may change from time to time, the "at will" nature of your employment may only be changed in an express written agreement signed by you and a duly authorized officer of the Company (other than you).

9. **Protected Activity Not Prohibited.** Nothing in this Agreement or in any other agreement between you or the Company, as applicable, will in any way limit or prohibit you from engaging for a lawful purpose in any Protected Activity. For purposes of this Agreement, "**Protected Activity**" means filing a charge or complaint, or otherwise communicating, cooperating, or participating with, any state, federal, or other governmental agency, including but not limited to the U.S. Securities and Exchange Commission, the Equal Employment Opportunity Commission, and the National Labor Relations Board. Notwithstanding any restrictions set forth in this Agreement or in any other agreement between you or the Company, as applicable, you understand that you are not required to obtain authorization from the Company prior to disclosing information to, or communicating with, such agencies, nor are you obligated to advise the Company as to any such disclosures or communications. In making any such disclosures or communications, you agree to take all reasonable precautions to prevent any unauthorized use or disclosure of any information that may constitute confidential information (within the meaning of the PIIA) to any parties other than the relevant government agencies. You further understand that "**Protected Activity**" does not include the disclosure of any Company attorney-client privileged communications, and that any such disclosure without the Company's written consent will constitute a material breach of this Agreement. You acknowledge that the Company has provided you with notice in compliance with the Defend Trade Secrets Act of 2016 regarding immunity from liability for limited disclosures of trade secrets. The full text of the notice is attached in Exhibit A.

10. **Miscellaneous.** This Agreement, along with the PIIA and the Severance Agreement, constitute the entire agreement between you and the Company regarding the subject matters discussed herein, and they supersede all prior negotiations, representations or agreements between you and the Company. For the avoidance of doubt, other than with respect to Section 9 of this Agreement, nothing in this Agreement will supersede the terms and provisions of the PIIA. This Agreement may only be modified by a written agreement signed by you and the Company's Board of Directors

To confirm the current terms and conditions of your employment, please sign and date in the spaces indicated and return this Agreement to the Company.

Sincerely,

RxSIGHT, Inc.

By: /s/ J. Andy Corley

J. Andy Corley
Chairman of the Board of Directors

I have read and understood this Agreement and hereby acknowledge, accept and agree to the terms as set forth herein and further acknowledge that no other commitments were made to me as part of my employment offer except as specifically set forth herein.

/s/ Ron Kurtz Ron Kurtz

Date: 7/8/2021

Exhibit A

SECTION 7 OF THE DEFEND TRADE SECRETS ACT OF 2016

" . . . An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that—(A) is made—(i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. . . . An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual—(A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order."

July 8, 2021

Shelley B. Thunen
c/o RxSight, Inc.
100 Columbia,
Aliso Viejo, CA 92656

Re: Confirmatory Employment Letter

Dear Shelley:

This letter agreement (the "**Agreement**") is entered into between Shelley B. Thunen ("**you**") and RxSight, Inc. (the "**Company**" or "**we**"). This Agreement is effective as of July 16, 2021 . The purpose of this Agreement is to confirm the terms and conditions of your employment.

1. **Position.** Your position will continue to be Chief Financial Officer, and you will continue to report to Ron Kurtz, the Company's President & Chief Executive Officer or to such other person as the Company subsequently may determine. This is a full-time position. You will perform the duties and have the responsibilities and authority customarily performed and held by an employee in your position or as otherwise may be assigned or delegated to you by the Company. While you render services to the Company, you will not engage in any other employment, consulting or other business activity (whether full time or part-time) that would create a conflict of interest with the Company. By signing this Agreement, you reconfirm to the Company that you have no contractual commitments or other legal obligations that would prohibit you from performing your duties for the Company.

2. **Cash Compensation.** Your current annual base salary is $375,000, which will be payable, less applicable withholdings and deductions, in accordance with the Company's normal payroll practices. Your annual base salary will be subject to review and adjustment based upon the Company's normal performance review practices.

3. **Annual Bonus**. You are eligible to earn an annual cash bonus with a target value of 50% of your base salary, based on achieving the Company's achievement of corporate performance objectives established by the Company's Board of Directors or an authorized committee thereof (the "Committee") and payable upon achievement of the corporate objectives as determined by the Committee. If any portion of such bonus is earned, it will be paid when practicable after the Committee determines it has been earned, subject to you remaining employed with the Company through the payment date. Your annual bonus opportunity will be subject to review and adjustment based upon the Company's normal performance review practices.

4. **Equity Awards.** You will be eligible to receive awards of stock options, restricted stock units or other equity awards pursuant to any plans or arrangements the Company may have in effect from time to time. The Committee will determine in its discretion whether you will be granted any such equity awards and the terms of any such award in accordance with the terms of any applicable plan or arrangement that may be in effect from time to time. Upon the effectivity of the Company's initial public offering (IPO) you will be granted stock options with a value of $900,000, based upon a Black-Scholes model on the closing price of the Company's common stock on the date of the IPO.

5. **Employee Benefits.** As a regular full-time employee of the Company, you will continue to be eligible to participate in Company-sponsored benefits in accordance with the terms of the Company's policies and benefits plan. Information regarding coverage, eligibility, and other information regarding these benefits is set forth in more detailed documents that are available from the Company. With the exception of the Company's at-will employment policy, discussed below, the Company may, from time to time, in its sole discretion, modify or eliminate its policies and/or benefits offered to employees.

6. **Severance.** You will be eligible to enter into a Change in Control and Severance Agreement (the "**Severance Agreement**") applicable to you based on your position with the Company. The Severance Agreement will specify the severance payments and benefits you would be eligible to receive in connection with certain terminations of your employment with the Company. These protections will supersede all other severance payments and benefits you would otherwise currently be eligible for to, or would become eligible for in the future, under any plan, program or policy that the Company may have in effect from time to time.

7. **Proprietary Information and Inventions Agreement.** As an employee of the Company, you will continue to have access to certain confidential information of the Company and you may, during the course of your employment, develop certain information or inventions that will be the property of the Company. To protect the interests of the Company, your acceptance of this Agreement confirms that the terms of the Company's Proprietary Information and Inventions Agreement you previously signed on (date) with the Company (the "**PIIA**") still apply.

8. **Employment Relationship.** Employment with the Company will continue to be for no specific period of time. Your employment with the Company will continue to be "at will," meaning that either you or the Company may terminate your employment at any time and for any reason, with or without cause. Any contrary representations that may have been made to you are superseded by this Agreement. This is the full and complete agreement between you and the Company on this term. Although your job duties, title, compensation and benefits, as well as the Company's personnel policies and procedures, may change from time to time, the "at will" nature of your employment may only be changed in an express written agreement signed by you and a duly authorized officer of the Company (other than you).

9. **Protected Activity Not Prohibited.** Nothing in this Agreement or in any other agreement between you or the Company, as applicable, will in any way limit or prohibit you from engaging for a lawful purpose in any Protected Activity. For purposes of this Agreement, "**Protected Activity**" means filing a charge or complaint, or otherwise communicating, cooperating, or participating with, any state, federal, or other governmental agency, including but not limited to the U.S. Securities and Exchange Commission, the Equal Employment Opportunity Commission, and the National Labor Relations Board. Notwithstanding any restrictions set forth in this Agreement or in any other agreement between you or the Company, as applicable, you understand that you are not required to obtain authorization from the Company prior to disclosing information to, or communicating with, such agencies, nor are you obligated to advise the Company as to any such disclosures or communications. In making any such disclosures or communications, you agree to take all reasonable precautions to prevent any unauthorized use or disclosure of any information that may constitute confidential information (within the meaning of the PIIA) to any parties other than the relevant government agencies. You further understand that "**Protected Activity**" does not include the disclosure of any Company attorney-client privileged communications, and that any such disclosure without the Company's written consent will constitute a material breach of this Agreement. You acknowledge that the Company has provided you with notice in compliance with the Defend Trade Secrets Act of 2016 regarding immunity from liability for limited disclosures of trade secrets. The full text of the notice is attached in Exhibit A.

10. **Miscellaneous.** This Agreement, along with the PIIA and the Severance Agreement, constitute the entire agreement between you and the Company regarding the subject matters discussed herein, and they supersede all prior negotiations, representations or agreements between you and the Company. For the avoidance of doubt, other than with respect to Section 9 of this Agreement, nothing in this Agreement will supersede the terms and provisions of the PIIA. This Agreement may only be modified by a written agreement signed by you and the Company's Board of Directors

To confirm the current terms and conditions of your employment, please sign and date in the spaces indicated and return this Agreement to the Company.

Sincerely,

RxSIGHT, Inc.

By: /s/ J. Andy Corley

J. Andy Corley
Chairman of the Board of Directors

I have read and understood this Agreement and hereby acknowledge, accept and agree to the terms as set forth herein and further acknowledge that no other commitments were made to me as part of my employment offer except as specifically set forth herein.

/s/ Shelley Thunen Shelley B. Thunen

Date: 7/8/2021

Exhibit A

SECTION 7 OF THE DEFEND TRADE SECRETS ACT OF 2016

" . . . An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that—(A) is made—(i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. . . . An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual—(A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order."

July 8, 2021

Eric J. Weinberg
c/o RxSight, Inc.
100 Columbia,
Aliso Viejo, CA 92656

Re: Confirmatory Employment Letter

Dear Eric:

This letter agreement (the "**Agreement**") is entered into between Eric J. Weinberg ("**you**") and RxSight, Inc. (the "**Company**" or "**we**"). This Agreement is effective as of July 16, 2021 . The purpose of this Agreement is to confirm the terms and conditions of your employment.

1. **Position.** Your position will continue to be Chief Commercial Officer, and you will continue to report to Ron Kurtz, the Company's President & Chief Executive Officer or to such other person as the Company subsequently may determine. This is a full-time position. You will perform the duties and have the responsibilities and authority customarily performed and held by an employee in your position or as otherwise may be assigned or delegated to you by the Company. While you render services to the Company, you will not engage in any other employment, consulting or other business activity (whether full time or part-time) that would create a conflict of interest with the Company. By signing this Agreement, you reconfirm to the Company that you have no contractual commitments or other legal obligations that would prohibit you from performing your duties for the Company.

2. **Cash Compensation**. Your current annual base salary is $375,000, which will be payable, less applicable withholdings and deductions, in accordance with the Company's normal payroll practices. Your annual base salary will be subject to review and adjustment based upon the Company's normal performance review practices.

3. **Annual Bonus**. You are eligible to earn an annual cash bonus with a target value of 50% of your base salary, based on achieving the Company's achievement of corporate performance objectives established by the Company's Board of Directors or an authorized committee thereof (the "Committee") and payable upon achievement of the corporate objectives as determined by the Committee. If any portion of such bonus is earned, it will be paid when practicable after the Committee determines it has been earned, subject to you remaining employed with the Company through the payment date. Your annual bonus opportunity will be subject to review and adjustment based upon the Company's normal performance review practices.

4. **Equity Awards**. You will be eligible to receive awards of stock options, restricted stock units or other equity awards pursuant to any plans or arrangements the Company may have in effect from time to time. The Committee will determine in its discretion whether you will be granted any such equity awards and the terms of any such award in accordance with the terms of any applicable plan or arrangement that may be in effect from time to time. Upon the effectivity of the Company's initial public offering (IPO) you will be granted stock options with a value of $800,000, based upon a Black-Scholes model on the closing price of the Company's common stock on the date of the IPO.

5. **Employee Benefits**. As a regular full-time employee of the Company, you will continue to be eligible to participate in Company-sponsored benefits in accordance with the terms of the Company's policies and benefits plan. Information regarding coverage, eligibility, and other information regarding these benefits is set forth in more detailed documents that are available from the Company. With the exception of the Company's at-will employment policy, discussed below, the Company may, from time to time, in its sole discretion, modify or eliminate its policies and/or benefits offered to employees.

6. **Severance.** You will be eligible to enter into a Change in Control and Severance Agreement (the "**Severance Agreement**") applicable to you based on your position with the Company. The Severance Agreement will specify the severance payments and benefits you would be eligible to receive in connection with certain terminations of your employment with the Company. These protections will supersede all other severance payments and benefits you would otherwise currently be eligible for to, or would become eligible for in the future, under any plan, program or policy that the Company may have in effect from time to time.

7. **Proprietary Information and Inventions Agreement**. As an employee of the Company, you will continue to have access to certain confidential information of the Company and you may, during the course of your employment, develop certain information or inventions that will be the property of the Company. To protect the interests of the Company, your acceptance of this Agreement confirms that the terms of the Company's Proprietary Information and Inventions Agreement you previously signed on (date) with the Company (the "**PIIA**") still apply.

8. **Employment Relationship**. Employment with the Company will continue to be for no specific period of time. Your employment with the Company will continue to be "at will," meaning that either you or the Company may terminate your employment at any time and for any reason, with or without cause. Any contrary representations that may have been made to you are superseded by this Agreement. This is the full and complete agreement between you and the Company on this term. Although your job duties, title, compensation and benefits, as well as the Company's personnel policies and procedures, may change from time to time, the "at will" nature of your employment may only be changed in an express written agreement signed by you and a duly authorized officer of the Company (other than you).

9. **Protected Activity Not Prohibited**. Nothing in this Agreement or in any other agreement between you or the Company, as applicable, will in any way limit or prohibit you from engaging for a lawful purpose in any Protected Activity. For purposes of this Agreement, "**Protected Activity**" means filing a charge or complaint, or otherwise communicating, cooperating, or participating with, any state, federal, or other governmental agency, including but not limited to the U.S. Securities and Exchange Commission, the Equal Employment Opportunity Commission, and the National Labor Relations Board. Notwithstanding any restrictions set forth in this Agreement or in any other agreement between you or the Company, as applicable, you understand that you are not required to obtain authorization from the Company prior to disclosing information to, or communicating with, such agencies, nor are you obligated to advise the Company as to any such disclosures or communications. In making any such disclosures or communications, you agree to take all reasonable precautions to prevent any unauthorized use or disclosure of any information that may constitute confidential information (within the meaning of the PIIA) to any parties other than the relevant government agencies. You further understand that "**Protected Activity**" does not include the disclosure of any Company attorney-client privileged communications, and that any such disclosure without the Company's written consent will constitute a material breach of this Agreement. You acknowledge that the Company has provided you with notice in compliance with the Defend Trade Secrets Act of 2016 regarding immunity from liability for limited disclosures of trade secrets. The full text of the notice is attached in Exhibit A.

10. **Miscellaneous**. This Agreement, along with the PIIA and the Severance Agreement, constitute the entire agreement between you and the Company regarding the subject matters discussed herein, and they supersede all prior negotiations, representations or agreements between you and the Company. For the avoidance of doubt, other than with respect to Section 9 of this Agreement, nothing in this Agreement will supersede the terms and provisions of the PIIA. This Agreement may only be modified by a written agreement signed by you and the Company's Board of Directors

To confirm the current terms and conditions of your employment, please sign and date in the spaces indicated and return this Agreement to the Company.

Sincerely,

RxSIGHT, Inc.

By: /s/ J. Andy Corley

J. Andy Corley
Chairman of the Board of Directors

I have read and understood this Agreement and hereby acknowledge, accept and agree to the terms as set forth herein and further acknowledge that no other commitments were made to me as part of my employment offer except as specifically set forth herein.

/s/ Eric Weinberg Eric J. Weinberg

Date: 7/8/2021

Exhibit A

SECTION 7 OF THE DEFEND TRADE SECRETS ACT OF 2016

" . . . An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that—(A) is made—(i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. . . . An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual—(A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order."

July 8, 2021

Ilya Goldshleger
c/o RxSight, Inc.
100 Columbia,
Aliso Viejo, CA 92656

Re: Confirmatory Employment Letter

Dear Ilya:

This letter agreement (the "**Agreement**") is entered into between Ilya Goldshleger ("**you**") and RxSight, Inc. (the "**Company**" or "**we**"). This Agreement is effective as of July 16, 2021 . The purpose of this Agreement is to confirm the terms and conditions of your employment.

1. **Position.** Your position will continue to be Chief Operating Officer, and you will continue to report to Ron Kurtz, the Company's President & Chief Executive Officer or to such other person as the Company subsequently may determine. This is a full-time position. You will perform the duties and have the responsibilities and authority customarily performed and held by an employee in your position or as otherwise may be assigned or delegated to you by the Company. While you render services to the Company, you will not engage in any other employment, consulting or other business activity (whether full time or part-time) that would create a conflict of interest with the Company. By signing this Agreement, you reconfirm to the Company that you have no contractual commitments or other legal obligations that would prohibit you from performing your duties for the Company.

2. **Cash Compensation.** Your current annual base salary is $375,000, which will be payable, less applicable withholdings and deductions, in accordance with the Company's normal payroll practices. Your annual base salary will be subject to review and adjustment based upon the Company's normal performance review practices.

3. **Annual Bonus.** You are eligible to earn an annual cash bonus with a target value of 50% of your base salary, based on achieving the Company's achievement of corporate performance objectives established by the Company's Board of Directors or an authorized committee thereof (the "Committee") and payable upon achievement of the corporate objectives as determined by the Committee. If any portion of such bonus is earned, it will be paid when practicable after the Committee determines it has been earned, subject to you remaining employed with the Company through the payment date. Your annual bonus opportunity will be subject to review and adjustment based upon the Company's normal performance review practices.

4. **Equity Awards**. You will be eligible to receive awards of stock options, restricted stock units or other equity awards pursuant to any plans or arrangements the Company may have in effect from time to time. The Committee will determine in its discretion whether you will be granted any such equity awards and the terms of any such award in accordance with the terms of any applicable plan or arrangement that may be in effect from time to time. Upon the effectivity of the Company's initial public offering (IPO) you will be granted stock options with a value of $900,000, based upon a Black-Scholes model on the closing price of the Company's common stock on the date of the IPO.

5. **Employee Benefits.** As a regular full-time employee of the Company, you will continue to be eligible to participate in Company-sponsored benefits in accordance with the terms of the Company's policies and benefits plan. Information regarding coverage, eligibility, and other information regarding these benefits is set forth in more detailed documents that are available from the Company. With the exception of the Company's at-will employment policy, discussed below, the Company may, from time to time, in its sole discretion, modify or eliminate its policies and/or benefits offered to employees.

6. **Severance.** You will be eligible to enter into a Change in Control and Severance Agreement (the "**Severance Agreement**") applicable to you based on your position with the Company. The Severance Agreement will specify the severance payments and benefits you would be eligible to receive in connection with certain terminations of your employment with the Company. These protections will supersede all other severance payments and benefits you would otherwise currently be eligible for to, or would become eligible for in the future, under any plan, program or policy that the Company may have in effect from time to time.

7. **Proprietary Information and Inventions Agreement.** As an employee of the Company, you will continue to have access to certain confidential information of the Company and you may, during the course of your employment, develop certain information or inventions that will be the property of the Company. To protect the interests of the Company, your acceptance of this Agreement confirms that the terms of the Company's Proprietary Information and Inventions Agreement you previously signed on (date) with the Company (the "**PIIA**") still apply.

8. **Employment Relationship.** Employment with the Company will continue to be for no specific period of time. Your employment with the Company will continue to be "at will," meaning that either you or the Company may terminate your employment at any time and for any reason, with or without cause. Any contrary representations that may have been made to you are superseded by this Agreement. This is the full and complete agreement between you and the Company on this term. Although your job duties, title, compensation and benefits, as well as the Company's personnel policies and procedures, may change from time to time, the "at will" nature of your employment may only be changed in an express written agreement signed by you and a duly authorized officer of the Company (other than you).

9. **Protected Activity Not Prohibited.** Nothing in this Agreement or in any other agreement between you or the Company, as applicable, will in any way limit or prohibit you from engaging for a lawful purpose in any Protected Activity. For purposes of this Agreement, "**Protected Activity**" means filing a charge or complaint, or otherwise communicating, cooperating, or participating with, any state, federal, or other governmental agency, including but not limited to the U.S. Securities and Exchange Commission, the Equal Employment Opportunity Commission, and the National Labor Relations Board. Notwithstanding any restrictions set forth in this Agreement or in any other agreement between you or the Company, as applicable, you understand that you are not required to obtain authorization from the Company prior to disclosing information to, or communicating with, such agencies, nor are you obligated to advise the Company as to any such disclosures or communications. In making any such disclosures or communications, you agree to take all reasonable precautions to prevent any unauthorized use or disclosure of any information that may constitute confidential information (within the meaning of the PIIA) to any parties other than the relevant government agencies. You further understand that "**Protected Activity**" does not include the disclosure of any Company attorney-client privileged communications, and that any such disclosure without the Company's written consent will constitute a material breach of this Agreement. You acknowledge that the Company has provided you with notice in compliance with the Defend Trade Secrets Act of 2016 regarding immunity from liability for limited disclosures of trade secrets. The full text of the notice is attached in Exhibit A.

10. **Miscellaneous.** This Agreement, along with the PIIA and the Severance Agreement, constitute the entire agreement between you and the Company regarding the subject matters discussed herein, and they supersede all prior negotiations, representations or agreements between you and the Company. For the avoidance of doubt, other than with respect to Section 9 of this Agreement, nothing in this Agreement will supersede the terms and provisions of the PIIA. This Agreement may only be modified by a written agreement signed by you and the Company's Board of Directors To confirm the current terms and conditions of your employment, please sign and date in the spaces indicated and return this Agreement to the Company.

