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

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2021

OR

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

For the transition period from _____ to _____

Commission file number 001-04321

PROCEPT BIOROBOTICS CORPORATION
(Exact name of registrant as specified in its charter)

Delaware	**3841**	**26-0199180**
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification No.)

900 Island Drive **Redwood City, CA**	**94065**
(Address of Principal Executive Offices)	(Zip Code)

(650) 232-7200
Registrant's telephone number, including area code

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, $0.00001 par value per share	PRCT	Nasdaq Global Market

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

Common Shares
(Title of class)

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

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

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

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

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

Large accelerated filer	o	Accelerated filer	o
Non-accelerated filer	x	Smaller reporting company	x
		Emerging growth company	x

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

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

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

As of June 30, 2021, the last business day of the registrant's most recently completed second fiscal quarter, there was no established public market for the registrant's common stock. The registrant's common stock began trading on The NASDAQ Global Market on September 14, 2021.

The registrant had outstanding 43,988,574 shares of common stock as of March 17, 2022.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive Proxy Statement for its 2022 Annual Stockholders' Meeting are incorporated by reference into Part III of this Annual Report on Form 10-K, to be filed within 120 days of the registrant's fiscal year ended December 31, 2021.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements. All statements other than statements of historical facts contained in this Annual Report are forward-looking statements. In some cases, you can identify forward-looking statements by terms such as “may,” "can," “will,” “would,” “should,” “expect,” “plan,” “anticipate,” “could,” “intend,” “target,” “project,” “contemplate,” “believe,” “estimate,” “predict,” “potential,” or “continue” or the negative of these terms or other similar expressions, although not all forward-looking statements contain these words. All statements other than statements of historical facts contained in this Annual Report, including without limitation statements regarding our business model and strategic plans for our products, technologies and business, including our implementation thereof, the impact on our business, financial condition and results of operations from the ongoing and global COVID-19 pandemic, or any other pandemic, epidemic or outbreak of an infectious disease in the United States or worldwide, the timing of and our ability to obtain and maintain regulatory approvals, our commercialization, marketing and manufacturing capabilities and strategy, our expectations about the commercial success and market acceptance of our products, the sufficiency of our cash and cash equivalents, and the plans and objectives of management for future operations and capital expenditures are forward-looking statements.

The forward-looking statements in this Annual Report are only predictions and are based largely on our current expectations and projections about future events and trends that we believe may affect our financial condition, results of operations, business strategy, short-term and long-term business operations and objectives, and financial needs. These forward-looking statements speak only as of the date of this Annual Report and are subject to a number of known

and unknown risks, uncertainties, and assumptions, including those described under the sections in this Annual Report entitled “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and elsewhere in this Annual Report. Moreover, we operate in a very competitive and rapidly changing environment. New risks emerge from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. In light of these risks, uncertainties, and assumptions, the future events and trends discussed in this Annual Report may not occur and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements.

Because forward-looking statements are inherently subject to risks and uncertainties, some of which cannot be predicted or quantified, you should not rely upon these forward-looking statements as predictions of future events. The events and circumstances reflected in the forward-looking statements may not be achieved or occur. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, performance, or achievements. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements contained herein, whether as a result of any new information, future events, changed circumstances or otherwise. We intend the forward-looking statements contained in this Annual Report to be covered by the safe harbor provisions for forward-looking statements contained in Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”).

SUMMARY RISK FACTORS

Our business is subject to numerous risks and uncertainties, including those described in Part I. Item 1A. “Risk Factors” in this Annual Report on Form 10-K. You should carefully consider these risks and uncertainties when investing in our common stock. The principal risks and uncertainties affecting our business include the following:

- We are an early-stage company with a history of significant net losses, we expect to continue to incur operating losses for the foreseeable future and we may not be able to achieve or sustain profitability.
- Our revenue is primarily generated from sales of our AquaBeam Robotic System and the accompanying single-use disposable handpieces, and we are therefore highly dependent on the success of those products.
- Our quarterly and annual operating results may fluctuate significantly and may not fully reflect the underlying performance of our business. This makes our future operating results difficult to predict and could cause our operating results to fall below expectations or any guidance we may provide.
- The terms of our loan and security agreement require us to meet certain operating and financial covenants and place restrictions on our operating and financial flexibility. If we raise additional capital through debt financing, the terms of any new debt could further restrict our ability to operate our business.
- We may need additional funding to finance our planned operations, and may not be able to raise capital when needed, which could force us to delay, reduce or eliminate one or more of our product development programs and future commercialization efforts.
- The commercial success of our AquaBeam Robotic System and Aquablation therapy will depend upon the degree of market acceptance of our products among hospitals, surgeons and patients.
- We have limited experience in training and marketing and selling our products and we may provide inadequate training, fail to increase our sales and marketing capabilities or fail to develop and maintain broad brand awareness in a cost-effective manner.
- We may not be able to obtain or maintain adequate levels of third-party coverage and reimbursement, and third parties may rescind or modify their coverage or delay payments related to our products.
- We face competition from many sources, including larger companies, and we may be unable to compete successfully.
- We have limited experience manufacturing our products in large-scale commercial quantities, and we face a number of manufacturing risks that may adversely affect our manufacturing abilities which could delay, prevent or impair our growth.

- We depend upon third-party suppliers, including contract manufacturers and single source suppliers, making us vulnerable to supply shortages and price fluctuations that could negatively affect our business, financial condition and results of operations.
- We may encounter difficulties in managing our growth, which could disrupt our operations.
- Our internal computer systems, or those used by our contractors or consultants, may fail or suffer security breaches, and such failure could negatively affect our business, financial condition and results of operations.
- Failure to comply with data protection laws and regulations could lead to government enforcement actions (which could include civil or criminal penalties), private litigation, and/or adverse publicity and could negatively affect our operating results and business.
- The sizes of the addressable markets for our AquaBeam Robotic System have not been established with precision and our potential market opportunity may be smaller than we estimate and may decline.
- 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.
- Cost-containment efforts of our customers, purchasing groups and governmental organizations could have a material adverse effect on our sales and profitability.
- We are highly dependent on our senior management team and key personnel, and our business could be harmed if we are unable to attract and retain personnel necessary for our success.
- Changes to the reimbursement rates for BPH treatments and measures to reduce healthcare costs may adversely impact our business.
- We must comply with anti-kickback, fraud and abuse, false claims, transparency, and other healthcare laws and regulations.
- Our AquaBeam Robotic System and our operations are subject to extensive government regulation and oversight in the United States. If we fail to maintain necessary marketing authorizations for our AquaBeam Robotic System, or if approvals or clearances for future products or modifications to existing products are delayed or not issued, it will negatively affect our business, financial condition and results of operations.
- Even though we have obtained marketing authorization for our AquaBeam Robotic System, we are subject to ongoing regulatory review and scrutiny. Failure to comply with post-marketing regulatory requirements could subject us to enforcement actions, including substantial penalties, and might require us to recall or withdraw a product from the market.
- We have to obtain, maintain and protect our intellectual property and failure to do so may adversely impact our competitive position.
- We may become a party to intellectual property litigation or administrative proceedings that could be expensive, time-consuming, unsuccessful, and could interfere with our ability to sell and market our products or services.
- The market price of our common stock may be volatile or may decline steeply or suddenly regardless of our operating performance, which could result in substantial losses for purchasers of our common stock, and we may not be able to meet investor or analyst expectations.
- Future securities issuances could result in significant dilution to our stockholders and impair the market price of our common stock.
- If we are not able to maintain adequate internal control over financial reporting, or if we are unable to produce timely or accurate financial statements, investors may lose confidence in our operating results and the trading price of our common stock could decline.

Part I

Item 1. Business

Overview

We are a surgical robotics company focused on advancing patient care by developing transformative solutions in urology. We develop, manufacture and sell the AquaBeam Robotic System, an advanced, image-guided, surgical robotic system for use in minimally invasive urologic surgery, with an initial focus on treating benign prostatic hyperplasia, or BPH. BPH is the most common prostate disease and impacts approximately 40 million men in the United States. The AquaBeam Robotic System employs a single-use disposable handpiece to deliver our proprietary Aquablation therapy, which combines real-time, multi-dimensional imaging, personalized treatment planning, automated robotics and heat-free waterjet ablation for targeted and rapid removal of prostate tissue. We designed our AquaBeam Robotic System to enable consistent and reproducible BPH surgery outcomes. We believe that Aquablation therapy represents a paradigm shift in the surgical treatment of BPH by addressing compromises associated with alternative surgical interventions. We designed Aquablation therapy to deliver effective, safe and durable outcomes for males suffering from lower urinary tract symptoms, or LUTS, due to BPH that are independent of prostate size and shape or surgeon experience. We have developed a significant and growing body of clinical evidence, which includes nine clinical studies and over 100 peer-reviewed publications, supporting the benefits and clinical advantages of Aquablation therapy. As of December 31, 2021, we had an install base of 130 AquaBeam Robotic Systems globally, including 78 in the United States.

BPH refers to the non-malignant enlargement of the prostate gland, a small gland in the male reproductive system. The main role of the prostate is to produce the fluid that protects and gives nutrients to sperm. The prostate sits underneath the bladder and surrounds the top part of the urethra, which carries urine from the bladder.

As the prostate enlarges, the gland presses against the urethra, which may obstruct or restrict the flow of urine from the bladder and result in uncomfortable LUTS, such as urgency, frequency, urinary retention, straining to urinate and a weak urinary stream. Without treatment, prolonged obstruction may eventually lead to acute urinary retention, urinary tract infections or renal insufficiency.

In the United States it is estimated that approximately 40 million men are impacted by BPH, with aging demographics expected to drive future growth. Over the next ten years, it is expected that the number of men over 65 years old in the United States will double and include a corresponding increase in the number of men with enlarged prostates. Of these men, approximately 12 million are being managed by a physician for symptoms related to their disease. Our total addressable patient population in the United States includes approximately 8.2 million patients, comprising 6.7 million receiving drug therapy, 1.1 million who have tried but failed drug therapy and 400,000 undergoing surgical intervention each year. Based on the average selling price of our single-use handpiece, we estimate that our total addressable market opportunity is in excess of $20 billion in the United States. The global incidence of BPH among men over 50 years old is similar to that of the United States, representing a significant incremental market opportunity outside of the United States.

The main goal of BPH treatment is to alleviate the symptoms associated with the disease and improve the patient’s quality of life. While drug therapy is typically a first line treatment option, limited efficacy and negative side effects contribute to low compliance and high failure rates and drop outs. On the other hand, surgical intervention is proven to provide effective and durable symptom relief compared to drug therapy, but the use of surgery is significantly underpenetrated, largely due to the compromise patients must make between the incidence of irreversible side effects associated with alternative resective surgical interventions, where obstructive tissue is removed at the time of intervention, or the lower rates of efficacy and durability associated with non-resective surgical interventions, where obstructive tissue is not removed, but rather the prostatic urethra is re-shaped. In addition, most alternative surgical interventions are limited by prostate size and shape, with no single procedure capable of effectively addressing the full range of prostate anatomies regardless of surgeon experience level.