Sincerely,

RxSIGHT, Inc.

By: /s/ J. Andy Corley

J. Andy Corley
Chairman of the Board of Directors

I have read and understood this Agreement and hereby acknowledge, accept and agree to the terms as set forth herein and further acknowledge that no other commitments were made to me as part of my employment offer except as specifically set forth herein.

/s/ Ilya Goldshleger Ilya Goldshleger

Date: 7/8/2021

Exhibit A

SECTION 7 OF THE DEFEND TRADE SECRETS ACT OF 2016

" . . . An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that—(A) is made—(i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. . . . An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual—(A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order."

Exhibit 10.18

RXSIGHT, INC.

CHANGE IN CONTROL SEVERANCE AGREEMENT

This Change in Control Severance Agreement (the "**Agreement**") is made between RxSight, Inc. (the "**Company**") and Ron Kurtz (the "**Executive**"), effective as of July 16, 2021 (the "**Effective Date**").

This Agreement provides certain protections to the Executive in connection with a change in control of the Company or in connection with the involuntary termination of the Executive's employment under the circumstances described in this Agreement. Certain capitalized terms are defined in Section 8 to the extent not otherwise defined in other Sections of the Agreement.

The Company and the Executive agree as follows:

1. Term of Agreement. This Agreement will terminate upon the date that all of the obligations of the parties hereto with respect to this Agreement have been satisfied.

2. At-Will Employment. The Company and the Executive acknowledge that the Executive's employment is and will continue to be at-will, as defined under applicable law.

3. Severance Benefits.

(a) Qualifying Non-CIC Termination. In the event of a Qualifying Non-CIC Termination (as defined below), and subject to Sections 5 and 7, the Executive will be eligible to receive the following from the Company:

(i) Salary Severance. A single, lump sum payment equal to 12 months of the Executive's Salary (as defined below), less applicable withholdings.

(ii) Bonus Severance. A single, lump sum payment equal to 12 months of the Executive's target annual bonus as in effect for the fiscal year in which the Qualifying Non-CIC Termination occurs, less applicable withholdings.

(iii) COBRA Coverage. Subject to Section 3(d), the Company will pay the premiums for coverage under COBRA (as defined below) for the Executive and the Executive's eligible dependents, if any, at the rates then in effect, subject to any subsequent changes in rates that are generally applicable to the Company's active employees (the "**COBRA Coverage**"), until the earliest of (A) a period of 12 months from the date of the Executive's termination of employment, (B) the date upon which the Executive (and the Executive's eligible dependents, as applicable) becomes covered under similar plans, or (C) the date upon which the Executive ceases to be eligible for coverage under COBRA.

(b) Qualifying CIC Termination. In the event of a Qualifying CIC Termination (as defined below), and subject to Sections 5 and 7, the Executive will be eligible to receive the following from the Company:

(i) Salary Severance. A single, lump sum payment equal to 18 months of the Executive's Salary, less applicable withholdings.

(ii) Bonus Severance. A single, lump sum payment equal to 18 months of the Executive's target annual bonus as in effect for the fiscal year in which the Qualifying CIC Termination occurs, less applicable withholdings.

(iii) COBRA Coverage. Subject to Section 3(d), the Company will provide COBRA Coverage until the earliest of (A) a period of 18 months from the date of the Executive's termination of employment, (B) the date upon which the Executive (and the Executive's eligible dependents, as applicable) becomes covered under similar plans, or (C) the date upon which the Executive ceases to be eligible for coverage under COBRA.

(iv) Equity Vesting. Vesting acceleration (and exercisability, as applicable) as to one hundred percent (100%) of the then-unvested shares subject to each of the Company equity awards granted to the Executive that is outstanding as of the date of the Qualifying Termination (each, an "**Equity Award**"). In the case of an Equity Award that is subject to performance-based vesting, unless otherwise specified in the applicable Equity Award agreement governing the Equity Award, all performance goals and other vesting criteria will be deemed achieved at one hundred percent (100%) of target levels. For the avoidance of doubt, in the event of the Executive's Qualifying Pre-CIC Termination (as defined below), any then outstanding Equity Awards will remain outstanding until the earlier of (x) nine (9) months following the Qualifying Termination or (y) the occurrence of a Change in Control, solely so that any benefits due on a Qualifying Pre-CIC Termination can be provided if a Change in Control occurs within nine (9) months following the Qualifying Termination (provided that in no event will the Executive's stock options or similar Equity Awards remain outstanding beyond the earlier to occur of (i) the Equity Award's maximum term to expiration or (ii) the Equity Award's post-termination exercise period). If no Change in Control occurs within nine (9) months following a Qualifying Pre-CIC Termination, any unvested portion of the Executive's Equity Awards automatically and permanently will be forfeited on the date nine (9) months following the date of the Qualifying Pre-CIC Termination without having vested.

(c) Termination Other Than a Qualifying Termination. If the termination of the Executive's employment with the Company Group (as defined below) is not a Qualifying Termination, then the Executive will not be entitled to receive the severance payments or other benefits specified in this Agreement.

(d) Conditions to Receipt of COBRA Coverage. The Executive's receipt of COBRA Coverage is subject to the Executive electing COBRA continuation coverage within the time period prescribed pursuant to COBRA for the Executive and the Executive's eligible dependents, if any. If the Company determines in its sole discretion that it cannot provide the COBRA Coverage without potentially violating, or being subject to an excise tax under, applicable law (including, without limitation, Section 2716 of the Public Health Service Act), then in lieu of any COBRA Coverage, the Company will provide to the Executive a taxable monthly payment payable on the last day of a given month, in an amount equal to the monthly COBRA premium that the Executive would be required to pay to continue his or her group health coverage in effect

on the date of his or her Qualifying Termination (which amount will be based on the premium rates applicable for the first month of COBRA Coverage for the Executive and any of eligible dependents of the Executive) (each, a "**COBRA Replacement Payment**"), which COBRA Replacement Payments will be made regardless of whether the Executive elects COBRA continuation coverage and will end on the earlier of (x) the date upon which the Executive obtains other employment (which offers group health coverage) or(y) the date the Company has paid an amount totaling the number of COBRA Replacement Payments equal to the number of months in the applicable COBRA Coverage period. For the avoidance of doubt, the COBRA Replacement Payments may be used for any purpose, including, but not limited, to continuation coverage under COBRA, and will be subject to any applicable withholdings. Notwithstanding anything to the contrary under this Agreement, if the Company determines in its sole discretion at any time that it cannot provide the COBRA Replacement Payments without violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act), the Executive will not receive the COBRA Replacement Payments or any further COBRA Coverage.

(e) Non-Duplication of Payment or Benefits. For purposes of clarity, in the event of a Qualifying Pre-CIC Termination, any severance payments and benefits to be provided to the Executive under Section 3(b) will be reduced by any amounts that already were provided to the Executive under Section 3(a). Notwithstanding any provision of this Agreement to the contrary, if the Executive is entitled to any cash severance, continued health coverage benefits, or vesting acceleration of any Equity Awards (other than under this Agreement) by operation of applicable law or under a plan, policy, contract, or arrangement sponsored by or to which any member of the Company Group is a party in connection with the Executive's separation ("**Other Benefits**"), then the corresponding severance payments and benefits under this Agreement will be reduced by the amount of Other Benefits paid or provided to the Executive.

(f) Death of the Executive. In the event of the Executive's death before all payments or benefits the Executive is entitled to receive under this Agreement have been provided, the unpaid amounts will be provided to the Executive's designated beneficiary, if living, or otherwise to the Executive's personal representative in a single lump sum as soon as possible following the Executive's death.

(g) Transfer Between Members of the Company Group. For purposes of this Agreement, if the Executive is involuntarily transferred from one member of the Company Group to another, the transfer will not be a termination without Cause but may give the Executive the ability to resign for Good Reason.

(h) Exclusive Remedy. In the event of a termination of the Executive's employment with the Company Group, the provisions of this Agreement are intended to be and are exclusive and in lieu of any other rights or remedies to which the Executive may otherwise be entitled, whether at law, tort or contract, or in equity. The Executive will be entitled to no benefits, compensation or other payments or rights upon termination of employment other than those benefits expressly set forth in this Agreement.

4. Accrued Compensation. On any termination of the Executive's employment with the Company Group, the Executive will be entitled to receive all accrued but unpaid vacation, expense reimbursements, wages, and other benefits due to the Executive under any Company-provided plans, policies, and arrangements. For avoidance of doubt, receipt of accrued compensation is not subject to the Release Requirement discussed in Section 5(a).

5. Conditions to Receipt of Severance.

(a) Separation Agreement and Release of Claims. The Executive's receipt of any severance payments or benefits upon the Executive's Qualifying Termination under Section 3 is subject to the Executive signing and not revoking the Company's then-standard separation agreement and release of claims (which may include an agreement not to disparage any member of the Company Group, non-solicit provisions, an agreement to assist in any litigation matters, and other standard terms and conditions) (the "**Release**" and that requirement, the "**Release Requirement**"), which must become effective and irrevocable no later than the sixtieth (60^{th}) day following the date of the Executive's Qualifying Termination (the "**Release Deadline Date**"). If the Release does not become effective and irrevocable by the Release Deadline Date, the Executive will forfeit any right to the severance payments or benefits under Section 3.

(b) Payment Timing. Any lump sum salary or bonus payments under Sections 3(a) and 3(b) will be provided on the first regularly scheduled payroll date of the Company following the date the Release becomes effective and irrevocable (the "**Severance Start Date**"), subject to any delay required by Section 5(d) below. Any taxable installments of any COBRA-related severance benefits that otherwise would have been made to the Executive on or before the Severance Start Date will be paid on the Severance Start Date, and any remaining installments thereafter will be provided as specified in this Agreement. Subject to Section 5(d), any restricted stock units, performance shares, performance units, and/or similar full value awards that accelerate vesting under Section 3(b) will be settled (x) within ten (10) days following the date the Release becomes effective and irrevocable, or (y) if later, in the event of a Qualifying Pre-CIC Termination, on the date of the Change in Control.

(c) Return of Company Property. The Executive's receipt of any severance payments or benefits upon the Executive's Qualifying Termination under Section 3 is subject to the Executive having returned all documents and other property provided to the Executive by any member of the Company Group (with the exception of a copy of the Company employee handbook and personnel documents specifically relating to the Executive), developed or obtained by the Executive in connection with his or her employment with the Company Group, or otherwise belonging to the Company Group, by no later than ten (10) days following the date of the Qualifying Termination.

(d) Section 409A. The Company intends that all payments and benefits provided under this Agreement or otherwise are exempt from, or comply with, the requirements of Section 409A of the Code (as defined below) and any guidance promulgated under Section 409A of the Code (collectively, "**Section 409A**") so that none of the payments or benefits will be subject to the additional tax imposed under Section 409A, and any ambiguities in this Agreement will be interpreted in accordance with this intent. No payment or benefits to be paid to the

Executive, if any such payments or benefits, under this Agreement or otherwise, when considered together with any other severance payments or separation benefits that are considered deferred compensation under Section 409A (together, the "**Deferred Payments**") will be paid or otherwise provided until the Executive has a "separation from service" within the meaning of Section 409A. If, at the time of the Executive's termination of employment, the Executive is a "specified employee" within the meaning of Section 409A, then the payment of the Deferred Payments will be delayed to the extent necessary to avoid the imposition of the additional tax imposed under Section 409A, which generally means that the Executive will receive payment on the first payroll date that occurs on or after the date that is six (6) months and one (1) day following the Executive's termination of employment. The Company reserves the right to amend this Agreement as it considers necessary or advisable, in its sole discretion and without the consent of the Executive or the consent of any other individual, to comply with any provision required to avoid the imposition of the additional tax imposed under Section 409A or to otherwise avoid income recognition under Section 409A prior to the actual payment of any benefits or imposition of any additional tax. Each payment, installment, and benefit payable under this Agreement is intended to constitute a separate payment for purposes of U.S. Treasury Regulation Section 1.409A-2(b)(2). In no event will any member of the Company Group reimburse, indemnify, or hold harmless the Executive for any taxes, penalties and interest that may be imposed, or other costs that may be incurred, as a result of Section 409A.

(e) Resignation of Officer and Director Positions. The Executive's receipt of any severance payments or benefits upon the Executive's Qualifying Termination under Section 3 is subject to the Executive having resigned from all officer and director positions with all members of the Company Group and the Executive executing any documents the Company may require in connection with the same.

6. Change in Control Benefits. If the Company experiences a Change in Control, and Executive remains an employee of any member of the Company Group through the date of such Change in Control, one hundred percent (100%) of the then-unvested shares subject to each Equity Award that is outstanding as of the date of such Change in Control will accelerate and fully vest. In the case of an Equity Award that is subject to performance-based vesting, unless otherwise specified in the applicable Equity Award agreement governing the Equity Award, all performance goals and other vesting criteria will be deemed achieved at one hundred percent (100%) of target levels.

7. Limitation on Payments.

(a) Reduction of Severance Benefits. If any payment or benefit that the Executive would receive from any Company Group member or any other party whether in connection with the provisions in this Agreement or otherwise (the "**Payment**") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Code, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the "**Excise Tax**"), then the Payment will be equal to the Best Results Amount. The "**Best Results Amount**" will be either (x) the full amount of the Payment or (y) a lesser amount that would result in no portion of the Payment being subject to the Excise Tax, whichever of those amounts, taking into account the applicable federal, state and local employment taxes, income taxes and the Excise Tax,

results in the Executive's receipt, on an after-tax basis, of the greater amount. If a reduction in payments or benefits constituting parachute payments is necessary so that the Payment equals the Best Results Amount, reduction will occur in the following order: (A) reduction of cash payments in reverse chronological order (that is, the cash payment owed on the latest date following the occurrence of the event triggering the excise tax will be the first cash payment to be reduced); (B) cancellation of Equity Awards that were granted "contingent on a change in ownership or control" within the meaning of Section 280G of the Code in the reverse order of date of grant of the awards (that is, the most recently granted Equity Awards will be cancelled first); (C) reduction of the accelerated vesting of Equity Awards in the reverse order of date of grant of the awards (that is, the vesting of the most recently granted Equity Awards will be cancelled first); and (D) reduction of employee benefits in reverse chronological order (that is, the benefit owed on the latest date following the occurrence of the event triggering the excise tax will be the first benefit to be reduced). In no event will the Executive have any discretion with respect to the ordering of Payment reductions. The Executive will be solely responsible for the payment of all personal tax liability that is incurred as a result of the payments and benefits received under this Agreement, and the Executive will not be reimbursed, indemnified, or held harmless by any member of the Company Group for any of those payments of personal tax liability.

(b) Determination of Excise Tax Liability. Unless the Company and the Executive otherwise agree in writing, the Company will select a professional services firm (the "**Firm**") to make all determinations required under this Section 7, which determinations will be conclusive and binding upon the Executive and the Company for all purposes. For purposes of making the calculations required by this Section 76, the Firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and the Executive will furnish to the Firm such information and documents as the Firm reasonably may request in order to make determinations under this Section 7. The Company will bear the costs and make all payments for the Firm's services in connection with any calculations contemplated by this Section 7. The Company will have no liability to the Executive for the determinations of the Firm.

8. Definitions. The following terms referred to in this Agreement will have the following meanings:

(a) "**Board**" means the Company's Board of Directors.

(b) "**Cause**" means (i) the Executive's willful and repeated failure, in the reasonable judgment of the Board, to substantially perform his or her assigned duties or responsibility as an employee as directed or assigned by the Board (other than the Executive's failure resulting from a Disability); (ii) the Executive engaging in intentional illegal conduct that was or is materially injurious to the Company Group or its affiliates; (iii) the Executive's knowing violation of a federal or state law or regulation directly or indirectly applicable to the business of the Company Group or its affiliates, which violation was or is reasonably likely to be injurious to the Company Group or its affiliates; (iv) the Executive's material breach of the terms of any confidentiality agreement or invention assignment agreement between the Executive and the Company Group (or any affiliate); or (v) the Executive being convicted of, or entering a plea of

guilty or nolo contendere to, a felony or committing any act of moral turpitude, dishonesty, or fraud against, or the misappropriation of material property belonging to, the Company Group or its affiliates. The foregoing definition does not in any way limit the Company's ability to terminate the Executive's employment at any time, and the term "Company" will be interpreted to include any subsidiary, parent, affiliate, or any successor thereto, if appropriate.

(c) "**Change in Control**" means the occurrence of any of the following events:

(i) A change in the ownership of the Company which occurs on the date that any one person, or more than one person acting as a group ("**Person**"), acquires ownership of the stock of the Company that, with the stock held by such Person, constitutes more than fifty percent (50%) of the total voting power of the stock of the Company; provided, that for this subsection, the acquisition of additional stock by any one Person, who prior to such acquisition is considered to own more than fifty percent (50%) of the total voting power of the stock of the Company will not be considered a Change in Control and provided, further, that any change in the ownership of the stock of the Company as a result of a private financing of the Company that is approved by the Board also will not be considered a Change in Control. Further, if the stockholders of the Company immediately before such change in ownership continue to retain immediately after the change in ownership, in substantially the same proportions as their ownership of shares of the Company's voting stock immediately prior to the change in ownership, direct or indirect beneficial ownership of fifty percent (50%) or more of the total voting power of the stock of the Company or of the ultimate parent entity of the Company, such event shall not be considered a Change in Control under this Section 8(c)(i). For this purpose, indirect beneficial ownership shall include, without limitation, an interest resulting from ownership of the voting securities of one or more corporations or other business entities which own the Company, as the case may be, either directly or through one or more subsidiary corporations or other business entities; or

(ii) A change in the effective control of the Company which occurs on the date a majority of members of the Board is replaced during any twelve (12)-month period by members of the Board whose appointment or election is not endorsed by a majority of the members of the Board prior to the appointment or election. For purposes of this Section 8(c)(ii), if any Person is considered to be in effective control of the Company, the acquisition of additional control of the Company by the same Person will not be considered a Change in Control; or

(iii) A change in the ownership of a substantial portion of the Company's assets which occurs on the date that any Person acquires (or has acquired during the twelve (12)-month period ending on the date of the most recent acquisition by such Person or Persons) assets from the Company that have a total gross fair market value equal to or more than fifty percent (50%) of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions; provided, that for this Section 8(c)(iii), the following will not constitute a change in the ownership of a substantial portion of the Company's assets:

(1) a transfer to an entity controlled by the Company's stockholders immediately after the transfer, or

(2) a transfer of assets by the Company to:

(A) a stockholder of the Company (immediately before the asset transfer) in exchange for or with respect to the Company's stock,

(B) an entity, fifty percent (50%) or more of the total value or voting power of which is owned, directly or indirectly, by the Company,

(C) a Person, that owns, directly or indirectly, fifty percent (50%) or more of the total value or voting power of all the outstanding stock of the Company, or

(D) an entity, at least fifty percent (50%) of the total value or voting power of which is owned, directly or indirectly, by a Person described in Section 8(c)(iii)(2)(A) to Section 8(c)(iii)(2)(C).

For this definition, gross fair market value means the value of the assets of the Company, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets.

For purposes of this Section 8(c), persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company. For the avoidance of doubt, wholly-owned subsidiaries of the Company shall not be considered "Persons" for purposes of this Section 8(c).

(iv) A transaction will not be a Change in Control:

(1) unless the transaction qualifies as a change in control event within the meaning of Code Section 409A; or

(2) if its primary purpose is to (1) change the jurisdiction of the Company's incorporation, or (2) create a holding company owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

(d) "**Change in Control Period**" means the period beginning on the date a LOI or similar agreement is made between the Company and an acquiror, provided such date occurs no earlier than nine (9) months prior to a Change in Control, and ending twelve (12) months following a Change in Control.

(e) "**COBRA**" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

(f) "**Code**" means the Internal Revenue Code of 1986, as amended.

(g) "**Company Group**" means the Company and its subsidiaries.

(h) "**Disability**" means a total and permanent disability as defined in Section 22(e)(3) of the Code.

(i) "**Good Reason**" means the Executive's resignation due to the occurrence of any of the following conditions which occurs without the Executive's written consent, provided that the requirements regarding advance notice and an opportunity to cure set forth below are satisfied: (i) a material reduction in the Executive's Salary, which the parties agree is a reduction of at least ten percent (10%) of the Executive's Salary; (ii) a material reduction of the Executive's duties, authorities, or responsibilities relative to the Executive's duties, authorities, or responsibilities in effect immediately prior to the reduction, including where such material reduction results solely by virtue of the Company being acquired and made part of a larger entity (as, for example, when the Chief Financial Officer of the Company remains as such following a Change in Control but is not made the Chief Financial Officer of the acquiring corporation); or (iii) a change by more than fifty (50) miles in the geographic location at which the Executive must perform services; *provided*, *however*, that no condition described herein will constitute "Good Reason" for purposes of this Agreement unless (1) the Executive will have first provided written notice to the Board of the existence of the condition within ninety (90) days of the initial existence of such Good Reason condition; (2) the Board will have failed to remedy the condition within thirty (30) days following the receipt of such notice (the "**Cure Period**"); (3) the Executive must cooperate in good faith with any efforts by the Company to remedy the Good Reason condition; (4) the Good Reason condition must continue to exist upon completion of the Cure Period; and (5) the date of termination of employment occurs no more than thirty (30) days after the end of the Cure Period. In no instance will a termination by the Executive be deemed to be for Good Reason for purposes of this Agreement if it becomes effective more than twelve (12) months following the initial existence of the Good Reason condition.

(j) "**Qualifying Pre-CIC Termination**" means a Qualifying CIC Termination that occurs after a letter of intent ("**LOI**") or similar agreement is made between the Company and an acquiror, but prior to the date of the Change in Control.

(k) "**Qualifying Termination**" means a termination of the Executive's employment either (i) by a Company Group member without Cause and other than by reason of the Executive's death or Disability, or (ii) by the Executive for Good Reason, in either case, during the Change in Control Period (a "**Qualifying CIC Termination**") or outside of the Change in Control Period (a "**Qualifying Non-CIC Termination**").

(l) "**Salary**" means the Executive's rate of base salary as in effect immediately prior to the Executive's Qualifying Termination (or if the termination is due to a resignation for Good Reason based on a material reduction in base salary, then the Executive's rate of base salary in effect immediately prior to the reduction) or, if the Executive's Qualifying Termination is a Qualifying CIC Termination and the amount is greater, at the level in effect immediately prior to the Change in Control.

9. Successors. This Agreement will be binding upon and inure to the benefit of (a) the heirs, executors, and legal representatives of the Executive upon the Executive's death, and (b) any successor of the Company. Any such successor of the Company will be deemed substituted for

the Company under the terms of this Agreement for all purposes. For this purpose, "successor" means any person, firm, corporation, or other business entity which at any time, whether by purchase, merger, or otherwise, directly or indirectly acquires all or substantially all of the assets or business of the Company. None of the rights of the Executive to receive any form of compensation payable pursuant to this Agreement may be assigned or transferred except by will or the laws of descent and distribution. Any other attempted assignment, transfer, conveyance, or other disposition of the Executive's right to compensation or other benefits will be null and void.

10. Notice.

(a) General. All notices and other communications required or permitted under this Agreement will be in writing and will be effectively given (i) upon actual delivery to the party to be notified; (ii) upon transmission by email; (iii) twenty-four (24) hours after confirmed facsimile transmission; (iv) one (1) business day after deposit with a recognized overnight courier; or (v) three (3) business days after deposit with the U.S. Postal Service by first class certified or registered mail, return receipt requested, postage prepaid, addressed (A) if to the Executive, at the address the Executive will have most recently furnished to the Company in writing, (B) if to the Company, at the following address:

RxSight, Inc.
100 Columbia
Aliso Viejo, CA 92656
Attention: Chief Executive Officer

(b) Notice of Termination. Any termination by a Company Group member for Cause will be communicated by a notice of termination to the Executive, and any termination by the Executive for Good Reason will be communicated by a notice of termination to the Company, in each case given in accordance with Section 10(a) of this Agreement. The notice will indicate the specific termination provision in this Agreement relied upon, will set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination under the provision so indicated, and will specify the termination date (which will be not more than thirty (30) days after the later of (i) the giving of the notice, or (ii) the end of any applicable cure period).

11. Resignation. The termination of the Executive's employment for any reason will also constitute, without any further required action by the Executive, the Executive's voluntary resignation from all officer and/or director positions held at any member of the Company Group, and at the Board's request, the Executive will execute any documents reasonably necessary to reflect the resignations.

12. Miscellaneous Provisions.

(a) No Duty to Mitigate. The Executive will not be required to mitigate the amount of any payment contemplated by this Agreement, nor will any payment be reduced by any earnings that the Executive may receive from any other source except as specified in Section 3(e).

(b) Waiver; Amendment. No provision of this Agreement will be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by an authorized officer of the Company (other than the Executive) and by the Executive. No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party will be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(c) Headings. All captions and section headings used in this Agreement are for convenient reference only and do not form a part of this Agreement.

(d) Entire Agreement. This Agreement constitutes the entire agreement of the parties and supersedes in their entirety all prior representations, understandings, undertakings or agreements (whether oral or written and whether expressed or implied) of the parties with respect to the subject matter of this Agreement, including, for the avoidance of doubt, any other employment letter or agreement, change in control severance agreement, severance policy or program, or Equity Award agreement.

(e) Choice of Law. This Agreement will be governed by the laws of the State of California without regard to California's conflicts of law rules that may result in the application of the laws of any jurisdiction other than California. The Executive hereby expressly consents to the personal and exclusive jurisdiction and venue of the state and federal courts located in California for any lawsuit filed against the Executive by any member of the Company Group.

(f) Severability. The invalidity or unenforceability of any provision or provisions of this Agreement will not affect the validity or enforceability of any other provision of this Agreement, which will remain in full force and effect.

(g) Withholding. All payments and benefits under this Agreement will be paid less applicable withholding taxes. The Company is authorized to withhold from any payments or benefits all federal, state, local, and/or foreign taxes required to be withheld from the payments or benefits and make any other required payroll deductions. No member of the Company Group will pay the Executive's taxes arising from or relating to any payments or benefits under this Agreement.

(h) 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.]

By its signature below, each of the parties signifies its acceptance of the terms of this Agreement, in the case of the Company by its duly authorized officer.

COMPANY

RXSIGHT, INC.

By: /s/ J. Andy Corley

Title:
J. Andy Corley
Chairman of the Board of Directors

Date: 7/8/2021

EXECUTIVE

/s/ Ron Kurtz

Ron Kurtz

Date: 7/8/2021

[Signature page to Change in Control Severance Agreement]

Exhibit 10.19

RXSIGHT, INC.

CHANGE IN CONTROL SEVERANCE AGREEMENT

This Change in Control Severance Agreement (the "**Agreement**") is made between RxSight, Inc. (the "**Company**") and Shelley B. Thunen (the "**Executive**"), effective as of July 16, 2021 (the "**Effective Date**").

This Agreement provides certain protections to the Executive in connection with a change in control of the Company or in connection with the involuntary termination of the Executive's employment under the circumstances described in this Agreement. Certain capitalized terms are defined in Section 8 to the extent not otherwise defined in other Sections of the Agreement.

The Company and the Executive agree as follows:

1. Term of Agreement. This Agreement will terminate upon the date that all of the obligations of the parties hereto with respect to this Agreement have been satisfied.

2. At-Will Employment. The Company and the Executive acknowledge that the Executive's employment is and will continue to be at-will, as defined under applicable law.

3. Severance Benefits.

(a) Qualifying Non-CIC Termination. In the event of a Qualifying Non-CIC Termination (as defined below), and subject to Sections 5 and 7, the Executive will be eligible to receive the following from the Company:

(i) Salary Severance. A single, lump sum payment equal to 12 months of the Executive's Salary (as defined below), less applicable withholdings.

(ii) Bonus Severance. A single, lump sum payment equal to 12 months of the Executive's target annual bonus as in effect for the fiscal year in which the Qualifying Non-CIC Termination occurs, less applicable withholdings.

(iii) COBRA Coverage. Subject to Section 3(d), the Company will pay the premiums for coverage under COBRA (as defined below) for the Executive and the Executive's eligible dependents, if any, at the rates then in effect, subject to any subsequent changes in rates that are generally applicable to the Company's active employees (the "**COBRA Coverage**"), until the earliest of (A) a period of 12 months from the date of the Executive's termination of employment, (B) the date upon which the Executive (and the Executive's eligible dependents, as applicable) becomes covered under similar plans, or (C) the date upon which the Executive ceases to be eligible for coverage under COBRA.

(b) Qualifying CIC Termination. In the event of a Qualifying CIC Termination (as defined below), and subject to Sections 5 and 7, the Executive will be eligible to receive the following from the Company:

(i) Salary Severance. A single, lump sum payment equal to 12 months of the Executive's Salary, less applicable withholdings.

(ii) Bonus Severance. A single, lump sum payment equal to 12 months of the Executive's target annual bonus as in effect for the fiscal year in which the Qualifying CIC Termination occurs, less applicable withholdings.

(iii) COBRA Coverage. Subject to Section 3(d), the Company will provide COBRA Coverage until the earliest of (A) a period of 12 months from the date of the Executive's termination of employment, (B) the date upon which the Executive (and the Executive's eligible dependents, as applicable) becomes covered under similar plans, or (C) the date upon which the Executive ceases to be eligible for coverage under COBRA.

(iv) Equity Vesting. Vesting acceleration (and exercisability, as applicable) as to one hundred percent (100%) of the then-unvested shares subject to each of the Company equity awards granted to the Executive that is outstanding as of the date of the Qualifying Termination (each, an "**Equity Award**"). In the case of an Equity Award that is subject to performance-based vesting, unless otherwise specified in the applicable Equity Award agreement governing the Equity Award, all performance goals and other vesting criteria will be deemed achieved at one hundred percent (100%) of target levels. For the avoidance of doubt, in the event of the Executive's Qualifying Pre-CIC Termination (as defined below), any then outstanding Equity Awards will remain outstanding until the earlier of (x) nine (9) months following the Qualifying Termination or (y) the occurrence of a Change in Control, solely so that any benefits due on a Qualifying Pre-CIC Termination can be provided if a Change in Control occurs within nine (9) months following the Qualifying Termination (provided that in no event will the Executive's stock options or similar Equity Awards remain outstanding beyond the earlier to occur of (i) the Equity Award's maximum term to expiration or (ii) the Equity Award's post-termination exercise period). If no Change in Control occurs within nine (9) months following a Qualifying Pre-CIC Termination, any unvested portion of the Executive's Equity Awards automatically and permanently will be forfeited on the date nine (9) months following the date of the Qualifying Pre-CIC Termination without having vested.

(c) Termination Other Than a Qualifying Termination. If the termination of the Executive's employment with the Company Group (as defined below) is not a Qualifying Termination, then the Executive will not be entitled to receive the severance payments or other benefits specified in this Agreement.

(d) Conditions to Receipt of COBRA Coverage. The Executive's receipt of COBRA Coverage is subject to the Executive electing COBRA continuation coverage within the time period prescribed pursuant to COBRA for the Executive and the Executive's eligible dependents, if any. If the Company determines in its sole discretion that it cannot provide the COBRA Coverage without potentially violating, or being subject to an excise tax under, applicable law (including, without limitation, Section 2716 of the Public Health Service Act), then in lieu of any COBRA Coverage, the Company will provide to the Executive a taxable monthly payment payable on the last day of a given month, in an amount equal to the monthly COBRA premium that the Executive would be required to pay to continue his or her group health coverage in effect on the date of his or her Qualifying Termination (which amount will be based on the premium

rates applicable for the first month of COBRA Coverage for the Executive and any of eligible dependents of the Executive) (each, a "**COBRA Replacement Payment**"), which COBRA Replacement Payments will be made regardless of whether the Executive elects COBRA continuation coverage and will end on the earlier of (x) the date upon which the Executive obtains other employment (which offers group health coverage) or(y) the date the Company has paid an amount totaling the number of COBRA Replacement Payments equal to the number of months in the applicable COBRA Coverage period. For the avoidance of doubt, the COBRA Replacement Payments may be used for any purpose, including, but not limited, to continuation coverage under COBRA, and will be subject to any applicable withholdings. Notwithstanding anything to the contrary under this Agreement, if the Company determines in its sole discretion at any time that it cannot provide the COBRA Replacement Payments without violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act), the Executive will not receive the COBRA Replacement Payments or any further COBRA Coverage.

(e) Non-Duplication of Payment or Benefits. For purposes of clarity, in the event of a Qualifying Pre-CIC Termination, any severance payments and benefits to be provided to the Executive under Section 3(b) will be reduced by any amounts that already were provided to the Executive under Section 3(a). Notwithstanding any provision of this Agreement to the contrary, if the Executive is entitled to any cash severance, continued health coverage benefits, or vesting acceleration of any Equity Awards (other than under this Agreement) by operation of applicable law or under a plan, policy, contract, or arrangement sponsored by or to which any member of the Company Group is a party in connection with the Executive's separation ("**Other Benefits**"), then the corresponding severance payments and benefits under this Agreement will be reduced by the amount of Other Benefits paid or provided to the Executive.

(f) Death of the Executive. In the event of the Executive's death before all payments or benefits the Executive is entitled to receive under this Agreement have been provided, the unpaid amounts will be provided to the Executive's designated beneficiary, if living, or otherwise to the Executive's personal representative in a single lump sum as soon as possible following the Executive's death.

(g) Transfer Between Members of the Company Group. For purposes of this Agreement, if the Executive is involuntarily transferred from one member of the Company Group to another, the transfer will not be a termination without Cause but may give the Executive the ability to resign for Good Reason.

(h) Exclusive Remedy. In the event of a termination of the Executive's employment with the Company Group, the provisions of this Agreement are intended to be and are exclusive and in lieu of any other rights or remedies to which the Executive may otherwise be entitled, whether at law, tort or contract, or in equity. The Executive will be entitled to no benefits, compensation or other payments or rights upon termination of employment other than those benefits expressly set forth in this Agreement.

4. Accrued Compensation. On any termination of the Executive's employment with the Company Group, the Executive will be entitled to receive all accrued but unpaid vacation, expense reimbursements, wages, and other benefits due to the Executive under any Company-

provided plans, policies, and arrangements. For avoidance of doubt, receipt of accrued compensation is not subject to the Release Requirement discussed in Section 5(a).

5. Conditions to Receipt of Severance.

(a) Separation Agreement and Release of Claims. The Executive's receipt of any severance payments or benefits upon the Executive's Qualifying Termination under Section 3 is subject to the Executive signing and not revoking the Company's then-standard separation agreement and release of claims (which may include an agreement not to disparage any member of the Company Group, non-solicit provisions, an agreement to assist in any litigation matters, and other standard terms and conditions) (the "**Release**" and that requirement, the "**Release Requirement**"), which must become effective and irrevocable no later than the sixtieth (60th) day following the date of the Executive's Qualifying Termination (the "**Release Deadline Date**"). If the Release does not become effective and irrevocable by the Release Deadline Date, the Executive will forfeit any right to the severance payments or benefits under Section 3.

(b) Payment Timing. Any lump sum salary or bonus payments under Sections 3(a) and 3(b) will be provided on the first regularly scheduled payroll date of the Company following the date the Release becomes effective and irrevocable (the "**Severance Start Date**"), subject to any delay required by Section 5(d) below. Any taxable installments of any COBRA-related severance benefits that otherwise would have been made to the Executive on or before the Severance Start Date will be paid on the Severance Start Date, and any remaining installments thereafter will be provided as specified in this Agreement. Subject to Section 5(d), any restricted stock units, performance shares, performance units, and/or similar full value awards that accelerate vesting under Section 3(b) will be settled (x) within ten (10) days following the date the Release becomes effective and irrevocable, or (y) if later, in the event of a Qualifying Pre-CIC Termination, on the date of the Change in Control.

(c) Return of Company Property. The Executive's receipt of any severance payments or benefits upon the Executive's Qualifying Termination under Section 3 is subject to the Executive having returned all documents and other property provided to the Executive by any member of the Company Group (with the exception of a copy of the Company employee handbook and personnel documents specifically relating to the Executive), developed or obtained by the Executive in connection with his or her employment with the Company Group, or otherwise belonging to the Company Group, by no later than ten (10) days following the date of the Qualifying Termination.

(d) Section 409A. The Company intends that all payments and benefits provided under this Agreement or otherwise are exempt from, or comply with, the requirements of Section 409A of the Code (as defined below) and any guidance promulgated under Section 409A of the Code (collectively, "**Section 409A**") so that none of the payments or benefits will be subject to the additional tax imposed under Section 409A, and any ambiguities in this Agreement will be interpreted in accordance with this intent. No payment or benefits to be paid to the Executive, if any such payments or benefits, under this Agreement or otherwise, when considered together with any other severance payments or separation benefits that are considered deferred compensation under Section 409A (together, the "**Deferred Payments**") will be paid or otherwise provided until the Executive has a "separation from service" within the meaning of Section 409A.

If, at the time of the Executive's termination of employment, the Executive is a "specified employee" within the meaning of Section 409A, then the payment of the Deferred Payments will be delayed to the extent necessary to avoid the imposition of the additional tax imposed under Section 409A, which generally means that the Executive will receive payment on the first payroll date that occurs on or after the date that is six (6) months and one (1) day following the Executive's termination of employment. The Company reserves the right to amend this Agreement as it considers necessary or advisable, in its sole discretion and without the consent of the Executive or the consent of any other individual, to comply with any provision required to avoid the imposition of the additional tax imposed under Section 409A or to otherwise avoid income recognition under Section 409A prior to the actual payment of any benefits or imposition of any additional tax. Each payment, installment, and benefit payable under this Agreement is intended to constitute a separate payment for purposes of U.S. Treasury Regulation Section 1.409A-2(b)(2). In no event will any member of the Company Group reimburse, indemnify, or hold harmless the Executive for any taxes, penalties and interest that may be imposed, or other costs that may be incurred, as a result of Section 409A.

(e) Resignation of Officer and Director Positions. The Executive's receipt of any severance payments or benefits upon the Executive's Qualifying Termination under Section 3 is subject to the Executive having resigned from all officer and director positions with all members of the Company Group and the Executive executing any documents the Company may require in connection with the same.

6. Change in Control Benefits. If the Company experiences a Change in Control, and Executive remains an employee of any member of the Company Group through the date of such Change in Control, one hundred percent (100%) of the then-unvested shares subject to each Equity Award that is outstanding as of the date of such Change in Control will accelerate and fully vest. In the case of an Equity Award that is subject to performance-based vesting, unless otherwise specified in the applicable Equity Award agreement governing the Equity Award, all performance goals and other vesting criteria will be deemed achieved at one hundred percent (100%) of target levels.

7. Limitation on Payments.

(a) Reduction of Severance Benefits. If any payment or benefit that the Executive would receive from any Company Group member or any other party whether in connection with the provisions in this Agreement or otherwise (the "**Payment**") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Code, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the "**Excise Tax**"), then the Payment will be equal to the Best Results Amount. The "**Best Results Amount**" will be either (x) the full amount of the Payment or (y) a lesser amount that would result in no portion of the Payment being subject to the Excise Tax, whichever of those amounts, taking into account the applicable federal, state and local employment taxes, income taxes and the Excise Tax, results in the Executive's receipt, on an after-tax basis, of the greater amount. If a reduction in payments or benefits constituting parachute payments is necessary so that the Payment equals the Best Results Amount, reduction will occur in the following order: (A) reduction of cash payments in reverse chronological order (that is, the cash payment owed on the latest date following the occurrence of the event triggering the excise tax will be the first cash payment to be reduced);

(B) cancellation of Equity Awards that were granted "contingent on a change in ownership or control" within the meaning of Section 280G of the Code in the reverse order of date of grant of the awards (that is, the most recently granted Equity Awards will be cancelled first); (C) reduction of the accelerated vesting of Equity Awards in the reverse order of date of grant of the awards (that is, the vesting of the most recently granted Equity Awards will be cancelled first); and (D) reduction of employee benefits in reverse chronological order (that is, the benefit owed on the latest date following the occurrence of the event triggering the excise tax will be the first benefit to be reduced). In no event will the Executive have any discretion with respect to the ordering of Payment reductions. The Executive will be solely responsible for the payment of all personal tax liability that is incurred as a result of the payments and benefits received under this Agreement, and the Executive will not be reimbursed, indemnified, or held harmless by any member of the Company Group for any of those payments of personal tax liability.

(b) Determination of Excise Tax Liability. Unless the Company and the Executive otherwise agree in writing, the Company will select a professional services firm (the "**Firm**") to make all determinations required under this Section 7, which determinations will be conclusive and binding upon the Executive and the Company for all purposes. For purposes of making the calculations required by this Section 76, the Firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and the Executive will furnish to the Firm such information and documents as the Firm reasonably may request in order to make determinations under this Section 7. The Company will bear the costs and make all payments for the Firm's services in connection with any calculations contemplated by this Section 7. The Company will have no liability to the Executive for the determinations of the Firm.

8. Definitions. The following terms referred to in this Agreement will have the following meanings:

(a) "**Board**" means the Company's Board of Directors.

(b) "**Cause**" means (i) the Executive's willful and repeated failure, in the reasonable judgment of the Board, to substantially perform his or her assigned duties or responsibility as an employee as directed or assigned by the Board (other than the Executive's failure resulting from a Disability); (ii) the Executive engaging in intentional illegal conduct that was or is materially injurious to the Company Group or its affiliates; (iii) the Executive's knowing violation of a federal or state law or regulation directly or indirectly applicable to the business of the Company Group or its affiliates, which violation was or is reasonably likely to be injurious to the Company Group or its affiliates; (iv) the Executive's material breach of the terms of any confidentiality agreement or invention assignment agreement between the Executive and the Company Group (or any affiliate); or (v) the Executive being convicted of, or entering a plea of guilty or nolo contendere to, a felony or committing any act of moral turpitude, dishonesty, or fraud against, or the misappropriation of material property belonging to, the Company Group or its affiliates. The foregoing definition does not in any way limit the Company's ability to terminate the Executive's employment at any time, and the term "Company" will be interpreted to include any subsidiary, parent, affiliate, or any successor thereto, if appropriate.