We began developing our proprietary AquaBeam Robotic System in 2009 to address many of the shortcomings of alternative surgical interventions by delivering our Aquablation therapy, the first and only image-guided robotic therapy for the treatment of BPH. The AquaBeam Robotic System combines real-time image guidance, personalized treatment planning, automated robotic execution and heat-free waterjet ablation. We believe our Aquablation therapy addresses the compromise between safety and efficacy of alternative surgical interventions, providing the following unique combination of benefits:

- ***Significant and durable symptom relief.*** Given obstructive prostate tissue is removed during the procedure, Aquablation therapy has demonstrated significant and long-lasting levels of symptom relief similar to those of

alternative resective procedures. In our U.S. pivotal trial, Waterjet Ablation Therapy for Endoscopic Resection of prostate tissue, or the WATER study, Aquablation therapy demonstrated superior safety and non-inferior efficacy results compared to transurethral resection of the prostate, or TURP, the historical standard of care for the surgical treatment of BPH. In the WATER and WATER II studies, surgical retreatment rates were only 5.2% at five years and 3.0% at four years, respectively. In the OPEN WATER study, there were no surgical retreatments at one year. The retreatment rates in the WATER and WATER II studies compare favorably to surgical retreatment rates observed for alternative treatments for BPH. One study published in the BJU International Journal reported on 52,748 men undergoing TURP or PVP with an approximated three-year freedom from surgical retreatment of 92% and 89%, respectively. A second study published in the Journal of Urology reported on 43,041 men undergoing TURP, PVP, enucleation, or open simple prostatectomy with an approximated three-year freedom from surgical retreatment of 93%, 89%, 94%, and 96%, respectively.

- ***Favorable safety profile.*** Aquablation therapy has demonstrated low rates of irreversible complications, including urinary incontinence, erectile dysfunction and ejaculatory dysfunction, compared to published rates observed for other resective surgeries. In our WATER study, patients who underwent Aquablation therapy maintained a higher level of sexual function compared to those who underwent TURP.

- ***Outcomes independent of prostate size and shape and surgeon experience.*** We designed Aquablation therapy to deliver outcomes that are effective, safe and durable for males suffering from LUTS due to BPH across all prostate sizes and shapes. Our WATER, WATER II and OPEN WATER studies enrolled men with prostate sizes between 20 ml and 150 ml; however, in the commercial setting, we have successfully treated men with prostate sizes over 300 ml. Additionally, in the WATER and WATER II studies, 50% and 83% of men, respectively, had an obstructive median lobe, and the average prostate size in each study was 54 ml and 107 ml, respectively. Compared to other resective procedures, we believe Aquablation therapy is relatively simple to learn, enabled by the intuitive user interface of the conformal planning unit, or CPU, and automated robotic resection, and delivers outcomes that are independent of surgeon experience.

- ***Personalized treatment planning and improved decision-making.*** Aquablation therapy combines cystoscopic visualization, which uses a camera attached to a hollow tube, along with ultrasound imaging and advanced planning software to provide the surgeon with a multidimensional view of the treatment area and enable personalized treatment planning for the patient's unique anatomy, improved decision-making and real-time monitoring during the procedure.

- ***Targeted and controlled resection with consistent resection times.*** Aquablation therapy utilizes automated robotic resection to remove prostate tissue using a precise, heat-free waterjet. These features enable targeted and controlled tissue removal with rapid resection times that are highly consistent across prostate sizes and shapes and surgeon experience.

We have developed a significant and growing body of clinical data that demonstrate the efficacy, safety and durability of Aquablation therapy, independent of prostate size and shape and surgeon experience. Our robust body of clinical evidence includes nine clinical studies and more than 100 peer-reviewed publications. Our WATER study is the only FDA pivotal study randomized against TURP. In this study, Aquablation therapy demonstrated superior safety and non-inferior efficacy compared to TURP across prostate sizes between 30 ml and 80 ml, and superior efficacy in a subset of patients with prostates larger than 50 ml. We have established strong relationships with KOLs within the urology community and collaborated with key urological societies in global markets. This support has been instrumental in facilitating broader acceptance and adoption of Aquablation therapy. We believe that as a result of our strong KOL network and our compelling clinical evidence, Aquablation therapy has been added to clinical guidelines of various professional associations, including the American Urological Association, or AUA.

In the United States, we sell our products to hospitals. These customers in turn bill various third-party payors, such as commercial payors and government agencies, for reimbursement for the procedures using our products. Effective in 2021, all local Medicare Administrative Contractors, or MACs, which represent 100% of eligible Medicare patients, issued final positive local coverage determinations to provide Medicare beneficiaries with access to Aquablation therapy in all 50 states so long as such beneficiaries meet certain clinical criteria set forth in the local coverage determination. We believe that our strong body of clinical evidence and support from key societies, supplemented by the momentum from Medicare coverage, have led to favorable coverage decisions from several large commercial payors, including Anthem, Cigna, Humana, Health Care Service Corporation, BlueCross – Massachusetts, Emblem Health, and CareFirst. We plan to leverage these recent successes in our active discussions with commercial payors to establish additional positive national and regional coverage policies, although we cannot provide any assurances that we will be successful in doing so. Outside of the United States,

we have ongoing efforts in key markets to expand established coverage and improve payment which we believe will expand patient access to Aquablation therapy.

We primarily sell our products through our direct sales organization in the United States, which targets urologists across the United States, who we believe represent the primary physician specialty managing the care of patients with BPH. We are initially targeting 860 high-volume hospitals that perform, on average, more than 200 resective procedures annually and account for approximately 70% of all hospital-based resective procedures. We estimate that approximately 50% of BPH patients who are on drug therapy as well as 50% who have failed drug therapy are under the care of a urologist, equating to approximately 3.9 million men. We believe we can reach these patients by continuing to educate our network of urologists of the clinical benefits of Aquablation therapy, provide comprehensive training programs and deepen our relationships with key urologists and various medical societies. Outside the United States, we sell our products using both our direct sales organization and, in certain regions, our network of distribution partners.

We generated revenue of $34.5 million and $7.7 million for the years ended December 31, 2021 and 2020, respectively, and incurred a net loss of $59.9 million and $53.0 million for the years ended December 31, 2021 and 2020, respectively. As of December 31, 2021, we had an accumulated deficit of $261.5 million.

Our Success Factors

We believe the continued growth of our company will be driven by the following success factors:

- ***First and only image-guided, heat-free robotic therapy for BPH that addresses the compromise between safety and efficacy of alternative surgical interventions.*** We have developed the AquaBeam Robotic System, an advanced, image-guided, surgical robotic system for use in minimally invasive BPH surgery. The AquaBeam Robotic System delivers our Aquablation therapy, the first and only image-guided, heat-free robotic therapy for the treatment of BPH. Aquablation therapy combines real-time, multidimensional imaging, personalized treatment planning, automated robotics and heat-free waterjet ablation for targeted and rapid removal of prostate tissue. We believe that alternative surgical interventions for BPH have a number of shortcomings which require patients to compromise between safety and efficacy, either providing significant symptom relief but with a heightened risk of irreversible complications or a lower risk of complications but with significantly less symptom relief. We believe Aquablation therapy represents a paradigm shift in the surgical treatment of BPH by addressing this compromise.

- ***Large, growing and underpenetrated market opportunity.*** BPH is the number one reason men visit a urologist and we estimate that approximately 40 million men in the United States alone are impacted by BPH, with aging demographics expected to drive future growth. Of these men, approximately 12 million are being managed by a physician for symptoms related to their disease. While drug therapy is typically a first-line treatment option, limited efficacy and negative side effects, including neurologic, ophthalmic and sexual complications, contribute to low compliance and high failure rates, often as high as 30%. On the other hand, surgical intervention is proven to provide effective and durable symptom relief compared to drug therapy, but the use of surgery is significantly underpenetrated, largely due to the compromise and limitations associated with alternative surgical interventions. Our total addressable patient population in the United States includes approximately 8.2 million patients, comprised of 6.7 million who are receiving drug therapy, 1.1 million who have tried but failed drug therapy and 400,000 who are undergoing surgical intervention each year. Based on the average selling price of our single-use handpiece, we estimate that our total U.S. addressable market opportunity is in excess of $20 billion. The global incidence of BPH among men over 50 years old is similar to that of the United States, representing a significant incremental market opportunity outside of the United States.

- ***Significant and growing body of clinical evidence and strong support from key opinion leaders, or KOLs, resulting in the inclusion of Aquablation therapy into societal guidelines and rapid expansion of positive reimbursement coverage policies.*** We have developed a significant and growing body of clinical data that demonstrates the efficacy, safety and durability of Aquablation therapy, consistent across all prostate sizes and shapes and independent of surgeon experience. Our robust clinical evidence includes nine clinical studies that we sponsored and enrolled between 2013 and 2018, as well as more than 100 peer-reviewed publications. Our employees participated in protocol design, data management, monitoring, and statistical analysis in all nine clinical studies and results were provided to authors for publication upon request. Our WATER study is the only FDA pivotal study randomized against TURP, which is the historical standard of care for the surgical treatment of BPH. In this study, Aquablation therapy demonstrated superior safety and non-inferior efficacy results compared to TURP across prostate sizes between 30 ml and 80 ml, and superior efficacy results in a subset of patients with prostates larger than 50 ml. We have established strong relationships with KOLs within the urology community and collaborated with key urological societies in global markets. This support has been instrumental in facilitating

broader acceptance and adoption of Aquablation therapy. As a result of our strong KOL network and our compelling clinical evidence, Aquablation therapy has been added to clinical guidelines of various professional associations, including the American Urological Association, European Association of Urology, Canadian Urological Association, and National Institute for Health and Care Excellence; has achieved favorable coverage determinations from MACs; and has been designated by the Centers for Medicare and Medicaid Services, or CMS, as demonstrating substantial clinical improvement over alternative surgical interventions and granted transitional pass-through payment status, effective January 1, 2020 through December 31, 2022. We believe our compelling clinical evidence, strong KOL relationships and engagement with global urological societies will continue to play an important role in growing awareness and increasing adoption of Aquablation therapy.

- ***Compelling value proposition and benefits to hospitals, surgeons and patients.*** We designed our AquaBeam Robotic System to enable consistent and reproducible BPH surgery outcomes that are independent of surgeon experience and require minimal training. In addition, we believe the differentiated features of Aquablation therapy allow for improved predictability of outcomes and, as such, increase surgeon confidence in recommending surgical intervention to their patients. Given its ability to treat prostate sizes of all shapes and sizes, Aquablation therapy enables hospitals to consolidate the surgical treatment of BPH in a single therapy. We also believe that hospital administrators will be able to leverage the differentiation of Aquablation therapy as a marketing tool to attract skilled surgeons and patients to their hospital system. Furthermore, the AquaBeam Robotic System is highly mobile and compact, requiring no retrofitting of the operating room, and we believe is competitively priced compared to other robotic systems and capital equipment devices, both factors which we believe remove adoption hurdles for hospital customers and allow for a more streamlined hospital sales cycle. For patients, Aquablation therapy offers significant and durable symptom relief with an attractive safety profile. We believe these benefits will continue to support the adoption of Aquablation therapy by hospitals and surgeons.

- ***Recurring revenue model.*** We generate revenue primarily from hospitals making capital purchases of our AquaBeam Robotic System and purchasing our single-use handpieces for individual patient use. We also generate revenue by providing post-warranty service for the AquaBeam Robotic System. We believe our business model of selling capital equipment that generates corresponding disposables utilization and post-warranty service contracts provides a path to predictable, recurring revenue.

- ***Broad research and development capabilities and a robust intellectual property portfolio.*** We have invested in establishing strong research and development capabilities for over a decade, including in surgical robotics and imaging-enabled surgery as well as integrating hardware and software to create an exceptional user and patient experience. We believe our focus on this experience will allow us to continue to bring new upgrades, capabilities and products to market, allowing us to innovate and maintain our competitive positioning. We have a broad patent portfolio, including 112 issued patents and 91 pending patent applications as of December 31, 2021. We believe our intellectual property and know-how present a significant barrier to entry for our competitors.

- ***Proven leadership team and board members with deep industry experience.*** We are led by a highly experienced management team and board with a successful track record of building businesses by identifying and providing solutions for underserved markets in the medical device industry. Our team has successfully led and managed dynamic growth phases in organizations and commercialized products in markets with established incumbents by addressing the unmet needs of the physicians and patients they serve. Our senior management team has an average of over 18 years of experience in the medical device industry across both public and private companies.