(c) "**Change in Control**" means the occurrence of any of the following events:

(i) A change in the ownership of the Company which occurs on the date that any one person, or more than one person acting as a group ("**Person**"), acquires ownership of the stock of the Company that, with the stock held by such Person, constitutes more than fifty percent (50%) of the total voting power of the stock of the Company; provided, that for this subsection, the acquisition of additional stock by any one Person, who prior to such acquisition is considered to own more than fifty percent (50%) of the total voting power of the stock of the Company will not be considered a Change in Control and provided, further, that any change in the ownership of the stock of the Company as a result of a private financing of the Company that is approved by the Board also will not be considered a Change in Control. Further, if the stockholders of the Company immediately before such change in ownership continue to retain immediately after the change in ownership, in substantially the same proportions as their ownership of shares of the Company's voting stock immediately prior to the change in ownership, direct or indirect beneficial ownership of fifty percent (50%) or more of the total voting power of the stock of the Company or of the ultimate parent entity of the Company, such event shall not be considered a Change in Control under this Section 8(c)(i). For this purpose, indirect beneficial ownership shall include, without limitation, an interest resulting from ownership of the voting securities of one or more corporations or other business entities which own the Company, as the case may be, either directly or through one or more subsidiary corporations or other business entities; or

(ii) A change in the effective control of the Company which occurs on the date a majority of members of the Board is replaced during any twelve (12)-month period by members of the Board whose appointment or election is not endorsed by a majority of the members of the Board prior to the appointment or election. For purposes of this Section 8(c)(ii), if any Person is considered to be in effective control of the Company, the acquisition of additional control of the Company by the same Person will not be considered a Change in Control; or

(iii) A change in the ownership of a substantial portion of the Company's assets which occurs on the date that any Person acquires (or has acquired during the twelve (12)-month period ending on the date of the most recent acquisition by such Person or Persons) assets from the Company that have a total gross fair market value equal to or more than fifty percent (50%) of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions; provided, that for this Section 8(c)(iii), the following will not constitute a change in the ownership of a substantial portion of the Company's assets:

(1) a transfer to an entity controlled by the Company's stockholders immediately after the transfer, or

(2) a transfer of assets by the Company to:

(A) a stockholder of the Company (immediately before the asset transfer) in exchange for or with respect to the Company's stock,

(B) an entity, fifty percent (50%) or more of the total value or voting power of which is owned, directly or indirectly, by the Company,

(C) a Person, that owns, directly or indirectly, fifty percent (50%) or more of the total value or voting power of all the outstanding stock of the Company, or

(D) an entity, at least fifty percent (50%) of the total value or voting power of which is owned, directly or indirectly, by a Person described in Section 8(c)(iii)(2)(A) to Section 8(c)(iii)(2)(C).

For this definition, gross fair market value means the value of the assets of the Company, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets.

For purposes of this Section 8(c), persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company. For the avoidance of doubt, wholly-owned subsidiaries of the Company shall not be considered "Persons" for purposes of this Section 8(c).

(iv) A transaction will not be a Change in Control:

(1) unless the transaction qualifies as a change in control event within the meaning of Code Section 409A; or

(2) if its primary purpose is to (1) change the jurisdiction of the Company's incorporation, or (2) create a holding company owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

(d) "**Change in Control Period**" means the period beginning on the date a LOI or similar agreement is made between the Company and an acquiror, provided such date occurs no earlier than nine (9) months prior to a Change in Control, and ending twelve (12) months following a Change in Control.

(e) "**COBRA**" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

(f) "**Code**" means the Internal Revenue Code of 1986, as amended.

(g) "**Company Group**" means the Company and its subsidiaries.

(h) "**Disability**" means a total and permanent disability as defined in Section 22(e)(3) of the Code.

(i) "**Good Reason**" means the Executive's resignation due to the occurrence of any of the following conditions which occurs without the Executive's written consent, provided that the requirements regarding advance notice and an opportunity to cure set forth below are satisfied: (i) a material reduction in the Executive's Salary, which the parties agree is a reduction of at least ten percent (10%) of the Executive's Salary; (ii) a material reduction of the Executive's

duties, authorities, or responsibilities relative to the Executive's duties, authorities, or responsibilities in effect immediately prior to the reduction, including where such material reduction results solely by virtue of the Company being acquired and made part of a larger entity (as, for example, when the Chief Financial Officer of the Company remains as such following a Change in Control but is not made the Chief Financial Officer of the acquiring corporation); or (iii) a change by more than fifty (50) miles in the geographic location at which the Executive must perform services; *provided, however*, that no condition described herein will constitute "Good Reason" for purposes of this Agreement unless (1) the Executive will have first provided written notice to the Board of the existence of the condition within ninety (90) days of the initial existence of such Good Reason condition; (2) the Board will have failed to remedy the condition within thirty (30) days following the receipt of such notice (the "**Cure Period**"); (3) the Executive must cooperate in good faith with any efforts by the Company to remedy the Good Reason condition; (4) the Good Reason condition must continue to exist upon completion of the Cure Period; and (5) the date of termination of employment occurs no more than thirty (30) days after the end of the Cure Period. In no instance will a termination by the Executive be deemed to be for Good Reason for purposes of this Agreement if it becomes effective more than twelve (12) months following the initial existence of the Good Reason condition.

(j) "**Qualifying Pre-CIC Termination**" means a Qualifying CIC Termination that occurs after a letter of intent ("**LOI**") or similar agreement is made between the Company and an acquiror, but prior to the date of the Change in Control.

(k) "**Qualifying Termination**" means a termination of the Executive's employment either (i) by a Company Group member without Cause and other than by reason of the Executive's death or Disability, or (ii) by the Executive for Good Reason, in either case, during the Change in Control Period (a "**Qualifying CIC Termination**") or outside of the Change in Control Period (a "**Qualifying Non-CIC Termination**").

(l) "**Salary**" means the Executive's rate of base salary as in effect immediately prior to the Executive's Qualifying Termination (or if the termination is due to a resignation for Good Reason based on a material reduction in base salary, then the Executive's rate of base salary in effect immediately prior to the reduction) or, if the Executive's Qualifying Termination is a Qualifying CIC Termination and the amount is greater, at the level in effect immediately prior to the Change in Control.

9. Successors. This Agreement will be binding upon and inure to the benefit of (a) the heirs, executors, and legal representatives of the Executive upon the Executive's death, and (b) any successor of the Company. Any such successor of the Company will be deemed substituted for the Company under the terms of this Agreement for all purposes. For this purpose, "successor" means any person, firm, corporation, or other business entity which at any time, whether by purchase, merger, or otherwise, directly or indirectly acquires all or substantially all of the assets or business of the Company. None of the rights of the Executive to receive any form of compensation payable pursuant to this Agreement may be assigned or transferred except by will

or the laws of descent and distribution. Any other attempted assignment, transfer, conveyance, or other disposition of the Executive's right to compensation or other benefits will be null and void.

10. Notice.

(a) General. All notices and other communications required or permitted under this Agreement will be in writing and will be effectively given (i) upon actual delivery to the party to be notified; (ii) upon transmission by email; (iii) twenty-four (24) hours after confirmed facsimile transmission; (iv) one (1) business day after deposit with a recognized overnight courier; or (v) three (3) business days after deposit with the U.S. Postal Service by first class certified or registered mail, return receipt requested, postage prepaid, addressed (A) if to the Executive, at the address the Executive will have most recently furnished to the Company in writing, (B) if to the Company, at the following address:

RxSight, Inc.
100 Columbia
Aliso Viejo, CA 92656
Attention: Chief Executive Officer

(b) Notice of Termination. Any termination by a Company Group member for Cause will be communicated by a notice of termination to the Executive, and any termination by the Executive for Good Reason will be communicated by a notice of termination to the Company, in each case given in accordance with Section 10(a) of this Agreement. The notice will indicate the specific termination provision in this Agreement relied upon, will set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination under the provision so indicated, and will specify the termination date (which will be not more than thirty (30) days after the later of (i) the giving of the notice, or (ii) the end of any applicable cure period).

11. Resignation. The termination of the Executive's employment for any reason will also constitute, without any further required action by the Executive, the Executive's voluntary resignation from all officer and/or director positions held at any member of the Company Group, and at the Board's request, the Executive will execute any documents reasonably necessary to reflect the resignations.

12. Miscellaneous Provisions.

(a) No Duty to Mitigate. The Executive will not be required to mitigate the amount of any payment contemplated by this Agreement, nor will any payment be reduced by any earnings that the Executive may receive from any other source except as specified in Section 3(e).

(b) Waiver; Amendment. No provision of this Agreement will be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by an authorized officer of the Company (other than the Executive) and by the Executive. No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party will be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(c) Headings. All captions and section headings used in this Agreement are for convenient reference only and do not form a part of this Agreement.

(d) Entire Agreement. This Agreement constitutes the entire agreement of the parties and supersedes in their entirety all prior representations, understandings, undertakings or agreements (whether oral or written and whether expressed or implied) of the parties with respect to the subject matter of this Agreement, including, for the avoidance of doubt, any other employment letter or agreement, change in control severance agreement, severance policy or program, or Equity Award agreement.

(e) Choice of Law. This Agreement will be governed by the laws of the State of California without regard to California's conflicts of law rules that may result in the application of the laws of any jurisdiction other than California. The Executive hereby expressly consents to the personal and exclusive jurisdiction and venue of the state and federal courts located in California for any lawsuit filed against the Executive by any member of the Company Group.

(f) Severability. The invalidity or unenforceability of any provision or provisions of this Agreement will not affect the validity or enforceability of any other provision of this Agreement, which will remain in full force and effect.

(g) Withholding. All payments and benefits under this Agreement will be paid less applicable withholding taxes. The Company is authorized to withhold from any payments or benefits all federal, state, local, and/or foreign taxes required to be withheld from the payments or benefits and make any other required payroll deductions. No member of the Company Group will pay the Executive's taxes arising from or relating to any payments or benefits under this Agreement.

(h) 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.]

By its signature below, each of the parties signifies its acceptance of the terms of this Agreement, in the case of the Company by its duly authorized officer.

COMPANY

RXSIGHT, INC.

By: /s/ J. Andy Corley

Title:
J. Andy Corley
Chairman of the Board of Directors

Date: 7/8/2021

EXECUTIVE

/s/ Shelley Thunen

Shelley B. Thunen

Date: 7/8/2021

[Signature page to Change in Control Severance Agreement]

Exhibit 10.20

RXSIGHT, INC.

CHANGE IN CONTROL SEVERANCE AGREEMENT

This Change in Control Severance Agreement (the "**Agreement**") is made between RxSight, Inc. (the "**Company**") and Eric J. Weinberg (the "**Executive**"), effective as of July 16, 2021 (the "**Effective Date**").

This Agreement provides certain protections to the Executive in connection with a change in control of the Company or in connection with the involuntary termination of the Executive's employment under the circumstances described in this Agreement. Certain capitalized terms are defined in Section 8 to the extent not otherwise defined in other Sections of the Agreement.

The Company and the Executive agree as follows:

1. Term of Agreement. This Agreement will terminate upon the date that all of the obligations of the parties hereto with respect to this Agreement have been satisfied.

2. At-Will Employment. The Company and the Executive acknowledge that the Executive's employment is and will continue to be at-will, as defined under applicable law.

3. Severance Benefits.

(a) Qualifying Non-CIC Termination. In the event of a Qualifying Non-CIC Termination (as defined below), and subject to Sections 5 and 7, the Executive will be eligible to receive the following from the Company:

(i) Salary Severance. A single, lump sum payment equal to 12 months of the Executive's Salary (as defined below), less applicable withholdings.

(ii) Bonus Severance. A single, lump sum payment equal to 12 months of the Executive's target annual bonus as in effect for the fiscal year in which the Qualifying Non-CIC Termination occurs, less applicable withholdings.

(iii) COBRA Coverage. Subject to Section 3(d), the Company will pay the premiums for coverage under COBRA (as defined below) for the Executive and the Executive's eligible dependents, if any, at the rates then in effect, subject to any subsequent changes in rates that are generally applicable to the Company's active employees (the "**COBRA Coverage**"), until the earliest of (A) a period of 12 months from the date of the Executive's termination of employment, (B) the date upon which the Executive (and the Executive's eligible dependents, as applicable) becomes covered under similar plans, or (C) the date upon which the Executive ceases to be eligible for coverage under COBRA.

(b) Qualifying CIC Termination. In the event of a Qualifying CIC Termination (as defined below), and subject to Sections 5 and 7, the Executive will be eligible to receive the following from the Company:

(i) Salary Severance. A single, lump sum payment equal to 12 months of the Executive's Salary, less applicable withholdings.

(ii) Bonus Severance. A single, lump sum payment equal to 12 months of the Executive's target annual bonus as in effect for the fiscal year in which the Qualifying CIC Termination occurs, less applicable withholdings.

(iii) COBRA Coverage. Subject to Section 3(d), the Company will provide COBRA Coverage until the earliest of (A) a period of 12 months from the date of the Executive's termination of employment, (B) the date upon which the Executive (and the Executive's eligible dependents, as applicable) becomes covered under similar plans, or (C) the date upon which the Executive ceases to be eligible for coverage under COBRA.

(iv) Equity Vesting. Vesting acceleration (and exercisability, as applicable) as to one hundred percent (100%) of the then-unvested shares subject to each of the Company equity awards granted to the Executive that is outstanding as of the date of the Qualifying Termination (each, an "**Equity Award**"). In the case of an Equity Award that is subject to performance-based vesting, unless otherwise specified in the applicable Equity Award agreement governing the Equity Award, all performance goals and other vesting criteria will be deemed achieved at one hundred percent (100%) of target levels. For the avoidance of doubt, in the event of the Executive's Qualifying Pre-CIC Termination (as defined below), any then outstanding Equity Awards will remain outstanding until the earlier of (x) nine (9) months following the Qualifying Termination or (y) the occurrence of a Change in Control, solely so that any benefits due on a Qualifying Pre-CIC Termination can be provided if a Change in Control occurs within nine (9) months following the Qualifying Termination (provided that in no event will the Executive's stock options or similar Equity Awards remain outstanding beyond the earlier to occur of (i) the Equity Award's maximum term to expiration or (ii) the Equity Award's post-termination exercise period). If no Change in Control occurs within nine (9) months following a Qualifying Pre-CIC Termination, any unvested portion of the Executive's Equity Awards automatically and permanently will be forfeited on the date nine (9) months following the date of the Qualifying Pre-CIC Termination without having vested.

(c) Termination Other Than a Qualifying Termination. If the termination of the Executive's employment with the Company Group (as defined below) is not a Qualifying Termination, then the Executive will not be entitled to receive the severance payments or other benefits specified in this Agreement.

(d) Conditions to Receipt of COBRA Coverage. The Executive's receipt of COBRA Coverage is subject to the Executive electing COBRA continuation coverage within the time period prescribed pursuant to COBRA for the Executive and the Executive's eligible dependents, if any. If the Company determines in its sole discretion that it cannot provide the COBRA Coverage without potentially violating, or being subject to an excise tax under, applicable law (including, without limitation, Section 2716 of the Public Health Service Act), then in lieu of any COBRA Coverage, the Company will provide to the Executive a taxable monthly payment payable on the last day of a given month, in an amount equal to the monthly COBRA premium that the Executive would be required to pay to continue his or her group health coverage in effect on the date of his or her Qualifying Termination (which amount will be based on the premium

rates applicable for the first month of COBRA Coverage for the Executive and any of eligible dependents of the Executive) (each, a "**COBRA Replacement Payment**"), which COBRA Replacement Payments will be made regardless of whether the Executive elects COBRA continuation coverage and will end on the earlier of (x) the date upon which the Executive obtains other employment (which offers group health coverage) or(y) the date the Company has paid an amount totaling the number of COBRA Replacement Payments equal to the number of months in the applicable COBRA Coverage period. For the avoidance of doubt, the COBRA Replacement Payments may be used for any purpose, including, but not limited, to continuation coverage under COBRA, and will be subject to any applicable withholdings. Notwithstanding anything to the contrary under this Agreement, if the Company determines in its sole discretion at any time that it cannot provide the COBRA Replacement Payments without violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act), the Executive will not receive the COBRA Replacement Payments or any further COBRA Coverage.

(e) Non-Duplication of Payment or Benefits. For purposes of clarity, in the event of a Qualifying Pre-CIC Termination, any severance payments and benefits to be provided to the Executive under Section 3(b) will be reduced by any amounts that already were provided to the Executive under Section 3(a). Notwithstanding any provision of this Agreement to the contrary, if the Executive is entitled to any cash severance, continued health coverage benefits, or vesting acceleration of any Equity Awards (other than under this Agreement) by operation of applicable law or under a plan, policy, contract, or arrangement sponsored by or to which any member of the Company Group is a party in connection with the Executive's separation ("**Other Benefits**"), then the corresponding severance payments and benefits under this Agreement will be reduced by the amount of Other Benefits paid or provided to the Executive.

(f) Death of the Executive. In the event of the Executive's death before all payments or benefits the Executive is entitled to receive under this Agreement have been provided, the unpaid amounts will be provided to the Executive's designated beneficiary, if living, or otherwise to the Executive's personal representative in a single lump sum as soon as possible following the Executive's death.

(g) Transfer Between Members of the Company Group. For purposes of this Agreement, if the Executive is involuntarily transferred from one member of the Company Group to another, the transfer will not be a termination without Cause but may give the Executive the ability to resign for Good Reason.

(h) Exclusive Remedy. In the event of a termination of the Executive's employment with the Company Group, the provisions of this Agreement are intended to be and are exclusive and in lieu of any other rights or remedies to which the Executive may otherwise be entitled, whether at law, tort or contract, or in equity. The Executive will be entitled to no benefits, compensation or other payments or rights upon termination of employment other than those benefits expressly set forth in this Agreement.

4. Accrued Compensation. On any termination of the Executive's employment with the Company Group, the Executive will be entitled to receive all accrued but unpaid vacation, expense reimbursements, wages, and other benefits due to the Executive under any Company-

provided plans, policies, and arrangements. For avoidance of doubt, receipt of accrued compensation is not subject to the Release Requirement discussed in Section 5(a).

5. Conditions to Receipt of Severance.

(a) Separation Agreement and Release of Claims. The Executive's receipt of any severance payments or benefits upon the Executive's Qualifying Termination under Section 3 is subject to the Executive signing and not revoking the Company's then-standard separation agreement and release of claims (which may include an agreement not to disparage any member of the Company Group, non-solicit provisions, an agreement to assist in any litigation matters, and other standard terms and conditions) (the "**Release**" and that requirement, the "**Release Requirement**"), which must become effective and irrevocable no later than the sixtieth (60th) day following the date of the Executive's Qualifying Termination (the "**Release Deadline Date**"). If the Release does not become effective and irrevocable by the Release Deadline Date, the Executive will forfeit any right to the severance payments or benefits under Section 3.

(b) Payment Timing. Any lump sum salary or bonus payments under Sections 3(a) and 3(b) will be provided on the first regularly scheduled payroll date of the Company following the date the Release becomes effective and irrevocable (the "**Severance Start Date**"), subject to any delay required by Section 5(d) below. Any taxable installments of any COBRA-related severance benefits that otherwise would have been made to the Executive on or before the Severance Start Date will be paid on the Severance Start Date, and any remaining installments thereafter will be provided as specified in this Agreement. Subject to Section 5(d), any restricted stock units, performance shares, performance units, and/or similar full value awards that accelerate vesting under Section 3(b) will be settled (x) within ten (10) days following the date the Release becomes effective and irrevocable, or (y) if later, in the event of a Qualifying Pre-CIC Termination, on the date of the Change in Control.

(c) Return of Company Property. The Executive's receipt of any severance payments or benefits upon the Executive's Qualifying Termination under Section 3 is subject to the Executive having returned all documents and other property provided to the Executive by any member of the Company Group (with the exception of a copy of the Company employee handbook and personnel documents specifically relating to the Executive), developed or obtained by the Executive in connection with his or her employment with the Company Group, or otherwise belonging to the Company Group, by no later than ten (10) days following the date of the Qualifying Termination.

(d) Section 409A. The Company intends that all payments and benefits provided under this Agreement or otherwise are exempt from, or comply with, the requirements of Section 409A of the Code (as defined below) and any guidance promulgated under Section 409A of the Code (collectively, "**Section 409A**") so that none of the payments or benefits will be subject to the additional tax imposed under Section 409A, and any ambiguities in this Agreement will be interpreted in accordance with this intent. No payment or benefits to be paid to the Executive, if any such payments or benefits, under this Agreement or otherwise, when considered together with any other severance payments or separation benefits that are considered deferred compensation under Section 409A (together, the "**Deferred Payments**") will be paid or otherwise provided until the Executive has a "separation from service" within the meaning of Section 409A.

If, at the time of the Executive's termination of employment, the Executive is a "specified employee" within the meaning of Section 409A, then the payment of the Deferred Payments will be delayed to the extent necessary to avoid the imposition of the additional tax imposed under Section 409A, which generally means that the Executive will receive payment on the first payroll date that occurs on or after the date that is six (6) months and one (1) day following the Executive's termination of employment. The Company reserves the right to amend this Agreement as it considers necessary or advisable, in its sole discretion and without the consent of the Executive or the consent of any other individual, to comply with any provision required to avoid the imposition of the additional tax imposed under Section 409A or to otherwise avoid income recognition under Section 409A prior to the actual payment of any benefits or imposition of any additional tax. Each payment, installment, and benefit payable under this Agreement is intended to constitute a separate payment for purposes of U.S. Treasury Regulation Section 1.409A-2(b)(2). In no event will any member of the Company Group reimburse, indemnify, or hold harmless the Executive for any taxes, penalties and interest that may be imposed, or other costs that may be incurred, as a result of Section 409A.

(e) Resignation of Officer and Director Positions. The Executive's receipt of any severance payments or benefits upon the Executive's Qualifying Termination under Section 3 is subject to the Executive having resigned from all officer and director positions with all members of the Company Group and the Executive executing any documents the Company may require in connection with the same.

6. Change in Control Benefits. If the Company experiences a Change in Control, and Executive remains an employee of any member of the Company Group through the date of such Change in Control, one hundred percent (100%) of the then-unvested shares subject to each Equity Award that is outstanding as of the date of such Change in Control will accelerate and fully vest. In the case of an Equity Award that is subject to performance-based vesting, unless otherwise specified in the applicable Equity Award agreement governing the Equity Award, all performance goals and other vesting criteria will be deemed achieved at one hundred percent (100%) of target levels.

7. Limitation on Payments.

(a) Reduction of Severance Benefits. If any payment or benefit that the Executive would receive from any Company Group member or any other party whether in connection with the provisions in this Agreement or otherwise (the "**Payment**") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Code, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the "**Excise Tax**"), then the Payment will be equal to the Best Results Amount. The "**Best Results Amount**" will be either (x) the full amount of the Payment or (y) a lesser amount that would result in no portion of the Payment being subject to the Excise Tax, whichever of those amounts, taking into account the applicable federal, state and local employment taxes, income taxes and the Excise Tax, results in the Executive's receipt, on an after-tax basis, of the greater amount. If a reduction in payments or benefits constituting parachute payments is necessary so that the Payment equals the Best Results Amount, reduction will occur in the following order: (A) reduction of cash payments in reverse chronological order (that is, the cash payment owed on the latest date following the occurrence of the event triggering the excise tax will be the first cash payment to be reduced);

(B) cancellation of Equity Awards that were granted "contingent on a change in ownership or control" within the meaning of Section 280G of the Code in the reverse order of date of grant of the awards (that is, the most recently granted Equity Awards will be cancelled first); (C) reduction of the accelerated vesting of Equity Awards in the reverse order of date of grant of the awards (that is, the vesting of the most recently granted Equity Awards will be cancelled first); and (D) reduction of employee benefits in reverse chronological order (that is, the benefit owed on the latest date following the occurrence of the event triggering the excise tax will be the first benefit to be reduced). In no event will the Executive have any discretion with respect to the ordering of Payment reductions. The Executive will be solely responsible for the payment of all personal tax liability that is incurred as a result of the payments and benefits received under this Agreement, and the Executive will not be reimbursed, indemnified, or held harmless by any member of the Company Group for any of those payments of personal tax liability.

(b) Determination of Excise Tax Liability. Unless the Company and the Executive otherwise agree in writing, the Company will select a professional services firm (the "**Firm**") to make all determinations required under this Section 7, which determinations will be conclusive and binding upon the Executive and the Company for all purposes. For purposes of making the calculations required by this Section 76, the Firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and the Executive will furnish to the Firm such information and documents as the Firm reasonably may request in order to make determinations under this Section 7. The Company will bear the costs and make all payments for the Firm's services in connection with any calculations contemplated by this Section 7. The Company will have no liability to the Executive for the determinations of the Firm.

8. Definitions. The following terms referred to in this Agreement will have the following meanings:

(a) "**Board**" means the Company's Board of Directors.

(b) "**Cause**" means (i) the Executive's willful and repeated failure, in the reasonable judgment of the Board, to substantially perform his or her assigned duties or responsibility as an employee as directed or assigned by the Board (other than the Executive's failure resulting from a Disability); (ii) the Executive engaging in intentional illegal conduct that was or is materially injurious to the Company Group or its affiliates; (iii) the Executive's knowing violation of a federal or state law or regulation directly or indirectly applicable to the business of the Company Group or its affiliates, which violation was or is reasonably likely to be injurious to the Company Group or its affiliates; (iv) the Executive's material breach of the terms of any confidentiality agreement or invention assignment agreement between the Executive and the Company Group (or any affiliate); or (v) the Executive being convicted of, or entering a plea of guilty or nolo contendere to, a felony or committing any act of moral turpitude, dishonesty, or fraud against, or the misappropriation of material property belonging to, the Company Group or its affiliates. The foregoing definition does not in any way limit the Company's ability to terminate the Executive's employment at any time, and the term "Company" will be interpreted to include any subsidiary, parent, affiliate, or any successor thereto, if appropriate.

(c) "**Change in Control**" means the occurrence of any of the following events:

(i) A change in the ownership of the Company which occurs on the date that any one person, or more than one person acting as a group ("**Person**"), acquires ownership of the stock of the Company that, with the stock held by such Person, constitutes more than fifty percent (50%) of the total voting power of the stock of the Company; provided, that for this subsection, the acquisition of additional stock by any one Person, who prior to such acquisition is considered to own more than fifty percent (50%) of the total voting power of the stock of the Company will not be considered a Change in Control and provided, further, that any change in the ownership of the stock of the Company as a result of a private financing of the Company that is approved by the Board also will not be considered a Change in Control. Further, if the stockholders of the Company immediately before such change in ownership continue to retain immediately after the change in ownership, in substantially the same proportions as their ownership of shares of the Company's voting stock immediately prior to the change in ownership, direct or indirect beneficial ownership of fifty percent (50%) or more of the total voting power of the stock of the Company or of the ultimate parent entity of the Company, such event shall not be considered a Change in Control under this Section 8(c)(i). For this purpose, indirect beneficial ownership shall include, without limitation, an interest resulting from ownership of the voting securities of one or more corporations or other business entities which own the Company, as the case may be, either directly or through one or more subsidiary corporations or other business entities; or

(ii) A change in the effective control of the Company which occurs on the date a majority of members of the Board is replaced during any twelve (12)-month period by members of the Board whose appointment or election is not endorsed by a majority of the members of the Board prior to the appointment or election. For purposes of this Section 8(c)(ii), if any Person is considered to be in effective control of the Company, the acquisition of additional control of the Company by the same Person will not be considered a Change in Control; or

(iii) A change in the ownership of a substantial portion of the Company's assets which occurs on the date that any Person acquires (or has acquired during the twelve (12)-month period ending on the date of the most recent acquisition by such Person or Persons) assets from the Company that have a total gross fair market value equal to or more than fifty percent (50%) of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions; provided, that for this Section 8(c)(iii), the following will not constitute a change in the ownership of a substantial portion of the Company's assets:

(1) a transfer to an entity controlled by the Company's stockholders immediately after the transfer, or

(2) a transfer of assets by the Company to:

(A) a stockholder of the Company (immediately before the asset transfer) in exchange for or with respect to the Company's stock,

(B) an entity, fifty percent (50%) or more of the total value or voting power of which is owned, directly or indirectly, by the Company,

(C) a Person, that owns, directly or indirectly, fifty percent (50%) or more of the total value or voting power of all the outstanding stock of the Company, or

(D) an entity, at least fifty percent (50%) of the total value or voting power of which is owned, directly or indirectly, by a Person described in Section 8(c)(iii)(2)(A) to Section 8(c)(iii)(2)(C).

For this definition, gross fair market value means the value of the assets of the Company, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets.

For purposes of this Section 8(c), persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company. For the avoidance of doubt, wholly-owned subsidiaries of the Company shall not be considered "Persons" for purposes of this Section 8(c).

(iv) A transaction will not be a Change in Control:

(1) unless the transaction qualifies as a change in control event within the meaning of Code Section 409A; or

(2) if its primary purpose is to (1) change the jurisdiction of the Company's incorporation, or (2) create a holding company owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

(d) "**Change in Control Period**" means the period beginning on the date a LOI or similar agreement is made between the Company and an acquiror, provided such date occurs no earlier than nine (9) months prior to a Change in Control, and ending twelve (12) months following a Change in Control.

(e) "**COBRA**" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

(f) "**Code**" means the Internal Revenue Code of 1986, as amended.

(g) "**Company Group**" means the Company and its subsidiaries.

(h) "**Disability**" means a total and permanent disability as defined in Section 22(e)(3) of the Code.

(i) "**Good Reason**" means the Executive's resignation due to the occurrence of any of the following conditions which occurs without the Executive's written consent, provided that the requirements regarding advance notice and an opportunity to cure set forth below are satisfied: (i) a material reduction in the Executive's Salary, which the parties agree is a reduction of at least ten percent (10%) of the Executive's Salary; (ii) a material reduction of the Executive's

duties, authorities, or responsibilities relative to the Executive's duties, authorities, or responsibilities in effect immediately prior to the reduction, including where such material reduction results solely by virtue of the Company being acquired and made part of a larger entity (as, for example, when the Chief Financial Officer of the Company remains as such following a Change in Control but is not made the Chief Financial Officer of the acquiring corporation); or (iii) a change by more than fifty (50) miles in the geographic location at which the Executive must perform services; *provided, however*, that no condition described herein will constitute "Good Reason" for purposes of this Agreement unless (1) the Executive will have first provided written notice to the Board of the existence of the condition within ninety (90) days of the initial existence of such Good Reason condition; (2) the Board will have failed to remedy the condition within thirty (30) days following the receipt of such notice (the "**Cure Period**"); (3) the Executive must cooperate in good faith with any efforts by the Company to remedy the Good Reason condition; (4) the Good Reason condition must continue to exist upon completion of the Cure Period; and (5) the date of termination of employment occurs no more than thirty (30) days after the end of the Cure Period. In no instance will a termination by the Executive be deemed to be for Good Reason for purposes of this Agreement if it becomes effective more than twelve (12) months following the initial existence of the Good Reason condition.

(j) "**Qualifying Pre-CIC Termination**" means a Qualifying CIC Termination that occurs after a letter of intent ("**LOI**") or similar agreement is made between the Company and an acquiror, but prior to the date of the Change in Control.

(k) "**Qualifying Termination**" means a termination of the Executive's employment either (i) by a Company Group member without Cause and other than by reason of the Executive's death or Disability, or (ii) by the Executive for Good Reason, in either case, during the Change in Control Period (a "**Qualifying CIC Termination**") or outside of the Change in Control Period (a "**Qualifying Non-CIC Termination**").

(l) "**Salary**" means the Executive's rate of base salary as in effect immediately prior to the Executive's Qualifying Termination (or if the termination is due to a resignation for Good Reason based on a material reduction in base salary, then the Executive's rate of base salary in effect immediately prior to the reduction) or, if the Executive's Qualifying Termination is a Qualifying CIC Termination and the amount is greater, at the level in effect immediately prior to the Change in Control.

9. Successors. This Agreement will be binding upon and inure to the benefit of (a) the heirs, executors, and legal representatives of the Executive upon the Executive's death, and (b) any successor of the Company. Any such successor of the Company will be deemed substituted for the Company under the terms of this Agreement for all purposes. For this purpose, "successor" means any person, firm, corporation, or other business entity which at any time, whether by purchase, merger, or otherwise, directly or indirectly acquires all or substantially all of the assets or business of the Company. None of the rights of the Executive to receive any form of compensation payable pursuant to this Agreement may be assigned or transferred except by will

or the laws of descent and distribution. Any other attempted assignment, transfer, conveyance, or other disposition of the Executive's right to compensation or other benefits will be null and void.

10. Notice.

(a) General. All notices and other communications required or permitted under this Agreement will be in writing and will be effectively given (i) upon actual delivery to the party to be notified; (ii) upon transmission by email; (iii) twenty-four (24) hours after confirmed facsimile transmission; (iv) one (1) business day after deposit with a recognized overnight courier; or (v) three (3) business days after deposit with the U.S. Postal Service by first class certified or registered mail, return receipt requested, postage prepaid, addressed (A) if to the Executive, at the address the Executive will have most recently furnished to the Company in writing, (B) if to the Company, at the following address:

RxSight, Inc.
100 Columbia
Aliso Viejo, CA 92656
Attention: Chief Executive Officer

(b) Notice of Termination. Any termination by a Company Group member for Cause will be communicated by a notice of termination to the Executive, and any termination by the Executive for Good Reason will be communicated by a notice of termination to the Company, in each case given in accordance with Section 10(a) of this Agreement. The notice will indicate the specific termination provision in this Agreement relied upon, will set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination under the provision so indicated, and will specify the termination date (which will be not more than thirty (30) days after the later of (i) the giving of the notice, or (ii) the end of any applicable cure period).

11. Resignation. The termination of the Executive's employment for any reason will also constitute, without any further required action by the Executive, the Executive's voluntary resignation from all officer and/or director positions held at any member of the Company Group, and at the Board's request, the Executive will execute any documents reasonably necessary to reflect the resignations.

12. Miscellaneous Provisions.

(a) No Duty to Mitigate. The Executive will not be required to mitigate the amount of any payment contemplated by this Agreement, nor will any payment be reduced by any earnings that the Executive may receive from any other source except as specified in Section 3(e).

(b) Waiver; Amendment. No provision of this Agreement will be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by an authorized officer of the Company (other than the Executive) and by the Executive. No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party will be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(c) Headings. All captions and section headings used in this Agreement are for convenient reference only and do not form a part of this Agreement.

(d) Entire Agreement. This Agreement constitutes the entire agreement of the parties and supersedes in their entirety all prior representations, understandings, undertakings or agreements (whether oral or written and whether expressed or implied) of the parties with respect to the subject matter of this Agreement, including, for the avoidance of doubt, any other employment letter or agreement, change in control severance agreement, severance policy or program, or Equity Award agreement.

(e) Choice of Law. This Agreement will be governed by the laws of the State of California without regard to California's conflicts of law rules that may result in the application of the laws of any jurisdiction other than California. The Executive hereby expressly consents to the personal and exclusive jurisdiction and venue of the state and federal courts located in California for any lawsuit filed against the Executive by any member of the Company Group.

(f) Severability. The invalidity or unenforceability of any provision or provisions of this Agreement will not affect the validity or enforceability of any other provision of this Agreement, which will remain in full force and effect.

(g) Withholding. All payments and benefits under this Agreement will be paid less applicable withholding taxes. The Company is authorized to withhold from any payments or benefits all federal, state, local, and/or foreign taxes required to be withheld from the payments or benefits and make any other required payroll deductions. No member of the Company Group will pay the Executive's taxes arising from or relating to any payments or benefits under this Agreement.

(h) 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.]

By its signature below, each of the parties signifies its acceptance of the terms of this Agreement, in the case of the Company by its duly authorized officer.

COMPANY

RXSIGHT, INC.

By: /s/ J. Andy Corley

Title:
J. Andy Corley
Chairman of the Board of Directors

Date: 7/8/2021

EXECUTIVE

/s/ Eric Weinberg

Eric J. Weinberg

Date: 7/8/2021

[Signature page to Change in Control Severance Agreement]

Exhibit 10.21

RXSIGHT, INC.

CHANGE IN CONTROL SEVERANCE AGREEMENT

This Change in Control Severance Agreement (the "**Agreement**") is made between RxSight, Inc. (the "**Company**") and Ilya Goldshleger (the "**Executive**"), effective as of July 16, 2021 (the "**Effective Date**").

This Agreement provides certain protections to the Executive in connection with a change in control of the Company or in connection with the involuntary termination of the Executive's employment under the circumstances described in this Agreement. Certain capitalized terms are defined in Section 8 to the extent not otherwise defined in other Sections of the Agreement.

The Company and the Executive agree as follows:

1. Term of Agreement. This Agreement will terminate upon the date that all of the obligations of the parties hereto with respect to this Agreement have been satisfied.

2. At-Will Employment. The Company and the Executive acknowledge that the Executive's employment is and will continue to be at-will, as defined under applicable law.

3. Severance Benefits.

(a) Qualifying Non-CIC Termination. In the event of a Qualifying Non-CIC Termination (as defined below), and subject to Sections 5 and 7, the Executive will be eligible to receive the following from the Company:

(i) Salary Severance. A single, lump sum payment equal to 12 months of the Executive's Salary (as defined below), less applicable withholdings.

(ii) Bonus Severance. A single, lump sum payment equal to 12 months of the Executive's target annual bonus as in effect for the fiscal year in which the Qualifying Non-CIC Termination occurs, less applicable withholdings.

(iii) COBRA Coverage. Subject to Section 3(d), the Company will pay the premiums for coverage under COBRA (as defined below) for the Executive and the Executive's eligible dependents, if any, at the rates then in effect, subject to any subsequent changes in rates that are generally applicable to the Company's active employees (the "**COBRA Coverage**"), until the earliest of (A) a period of 12 months from the date of the Executive's termination of employment, (B) the date upon which the Executive (and the Executive's eligible dependents, as applicable) becomes covered under similar plans, or (C) the date upon which the Executive ceases to be eligible for coverage under COBRA.

(b) Qualifying CIC Termination. In the event of a Qualifying CIC Termination (as defined below), and subject to Sections 5 and 7, the Executive will be eligible to receive the following from the Company:

(i) Salary Severance. A single, lump sum payment equal to 12 months of the Executive's Salary, less applicable withholdings.

(ii) Bonus Severance. A single, lump sum payment equal to 12 months of the Executive's target annual bonus as in effect for the fiscal year in which the Qualifying CIC Termination occurs, less applicable withholdings.

(iii) COBRA Coverage. Subject to Section 3(d), the Company will provide COBRA Coverage until the earliest of (A) a period of 12 months from the date of the Executive's termination of employment, (B) the date upon which the Executive (and the Executive's eligible dependents, as applicable) becomes covered under similar plans, or (C) the date upon which the Executive ceases to be eligible for coverage under COBRA.

(iv) Equity Vesting. Vesting acceleration (and exercisability, as applicable) as to one hundred percent (100%) of the then-unvested shares subject to each of the Company equity awards granted to the Executive that is outstanding as of the date of the Qualifying Termination (each, an "**Equity Award**"). In the case of an Equity Award that is subject to performance-based vesting, unless otherwise specified in the applicable Equity Award agreement governing the Equity Award, all performance goals and other vesting criteria will be deemed achieved at one hundred percent (100%) of target levels. For the avoidance of doubt, in the event of the Executive's Qualifying Pre-CIC Termination (as defined below), any then outstanding Equity Awards will remain outstanding until the earlier of (x) nine (9) months following the Qualifying Termination or (y) the occurrence of a Change in Control, solely so that any benefits due on a Qualifying Pre-CIC Termination can be provided if a Change in Control occurs within nine (9) months following the Qualifying Termination (provided that in no event will the Executive's stock options or similar Equity Awards remain outstanding beyond the earlier to occur of (i) the Equity Award's maximum term to expiration or (ii) the Equity Award's post-termination exercise period). If no Change in Control occurs within nine (9) months following a Qualifying Pre-CIC Termination, any unvested portion of the Executive's Equity Awards automatically and permanently will be forfeited on the date nine (9) months following the date of the Qualifying Pre-CIC Termination without having vested.

(c) Termination Other Than a Qualifying Termination. If the termination of the Executive's employment with the Company Group (as defined below) is not a Qualifying Termination, then the Executive will not be entitled to receive the severance payments or other benefits specified in this Agreement.

(d) Conditions to Receipt of COBRA Coverage. The Executive's receipt of COBRA Coverage is subject to the Executive electing COBRA continuation coverage within the time period prescribed pursuant to COBRA for the Executive and the Executive's eligible dependents, if any. If the Company determines in its sole discretion that it cannot provide the COBRA Coverage without potentially violating, or being subject to an excise tax under, applicable law (including, without limitation, Section 2716 of the Public Health Service Act), then in lieu of any COBRA Coverage, the Company will provide to the Executive a taxable monthly payment payable on the last day of a given month, in an amount equal to the monthly COBRA premium that the Executive would be required to pay to continue his or her group health coverage in effect on the date of his or her Qualifying Termination (which amount will be based on the premium

rates applicable for the first month of COBRA Coverage for the Executive and any of eligible dependents of the Executive) (each, a "**COBRA Replacement Payment**"), which COBRA Replacement Payments will be made regardless of whether the Executive elects COBRA continuation coverage and will end on the earlier of (x) the date upon which the Executive obtains other employment (which offers group health coverage) or (y) the date the Company has paid an amount totaling the number of COBRA Replacement Payments equal to the number of months in the applicable COBRA Coverage period. For the avoidance of doubt, the COBRA Replacement Payments may be used for any purpose, including, but not limited, to continuation coverage under COBRA, and will be subject to any applicable withholdings. Notwithstanding anything to the contrary under this Agreement, if the Company determines in its sole discretion at any time that it cannot provide the COBRA Replacement Payments without violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act), the Executive will not receive the COBRA Replacement Payments or any further COBRA Coverage.