Our Growth Strategies

Our mission is to establish Aquablation therapy as the surgical standard of care for BPH. The key elements of our growth strategy are:

- ***Grow our installed base of AquaBeam Robotic Systems by driving adoption of Aquablation therapy among urologists.*** In the United States, we are initially focused on driving adoption of Aquablation therapy among urologists that perform hospital-based resective BPH surgery. We estimate that approximately 290,000 of the 400,000 annual BPH surgeries are resective procedures performed across approximately 2,700 hospitals. We are initially targeting 860 high-volume hospitals that we estimate perform, on average, more than 200 resective procedures annually and account for approximately 70% of all hospital-based resective procedures. To penetrate these hospitals, we will continue to increase our direct team of capital sales representatives, who are focused on driving system placement within hospitals by engaging with key surgeons and decision makers to educate them about the compelling value proposition of Aquablation therapy. We also intend to increase awareness of Aquablation therapy by continuing to publish clinical data in various industry and scientific journals, present our

clinical data at various industry conferences and sponsor peer-to-peer education programs and proctorships. Over time, we will gradually expand our focus to also include mid- and low-volume hospitals.

- ***Increase system utilization by establishing Aquablation therapy as the surgical treatment of choice for BPH.*** Once we place a system within a hospital, our objective is to establish Aquablation therapy as the surgical treatment of choice for BPH. Within each hospital, we are initially focused on targeting urologists who perform medium-to-high volumes of resective procedures and converting their resective cases to Aquablation therapy. To accomplish this, we will continue expanding our team of highly trained Aquablation representatives and clinical specialists, who are focused on driving system utilization within the hospital, providing education and training support and ensuring excellent user experiences. As urologists gain experience with Aquablation therapy, we will leverage their experiences to capture more surgical volumes and establish Aquablation therapy as the surgical standard of care. Over time, we intend to leverage our relationships with urologists to drive utilization of Aquablation therapy beyond the current surgical market. We estimate that approximately 50% of BPH patients who are on drug therapy as well as 50% who have failed drug therapy are under the care of a urologist, equating to approximately 3.9 million men. We believe we can reach these patients by continuing to educate our network of urologists of the clinical benefits of Aquablation therapy, provide comprehensive training programs and deepen our relationships with key urologists and various medical societies. Furthermore, we believe that additional coverage by private payors will continue to drive increased utilization.

- ***Continue to broaden private payor coverage.*** Since the addition of Aquablation therapy to AUA clinical guidelines in May 2019, we have significantly grown coverage for Aquablation therapy in the United States. Effective in 2021, all local MACs, which represent 100% of eligible Medicare patients, issued final positive local coverage determinations to provide Medicare beneficiaries with access to Aquablation therapy in all 50 states so long as such beneficiaries meet certain clinical criteria set forth in the local coverage determinations. We believe that these favorable coverage decisions have been a catalyst for hospital adoption of our AquaBeam Robotic System. Our strong body of clinical evidence and support from key societies, supplemented by the momentum from Medicare coverage, have led to favorable coverage decisions from several large private payors, including Anthem, Cigna, Humana, Health Care Service Corporation, BlueCross – Massachusetts, Emblem Health, and CareFirst. We plan to leverage these recent successes in our active discussions with private payors to establish additional positive national and regional coverage policies. We believe that additional private payor coverage will contribute to increasing utilization of our system over time. Outside of the United States, we have ongoing efforts in key markets to expand established coverage and further improve patient access to Aquablation therapy.

- ***Build upon our strong base of clinical evidence.*** We are committed to continuing to build upon our foundation of clinical evidence, which we believe will help drive increased awareness and adoption of our products. For example, we are continuing to follow patients in our WATER and WATER II studies to collect five-year clinical outcomes as well as conducting sub-group analyses across our base of clinical data that we believe will further define the role of Aquablation therapy across patient populations. We also plan to further build our base of clinical evidence by supporting new clinical studies intended to support commercial, regulatory and reimbursement efforts. For example, we are supporting an investigator-initiated clinical study, called WATER III, which will be a randomized controlled trial evaluating Aquablation therapy against laser enucleation in treating BPH patients with large prostate sizes.

- ***Invest in research and development to drive continuous improvements and innovation.*** We are currently developing additional and next generation technologies to support and improve Aquablation therapy to further satisfy the evolving needs of surgeons and their patients as well as to further enhance the usability and scalability of the AquaBeam Robotic System. We also plan to leverage our treatment data and software development capabilities to integrate artificial intelligence and machine-learning to enable computer-assisted anatomy recognition and improved treatment planning and personalization. In the future, we may evaluate the application of the AquaBeam Robotic System in new urologic conditions beyond BPH.

- ***Drive increased awareness of Aquablation therapy beyond the urology community.*** As we expand our network of urologists and grow our installed base, we intend to increase awareness and brand recognition of Aquablation therapy beyond urologists, primarily among primary care physicians who manage BPH patients. We estimate that approximately 3.9 million men, including approximately 3.3 million patients who are on drug therapy and 600,000 who have failed drug therapy, are under the care of a primary care physician. To achieve this objective, we will invest in marketing initiatives directed at primary care physicians in order to expand networks for BPH patients to visit a urologist. Once we have established a broader installed base of systems, we may seek to further increase patient awareness through various direct-to-patient marketing initiatives.

- ***Further penetrate and expand into existing and new international markets.*** We plan to establish and strengthen our presence internationally. While the United States remains our primary focus in the near-term, we are growing our existing presence in the large European markets, including Germany, France, Italy, Spain and the United Kingdom, by continuing to promote the clinical benefits of Aquablation therapy, supporting investments in clinical studies to improve coverage and reimbursement and fostering relationships with KOLs. In addition, we intend to expand our reach to selected new markets in the Asia-Pacific region over time. We plan to strategically invest in new markets based on our assessment of market size and opportunity and prospects for compelling reimbursement.

Market Overview

Our Addressable Market Opportunity in BPH

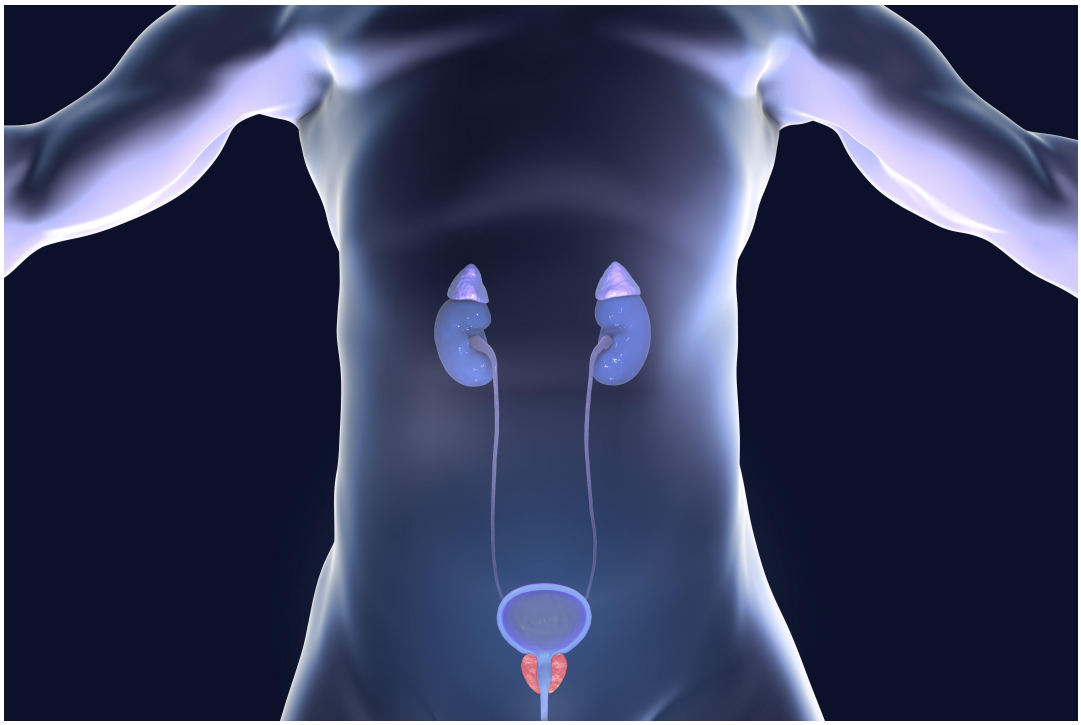
In the United States, BPH is the number one reason men visit a urologist. BPH is estimated to occur in more than 50% of men in their 50s, growing to 70% of men in their 60s, and is the fourth most common diagnosed disease in men above 50 years old, ranking behind coronary artery disease, hypertension and type 2 diabetes. BPH often results in uncomfortable LUTS, which can have a significant impact on quality of life. If left untreated, BPH may eventually lead to more serious complications.

In the United States, we estimate that approximately 40 million men are impacted by symptoms of BPH, with aging demographics expected to drive future growth. Over the next ten years, we expect that the number of men over 65 years old in the United States will double and include a corresponding increase in the number of men with enlarged prostates. Of these men, approximately 12 million are being managed by a physician for symptoms related to their disease. While drug therapy is typically a first line treatment option, limited efficacy and negative side effects contribute to low patient compliance, high failure rates and drop outs. On the other hand, surgical intervention is proven to provide effective and durable symptom relief compared to drug therapy, but the use of surgery is significantly underpenetrated, largely due to the compromise patients must make between (1) the incidence of irreversible side effects associated with current resective surgical interventions, or (2) the lower rates of efficacy and durability associated with non-resective surgical interventions. Our total addressable patient population in the United States includes approximately 8.2 million patients, comprised of 6.7 million receiving drug therapy, 1.1 million who have tried but failed drug therapy and 400,000 undergoing surgical intervention each year. Based on the average selling price of our single-use handpiece, we estimate that our total addressable market opportunity is in excess of $20 billion in the United States. The global incidence of BPH among men over 50 years old is similar to that of the United States, representing a significant incremental market opportunity outside of the United States.

Overview of the Prostate

The prostate is a small gland in the male reproductive system. The main role of the prostate is to produce the fluid that protects and gives nutrients to sperm. The prostate sits underneath the bladder and surrounds the top part of the urethra, which carries urine from the bladder.