(e) Non-Duplication of Payment or Benefits. For purposes of clarity, in the event of a Qualifying Pre-CIC Termination, any severance payments and benefits to be provided to the Executive under Section 3(b) will be reduced by any amounts that already were provided to the Executive under Section 3(a). Notwithstanding any provision of this Agreement to the contrary, if the Executive is entitled to any cash severance, continued health coverage benefits, or vesting acceleration of any Equity Awards (other than under this Agreement) by operation of applicable law or under a plan, policy, contract, or arrangement sponsored by or to which any member of the Company Group is a party in connection with the Executive's separation ("**Other Benefits**"), then the corresponding severance payments and benefits under this Agreement will be reduced by the amount of Other Benefits paid or provided to the Executive.

(f) Death of the Executive. In the event of the Executive's death before all payments or benefits the Executive is entitled to receive under this Agreement have been provided, the unpaid amounts will be provided to the Executive's designated beneficiary, if living, or otherwise to the Executive's personal representative in a single lump sum as soon as possible following the Executive's death.

(g) Transfer Between Members of the Company Group. For purposes of this Agreement, if the Executive is involuntarily transferred from one member of the Company Group to another, the transfer will not be a termination without Cause but may give the Executive the ability to resign for Good Reason.

(h) Exclusive Remedy. In the event of a termination of the Executive's employment with the Company Group, the provisions of this Agreement are intended to be and are exclusive and in lieu of any other rights or remedies to which the Executive may otherwise be entitled, whether at law, tort or contract, or in equity. The Executive will be entitled to no benefits, compensation or other payments or rights upon termination of employment other than those benefits expressly set forth in this Agreement.

4. Accrued Compensation. On any termination of the Executive's employment with the Company Group, the Executive will be entitled to receive all accrued but unpaid vacation, expense reimbursements, wages, and other benefits due to the Executive under any Company-

provided plans, policies, and arrangements. For avoidance of doubt, receipt of accrued compensation is not subject to the Release Requirement discussed in Section 5(a).

5. Conditions to Receipt of Severance.

(a) Separation Agreement and Release of Claims. The Executive's receipt of any severance payments or benefits upon the Executive's Qualifying Termination under Section 3 is subject to the Executive signing and not revoking the Company's then-standard separation agreement and release of claims (which may include an agreement not to disparage any member of the Company Group, non-solicit provisions, an agreement to assist in any litigation matters, and other standard terms and conditions) (the "**Release**" and that requirement, the "**Release Requirement**"), which must become effective and irrevocable no later than the sixtieth (60th) day following the date of the Executive's Qualifying Termination (the "**Release Deadline Date**"). If the Release does not become effective and irrevocable by the Release Deadline Date, the Executive will forfeit any right to the severance payments or benefits under Section 3.

(b) Payment Timing. Any lump sum salary or bonus payments under Sections 3(a) and 3(b) will be provided on the first regularly scheduled payroll date of the Company following the date the Release becomes effective and irrevocable (the "**Severance Start Date**"), subject to any delay required by Section 5(d) below. Any taxable installments of any COBRA-related severance benefits that otherwise would have been made to the Executive on or before the Severance Start Date will be paid on the Severance Start Date, and any remaining installments thereafter will be provided as specified in this Agreement. Subject to Section 5(d), any restricted stock units, performance shares, performance units, and/or similar full value awards that accelerate vesting under Section 3(b) will be settled (x) within ten (10) days following the date the Release becomes effective and irrevocable, or (y) if later, in the event of a Qualifying Pre-CIC Termination, on the date of the Change in Control.

(c) Return of Company Property. The Executive's receipt of any severance payments or benefits upon the Executive's Qualifying Termination under Section 3 is subject to the Executive having returned all documents and other property provided to the Executive by any member of the Company Group (with the exception of a copy of the Company employee handbook and personnel documents specifically relating to the Executive), developed or obtained by the Executive in connection with his or her employment with the Company Group, or otherwise belonging to the Company Group, by no later than ten (10) days following the date of the Qualifying Termination.

(d) Section 409A. The Company intends that all payments and benefits provided under this Agreement or otherwise are exempt from, or comply with, the requirements of Section 409A of the Code (as defined below) and any guidance promulgated under Section 409A of the Code (collectively, "**Section 409A**") so that none of the payments or benefits will be subject to the additional tax imposed under Section 409A, and any ambiguities in this Agreement will be interpreted in accordance with this intent. No payment or benefits to be paid to the Executive, if any such payments or benefits, under this Agreement or otherwise, when considered together with any other severance payments or separation benefits that are considered deferred compensation under Section 409A (together, the "**Deferred Payments**") will be paid or otherwise provided until the Executive has a "separation from service" within the meaning of Section 409A.

If, at the time of the Executive's termination of employment, the Executive is a "specified employee" within the meaning of Section 409A, then the payment of the Deferred Payments will be delayed to the extent necessary to avoid the imposition of the additional tax imposed under Section 409A, which generally means that the Executive will receive payment on the first payroll date that occurs on or after the date that is six (6) months and one (1) day following the Executive's termination of employment. The Company reserves the right to amend this Agreement as it considers necessary or advisable, in its sole discretion and without the consent of the Executive or the consent of any other individual, to comply with any provision required to avoid the imposition of the additional tax imposed under Section 409A or to otherwise avoid income recognition under Section 409A prior to the actual payment of any benefits or imposition of any additional tax. Each payment, installment, and benefit payable under this Agreement is intended to constitute a separate payment for purposes of U.S. Treasury Regulation Section 1.409A-2(b)(2). In no event will any member of the Company Group reimburse, indemnify, or hold harmless the Executive for any taxes, penalties and interest that may be imposed, or other costs that may be incurred, as a result of Section 409A.

(e) Resignation of Officer and Director Positions. The Executive's receipt of any severance payments or benefits upon the Executive's Qualifying Termination under Section 3 is subject to the Executive having resigned from all officer and director positions with all members of the Company Group and the Executive executing any documents the Company may require in connection with the same.

6. Change in Control Benefits. If the Company experiences a Change in Control, and Executive remains an employee of any member of the Company Group through the date of such Change in Control, one hundred percent (100%) of the then-unvested shares subject to each Equity Award that is outstanding as of the date of such Change in Control will accelerate and fully vest. In the case of an Equity Award that is subject to performance-based vesting, unless otherwise specified in the applicable Equity Award agreement governing the Equity Award, all performance goals and other vesting criteria will be deemed achieved at one hundred percent (100%) of target levels.

7. Limitation on Payments.

(a) Reduction of Severance Benefits. If any payment or benefit that the Executive would receive from any Company Group member or any other party whether in connection with the provisions in this Agreement or otherwise (the "**Payment**") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Code, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the "**Excise Tax**"), then the Payment will be equal to the Best Results Amount. The "**Best Results Amount**" will be either (x) the full amount of the Payment or (y) a lesser amount that would result in no portion of the Payment being subject to the Excise Tax, whichever of those amounts, taking into account the applicable federal, state and local employment taxes, income taxes and the Excise Tax, results in the Executive's receipt, on an after-tax basis, of the greater amount. If a reduction in payments or benefits constituting parachute payments is necessary so that the Payment equals the Best Results Amount, reduction will occur in the following order: (A) reduction of cash payments in reverse chronological order (that is, the cash payment owed on the latest date following the occurrence of the event triggering the excise tax will be the first cash payment to be reduced);

(B) cancellation of Equity Awards that were granted "contingent on a change in ownership or control" within the meaning of Section 280G of the Code in the reverse order of date of grant of the awards (that is, the most recently granted Equity Awards will be cancelled first); (C) reduction of the accelerated vesting of Equity Awards in the reverse order of date of grant of the awards (that is, the vesting of the most recently granted Equity Awards will be cancelled first); and (D) reduction of employee benefits in reverse chronological order (that is, the benefit owed on the latest date following the occurrence of the event triggering the excise tax will be the first benefit to be reduced). In no event will the Executive have any discretion with respect to the ordering of Payment reductions. The Executive will be solely responsible for the payment of all personal tax liability that is incurred as a result of the payments and benefits received under this Agreement, and the Executive will not be reimbursed, indemnified, or held harmless by any member of the Company Group for any of those payments of personal tax liability.

(b) Determination of Excise Tax Liability. Unless the Company and the Executive otherwise agree in writing, the Company will select a professional services firm (the "**Firm**") to make all determinations required under this Section 7, which determinations will be conclusive and binding upon the Executive and the Company for all purposes. For purposes of making the calculations required by this Section 76, the Firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and the Executive will furnish to the Firm such information and documents as the Firm reasonably may request in order to make determinations under this Section 7. The Company will bear the costs and make all payments for the Firm's services in connection with any calculations contemplated by this Section 7. The Company will have no liability to the Executive for the determinations of the Firm.

8. Definitions. The following terms referred to in this Agreement will have the following meanings:

(a) "**Board**" means the Company's Board of Directors.

(b) "**Cause**" means (i) the Executive's willful and repeated failure, in the reasonable judgment of the Board, to substantially perform his or her assigned duties or responsibility as an employee as directed or assigned by the Board (other than the Executive's failure resulting from a Disability); (ii) the Executive engaging in intentional illegal conduct that was or is materially injurious to the Company Group or its affiliates; (iii) the Executive's knowing violation of a federal or state law or regulation directly or indirectly applicable to the business of the Company Group or its affiliates, which violation was or is reasonably likely to be injurious to the Company Group or its affiliates; (iv) the Executive's material breach of the terms of any confidentiality agreement or invention assignment agreement between the Executive and the Company Group (or any affiliate); or (v) the Executive being convicted of, or entering a plea of guilty or nolo contendere to, a felony or committing any act of moral turpitude, dishonesty, or fraud against, or the misappropriation of material property belonging to, the Company Group or its affiliates. The foregoing definition does not in any way limit the Company's ability to terminate the Executive's employment at any time, and the term "Company" will be interpreted to include any subsidiary, parent, affiliate, or any successor thereto, if appropriate.

(c) "**Change in Control**" means the occurrence of any of the following events:

(i) A change in the ownership of the Company which occurs on the date that any one person, or more than one person acting as a group ("**Person**"), acquires ownership of the stock of the Company that, with the stock held by such Person, constitutes more than fifty percent (50%) of the total voting power of the stock of the Company; provided, that for this subsection, the acquisition of additional stock by any one Person, who prior to such acquisition is considered to own more than fifty percent (50%) of the total voting power of the stock of the Company will not be considered a Change in Control and provided, further, that any change in the ownership of the stock of the Company as a result of a private financing of the Company that is approved by the Board also will not be considered a Change in Control. Further, if the stockholders of the Company immediately before such change in ownership continue to retain immediately after the change in ownership, in substantially the same proportions as their ownership of shares of the Company's voting stock immediately prior to the change in ownership, direct or indirect beneficial ownership of fifty percent (50%) or more of the total voting power of the stock of the Company or of the ultimate parent entity of the Company, such event shall not be considered a Change in Control under this Section 8(c)(i). For this purpose, indirect beneficial ownership shall include, without limitation, an interest resulting from ownership of the voting securities of one or more corporations or other business entities which own the Company, as the case may be, either directly or through one or more subsidiary corporations or other business entities; or

(ii) A change in the effective control of the Company which occurs on the date a majority of members of the Board is replaced during any twelve (12)-month period by members of the Board whose appointment or election is not endorsed by a majority of the members of the Board prior to the appointment or election. For purposes of this Section 8(c)(ii), if any Person is considered to be in effective control of the Company, the acquisition of additional control of the Company by the same Person will not be considered a Change in Control; or

(iii) A change in the ownership of a substantial portion of the Company's assets which occurs on the date that any Person acquires (or has acquired during the twelve (12)-month period ending on the date of the most recent acquisition by such Person or Persons) assets from the Company that have a total gross fair market value equal to or more than fifty percent (50%) of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions; provided, that for this Section 8(c)(iii), the following will not constitute a change in the ownership of a substantial portion of the Company's assets:

(1) a transfer to an entity controlled by the Company's stockholders immediately after the transfer, or

(2) a transfer of assets by the Company to:

(A) a stockholder of the Company (immediately before the asset transfer) in exchange for or with respect to the Company's stock,

(B) an entity, fifty percent (50%) or more of the total value or voting power of which is owned, directly or indirectly, by the Company,

(C) a Person, that owns, directly or indirectly, fifty percent (50%) or more of the total value or voting power of all the outstanding stock of the Company, or

(D) an entity, at least fifty percent (50%) of the total value or voting power of which is owned, directly or indirectly, by a Person described in Section 8(c)(iii)(2)(A) to Section 8(c)(iii)(2)(C).

For this definition, gross fair market value means the value of the assets of the Company, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets.

For purposes of this Section 8(c), persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company. For the avoidance of doubt, wholly-owned subsidiaries of the Company shall not be considered "Persons" for purposes of this Section 8(c).

(iv) A transaction will not be a Change in Control:

(1) unless the transaction qualifies as a change in control event within the meaning of Code Section 409A; or

(2) if its primary purpose is to (1) change the jurisdiction of the Company's incorporation, or (2) create a holding company owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

(d) "**Change in Control Period**" means the period beginning on the date a LOI or similar agreement is made between the Company and an acquiror, provided such date occurs no earlier than nine (9) months prior to a Change in Control, and ending twelve (12) months following a Change in Control.

(e) "**COBRA**" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

(f) "**Code**" means the Internal Revenue Code of 1986, as amended.

(g) "**Company Group**" means the Company and its subsidiaries.

(h) "**Disability**" means a total and permanent disability as defined in Section 22(e)(3) of the Code.

(i) "**Good Reason**" means the Executive's resignation due to the occurrence of any of the following conditions which occurs without the Executive's written consent, provided that the requirements regarding advance notice and an opportunity to cure set forth below are satisfied: (i) a material reduction in the Executive's Salary, which the parties agree is a reduction of at least ten percent (10%) of the Executive's Salary; (ii) a material reduction of the Executive's

duties, authorities, or responsibilities relative to the Executive's duties, authorities, or responsibilities in effect immediately prior to the reduction, including where such material reduction results solely by virtue of the Company being acquired and made part of a larger entity (as, for example, when the Chief Financial Officer of the Company remains as such following a Change in Control but is not made the Chief Financial Officer of the acquiring corporation); or (iii) a change by more than fifty (50) miles in the geographic location at which the Executive must perform services; *provided, however*, that no condition described herein will constitute "Good Reason" for purposes of this Agreement unless (1) the Executive will have first provided written notice to the Board of the existence of the condition within ninety (90) days of the initial existence of such Good Reason condition; (2) the Board will have failed to remedy the condition within thirty (30) days following the receipt of such notice (the "**Cure Period**"); (3) the Executive must cooperate in good faith with any efforts by the Company to remedy the Good Reason condition; (4) the Good Reason condition must continue to exist upon completion of the Cure Period; and (5) the date of termination of employment occurs no more than thirty (30) days after the end of the Cure Period. In no instance will a termination by the Executive be deemed to be for Good Reason for purposes of this Agreement if it becomes effective more than twelve (12) months following the initial existence of the Good Reason condition.

(j) "**Qualifying Pre-CIC Termination**" means a Qualifying CIC Termination that occurs after a letter of intent ("**LOI**") or similar agreement is made between the Company and an acquiror, but prior to the date of the Change in Control.

(k) "**Qualifying Termination**" means a termination of the Executive's employment either (i) by a Company Group member without Cause and other than by reason of the Executive's death or Disability, or (ii) by the Executive for Good Reason, in either case, during the Change in Control Period (a "**Qualifying CIC Termination**") or outside of the Change in Control Period (a "**Qualifying Non-CIC Termination**").

(l) "**Salary**" means the Executive's rate of base salary as in effect immediately prior to the Executive's Qualifying Termination (or if the termination is due to a resignation for Good Reason based on a material reduction in base salary, then the Executive's rate of base salary in effect immediately prior to the reduction) or, if the Executive's Qualifying Termination is a Qualifying CIC Termination and the amount is greater, at the level in effect immediately prior to the Change in Control.

9. Successors. This Agreement will be binding upon and inure to the benefit of (a) the heirs, executors, and legal representatives of the Executive upon the Executive's death, and (b) any successor of the Company. Any such successor of the Company will be deemed substituted for the Company under the terms of this Agreement for all purposes. For this purpose, "successor" means any person, firm, corporation, or other business entity which at any time, whether by purchase, merger, or otherwise, directly or indirectly acquires all or substantially all of the assets or business of the Company. None of the rights of the Executive to receive any form of compensation payable pursuant to this Agreement may be assigned or transferred except by will

or the laws of descent and distribution. Any other attempted assignment, transfer, conveyance, or other disposition of the Executive's right to compensation or other benefits will be null and void.

10. Notice.

(a) General. All notices and other communications required or permitted under this Agreement will be in writing and will be effectively given (i) upon actual delivery to the party to be notified; (ii) upon transmission by email; (iii) twenty-four (24) hours after confirmed facsimile transmission; (iv) one (1) business day after deposit with a recognized overnight courier; or (v) three (3) business days after deposit with the U.S. Postal Service by first class certified or registered mail, return receipt requested, postage prepaid, addressed (A) if to the Executive, at the address the Executive will have most recently furnished to the Company in writing, (B) if to the Company, at the following address:

RxSight, Inc.
100 Columbia
Aliso Viejo, CA 92656
Attention: Chief Executive Officer

(b) Notice of Termination. Any termination by a Company Group member for Cause will be communicated by a notice of termination to the Executive, and any termination by the Executive for Good Reason will be communicated by a notice of termination to the Company, in each case given in accordance with Section 10(a) of this Agreement. The notice will indicate the specific termination provision in this Agreement relied upon, will set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination under the provision so indicated, and will specify the termination date (which will be not more than thirty (30) days after the later of (i) the giving of the notice, or (ii) the end of any applicable cure period).

11. Resignation. The termination of the Executive's employment for any reason will also constitute, without any further required action by the Executive, the Executive's voluntary resignation from all officer and/or director positions held at any member of the Company Group, and at the Board's request, the Executive will execute any documents reasonably necessary to reflect the resignations.

12. Miscellaneous Provisions.

(a) No Duty to Mitigate. The Executive will not be required to mitigate the amount of any payment contemplated by this Agreement, nor will any payment be reduced by any earnings that the Executive may receive from any other source except as specified in Section 3(e).

(b) Waiver; Amendment. No provision of this Agreement will be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by an authorized officer of the Company (other than the Executive) and by the Executive. No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party will be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(c) Headings. All captions and section headings used in this Agreement are for convenient reference only and do not form a part of this Agreement.

(d) Entire Agreement. This Agreement constitutes the entire agreement of the parties and supersedes in their entirety all prior representations, understandings, undertakings or agreements (whether oral or written and whether expressed or implied) of the parties with respect to the subject matter of this Agreement, including, for the avoidance of doubt, any other employment letter or agreement, change in control severance agreement, severance policy or program, or Equity Award agreement.

(e) Choice of Law. This Agreement will be governed by the laws of the State of California without regard to California's conflicts of law rules that may result in the application of the laws of any jurisdiction other than California. The Executive hereby expressly consents to the personal and exclusive jurisdiction and venue of the state and federal courts located in California for any lawsuit filed against the Executive by any member of the Company Group.

(f) Severability. The invalidity or unenforceability of any provision or provisions of this Agreement will not affect the validity or enforceability of any other provision of this Agreement, which will remain in full force and effect.

(g) Withholding. All payments and benefits under this Agreement will be paid less applicable withholding taxes. The Company is authorized to withhold from any payments or benefits all federal, state, local, and/or foreign taxes required to be withheld from the payments or benefits and make any other required payroll deductions. No member of the Company Group will pay the Executive's taxes arising from or relating to any payments or benefits under this Agreement.

(h) 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.]

By its signature below, each of the parties signifies its acceptance of the terms of this Agreement, in the case of the Company by its duly authorized officer.

COMPANY

RXSIGHT, INC.

By: /s/ J. Andy Corley

Title:
J. Andy Corley
Chairman of the Board of Directors

Date: 7/8/2021

EXECUTIVE

/s/ Ilya Goldshleger

Ilya Goldshleger

Date: 7/8/2021

[Signature page to Change in Control Severance Agreement]

RXSIGHT, INC.
CONSULTING AGREEMENT

This Consulting Agreement (the "Agreement") is made by and between **RxSight, Inc.** (the "Company"), and **Yelroc Consulting, Inc.** (the "Consultant"), in the state of California, effective **January 1st, 2019**.

1. **Services**. The Consultant shall provide to the Company the services set forth in paragraph 1 of Exhibit A in accordance with the terms and conditions contained in this Agreement.

2. **Term**. Unless terminated in accordance with the provisions of paragraph 8 hereof, the services provided by the Consultant to the Company shall be performed during the period set forth in paragraph 2 of Exhibit A. The Consultant shall coordinate his work efforts and report his progress regularly to the individual(s) set forth in paragraph 3 of Exhibit A.

3. **Payment for Service Rendered**. For providing the consulting services as defined herein, the Company shall deliver to the Consultant the consideration described in paragraph 4 of Exhibit A. The Company shall reimburse the Consultant for all approved expenses including travel as described in paragraph 5 of Exhibit A.

4. **Consultant's Warranties**. The Consultant is not aware of anyone who has exclusive rights to his services in the specific areas described herein and the Consultant is in no way compromising any rights or trust relationships between any other party and the Consultant or creating a conflict of interest or any possibility thereof for the Consultant or for the Company. The Consultant will review each instruction from the Company and will advise of any potential conflict.