Overview of the Prostate and Surrounding Structures

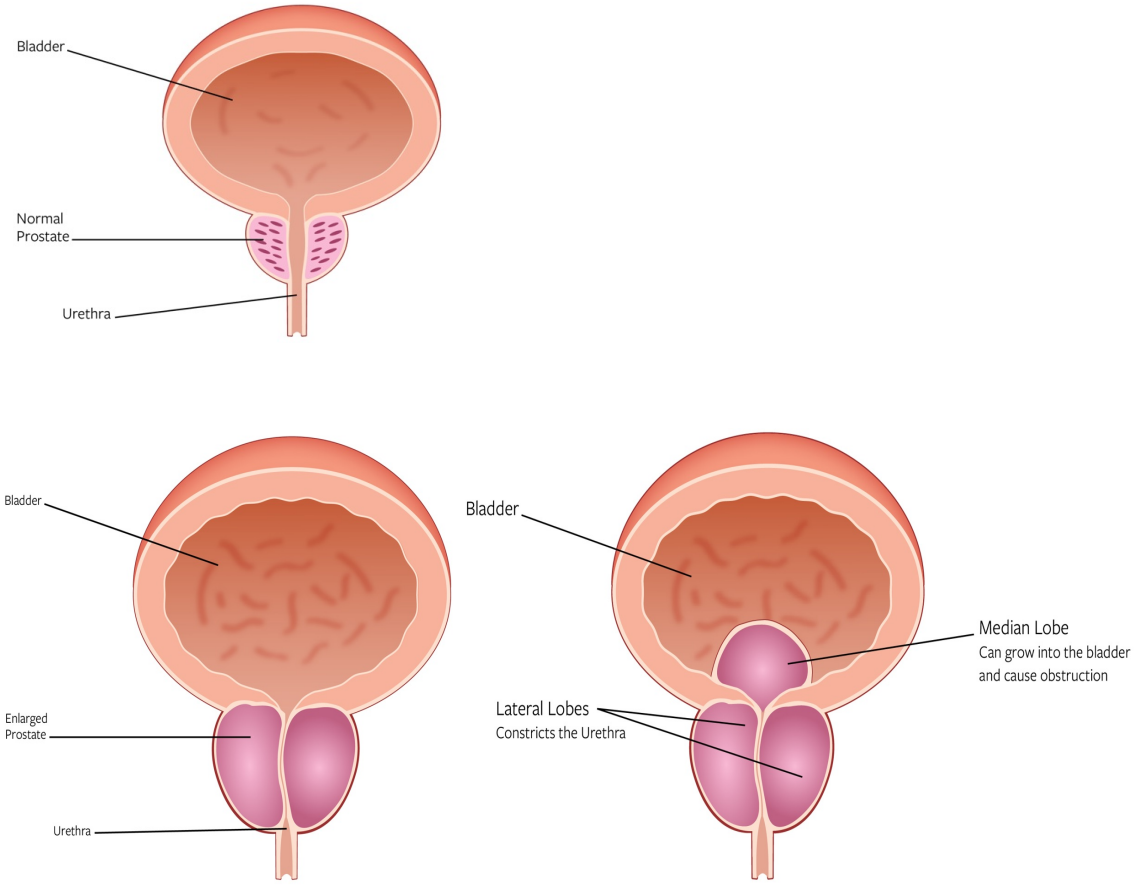


The prostate is approximately the size of a walnut in men younger than 30 years old; as men age, the prostate grows larger. At puberty, testosterone levels in boys start to increase and the prostate grows to about eight times its size. The prostate continues to grow, doubling in size between the ages of 21 and 50 years, and almost doubles again in size between the ages of 50 and 80 years. Prostate size is generally measured in volume using milliliters, or ml.

BPH Disease Overview and Diagnosis

BPH refers to the non-malignant enlargement of the prostate gland. As the prostate enlarges, the gland presses against the urethra, which may obstruct or restrict the flow of urine from the bladder and result in uncomfortable LUTS, such as urgency, frequency, urinary retention, straining to urinate and a weak urinary stream. Without treatment, prolonged obstruction may eventually lead to acute urinary retention, urinary tract infections or renal insufficiency. An enlarged prostate can range between roughly 30 ml to above 300 ml. As prostates increase in size so does the complexity of shape where the obstructive tissue will grow back into the bladder (called an intravesical component).

Normal Prostate versus Enlarged Prostate



While some BPH patients are asymptomatic, most will experience symptoms, which generally become more bothersome with age. According to the AUA guidelines, it is estimated that 90% of men between the ages of 45 and 80 will experience LUTS, and 50% of them will experience moderate-to-severe symptoms by the time they are 85 years old, which we believe are predominantly caused by BPH. Furthermore, 50% of men between the ages of 51-60 have pathological BPH. Symptoms associated with BPH can have a significant impact on a patient's quality of life, including inability to sleep through the night, limiting activities due to proximity to the bathroom, impact on relationships, professional life and social activities, ongoing embarrassment and frustration and impact on sexual function. According to our internal marketing survey, 99% of men diagnosed with BPH say symptoms impact their quality of life.

Clinical diagnosis of BPH typically involves a number of tests that are used to assess the degree of LUTS and determine whether the symptoms are caused by BPH or another condition. A symptom score index utilizes standardized questionnaires to quantify a patient's degree of LUTS. One of the most common scoring systems is the International Prostate Symptom Score, or IPSS. Using this scoring system, LUTS are classified as either mild, moderate or severe. The IPSS questionnaire is a key tool used to evaluate treatment options and assess treatment success. Other commonly used tests include a digital rectal exam, urine sample tests, imaging scans, blood tests and uroflowmetry tests, which measure the strength and amount of urine flow during urination. Patients suffering from symptoms of BPH are typically first seen by a primary care physician, who may diagnose and manage the patient, or refer the patient to a urologist. A urologist is a physician who specializes in diseases of the urinary tract in both males and females as well as the male reproductive system. Urologists are trained to perform surgery for various types of urologic conditions, including BPH.

BPH Treatment Options

The main goal of BPH treatment is to alleviate the symptoms associated with the disease and improve the patient's quality of life. As such, a patient's recommended course of treatment is largely based on the patient's degree of symptoms, typically measured using validated scoring systems such as IPSS. Patients with mild symptoms who have not developed other complications of BPH may choose watchful waiting, meaning that before proceeding with active treatment, the physician and patient wait to see if symptoms get worse or if new symptoms develop. Patients who choose this approach are generally advised to implement lifestyle changes and return for yearly visits with their physician to determine if symptoms are changing. For most men, the prostate will continue to grow and symptoms will worsen. As symptoms become more bothersome, active treatment may be recommended. The two primary categories of active treatment for BPH are drug therapy and surgical intervention.

Drug Therapy

Drug therapy is often the first step in actively treating mild-to-moderate symptoms of BPH. While there is no pharmacological cure for BPH, drugs may be used to manage symptoms. Available drugs address symptoms by either shrinking (5-alpha reductase inhibitors) the prostate or relaxing (alpha blockers) muscles surrounding the prostate. In some instances, patients may be prescribed a combination of both medications. Most men with BPH who start drug therapy will need to continue it indefinitely in order to relieve symptoms, unless they choose to undergo surgical intervention. While drug therapy can provide relief for some men, two out of three patients are not satisfied with the effectiveness of their medication. In general, drug therapy provides IPSS reduction of approximately five points and flow improvement of up to 2.5 ml per second. Drug therapy is also often associated with negative side effects, including headaches, dizziness, nausea, erectile dysfunction, ejaculatory dysfunction, loss of libido, cardiac failure and dementia. These side effects often contribute to poor treatment compliance, with drug therapy failing in up to 30% of men within two years. Furthermore, drug therapy may be costly, particularly in light of limited symptom relief. For example, a recent study has shown that payor costs for branded combination drug therapy over a two-year period was the least cost-effective of all treatment options included in the study, as drug therapy requires extended use and yields the least symptom relief.

Surgical Intervention

Surgical intervention is recommended for patients who have failed or are unwilling to consider drug therapy, or are suffering from complications due to their BPH. Although more invasive than drug therapy, surgical intervention generally provides more significant, longer-lasting symptom relief. We estimate that approximately 400,000 BPH surgeries were performed in the United States in 2019, growing at a compounded annual growth rate, or CAGR, of 11% since 2016. We believe that growth in the use of surgical intervention over the past several years is due to the introduction of new technologies that better balance the compromise between efficacy and safety as well as growing awareness of surgical intervention as an effective way to manage BPH symptoms compared to drug therapy.

There are two categories of surgical intervention, resective, where obstructive tissue is removed at the time of intervention, and non-resective, where obstructive tissue is not removed, but rather the prostatic urethra is re-shaped.

Resective Procedures. In resective surgery, tissue is removed during the procedure. Resective prostate procedures generally provide more significant and longer-lasting symptom relief than non-resective procedures, but may result in a higher incidence of irreversible complications, including urinary incontinence, erectile dysfunction and ejaculatory dysfunction. Resective procedures generally provide IPSS reduction of approximately 15 points. These procedures are typically performed in the hospital or outpatient surgery center under general or spinal anesthesia. In 2019, approximately 290,000 resective surgeries were performed in the United States, accounting for over 70% of all BPH surgeries.

Resective surgeries may be performed endoscopically, allowing the procedure to be completed through a tubular instrument, or via an open or a laparoscopic procedure, called a simple prostatectomy.

Endoscopic procedures access the prostate through the urethra, so no incisions are made in the patient's abdomen. These procedures typically use heat-based technologies to resect prostate tissue, utilizing a single camera called a cystoscope that provides limited visualization of the anatomy during the procedure. Common alternative endoscopic resective procedures include:

- *Transurethral Resection of the Prostate*. TURP is a resective procedure which uses electrocautery to cut and remove prostate tissue. Despite being used for almost a century, this procedure is still the most frequently performed resective surgery and is considered the historical standard of care for the surgical treatment of BPH for prostates less than 80 ml. In 2019, approximately 135,000 TURP procedures were performed in the United States.

- *Photoselective Vaporization of the Prostate, or PVP.* PVP is a transurethral form of treatment that utilizes a laser fiber to vaporize prostate tissue sequentially outwards until the surgeon creates a sufficient cavity through which the patient may now void. PVP is generally used in patients with small- to average-sized prostates and can be used in patients who are at high risk of bleeding complications. In 2019, approximately 80,000 PVP procedures were performed in the United States.

- *Laser Enucleation of the Prostate.* Laser enucleation utilizes a surgical laser to manually resect prostate tissue through the urethra. This procedure allows the surgeon to follow anatomic planes to separate entire lobes of the prostate. In general, separated prostate lobes are then pushed into the bladder and suctioned out via a special tool. Laser enucleation is prostate size-independent; however, this procedure is more commonly used in larger prostates, and adoption has been limited due to the high degree of skill and experience required. In 2019, approximately 30,000 enucleation procedures were performed in the United States.

A simple prostatectomy is an invasive, open procedure that requires one or more incisions to be made in the patient's abdomen to access and remove part or all of the prostate. This procedure is typically a last resort treatment for BPH in patients with very large prostates or those patients with severe complications due to BPH. This surgery may be done manually, or with the assistance of a robot, but in either case is a procedure that requires a high degree of surgeon skill. In 2019, approximately 25,000 prostatectomy procedures were performed for the treatment of BPH in the United States.

Non-Resective Procedures. In non-resective procedures, prostate tissue is not removed at the time of surgery. By not removing tissue, symptom relief is generally less significant and durable compared to resective procedures. Non-resective procedures generally provide IPSS reduction of approximately ten points. The two most common commercially available non-resective procedures are prostatic urethral lift, or PUL, and water vapor therapy. PUL uses permanent implants of nitinol and stainless steel placed transurethrally to pin back and compress obstructing prostate tissue, thus creating a channel for improved urinary flow. Water vapor therapy utilizes principles of convection by transurethrally delivering water vapor into obstructing prostate tissue, which results in cell death and reduction of prostate volume over a period of three to six months. Non-resective procedures are generally approved for small- to average-sized prostates. In 2019, approximately 105,000 non-resective surgeries were performed in the United States.

Limitations of Alternative Surgical Interventions

Two factors that surgeons and patients commonly consider when evaluating surgical intervention are efficacy and safety. Efficacy is generally measured by symptom relief as well as durability of relief, and safety by the occurrence of irreversible complications such as urinary incontinence, erectile dysfunction and ejaculatory dysfunction. We believe that alternative surgical interventions for BPH require patients to compromise between efficacy and safety. Alternative interventions either provide significant symptom relief with a heightened risk of irreversible complications or a lower risk of complications with significantly less symptom relief. In addition, most alternative surgical interventions are limited by prostate size and shape, with no single procedure capable of effectively addressing the full range of prostate anatomies regardless of surgeon experience level. We believe that the compromise and limitations associated with alternative surgical interventions have contributed to the relatively low penetration rate of surgical intervention.

Limitations of Endoscopic Resective Procedures. While endoscopic resective surgeries such as TURP and laser-based procedures may provide BPH patients with durable symptom relief, these procedures have a number of limitations, including:

- *High rates of irreversible complications.* Irreversible complications are a common side effect of endoscopic resective procedures. Published studies have shown rates of erectile dysfunction as high as 14%, 20% and 8%, ejaculatory dysfunction as high as 89%, 50% and 77%, and incontinence as high as 2%, 2%, and 33% for TURP, PVP and laser enucleation, respectively. We believe the high rates of irreversible complications are in large part due to these technologies utilizing heat to remove prostate tissue, which may lead to unintended thermal damage to critical parts of the anatomy. Furthermore, minimal intraoperative visualization, which is generally limited to a cystoscope, provides limited visibility of the prostate and makes it difficult for the surgeon to see and preserve critical parts of the prostate during tissue resection. This results in highly variable depth of tissue penetration, damage to tissue which may extend deeper than cavity created, a potential for unintended prostate capsule perforation, potential damage to nerve bundle responsible for erectile function, and delayed healing of prostatic urethra.

- *Prostate size limitations.* While TURP is considered the standard of care for surgical treatment of BPH, it is generally reserved for small- to average-sized prostates below 80 ml given the length and manual nature of the

procedure. For laser-based therapies, PVP is also most commonly used for small- to average-sized prostates, while laser enucleation is generally reserved for treating patients with larger prostates.

- *Experience dependent outcomes and long learning curves.* Endoscopic resective procedures rely on manual resection of the prostate, with clinical outcomes often highly dependent on the surgeon's experience level. For example, a study of a large number of patients undergoing TURP found that the rate of reoperation was 1.2-fold higher in men treated by surgeons who had performed 172 or fewer TURP procedures versus surgeons that had performed more than 402 TURP procedures. In addition, a study of 200 procedures by a surgeon performing PVP showed that the surgeon required at least 120 procedures to achieve optimal clinical outcomes. Furthermore, a study of surgeons learning to perform laser enucleation demonstrated that one-third of the surgeons failed to complete the training program.

- *Inconsistent and lengthy resection times.* Endoscopic resective procedures require manual resection of prostate tissue performed under limited visualization. This manual process contributes to highly inconsistent and lengthy resection times that are strongly correlated with prostate size.

Limitations of a Simple Prostatectomy. While a simple prostatectomy typically provides maximum symptom relief by removing part or all of the prostate gland, this procedure is generally considered a treatment of last resort reserved for patients with large prostates. Limitations of a simple prostatectomy include:

- *Surgical safety concerns.* Even when performed robotically, a simple prostatectomy still requires incisions to be made in the patient's abdomen in order to access the prostate gland. Bleeding events are a key risk in these types of procedures, with transfusion rates as high as 25%.

- *High rates of irreversible complications.* Similar to endoscopic resective procedures, open procedures commonly result in high rates of irreversible complications, with studies showing erectile, ejaculatory dysfunction, and incontinence rates as high as 2-3%, 90% and 8%, respectively.

- *Long hospital stay and recovery time.* Given the invasiveness of open procedures, long hospital stays and post-procedure recovery are common. In addition, patients typically stay in the hospital for an average of five days after surgery and have long recovery times.

Limitations of Non-Resective Procedures. While non-resective procedures are associated with favorable safety profiles and limited impact on sexual function, these procedures generally deliver lower and less durable symptom relief than resective procedures. Limitations of non-resective procedures include:

- *Limited symptom relief and durability.* By not removing obstructive prostate tissue, non-resective procedures generally results in less significant and durable symptom relief compared to resective procedures. In addition, since prostate tissue continues to grow over time, durability of symptom relief is typically less favorable in non-resective procedures, with higher rates of patients needing to undergo surgical retreatment or go back on drugs. For example, five-year surgical retreatment rates for PUL and water vapor therapy were 13.6% and 4.4%, respectively. In addition, the rates of PUL and water vapor therapy patients back on drug therapy at five years were 10.7% and 11.1%, respectively. Furthermore, since PUL requires the use of a permanent implant, there is risk of post-operative complications due to the implant which may require implant removal, with a published five-year rate of implant removal of 9.3%.

- *Limited intraoperative visualization.* Similar to endoscopic resective procedures, the surgeon's view of the prostate in endoscopic non-resective procedures is limited to a cystoscope that provides minimal visibility of the prostate.

- *Prostate size and shape limitations.* Both PUL and water vapor therapy are generally used for small- to average-sized prostates. Unlike any of the resective procedures, both of these procedures are specifically limited by the FDA for use in certain prostate sizes. The mean prostate volumes for PUL and water vapor therapy were 45 ml and 46 ml, respectively, in their respective U.S. pivotal, prospective, randomized clinical trials. In addition, the use of these procedures may be limited for certain complex prostate shapes.

Our Solution

We have developed the AquaBeam Robotic System, an advanced, image-guided, surgical robotic system for use in minimally invasive urologic surgery. Our proprietary AquaBeam Robotic System delivers our Aquablation therapy, the first and only image-guided robotic therapy for the treatment of BPH. We market the AquaBeam Robotic System in the

United States pursuant to FDA 510(k) clearance that we received in March 2021. The most common side effects observed for Aquablation therapy are mild and transient and may include mild pain or difficulty when urinating, discomfort in the pelvis, blood in the urine, inability to empty the bladder or a frequent or urgent need to urinate, and bladder or urinary tract infection. During our clinical studies, we documented a rate of incontinence between 0%-2%, ejaculatory dysfunction between 6.9%-24.6%, and a peri-operative transfusion rate between 0.9%-5.9%. Since then, a number of publications have reported on transfusion rates. A key study published in April 2021 of 2,089 men undergoing Aquablation therapy with prostates ranging in size from 20 ml to 363 ml observed a transfusion rate of only 0.8%.

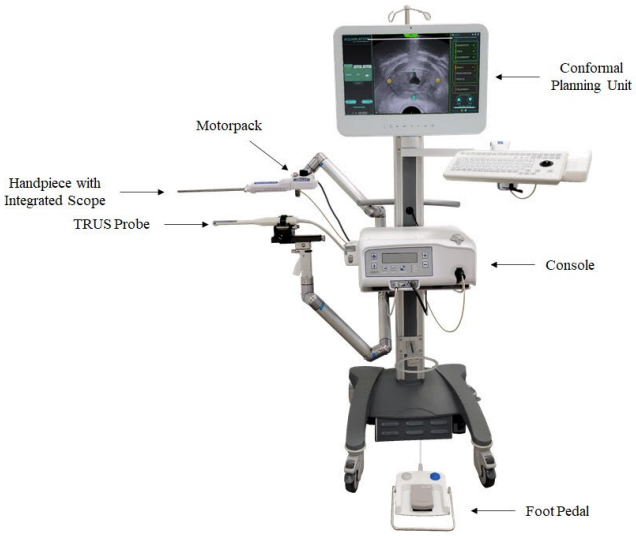
The AquaBeam Robotic System combines the following highly differentiated features that are intended to deliver effective, safe and durable outcomes for males suffering from LUTS due to BPH that are consistent across all prostate sizes and shapes and independent of surgeon experience:

- ***Real-time image guidance.*** Intraoperative ultrasound imaging combined with cystoscopic visualization, which provides a multidimensional view of the treatment area, enabling improved decision-making and real-time treatment monitoring.
- ***Personalized treatment planning.*** Using ultrasound imaging integrated with advanced planning software, the surgeon is able to map the treatment contour that precisely targets the resection area, personalizing the optimal tissue removal plan based on each patient's unique anatomy.
- ***Automated robotic execution.*** Once the treatment plan is finalized, the robot automatically executes the plan, guiding the precisely calibrated waterjet with speed and accuracy while the surgeon monitors.
- ***Heat-free waterjet resection.*** Utilizing the unique power of a pulsating waterjet near the speed of sound, Aquablation therapy removes prostatic tissue with a heat-free waterjet, minimizing the risk of complications arising from prolonged thermal injury.

Components of the AquaBeam Robotic System

The AquaBeam Robotic System is highly mobile and compact, requiring no retrofitting of the operating room. The main components of the AquaBeam Robotic System are the conformal planning unit, or CPU, console, motorpack and handpiece with integrated scope.

AquaBeam Robotic System



The CPU serves as the primary user interface of the AquaBeam Robotic System, displaying live transrectal ultrasound, or TRUS, video which allows the surgeon to visualize the prostate and surrounding structures, identify key anatomical markers and personalize the resection based on the patient's unique anatomy. Through an intuitive user interface, the CPU allows the surgeon to map the contour of the prostate and plan the resection pathway by selecting the resection angles, length and depth. The planned parameters of the resection are transferred to the console to initiate Aquablation therapy.

During the procedure, the surgeon utilizes the CPU to observe the progress of the resection in real time and has the option to make adjustments to the treatment area as needed. The CPU is equipped with a variety of integrated safety mechanisms that provide the surgeon with advisory notifications during treatment.

The console contains a high-pressure pumping system that is responsible for generating the high-velocity waterjet used in Aquablation therapy. The high-pressure pumping system consists of a control unit and powerboards that drive the positioning and flow rates of the waterjet. In addition, the console utilizes a peristaltic pump that assists in active evacuation of saline and tissue from the bladder and prostatic urethra during the Aquablation therapy to manage fluid levels. The console interfaces with both the CPU and motorpack and handpiece assembly, generating the water flow rates based on instructions received from the CPU. The console is activated by a foot pedal and has a small screen that displays the pump level and procedure mode.

The motorpack is connected to the console with a flexible cable that provides power and control instructions to the motorpack. The motorpack consists of a motor control system that drives the movement and position of the waterjet nozzle in the handpiece and is designed to mechanically dock with the handpiece, completing the waterjet drive mechanism as well as establishing a secure electrical connection. The motorpack has buttons that allow a surgeon to manually increase or decrease the pump power level during resection, if needed.

The handpiece is the sterile, single-use component of the AquaBeam Robotic System that delivers the high-velocity waterjet. The tip of the handpiece is inserted transurethrally into the patient, advanced through the prostatic urethra into the bladder and positioned using both TRUS imaging and cystoscopic guidance from the integrated, reusable scope. The motorpack and handpiece assembly is secured to an articulating arm. The start treatment location, end treatment location, depth and angle of resection are based on the transferred planned contour and profile from the CPU to the console and motorpack.

The AquaBeam Robotic System also includes a customized ultrasound set through which ultrasound images are integrated with our system.

Treatment with Aquablation Therapy

Aquablation therapy is currently performed in the hospital setting in a procedure that typically takes less than one hour. On the day of surgery, the patient is given either general or spinal anesthesia and then prepped and positioned on their back with their knees bent above the hips and legs spread apart using stirrups, similar to other BPH surgical procedures. The

procedure begins with the insertion of the TRUS probe, followed by the insertion of the handpiece into the patient's bladder through the urethra under visual guidance from the integrated scope. The surgeon confirms successful positioning of the TRUS probe and handpiece with visual markers on the CPU screen with adjustments made by advancing, retracting and rotating the TRUS probe. Once positioning is confirmed, the TRUS probe and motorpack and handpiece assembly are secured to articulating arms that are mounted to the bed rails to prevent movement during planning and the procedure.

The surgeon begins the planning process via the user interface of the CPU. Using real-time TRUS imaging displayed on the CPU to visualize the anatomy of the prostate, the surgeon plans the treatment area. The surgeon defines the treatment area by adjusting the boundaries of treatment along the length, width and height of the prostate. The boundaries serve as a tissue depth guide to help maintain the resection within the treatment area. If a median lobe is present, the surgeon can visualize and separately plan the resection of the median lobe. Once planning and mapping are complete, the surgeon then begins resection by depressing the foot pedal to initiate the high-velocity waterjet, with the resection automatically executed based on the defined treatment plan. As the waterjet removes prostate tissue along the planned treatment contour, excess water and ablated tissue are actively suctioned out of the patient. The surgeon monitors the progress of the resection on the CPU and, at any point during the procedure, the surgeon can pause the treatment by releasing the foot pedal. Using buttons on the motorpack, the surgeon can manually decrease the resection depths in real time as the procedure is monitored on both live ultrasound and cystoscopy. Aquablation therapy treatment stops upon reaching the planned treatment endpoint. The surgeon may decide to plan additional resection passes depending on the length or depth of the prostate.