5. **Nature of Relationship**. The Consultant is an independent contractor and will not act as an agent nor shall he be deemed an employee of the Company for the purposes of any employee benefit program, income tax withholding, FICA taxes, unemployment benefits or otherwise. The Consultant shall not enter into any agreement or incur any obligations on the Company's behalf or commit the Company in any manner without the Company's prior written consent.

6. **Inventions, Patents and Technology**. The Consultant shall promptly and fully disclose to the Company any and all inventions, improvements, discoveries, developments, original works of authorship, trade secrets or other intellectual property conceived, developed or reduced to practice by the Consultant in connection with, or as a result of, the consulting services performed for the Company pursuant to this Agreement (the "Information") and shall treat all such Information as the proprietary property of the Company. The Consultant agrees to assign, and does hereby assign, to the Company and its successors and assigns, without further consideration, the Consultant's entire right, title and interest in and to the

Information whether or not patentable or copyrightable. The Consultant further agrees to execute all applications for patents or copyrights, domestic or foreign, assignments and other papers necessary to secure and enforce rights related to the Information. The parties acknowledge that all original works of authorship which are made by the Consultant within the scope of his consulting services and which are protectable by copyright are "works made for hire," as the term is defined in the United States Copyright Act (17USC Section 101).

7. **Confidentiality**. The Consultant agrees that he shall not use (except for the Company's benefit) or divulge to any third party, during the term of this Agreement or thereafter, any of the Company's trade secrets or other proprietary data or information of any kind whatsoever, including financial data or information with regard to the operation of the Company, which are acquired by the Consultant while operating under this Agreement. This obligation of confidentiality shall not apply to information:

a. Described, in its totality, in a patent or other printed publication at the time it was communicated by the Company to the Consultant or by the Consultant to the Company, whichever is the case.

b. In the Consultant's possession, in its totality, free of any obligation of confidence at the time it was communicated to the Consultant.

c. Became known to the public, in its totality, or was lawfully communicated to the Consultant, by a third party free of any obligation of confidence, subsequent to the time it was communicated by the Company to the Consultant or by the Consultant to the Company, whichever is the case.

The Consultant further agrees that upon completion or termination of this Agreement, he will turn over to the Company any notebook, data, information or other material acquired or prepared by the Consultant in carrying out the terms of this Agreement. However, the Consultant may keep one copy of such material for archival purposes.

8. **Termination**. Either party may terminate this Agreement within its sole discretion by sending written notice of termination at least seven (7) days prior to the intended termination to the other party. Such termination shall be effective in the manner and upon the date specified in the notice and without prejudice to any claims which one party may have against the other. In the event of such termination, the Company shall be obligated to reimburse the Consultant for services actually performed by the Consultant up to the effective date of termination. Termination shall not relieve the Consultant of his continuing obligations under this Agreement, particularly the requirements of paragraphs 6 and 7 above.

9. **Miscellaneous**.

(a) No failure on the part of either party to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any right or remedy granted hereby or by any related document or by law.

(b) This Agreement shall be deemed to be a contract made under the law of the State of California and for all purposes it, plus any related or supplemental documents and notices shall be construed in accordance with and governed by the laws of such State.

(c) This Agreement may not be and shall not be deemed or construed to have been modified, amended, rescinded, canceled or waived in whole or in part, except by written instruments signed by the parties hereto.

(d) This Agreement, including the exhibits attached hereto and made part hereof, constitutes and expresses the entire agreement and understanding between the parties, and replaces any and all previous agreements between the parties.

(e) In the event there is any dispute with the Company relating to this Agreement, and the parties are unable to resolve same through direct discussion, regardless of the kind or type of dispute, Consultant and the Company agree to submit all such disputes exclusively to final and binding arbitration under the Federal Arbitration Act, in conformity with the procedures of the California Arbitration Act (Cal. Code Civ. Proc. sec. 1280 et seq.).

The claims to be arbitrated under this Agreement include, but are not limited to claims for compensation, breach of contract (express or implied), violation of public policy, wrongful termination, wrongful demotion, tort claims, fraud, misrepresentation, unlawful discrimination, harassment, retaliation, and violation of any federal, state, or other government law, statute, regulation, or ordinance, including claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the California Fair Employment and Housing Act and the California Labor Code.

Any dispute, controversy or claim covered by or arising out of this Agreement shall be resolved through binding arbitration administered by the American Arbitration Association ("AAA") in accordance with the AAA Employment Arbitration Rules and Mediation Procedures. These Rules are available at: http://www.adr.org/. There shall be one arbitrator as mutually agreed by the parties. If the parties are unable to agree on an arbitrator, the arbitrator shall be chosen in accordance with the AAA Rules. Each party shall have the right to conduct reasonable discovery, as determined by the

arbitrator. This agreement to arbitrate does not apply to disputes or claims related to workers' compensation benefits, disputes or claims related to unemployment insurance benefits, unfair labor practice charges under the National Labor Relations Act, or disputes or claims that are expressly excluded from arbitration by statute or are expressly required to be arbitrated under a different procedure pursuant to an employee benefit plan. This agreement to arbitrate does not prevent Consultant from filing a charge or complaint with the California Department of Fair Employment and Housing, or the U.S. Equal Opportunity Commission, or any other similar government agency. It also does not prevent Consultant from participating in any investigation or proceeding conducted by an agency. However, if one of these agencies issues a right to sue notice, binding arbitration under this agreement will be your sole remedy.

To the extent permitted by law without impairing the enforceability of this arbitration agreement, Consultant and Company agree that each shall only submit their own, individual claims in arbitration and will not seek to represent the interests of any other person and that each will not assert class or representative claims against the other in arbitration. To the extent permitted by law without impairing the enforceability of this arbitration agreement, Consultant and Company further agree that class action and representative action procedures shall not be asserted or permitted in arbitration. Claims brought by Consultant or by Company may not be joined or consolidated in the arbitration with claims brought by or against any other employees, unless agreed to in writing by all parties. The arbitrator shall have all powers conferred by law and a judgment may be entered on the award by a court of law having jurisdiction. The arbitrator shall render a written arbitration award that contains the essential findings and conclusions on which the award is based.

Following the issuance of the arbitrator's decision, either party may petition a court to confirm, enforce, correct or vacate the arbitrator's opinion and award under the Federal Arbitration Act, or applicable state law. The parties shall share equally the costs of the arbitrator and the arbitration forum unless a different fee payment arrangement is required by applicable law to preserve the enforceability of this arbitration provision. The Company will pay the costs of the arbitrator and the arbitration forum if required by applicable law to preserve the enforceability of this arbitration provision.

Consultant understands that by signing this Agreement, Consultant is giving up his right to a trial in a court of law and the right to a trial by jury. Except as otherwise required by law, the parties shall each pay the fees of their own attorneys and the expenses of their own witnesses.

If one or more provisions of this Agreement are held to be unenforceable under applicable law,

Consultant agrees to renegotiate with the Company such provision in good faith. In the event that Consultant and the Company cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the agreement shall be enforceable in accordance with its terms.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

COMPANY	**CONSULTANT**
/s/ Ron Kurtz	/s/ Andy Corley
Ron Kurtz Chief Executive Officer	**Yelroc Consulting – Andy Corley**
1/11/2019	1/11/2019
(Date)	(Date)
EIN: Addr1: 100 Columbia Addr2: Aliso Viejo, CA 92656 Phone: (949) 521-7955 E-Mail:	EIN/SSN: Addr1: Addr2: Phone: E-mail:

EXHIBIT A

1. **Description of consulting services**: Consultant will provide services in the following areas as requested:

   - **Serve as Chairman of the Board.**
   - **Help lead the Company's strategic discussions and negotiations.**
   - **Provide technical and commercial consulting expertise.**

2. **Term of the Agreement.** Consulting services will be performed from **January 1st, 2019,** through **December 31st, 2020,** or until canceled by either party in accordance with paragraph 8 of the Agreement.

3. **Reporting Relationship**. Consultant reports to and is given direction by the Company's **CEO** or his designated representative. The instructions to the Consultant shall be given orally or in writing and shall detail the work requested by the Company.

4. **Consideration for Services and Payment**. Consultant will be compensated for his services hereunder at the rate of **$10,000** per month.

5. **Expenses**. Consultant shall be reimbursed for any expenses that he incurs as a result of performing these consulting services so long as they are reasonable and customary business expenses. Any expenses which are over $250.00 must be approved in advance by the Company's Chief Executive Officer or his designated representative. Consultant will submit his expenses in a timely manner with receipts for reimbursement by the Company.

Amendment #1 to Consulting Agreement

THIS 1st AMENDMENT TO CONSULTING AGREEMENT (hereinafter referred to as "**Amendment**") is made and entered into effective December 16, 2020 (the "**Amendment Effective Date**"), by and between RxSight, Inc., a California corporation ("**RxSight**"), and Yelroc Consulting, Inc. ("**Consultant**", and together with RxSight, the "**Parties**").

WHEREAS, the Parties entered into that certain Consulting Agreement dated effective as of January 1, 2019 (the "**Agreement**"), and

WHEREAS, the Parties desire to amend the Agreement in the manner reflected herein, and

WHEREAS, the Parties to the Agreement have approved the Amendment of the Agreement in the manner reflected herein,

NOW THEREFORE, in consideration of the premises and mutual covenants and conditions herein, the Parties, intending to be legally bound, hereby agree as follows:

1) Section 2 of EXHIBIT A of the Agreement is hereby amended and restated in its entirety as follows:

   2. Term of the Agreement. *Consulting services will be performed from January 1st 2019, through December 31st, 2021, or until canceled by either party in accordance with paragraph 8 of the Agreement.*

2) This Amendment may be executed in one or more facsimile, electronic, or original counterparts, each of which shall be deemed an original and both of which together shall constitute the same instrument.

3) All terms and provisions of the Agreement not amended hereby, either expressly or by necessary implication, shall remain in full force and effect. From and after the date of this Amendment, all references to the term "Agreement" in this Amendment or the original Agreement shall include the terms contained in this Amendment.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment to the Agreement effective as of the Amendment Effective Date.

RxSight, Inc.		Yelroc Consulting, Inc.	
By:	/s/ Shelley Thunen	By:	/s/ Andy Corley
Name:	Shelley Thunen	Name:	Andy corley
Title:	CFO	Title:	Chairman
Date:	12/21/20	Date:	12/18/2020

RXSIGHT, INC.
CONSULTING AGREEMENT

This Consulting Agreement (the "Agreement") is made by and between **RxSight, Inc.** (the "Company"), and **Daniel M. Schwartz, MD** (the "Consultant"), in the state of California, effective **January 1st, 2019.**

1. **Services.** The Consultant shall provide to the Company the services set forth in paragraph 1 of Exhibit A in accordance with the terms and conditions contained in this Agreement.

2. **Term.** Unless terminated in accordance with the provisions of paragraph 9 hereof, the services provided by the Consultant to the Company shall be performed during the period set forth in paragraph 2 of Exhibit A. The Consultant shall coordinate his work efforts and report his progress regularly to the individual(s) set forth in paragraph 3 of Exhibit A.

3. **Payment for Service Rendered.** For providing the consulting services as defined herein, the Company shall deliver to the Consultant the consideration described in paragraph 4 of Exhibit A. The Company shall reimburse the Consultant for all approved expenses including travel as described in paragraph 5 of Exhibit A.

4. **Consultant's Warranties.** The Consultant is not aware of anyone who has exclusive rights to his services in the specific areas described herein and the Consultant is in no way compromising any rights or trust relationships between any other party and the Consultant or creating a conflict of interest or any possibility thereof for the Consultant or for the Company. The Consultant will review each instruction from the Company and will advise of any potential conflict.

5. **Nature of Relationship.** The Consultant is an independent contractor and will not act as an agent nor shall he be deemed an employee of the Company for the purposes of any employee benefit program, income tax withholding, FICA taxes, unemployment benefits or otherwise. The Consultant shall not enter into any agreement or incur any obligations on the Company's behalf or commit the Company in any manner without the Company's prior written consent.

6. **Relationship with University.** The Company acknowledges that Consultant is a faculty member at the University of California, San Francisco (the "University") and is subject to the University's policies, including the University Patent Acknowledgement. Notwithstanding the foregoing, Consultant hereby represents and warrants that Consultant's services to the Company, are and shall remain in compliance with all applicable rules, guidelines and policies of the University. Consultant hereby agrees that the Company's execution and delivery of this Agreement is contingent upon Consultant's representation that this Agreement will not violate any restrictions placed on Consultant by the University.

7. **Inventions, Patents and Technology.** The Consultant shall promptly and fully disclose to the Company any and all inventions, improvements, discoveries, developments, original works of authorship, trade secrets or other intellectual property conceived, developed or reduced to practice by the Consultant in connection with, or as a result of, the consulting services performed for the Company pursuant to this Agreement (the "Information") and shall treat all such Information as the proprietary property of the Company. The Consultant agrees to assign, and does hereby assign, to the Company and its successors and assigns, without further consideration, the Consultant's entire right, title and interest in and to the Information whether or not patentable or copyrightable. The Consultant further agrees to execute all applications for patents or copyrights, domestic or foreign, assignments and other papers necessary to secure and enforce rights related to the Information. The parties acknowledge that all original works of authorship which are made by the Consultant within the scope of his consulting services and which are protectable by copyright are "works made for hire," as the term is defined in the United States Copyright Act (17USC Section 101).

8. **Confidentiality.** The Consultant agrees that he shall not use (except for the Company's benefit) or divulge to any third party, during the term of this Agreement or thereafter, any of the Company's trade secrets or other proprietary data or information of any kind whatsoever, including financial data or information with regard to the operation of the Company, which are acquired by the Consultant while operating under this Agreement. This obligation of confidentiality shall not apply to information:

a. Described, in its totality, in a patent or other printed publication at the time it was communicated by the Company to the Consultant or by the Consultant to the Company, whichever is the case.

b. In the Consultant's possession, in its totality, free of any obligation of confidence at the time it was communicated to the Consultant.

c. Became known to the public, in its totality, or was lawfully communicated to the Consultant, by a third party free of any obligation of confidence, subsequent to the time it was communicated by the Company to the Consultant or by the Consultant to the Company, whichever is the case.

The Consultant further agrees that upon completion or termination of this Agreement, he will turn over to the Company any notebook, data, information or other material acquired or prepared by the Consultant in carrying out the terms of this Agreement. However, the Consultant may keep one copy of such material for archival purposes.

9. **Termination.** Either party may terminate this Agreement within its sole discretion by sending written notice of termination at least seven (7) days prior to the intended termination to the other party. Such termination shall be effective in the manner and upon the date specified in the notice and without

prejudice to any claims which one party may have against the other. In the event of such termination, the Company shall be obligated to reimburse the Consultant for services actually performed by the Consultant up to the effective date of termination. Termination shall not relieve the Consultant of his continuing obligations under this Agreement, particularly the requirements of paragraphs 6 and 8 above.

10. **Miscellaneous**.

(a) No failure on the part of either party to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any right or remedy granted hereby or by any related document or by law.

(b) This Agreement shall be deemed to be a contract made under the law of the State of California and for all purposes it, plus any related or supplemental documents and notices shall be construed in accordance with and governed by the laws of such State.

(c) This Agreement may not be and shall not be deemed or construed to have been modified, amended, rescinded, canceled or waived in whole or in part, except by written instruments signed by the parties hereto.

(d) This Agreement, including the exhibits attached hereto and made part hereof, constitutes and expresses the entire agreement and understanding between the parties, and replaces any and all previous agreements between the parties.

(e) In the event there is any dispute with the Company relating to this Agreement, and the parties are unable to resolve same through direct discussion, regardless of the kind or type of dispute, Consultant and the Company agree to submit all such disputes exclusively to final and binding arbitration under the Federal Arbitration Act, in conformity with the procedures of the California Arbitration Act (Cal. Code Civ. Proc. sec. 1280 et seq.).

The claims to be arbitrated under this Agreement include, but are not limited to claims for compensation, breach of contract (express or implied), violation of public policy, wrongful termination, wrongful demotion, tort claims, fraud, misrepresentation, unlawful discrimination, harassment, retaliation, and violation of any federal, state, or other government law, statute, regulation, or ordinance, including claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the California Fair Employment and Housing Act and the California Labor Code.

Any dispute, controversy or claim covered by or arising out of this Agreement shall be resolved through binding arbitration administered by the American Arbitration Association ("AAA") in accordance with the AAA Employment Arbitration Rules and Mediation Procedures.

These Rules are available at: http://www.adr.org/. There shall be one arbitrator as mutually agreed by the parties. If the parties are unable to agree on an arbitrator, the arbitrator shall be chosen in accordance with the AAA Rules. Each party shall have the right to conduct reasonable discovery, as determined by the arbitrator. This agreement to arbitrate does not apply to disputes or claims related to workers' compensation benefits, disputes or claims related to unemployment insurance benefits, unfair labor practice charges under the National Labor Relations Act, or disputes or claims that are expressly excluded from arbitration by statute or are expressly required to be arbitrated under a different procedure pursuant to an employee benefit plan. This agreement to arbitrate does not prevent Consultant from filing a charge or complaint with the California Department of Fair Employment and Housing, or the U.S. Equal Opportunity Commission, or any other similar government agency. It also does not prevent Consultant from participating in any investigation or proceeding conducted by an agency. However, if one of these agencies issues a right to sue notice, binding arbitration under this agreement will be your sole remedy.

To the extent permitted by law without impairing the enforceability of this arbitration agreement, Consultant and Company agree that each shall only submit their own, individual claims in arbitration and will not seek to represent the interests of any other person and that each will not assert class or representative claims against the other in arbitration. To the extent permitted by law without impairing the enforceability of this arbitration agreement, Consultant and Company further agree that class action and representative action procedures shall not be asserted or permitted in arbitration. Claims brought by Consultant or by Company may not be joined or consolidated in the arbitration with claims brought by or against any other employees, unless agreed to in writing by all parties. The arbitrator shall have all powers conferred by law and a judgment may be entered on the award by a court of law having jurisdiction. The arbitrator shall render a written arbitration award that contains the essential findings and conclusions on which the award is based.

Following the issuance of the arbitrator's decision, either party may petition a court to confirm, enforce, correct or vacate the arbitrator's opinion and award under the Federal Arbitration Act, or applicable state law. The parties shall share equally the costs of the arbitrator and the arbitration forum unless a different fee payment arrangement is required by applicable law to preserve the enforceability of this arbitration provision. The Company will pay the costs of the arbitrator and the arbitration forum if required by applicable law to preserve the enforceability of this arbitration provision.

Consultant understands that by signing this Agreement, Consultant is giving up his right to a trial in a court of law and the right to a trial by jury. Except as otherwise required by law, the parties

shall each pay the fees of their own attorneys and the expenses of their own witnesses.

If one or more provisions of this Agreement are held to be unenforceable under applicable law, Consultant agrees to renegotiate with the Company such provision in good faith. In the event that Consultant and the Company cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the agreement shall be enforceable in accordance with its terms.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

COMPANY	**CONSULTANT**
/s/ Ron Kurtz	/s/ Daniel M. Schwartz
Ron Kurtz Chief Executive Officer	**Daniel M. Schwartz, MD**
3/18/19	March 18, 2019
(Date)	(Date)
EIN: Addr1: 100 Columbia Addr2: Aliso Viejo, CA 92656 Phone: (949) 521-7955 E-Mail:	EIN/SSN: Addr1: Addr2: Phone: E-mail:

EXHIBIT A

1. **Description of consulting services:** Consultant will provide services in the following areas as requested:

   - **Serve as a member of the board of directors.**
   - **Assist with the Company's strategic discussions and negotiations.**

2. **Term of the Agreement.** Consulting services will be performed from **January 1st, 2019,** through **December 31st, 2020,** or until canceled by either party in accordance with paragraph 9 of the Agreement.

3. **Reporting Relationship.** Consultant reports to and is given direction by the Company's **CEO** or his designated representative. The instructions to the Consultant shall be given orally or in writing and shall detail the work requested by the Company.

4. **Consideration for Services and Payment.** Consultant will be compensated for his services hereunder at the rate of **$6,250** per month.

5. **Expenses.** Consultant shall be reimbursed for any expenses that he incurs as a result of performing these consulting services so long as they are reasonable and customary business expenses. Any expenses which are over $250.00 must be approved in advance by the Company's Chief Executive Officer or his designated representative. Consultant will submit his expenses in a timely manner with receipts for reimbursement by the Company.

Amendment #1 to Consulting Agreement

THIS 1st AMENDMENT TO CONSULTING AGREEMENT (hereinafter referred to as "**Amendment**") is made and entered into effective December 16, 2020 (the "**Amendment Effective Date**"), by and between RxSight, Inc., a California corporation ("**RxSight**"), and Daniel M. Schwartz, MD ("**Consultant**", and together with RxSight, the "**Parties**").

WHEREAS, the Parties entered into that certain Consulting Agreement dated effective as of January 1, 2019 (the "**Agreement**"), and

WHEREAS, the Parties desire to amend the Agreement in the manner reflected herein, and

WHEREAS, the Parties to the Agreement have approved the Amendment of the Agreement in the manner reflected herein,

NOW THEREFORE, in consideration of the premises and mutual covenants and conditions herein, the Parties, intending to be legally bound, hereby agree as follows:

1) Section 2 of EXHIBIT A of the Agreement is hereby amended and restated in its entirety as follows:

   2. Term of the Agreement. *Consulting services will be performed from January 1st, 2019, through December 31st, 2021, or until canceled by either party in accordance with paragraph 8 of the Agreement.*

2) This Amendment may be executed in one or more facsimile, electronic, or original counterparts, each of which shall be deemed an original and both of which together shall constitute the same instrument.

3) All terms and provisions of the Agreement not amended hereby, either expressly or by necessary implication, shall remain in full force and effect. From and after the date of this Amendment, all references to the term "Agreement" in this Amendment or the original Agreement shall include the terms contained in this Amendment.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment to the Agreement effective as of the Amendment Effective Date.

RxSight, Inc.		Daniel M. Schwartz	
By:	/s/ Shelley B. Thunen	By:	/s/ Daniel M. Schwartz
Name:	Shelley B. Thunen		
Title:	CFO		
Date:	12/21/2020	Date:	12/18/2020

Exhibit 10.24

AMENDED AND RESTATED SECURED FULL RECOURSE PROMISSORY NOTE

(This Amended and Restated Secured Full Recourse Promissory Note (the "**Note**") supersedes in its entirety that certain Secured Full Recourse Promissory Note dated as of April 18, 2016 (the "**Original Note**"), previously representing the indebtedness set forth below, which previous Note shall have no further force or effect.)

$160,000.00 April 18, 2019

FOR VALUE RECEIVED the undersigned, Daniel Schwartz (the "**Maker**"), promises to pay to RxSight, Inc., a California corporation (f/k/a Calhoun Vision, Inc.) (the "**Payee**"), or its registered assigns, in Aliso Viejo, California, or at such other place as Payee may from time to time designate, in lawful money of the United States of America the principal sum of ONE HUNDRED SIXTY THOUSAND DOLLARS ($160,000.00), or such lesser amount as shall equal the outstanding principal amount hereof, together with (i) interest from the date of this Note on the unpaid principal balance at a rate equal to seven percent (7.00%) compounded annually, computed on the basis of the actual number of days elapsed and a year of 365 days, and (ii) interest of Thirty Six Thousand Forty Nine and 52/100 Dollars ($36,049.52) accrued to the date hereof on the principal amount of the Original Note, that at this Note amends, restates and supersedes.

The principal amount under this Note and any accrued and unpaid interest shall be due and payable in full on April 18, 2022 (the "**Maturity Date**"). Notwithstanding the foregoing, the entire unpaid principal sum and accrued interest under this Note shall become immediately due and payable upon the earlier to occur of (i) a Change of Control (as defined below) of Payee, (ii) a firm commitment underwritten public offering of Payee's common stock to be registered under the Securities Act of 1933, as amended, or (iii) the sale or transfer of all of the shares of Common Stock subject to the Pledge Agreement (the "**Pledged Securities**"). As used herein, "**Change in Control**" means (i) a sale of all or substantially all of Payee's assets, (ii) any merger, consolidation or other business combination transaction of Payee with or into another corporation, entity or person, other than a transaction in which the holders of at least a majority of the shares of voting capital stock of Payee outstanding immediately prior to such transaction continue to hold (either by such shares remaining outstanding or by their being converted into shares of voting capital stock of the surviving entity) a majority of the total voting power represented by the shares of voting capital stock of Payee (or the surviving entity) outstanding immediately after such transaction, or (iii) the direct or indirect acquisition (including by way of a tender or exchange offer) by any person, or persons acting as a group, of beneficial ownership or a right to acquire beneficial ownership of shares representing a majority of the voting power of the then outstanding shares of capital stock of Payee. "**Director**" means any individual who is a member of the Board of Directors of Payee.

If any interest is determined to be in excess of the then legal maximum rate, then that portion of each interest payment representing an amount in excess of the then legal maximum rate shall be deemed a payment of principal and applied against the principal of the obligations evidenced by this Note.

Maker shall have the right to prepay all or any part of the unpaid principal amount of this Note from time to time without any penalty or premium. Any payments made under this Note shall be applied first against any accrued interest, and then against the outstanding principal balance.

In the event Maker proposes to sell or otherwise transfer any portion of the Pledged Securities, Maker shall, as a condition to such sale or transfer, prepay in cash, that portion of the then outstanding principal of this Note, together with the accrued and unpaid interest with respect to the amount to be prepaid as of the date of such prepayment. The principal amount to be so prepaid shall equal the number of shares

to be sold or transferred, multiplied by the price per share originally paid by Maker for the Pledged Securities ($0.40 per share), subject to adjustment for stock splits, dividends, recapitalizations or other similar events. Maker shall deliver the principal and interest required to be so prepaid to the company on or prior to the effective date of any such transfer or sale. Upon receipt of the required prepayment by the Payee, Payee shall release the number of Pledged Securities sold or transferred from the security interest created by the Pledge Agreement and shall issue additional certificates representing the sold or transferred shares as may be necessary to effect such sale or transfer. Payee shall make appropriate annotations on the face of this Note to reflect the receipt of such payment and transfer and release of the respective Pledged Securities. Notwithstanding the foregoing, in the event Payee enters into a transaction, the result of which is the purchase by another from Maker of any shares of Pledged Securities, Maker may direct such purchaser to deliver all or a portion of the consideration to be revised by Maker in such transaction to Payee in satisfaction of Makers obligation to prepay in the event of a transfer or sale of a portion of the Pledged Securities. Payee shall apply any amounts so received to the prepayment of this Note as though Maker had paid such amounts directly to Payee.

Consent by the Payee to waive one default shall not be deemed to be a waiver of the right to require consent to waive future or successive defaults.

This Note is secured pursuant to that certain Stock Pledge Agreement, dated as of the date hereof, by and between Maker and Payee and attached hereto as Exhibit A (the "**Pledge Agreement**"). For the avoidance of doubt, and without in any manner impairing the validity of this Note, the Pledge Agreement or any security interest created thereof, this Note shall be "full recourse" such that in the event of any default under the terms of this Note, Payee may hold Maker personally liable for payment of the obligations evidenced by this Note or for any other sums due as a result of any defaults under this Note. The security interest created pursuant to the Original Note in the Pledged Collateral is hereby superseded and replaced in its entirety by the security interest in the Pledged Collateral created pursuant to the Pledge Agreement.

Maker hereby waives presentment, demand, notice of dishonor, protest, notice of protest and all other demands, protests and notices in connection with the execution, delivery, performance, collection and enforcement of this Note. The Maker shall pay all costs of collection when incurred, including reasonable attorneys' fees, costs and expenses.

This Note is being delivered in, is intended to be performed in, shall be construed and interpreted in accordance with, and be governed by the internal laws of, the State of California, without regard to principles of conflict of laws.

This Note may only be amended, modified or terminated by an agreement in writing signed by the party to be charged. This Note shall be binding upon the heirs, executors, administrators, successors and assigns of the Maker and inure to the benefit of the Payee and its permitted successors, endorsees and assigns. This Note shall not be transferred without the express written consent of Payee, provided that if Payee consents to any such transfer or if notwithstanding the foregoing such a transfer occurs, then the provisions of this Note shall be binding upon any successor to Maker and shall inure to the benefit of and be extended to any holder thereof.

(signature page follows)

IN WITNESS WHEREOF, the Maker has caused this Note to be duly executed in Aliso Viejo, California and issued as of the date first written above.

MAKER

/s/ Daniel Schwartz
Daniel Schwartz

Exhibit A

Stock Pledge Agreement

[see attached]

STOCK PLEDGE AGREEMENT

This **STOCK PLEDGE AGREEMENT,** dated as of April 18, 2019 (this "**Pledge Agreement**"), is executed by **Daniel Schwartz** ("**Debtor**"), in favor of RxSight, Inc., a California corporation (f/k/a Calhoun Vision, Inc.) ("**Secured Party**").

RECITALS

A. Debtor has executed a Promissory Note (the "**Note**") in favor of Secured Party.

B. In order to induce Secured Party to extend the credit evidenced by the Note, Debtor has agreed to enter into this Pledge Agreement and to pledge and grant to Secured Party the security interest in the Collateral described below.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Debtor hereby agrees with Secured Party as follows:

1. Definitions and Interpretation. Unless otherwise defined herein, all other capitalized terms used herein and defined in the Note shall have the respective meanings given to those terms in the Note, and all terms defined in the California Uniform Commercial Code (the "**UCC**") shall have the respective meanings given to those terms in the UCC.

2. The Pledge. To secure the Obligations as defined in Section 3 hereof, Debtor hereby pledges and assigns to Secured Party, and grants to Secured Party a security interest in, all of Debtor's right, title and interest, whether now existing or hereafter arising in all instruments, certificated and uncertificated securities, money and general intangibles of, relating to or arising from the following property (the "**Pledged Collateral**"):

(a) The securities of Secured Party listed on Schedule A hereto, which securities (to the extent they are currently held by Debtor) are more particularly described on Schedule A hereto (the "**Securities**"), together with any additional securities of Secured Party hereafter acquired by Debtor (collectively, with the Securities, the "**Pledged Securities**");

(b) All dividends (including cash dividends), other distributions (including redemption proceeds), or other property, securities or instruments in respect of or in exchange for the Pledged Securities, whether by way of dividends, stock dividends, recapitalizations, mergers, consolidations, split-ups, combinations or exchanges of shares or otherwise; and

(c) All proceeds of the foregoing ("**Proceeds**").

3. Security for Obligations. The obligations secured by this Pledge Agreement (the "**Obligations**") shall mean and include all loans, advances, debts, liabilities and obligations, howsoever arising, owed by Debtor to Secured Party of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), now existing or hereafter arising under or pursuant to the terms of the Note, including, all interest, fees, charges, expenses, attorneys' fees and costs and accountants' fees and costs chargeable to and payable by Debtor hereunder and thereunder, in each case, whether direct or indirect, absolute or contingent, due or to become due, and whether or not arising after the commencement of a proceeding under

Title 11 of the United States Code (11 U.S.C. Section 101 et seq.), as amended from time to time (including post-petition interest) and whether or not allowed or allowable as a claim in any such proceeding.

4. Delivery of Pledged Collateral; Financing Statements. All certificates or instruments representing or evidencing the Pledged Collateral shall be promptly delivered to Secured Party and shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to Secured Party. Concurrently with the execution of this Pledge Agreement, Debtor shall execute and deliver to Secured Party the UCC-1 financing statement provided by Secured Party.

5. Representations and Warranties. Debtor hereby represents and warrants as follows:

(a) Issuance of Pledged Securities, Etc. The Pledged Securities are owned by Debtor free and clear of any and all liens, pledges, encumbrances (other than any restrictions on transferability imposed in accordance with the Secured Party's equity incentive plan pursuant to which the Securities were issued to Debtor) or charges, and Debtor has not optioned or otherwise agreed to sell, hypothecate, pledge, or otherwise encumber or dispose of the Pledged Securities.

(b) Security Interest. The pledge of the Pledged Collateral creates a valid security interest in the Pledged Collateral, which security interest is a perfected and first priority security interest, securing the payment of the Obligations and the obligations hereunder.

(c) Restatement of Representations and Warranties. On and as of the date any property becomes Pledged Collateral, the foregoing representations and warranties shall be deemed restated with respect to such additional Pledged Collateral.

6. Further Assurances. Debtor agrees that at any time and from time to time, at Debtor's expense, Debtor will promptly execute and deliver all further instruments and documents, including without limitation all additional Pledged Securities, and take all further action, that may be necessary or desirable, or that Secured Party may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Secured Party to exercise and enforce its rights and remedies hereunder with respect to any Pledged Collateral.

7. Voting Rights; Dividends; Etc.

(a) Rights Prior to an Event of Default. So long as no Event of Default shall have occurred and be continuing:

(i) Debtor shall be entitled to exercise any and all voting and other consensual rights pertaining to the Pledged Securities or any part thereof for any purpose not inconsistent with the terms of this Pledge Agreement.

(ii) Debtor shall be entitled to receive and retain free and clear of the security interest of Secured Party hereunder any and all dividends and interest paid in respect of the Pledged Securities, provided, however, that any and all (A) dividends and interest paid or payable other than in cash in respect of, and instruments and other property received, receivable or otherwise distributed in respect of, or in exchange for any Pledged Securities, (B) dividends and other distributions paid or payable in cash in respect of any Pledged Securities in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, capital surplus or paid-in-surplus, and (C) cash paid, payable or otherwise distributed in respect of principal of, or in redemption of, or in exchange for, any Pledged Securities, shall be, and shall be forthwith

delivered to Secured Party to hold as, Pledged Collateral and shall, if received by Debtor, be received in trust for the benefit of Secured Party, be segregated from the other property or funds of Debtor and be forthwith delivered to Secured Party as Pledged Collateral in the same form as so received (with any necessary endorsement) to be held as part of the Pledged Collateral.

(b) Rights Following an Event of Default. Upon the occurrence and during the continuance of an Event of Default:

(i) All rights of Debtor to exercise the voting and other consensual rights which it would otherwise be entitled to exercise pursuant to Section 7(a)(i) and to receive the dividends and interest payments which it would otherwise be authorized to receive and retain pursuant to Section 7(a)(ii) shall cease and all such rights shall thereupon become vested in Secured Party which shall thereupon have the sole right, but not the obligation, to exercise such voting and other consensual rights and to receive and hold as Pledged Collateral such dividends and interest payments.

(ii) All dividends and interest payments which are received by Debtor contrary to the provisions of subparagraph (i) of this Section 7(b) shall be received in trust for the benefit of Secured Party, shall be segregated from other funds of Debtor and shall be forthwith delivered to Secured Party as Pledged Collateral in the same form as so received (with any necessary endorsement).

8. Events of Default; Remedies.

(a) Event of Default. An Event of Default shall be deemed to have occurred upon the occurrence and during the continuance of any breach of any terms of the Note (an "**Event of Default**"), including, without limitation, if the Debtor shall fail to pay (i) when due any principal payment on the Maturity Date under the Note, or (ii) any interest payment or other payment required under the terms of the Note and such payment shall not have been made within ten (10) business days of the Secured Party's receipt of written notice to the Secured Party of such failure to pay.

(b) Rights Under the UCC. In addition to all other rights granted hereby, and otherwise by law, Secured Party shall have, with respect to the Pledged Collateral, the rights and obligations of a secured party under the UCC.

(c) Sale of Pledged Collateral. Debtor acknowledges and recognizes that Secured Party may be unable to effect a public sale of all or a part of the Pledged Securities and may be compelled to resort to one or more private sales to a restricted group of purchasers who will be obligated to agree, among other things, to acquire the Pledged Securities for their own account, for investment and not with a view to the distribution or resale thereof. Debtor acknowledges that any such private sales may be at prices and on terms less favorable to Secured Party than those of public sales, and agrees that so long as such sales are made in good faith such private sales shall be deemed to have been made in a commercially reasonable manner and that Secured Party has no obligation to delay sale of any Pledged Securities to register such securities for public sale under the Securities Act of 1933, as amended, or under any state securities law.

(d) Notice, Etc. In any case where notice of sale is required, ten (10) business days' notice shall be deemed reasonable notice. Secured Party may have resort to the Pledged Collateral or any portion thereof with no requirement on the part of Secured Party to proceed first against any other Person or property.

(e) Other Remedies. Upon the occurrence and during the continuance of an Event of Default, (i) at the request of Secured Party, Debtor shall assemble and make available to Secured Party all records relating to the Pledged Securities at any place or places specified by Secured Party, together with such other information

as Secured Party shall request concerning Debtor's ownership of the Pledged Securities; and (ii) Secured Party or its nominee shall have the right, but shall not be obligated, to vote or give consent with respect to the Pledged Securities or any part thereof.

9. Secured Party Appointed Attorney-in-Fact.

Debtor hereby appoints Secured Party as Debtor's attorney-in-fact, with full authority in the place and stead of Debtor and in the name of Debtor or otherwise, from time to time in Secured Party's discretion and to the full extent permitted by law to take any action and to execute any instrument which Secured Party may deem reasonably necessary or advisable to accomplish the purposes of this Pledge Agreement in accordance with the terms and provisions hereof, including without limitation, to receive, endorse and collect all instruments made payable to Debtor representing any dividend, interest payment or other distribution in respect of the Pledged Collateral or any part thereof and to give full discharge for the same.

Debtor hereby ratifies all reasonable actions that said attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable. The powers conferred on Secured Party hereunder are solely to protect its interests in the Pledged Collateral and shall not impose any duty upon Secured Party to exercise any such powers. Secured Party shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and in no event shall Secured Party or any of its officers, directors, employees or agents be responsible to Debtor for any act or failure to act, except for gross negligence or willful misconduct.

10. Miscellaneous.

(a) Notices. Except as otherwise provided herein, all notices, requests, demands, consents, instructions or other communications to or upon Secured Party or Debtor under this Agreement or the Note shall be in writing and faxed, mailed or delivered to each party at the address or fax number last given to the other party. All such notices and communications shall be effective (a) when sent by Federal Express or other overnight service of recognized standing, on the business day following the deposit with such service 5 business days from acceptance; (b) when mailed by registered or certified mail, first class postage prepaid and addressed as aforesaid through the United States Postal Service, 5 business days upon receipt; (c) when delivered by hand, 5 business days from delivery; and (d) when sent via facsimile or other form of electronic transmission, 5 business days upon confirmation of receipt.

(b) Nonwaiver. No failure or delay on Secured Party's part in exercising any right hereunder shall operate as a waiver thereof or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right.

(c) Amendments and Waivers. This Pledge Agreement may not be amended or modified, nor may any of its terms be waived, except by written instruments signed by Debtor and Secured Party. Each waiver or consent under any provision hereof shall be effective only in the specific instances for the purpose for which given.

(d) Assignments. This Pledge Agreement shall be binding upon and inure to the benefit of Secured Party and Debtor and their respective successors and assigns; provided, however, that Debtor may not assign its rights and duties hereunder without the prior written consent of Secured Party.

(e) Cumulative Rights, etc. The rights, powers and remedies of Secured Party under this Pledge Agreement shall be in addition to all rights, powers and remedies given to Secured Party by virtue of any applicable law, rule or regulation of any governmental authority, the Note or any other agreement, all of which

rights, powers, and remedies shall be cumulative and may be exercised successively or concurrently without impairing Secured Party's rights hereunder. Debtor waives any right to require Secured Party to proceed against any Person or to exhaust any collateral or to pursue any remedy in Secured Party's power.

(f) Payments Free of Taxes, Etc. All payments made by Debtor under this Pledge Agreement shall be made by Debtor free and clear of and without deduction for any and all present and future taxes, levies, charges, deductions and withholdings. In addition, Debtor shall pay upon demand any stamp or other taxes, levies or charges of any jurisdiction with respect to the execution, delivery, registration, performance and enforcement of this Pledge Agreement. Upon request by Secured Party, Debtor shall furnish evidence satisfactory to Secured Party or such Secured Party that all requisite authorizations and approvals by, and notices to and filings with, governmental authorities and regulatory bodies have been obtained and made and that all requisite taxes, levies and charges have been paid.

(g) Partial Invalidity. If any time any provision of this Pledge Agreement is or becomes illegal, invalid or unenforceable in any respect under the law or any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Pledge Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

(h) Expenses. Each of Debtor and Secured Party shall bear its own costs in connection with the preparation, execution and delivery of, and the exercise of its duties under, this Pledge Agreement and the Note. Debtor shall pay on demand all reasonable fees and expenses, including reasonable attorneys' fees and expenses, incurred by Secured Party with respect to any amendments or waivers hereof requested by Debtor or in the enforcement or attempted enforcement of any of the Obligations or in preserving any of Secured Party's rights and remedies (including, without limitation, all such fees and expenses incurred in connection with any "workout" or restructuring affecting this Agreement, the Note or the Obligations or any bankruptcy or similar proceeding involving Debtor or any of its subsidiaries). As used herein, the term "reasonable attorneys' fees" shall include, without limitation, allocable costs of Secured Party's in-house legal counsel and staff.

(i) Governing Law. This Pledge Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to conflicts of law rules (except to the extent governed by the UCC).

(j) Jury Trial. EACH OF DEBTOR AND SECURED PARTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING HERETO IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS PLEDGE AGREEMENT.

(signature page follows)

IN WITNESS WHEREOF, Debtor has caused this Pledge Agreement to be executed as of the day and year first above written.

DEBTOR

/s/ Daniel Schwartz
Daniel Schwartz

ACKNOWLEDGED:

RXSIGHT, INC.

By: /s/ Ron Kurtz
Name: Ron Kurtz
Title: Chief Executive Officer

SCHEDULE A
TO PLEDGE AGREEMENT

Issuer	Certificate No.	Certificate Date	No. of Shares	Registered Holder
RxSight, Inc.	C-409	April 18, 2016	400,000	Daniel M. Schwartz

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption “Experts” and to the use of our report dated May 14, 2021, in the Registration Statement on Form S-1 and related Prospectus of RxSight, Inc. for the registration of shares of its common stock.

/s/ Ernst & Young LLP

Irvine, California
July 9, 2021