When the procedure is complete, the motorpack and handpiece assembly is undocked from the articulating arm. The surgeon can manually scan the treatment area endoscopically by using the integrated scope of the handpiece. After post-procedural cystoscopy is complete, the handpiece is removed from the urethra. The surgeon may then use a resectoscope to remove ablated tissue to improve visualization and then perform focal, targeted and methodical bladder neck cautery to achieve post-operative hemostasis, or a state where the bleeding has stopped. Following the procedure, the patients are typically monitored in the Post-Anesthesia Care Unit, or PACU, with the majority of patients discharged after one overnight stay, without needing to leave with a catheter.

Key Benefits of Aquablation Therapy

We believe our Aquablation therapy addresses the compromise between safety and efficacy of alternative surgical interventions, providing the following unique benefits:

- ***Significant and durable symptom relief.*** Given obstructive prostate tissue is removed during the procedure, Aquablation therapy has demonstrated significant and long-lasting levels of symptom relief similar to those of alternative resective procedures. The efficacy of Aquablation therapy has been evaluated in nine clinical studies and over 100 peer reviewed publications. Significant symptom reduction, quality of life and uroflowmetry improvements were observed across the WATER, WATER II and OPEN WATER studies. In the WATER study, Aquablation therapy demonstrated superior safety and non-inferior efficacy results compared to TURP, the historical standard of care for the surgical treatment of BPH. Our studies have also demonstrated durable outcomes with low rates of surgical retreatment and few men having to go back on drugs following surgery. In the WATER and WATER II studies, surgical retreatment rates were only 5.2% at five years and 3.0% at four years, respectively. In the OPEN WATER study, there were no surgical retreatments at one year.

- ***Uncompromised safety profile.*** Aquablation therapy has demonstrated low rates of irreversible complications, including urinary incontinence, erectile dysfunction and ejaculatory dysfunction, compared to published rates observed for other resective surgeries. In our WATER study, patients who underwent Aquablation therapy maintained a higher level of sexual function compared to those who underwent TURP. We believe the strong safety profile of Aquablation therapy is a result of the therapy's ability to preserve key anatomical structures and limit prolonged and unintended thermal injury. In addition, no implant remains in the body with Aquablation therapy, minimizing the risk of mid-to-long term post-operative complications resulting from the implant.

- ***Outcomes consistent across all prostate sizes and shapes and independent of surgeon experience.*** We designed Aquablation therapy to deliver outcomes that are effective, safe and durable for males suffering from LUTS due to BPH across all prostate sizes and shapes. Our WATER, WATER II and OPEN WATER studies enrolled men with prostate sizes between 20 ml and 150 ml; however, in the commercial setting, we have successfully treated men with prostate sizes over 300 ml. Additionally, in the WATER and WATER II studies, 50% and 83% of men, respectively, had an obstructive median lobe, and the average prostate size in each study was 54 ml and 107 ml, respectively. Compared to other resective procedures, we believe Aquablation therapy is relatively simple to learn, enabled by the intuitive interface of the CPU and automated robotic resection, and delivers outcomes that are

independent of surgeon experience. In the WATER study, 14 of the 17 participating surgeons had no previous experience with Aquablation therapy, and in the WATER II study surgeons had a median previous experience of only 0.5 procedures.

- ***Personalized treatment planning and improved decision-making.*** Aquablation therapy combines cystoscopic visualization, ultrasound imaging and advanced planning software. Together, these technologies provide the surgeon with a multidimensional view of the treatment area and enable personalized treatment planning for the patient's unique anatomy, improved decision-making and real-time monitoring during the procedure.

- ***Targeted and controlled resection with consistent resection times.*** Aquablation therapy utilizes automated robotic resection to remove prostate tissue using a precise, heat-free waterjet. These features enable targeted and controlled tissue removal with rapid resection times that are highly consistent across prostate sizes and shapes and surgeon experience.

Our Clinical Results and Studies

A significant body of clinical evidence supports the efficacy, safety and durability of Aquablation therapy across prostate sizes and shapes as well as surgeon experience. This robust body of evidence includes more than 100 peer-reviewed publications in premier journals, such as the Journal of Urology, European Urology and BJU International, as well as nine clinical studies, including our three core studies: WATER, WATER II and OPEN WATER.

- ***WATER.*** The WATER study was double-blind, randomized, controlled study of Aquablation therapy against TURP in men with prostate sizes between 30 ml and 80 ml. This study is the only FDA pivotal trial for BPH randomized against TURP. The study was designed with 80% power to show superiority in safety and more than 80% power to show non-inferiority in efficacy. The results of our WATER study served as the basis for FDA grant of our De Novo request and were first published in the Journal of Urology in 2018.

- ***WATER II.*** The WATER II study was a prospective, multicenter study of Aquablation therapy in patients with prostate sizes between 80 ml and 150 ml. The study was designed with 80% power for safety and 99% power for efficacy against an objective performance criteria, or OPC, based upon TURP data, even though TURP procedures are typically performed in smaller prostates. The results of the WATER II study served as the basis for increased reimbursement and coverage and were first published in BJU International in 2019.

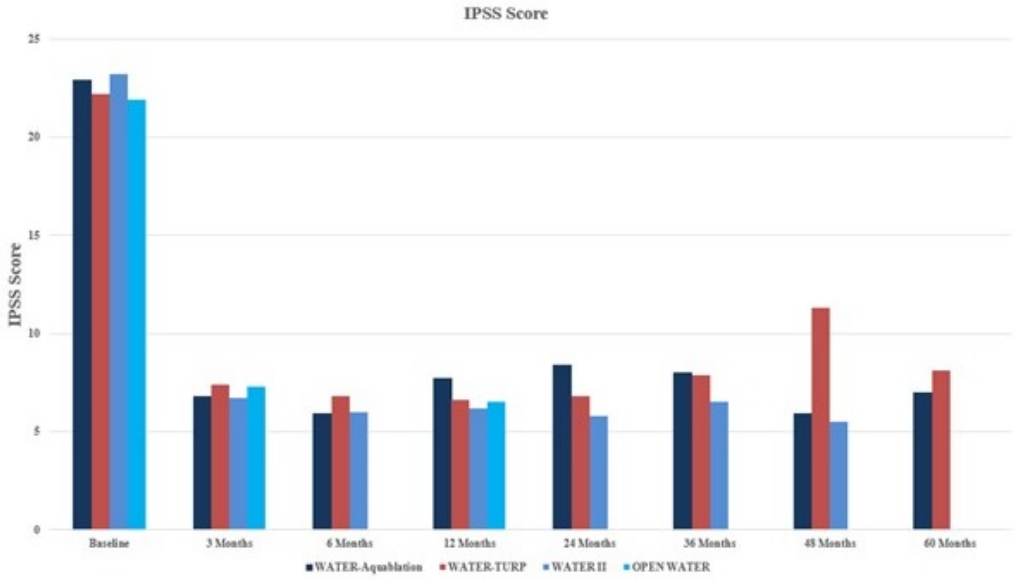
- ***OPEN WATER.*** The OPEN WATER study was a prospective, multicenter, all-comer study conducted in a commercial setting spanning patients with prostate sizes between 20 ml and 150 ml. Due to the size of this study, it was sufficiently powered to statistical conclusions with the data. There was no OPC established for this study. The results of the OPEN WATER study were first published in Journal of Clinical Medicine in 2020.

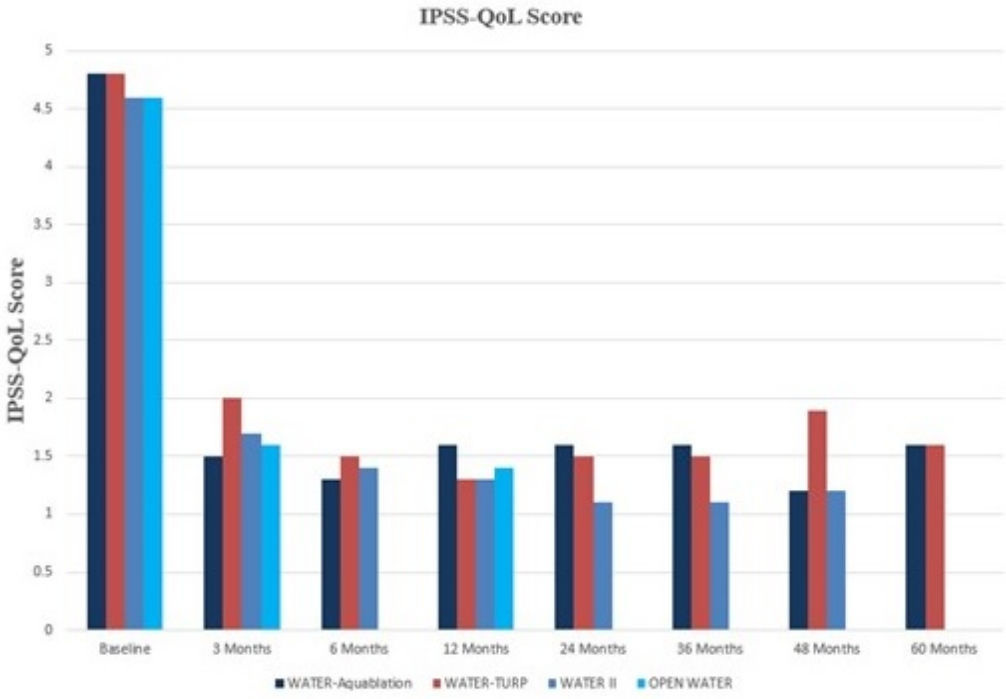
The following table highlights key findings from our three core studies.

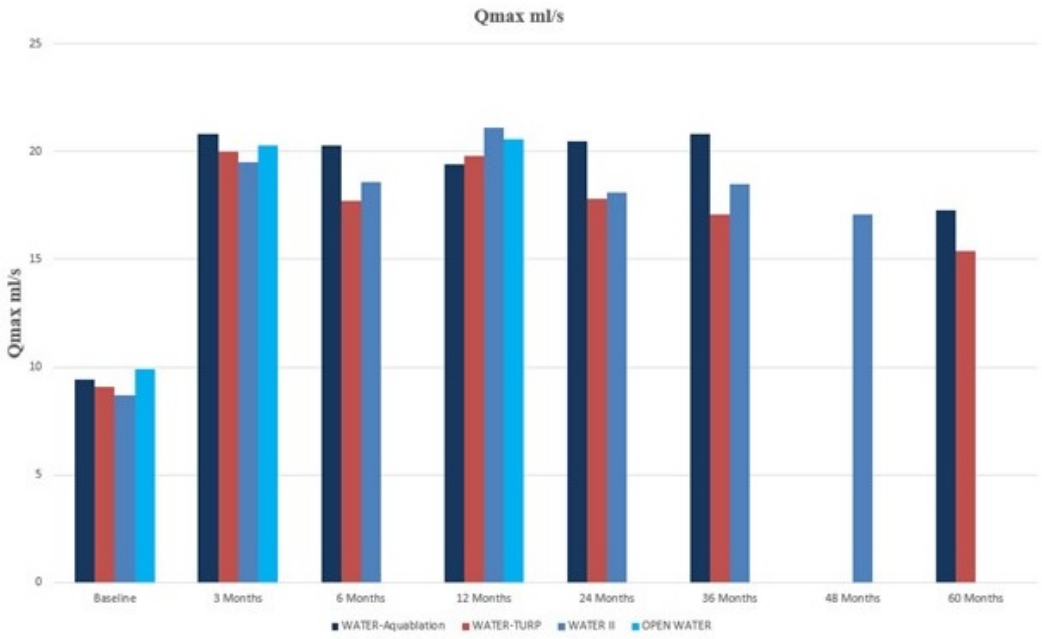
	OPEN WATER	WATER II	WATER (Aquablation arm)	WATER (TURP arm)
Number Treated	178	101	116	65
Demographics (all data reported as mean)				
Age (years)	68	68	66	66
Prostate size	59ml	107ml	54ml	52ml
Obstructive median lobe	59 %	83 %	50 %	52 %
Longest Duration of Follow-up	1 year	4 years	5 years	
Efficacy				
IPSS baseline	21.6	23.2	22.9	22.2
IPSS at longest FU	6.4	5.5	7.0	8.1
IPSS-QoL baseline	4.7	4.6	4.8	4.8
IPSS-QoL at longest FU	1.4	1.2	1.6	1.6
Qmax baseline	9.9 ml/sec	8.7 ml/sec	9.4 ml/sec	9.1 ml/sec
Qmax at longest FU	20.8 ml/sec	17.1 ml/sec	17.3 ml/sec	15.4 ml/sec
Safety (irreversible complications assessed by protocol definitions)				
Incontinence	0.0 %	2.0 %	0.0 %	0.0 %
Erectile dysfunction	0.0 %	0.0 %	0.0 %	0.0 %
Ejaculatory dysfunction (% in sexually active)	8.4% (11.9%)	14.9% (19.5%)	6.9% (10.3%)	24.6% (35.6%)
Durability				
Surgical retreatment for BPH at longest FU	0.0 %	3.0 %	5.2 %	1.5 %
Surgical retreatment annualized	0.0 %	0.8 %	1.0 %	0.3 %
Back on BPH medication at longest FU	3.4 %	6.9 %	0.9 %	10.8 %
Back on BPH medication annualized	3.4 %	1.7 %	0.2 %	2.2 %

Efficacy and Durability

The most common measure of efficacy in BPH clinical research is symptom relief measured by improvement in IPSS. IPSS is a validated, standardized questionnaire used to quantify a patient's degree of LUTS. The questionnaire is comprised of seven questions that characterize urinary dysfunction. Scores range from 0 to 35, with a higher score indicating more severe symptoms. A total score of 7 or less indicates mild symptoms, 8 to 19 indicates moderate symptoms and 20 to 30 indicates severe symptoms. The IPSS-Quality of Life, or IPSS-QoL, is a single question with a score of 0 to 6 that asks the patient how he would feel if he had to spend the rest of his life with his current urinary symptoms. A higher score indicates a higher level of dissatisfaction. Uroflowmetry tests, which measure the strength and amount of urine flow during urination, are also used to measure efficacy, with Qmax being the primary measurement. Qmax is a measure of the max urinary flow rate. A study of 348 18-year-old males showed the majority of men had a Qmax of 20 ml/s or higher.
Our core clinical studies have demonstrated the strong efficacy of Aquablation therapy across prostate sizes and shapes. The following figures highlight efficacy results for IPSS scores, IPSS-QoL scores and Qmax at various points in time across these studies. All changes for IPSS, IPPS-QoL, and Qmax had a statistically significant change from baseline ($p < 0.0001$).


IPSS Score
IPSS Score
25
20
15
10
5
0
Baseline
3 Months
6 Months
12 Months
24 Months
36 Months
48 Months
60 Months
WATER-Aquablation
WATER-TURP
WATER II
OPEN WATER


IPSS-QoL Score
IPSS-QoL Score
5
4.5
4
3.5
3
2.5
2
1.5
1
0.5
0
Baseline
3 Months
6 Months
12 Months
24 Months
36 Months
48 Months
60 Months
WATER-Aquablation
WATER-TURP
WATER II
OPEN WATER



An important factor related to efficacy is durability, which is commonly measured by freedom from surgical retreatment due to recurrent LUTS associated with BPH. In addition, since one of the key goals of surgical intervention is to reduce or eliminate the need for drugs, the rate of patients back on drug therapy due to recurrent LUTS associated with BPH is also an important measure of durability. Lower rates of surgical retreatment and being back on drug therapy are more favorable. The table below highlights the strong durability observed across our core clinical studies.

	OPEN WATER	WATER II	WATER (Aquablation arm)	WATER (TURP arm)
Longest Duration of Follow-up	1 year	4 years	5 years	
Surgical retreatment for BPH at longest FU	0.0 %	3.0 %	5.2 %	1.5 %
Surgical retreatment annualized	0.0 %	0.8 %	1.0 %	0.3 %
Back on BPH medication at longest FU	3.4 %	6.9 %	0.9 %	10.8 %
Back on BPH medication annualized	3.4 %	1.7 %	0.2 %	2.2 %

Safety

A key measure of safety used in BPH clinical research is the rate of irreversible complications, which includes urinary incontinence, erectile dysfunction and ejaculatory dysfunction. Urinary incontinence refers to the loss of bladder control, resulting in the occasional leak of urine. Erectile dysfunction refers to the inability to get or maintain an erection firm enough for sexual intercourse. Ejaculatory dysfunction refers to the inability of a man to efficiently ejaculate semen from the penis at the moment of sexual climax.

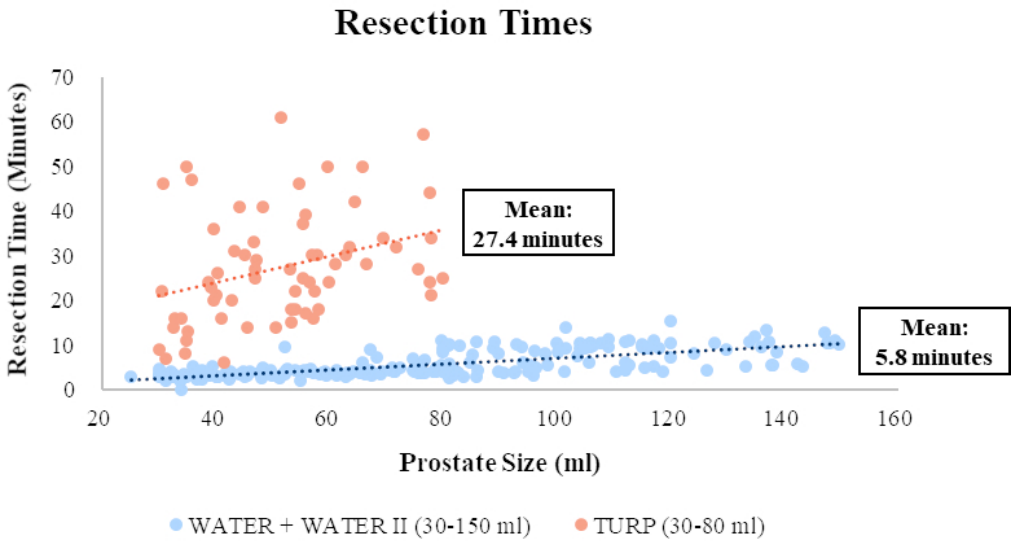
Aquablation therapy has demonstrated low rates of irreversible complications across our core studies, with consistently low rates of urinary incontinence and erectile dysfunction and ejaculatory dysfunction risk as low 10% in sexually active men. The table below highlights the strong safety profile observed across our core clinical studies.

	OPEN WATER	WATER II	WATER (Aquablation arm)	WATER (TURP arm)
Incontinence	0.0 %	2.0 %	0.0 %	0.0 %
Erectile dysfunction	0.0 %	0.0 %	0.0 %	0.0 %
Ejaculatory dysfunction (% in sexually active)	8.4% (11.9%)	14.9% (19.5%)	6.9% (10.3%)	24.6% (35.6%)

Surgical Standardization

The efficacy, safety and durability of Aquablation therapy across prostate sizes and shapes has been evaluated across our three core studies. These studies have also demonstrated that outcomes are independent of surgeon experience. For example, in the WATER study, 14 of the 17 participating surgeons had no previous experience with Aquablation therapy and, in the WATER II study, participating surgeons had a median previous experience with Aquablation therapy of only 0.5 procedures. We believe the short learning curve associated with Aquablation therapy is in large part due to pre-operative planning capabilities and automated robotic execution.

Another key outcome observed across our core studies was consistency of operative and resection times. Regardless of prostate size or shape, the procedure setup and planning processes are the same. Once the surgeon has established the treatment area, the tissue resection is robotically executed, resulting in efficient resection times that are consistent across prostate sizes. The chart below demonstrates consistent resection times observed across our WATER and WATER II studies in prostate sizes between 30 ml and 150 ml. These resection times are in contrast to the highly variable data observed in the TURP arm of the WATER study, which is a key reason why TURP is generally limited to prostate sizes below 80 ml.



WATER

The WATER study was a prospective, multicenter, double-blind, randomized, controlled study of Aquablation therapy against TURP for the treatment of LUTS associated with BPH in men with prostate sizes between 30 ml and 80 ml. One hundred eighty-one patients were enrolled and treated in the study, with 116 undergoing Aquablation therapy and 65 undergoing TURP, across 17 investigational sites. The study commenced in October 2015, and the results were first published in May 2018 in the Journal of Urology.

At baseline for patients undergoing Aquablation therapy, the mean age was 66.0 years, the mean prostate size was 54.1 ml, with 54.1% of patients presenting with an obstructive median lobe, the mean IPSS score was 22.9, the mean IPSS-QoL score was 4.8 and the mean Qmax was 9.4 ml/s. At baseline for patients undergoing TURP, the mean age was 65.8 years, the mean prostate size was 51.8 ml, with 52.0% of patients presenting with an obstructive median lobe, the mean IPSS score was 22.2, the mean IPSS-QoL score was 4.8 and the mean Qmax was 9.1 ml/s.

The primary efficacy endpoint was the change in IPSS at six months compared to baseline for the Aquablation therapy treatment arm randomized against the TURP arm. The primary safety endpoint was the occurrence of Clavien-Dindo persistent grade 1 or grade 2 or higher perioperative complications at three months. The study is planned to follow patients for five years, with three-year data currently published.

Mean total operative time was similar for the Aquablation therapy and TURP treatment arms (33 vs 36 minutes, p = 0.2752), but resection time was lower for Aquablation therapy (4 vs 27 minutes, p <0.0001). Fourteen of the 17 participating surgeons had no previous experience with Aquablation therapy.

Efficacy and Durability Results

The study successfully achieved its primary efficacy endpoint, with Aquablation therapy showing non-inferior symptom relief compared to TURP. Analysis of a patient subgroup with prostates above 50 ml demonstrated that Aquablation therapy was superior to TURP in symptom reduction.

At six months, mean IPSS scores decreased from 22.9 at baseline to 5.9 in the Aquablation therapy treatment arm and from 22.2 at baseline to 6.8 in the TURP group. The IPSS change score at month six was 1.8 points larger for the Aquablation therapy treatment arm (95% CI -0.4 to 4.0). The lower confidence limit of the difference was above the pre-specified non-inferiority margin of 4.7, substantiating statistical and clinical non-inferiority of efficacy results.

The baseline IPSS average for the study was 22.6 and did not differ between treatment groups. Mean (SD) IPSS reduction at five years was 15.1 (6.6) in the Aquablation therapy group and 13.2 (8.2) in the TURP group (p=.2764 for difference). At five years, the median IPSS score was 5.5 for Aquablation therapy and 6 for TURP. For men with larger prostates (≥50 ml), IPSS reduction was 3.5 points greater in the Aquablation therapy group compared to the TURP group (p=.0123, repeated measures analysis of variance). There was no difference in IPSS changes when analyzing the other pre-specified subgroups of age (<65 vs. ≥65) and LUTS severity as measured by IPSS (<20 vs. ≥20). The IPSS quality of life score can range from 0 to 6. The baseline IPSS quality of life average for the study was 4.8 and did not differ between treatment groups. At five years, the IPSS QoL score was 1.6 for both arms and showed no statistical difference in change scores, p=.8009.

In both groups, five-year peak urinary flow rates (Qmax) increased markedly within one month after surgery and were maintained at five years. Mean five-year improvements in Qmax were 8.7 (9.1) ml/sec, or 125% improvement, for the Aquablation therapy group versus 6.3 (7.5) ml/sec, or 89% improvement, for TURP. The mean five-year reduction in post-void residual was 62 (86) and 82 (94) ml (p=.3960).

At five-year follow-up for Aquablation therapy, 6.0% of patients needed an additional BPH therapy (started BPH medication anew and continued to study exit or intervention) due to recurrent LUTS, which was 51% less than the TURP arm. In the TURP arm, 12.3% of patients needed additional BPH therapy. The average IPSS score before the additional BPH therapy was similar in both arms, 14 for Aquablation therapy and 15 for TURP, and did not differ whether the patient chose to undergo another intervention or start medication.

Safety

The primary safety endpoint was successfully achieved at three months where the Aquablation therapy group had a lower event rate compared to TURP (26% vs. 42%, p=.0149 for superiority). Urinary complications from three to five years did not differ between groups. The tabular details of these events were previously published. The rate of persistent grade 1 events at month three was lower (7% vs. 25%, p=.0004) after Aquablation, and the rate of grade 2 and above events was similar across groups (20% for Aquablation vs. 23% for TURP, p=.3038). There were zero de novo erectile dysfunction events or incontinence events requiring a pad in either arm. However, procedure-related anejaculation was less common after Aquablation, 7%, versus TURP, 25%, p=.0004. The transfusion rates in the Aquablation therapy and TURP treatment arms were 0.9% and 0.0%, respectively, and not statistically different. Published transfusion rates of TURP, typically performed in prostates sizes of less than 80 ml, are in the range of 1.8% - 2.8%.

WATER II

The WATER II study was a prospective, multicenter single-arm study for the treatment of LUTS associated with BPH in men with prostate sizes between 80 ml and 150 ml. One hundred and one patients were enrolled and treated in the study across 16 investigational sites. The study commenced in 2017, and the results were first published BJU International in March 2019.

At baseline for patients in the study, the mean age was 67.5 years, the mean prostate size was 107.4 ml, with 83.2% of patients presenting with an obstructive median lobe, the mean IPSS score was 23.2, the mean IPSS-QoL score was 4.6 and the mean Qmax was 8.7 ml/s.

The primary efficacy endpoint was IPSS reduction. Secondary efficacy endpoints include IPSS-QoL score, maximum urinary flow rate, post-void residual urine volume and prostate-specific antigen concentration. The primary safety endpoint was the percentage of Clavien–Dindo grade 2 or higher or any grade 1 event resulting in persistent disability. The study is planned to follow patients for five years, with three-year data having already been collected and analyzed.

Mean total operative and resection time was 55 minutes and eight minutes, respectively. Participating surgeons had a median previous experience with Aquablation therapy of only 0.5 procedures.

Efficacy and Durability

The study met its primary and secondary efficacy endpoints showing the Aquablation procedure's ability to provide significant symptom relief in large prostates and is a size independent procedure. The mean IPSS improved from 23.2 at baseline to 6.7 at three months ($p < 0.001$), which is a 17.4-point improvement and meeting the study's primary efficacy endpoint goal. At four years, mean IPSS decreased from 23.2 at baseline to 5.5, mean IPSS-QoL decreased from 4.6 to 1.2 and mean Qmax increased from 8.7 ml/s to 17.1 ml/s.

Four-year surgical retreatment rate was 3.0%. There were no surgical retreatments for BPH beyond 36 months. At four years, the rate of patients that were back on drug therapy was 6.9%.

Safety

The study met its primary safety endpoint of Clavien–Dindo grade 2 or higher or any grade 1 event resulting in persistent disability. At three months, this occurred in 45.5% of men, which met the study design goal of less than 65%. Consistent with the results of the WATER study, WATER II observed low rates of irreversible complications: 2% new onset urinary incontinence and, among sexually active men, 0% erectile dysfunction and 19% ejaculatory dysfunction.

While the primary safety endpoint was achieved, the procedure was done without any cauterization to achieve hemostasis, or a state where the bleeding has stopped. As a result, we experienced peri-operative transfusions, or transfusions that occur prior to a patient being discharged from the hospital, at a rate of 5.9%. We worked with numerous surgeons to identify the optimal hemostasis method that would work across all prostate sizes. That method, focal bladder neck cautery, was formally included as part of the Aquablation therapy training program beginning in January 2020. Since then, a number of publications have reported on transfusion rates. A key study published in April 2021 of 2,089 men undergoing Aquablation therapy with prostates ranging in size from 20 ml to 363 ml observed a transfusion rate of only 0.8%. Published transfusion rates of enucleation and simple prostatectomy, typically performed in prostates with sizes of greater than 80 ml, are in the range of 0.8% to 3.4% and 16% to 25%, respectively. TURP transfusion rates are not provided for comparison because TURP is routinely done in prostates less than 80ml.

OPEN WATER

The OPEN WATER study was a prospective, multicenter, all-comer study conducted in a commercial setting spanning patients with prostate sizes between 20 ml and 150 ml. One hundred and seventy-eight patients were enrolled and treated in the study across five investigational sites. The study commenced in September 2017, and the results were first published in Journal of Clinical Medicine in February 2020.

At baseline for patients in the study, the mean age was 66.0 years, the mean prostate size was 59.3 ml, with 59.6% of patients presenting with an obstructive median lobe, the mean IPSS score was 21.6, the mean IPSS-QoL score was 4.6 and the mean Qmax was 9.9 ml/s.

The study's primary endpoint was the change in total IPSS score from baseline to three months.

Efficacy and Durability

The primary efficacy endpoint of IPSS reduction was met with mean IPSS scores decreasing from 21.6 at baseline to 7.1 and 6.4 at the three- and 12-month follow-up, respectively.

The secondary endpoint of IPSS-QoL reduction was also met with mean IPSS-QoL scores decreasing from 4.6 at baseline to 1.5 and 1.4 at 3- and 12-month follow-up, respectively. The maximum urinary flow rate (Qmax) increased from 9.9 to 20.3 and 20.8 cc/sec at 3- and 12-month follow-up, respectively and post-void residual urinary volume decreased from 108cc at baseline to 47cc and 61cc at 3- and 12-month follow-up, respectively. All changes for IPSS, IPPS-QoL, and Qmax had a statistically significant change from baseline ($p < 0.0001$). We do not have any plans for additional follow-up with patients in the OPEN WATER study.

There were no cases of surgical retreatment because of recurrent LUTS due to BPH at 12-months, with 3.4% back on drug therapy.

Safety

In terms of safety, irreversible complications were similar to WATER and WATER II; 0% incontinence and among sexually active men 0% erectile dysfunction and 12% ejaculatory dysfunction.

Following Aquablation therapy, 2.7% of patients underwent a transfusion and 7.9% of patients were taken back to the OR for postoperative hemostasis management. The prostate volumes included in the study spanned both WATER and WATER II, which were a broader range than routinely treated by TURP. The OPEN WATER trial demonstrated a similar transfusion rate of published TURP results (1.8% - 2.8%) where typically used in smaller prostates less than 80 ml.

Sales and Marketing

Commercial Activities in the United States

We designed our commercial strategy and built our direct sales team to target primarily urologists across the United States, who we believe represent the primary physician specialty managing the care of patients with BPH. We estimate that there are approximately 12,000 urologists who manage approximately 4.3 million BPH patients, comprised of 400,000 undergoing BPH surgery annually, 3.3 million who are on drug therapy and 600,000 who have tried but failed drug therapy. We are first focused on driving adoption of Aquablation therapy among urologists who perform hospital-based BPH resective surgery. We estimate that approximately 290,000 of the 400,000 annual BPH surgeries are resective procedures performed across approximately 2,700 hospitals. We are initially targeting 860 high-volume hospitals that perform, on average, more than 200 resective procedures annually and account for approximately 70% of all hospital-based resective procedures. Within each high-volume hospital, we are focused on targeting urologists who perform medium-to-high volumes of resective procedures and converting their resective cases to Aquablation therapy. As urologists gain experience with Aquablation therapy, we will leverage their experiences to capture more surgical volumes and establish Aquablation therapy as the surgical standard of care. We also intend to leverage our relationships with urologists to drive utilization of Aquablation therapy beyond the current surgical market. Over time, we will gradually expand our focus to also include mid- and low-volume hospitals.

We primarily sell our products through our direct sales organization in the United States. This team actively engages with providers to drive awareness, adoption and utilization of our Aquablation therapy. Our direct sales organization is supported by clinical specialists and professional education employees, who are responsible for training and supporting surgeons, reimbursement specialists, who are responsible for customer and physician education on coding, coverage and payment, and field service employees, who provide preventative maintenance and support for our customers. We intend to expand the size of our direct sales organization to support our efforts for adoption and utilization of Aquablation therapy.

In addition to our direct sales efforts, we support our sales organization with marketing and market development initiatives. We plan to continue to expand and enhance our marketing capabilities to support our growing commercial organization and customer base. Our near-term marketing efforts center principally on increasing awareness and driving adoption of Aquablation therapy among urologists by continuing to publish clinical data in various industry and scientific journals, present our clinical data at various industry conferences, expand our network of KOLs and sponsor peer-to-peer education programs and proctorships. We believe these initiatives will further deepen our relationships with urologists and key medical societies, contributing to our goal of Aquablation therapy becoming the surgical standard of care for BPH surgery. Longer-term, as we expand our network of urologists and grow our installed base, we intend to increase awareness and brand recognition of Aquablation therapy beyond urologists, primarily among primary care physicians who manage BPH patients. To achieve this objective, we will invest in marketing initiatives directed at primary care physicians in order

to expand networks for BPH patients to visit a urologist. Once we have established a broader installed base of systems, we may seek to further increase patient awareness through various direct-to-patient marketing initiatives.

Commercial Activities Outside of the United States

Our commercialization strategy outside the United States is focused on large addressable markets through a broad range of market development activities, including increasing awareness, obtaining regulatory approvals and establishing reimbursement. We sell our products using both our direct sales organization and, in certain regions, our network of distribution partners.

In EMEA, our direct sales organization is currently primarily focused on Germany, France, the United Kingdom, Switzerland and Austria. In other countries, such as Italy and Spain, we engage distribution partners to assist us with market development and sales activities. As of December 31, 2021, we employed 13 personnel to support sales and marketing activities in EMEA. We will opportunistically choose distribution partners with clinical and marketing expertise to enter new markets. We are focused on distribution partners that have the capability to assist with surgeon training and, when required, obtaining regulatory approvals. In the Asia-Pacific region, we are focused on obtaining local regulatory clearances with the assistance of our distribution partners in this region. We have regulatory approval in Hong Kong, where we are engaged with a distribution partner for market development activities.

Third-Party Reimbursement

In the United States, we sell our products to hospitals. These customers in turn bill various third-party payors, such as commercial payors and government agencies, for reimbursement for the procedures using our products. Our market access team includes four professionals who are focused on all key aspects of reimbursement, which include securing appropriate coding, payment and coverage policies for our products and procedures using our products. This team focuses both on payer engagement as well as providing support to the providers.

Coverage and reimbursement by governmental and third-party payors may depend upon a number of factors, including the determination that the product or service and its use or administration for a particular patient is:

- a covered benefit;
- safe, effective and medically necessary;
- appropriate for the specific patient;
- supported by guidelines established by the relevant professional societies;
- cost-effective; and
- neither experimental nor investigational.

Third-party payors, whether foreign or domestic, or governmental or commercial, are developing increasingly sophisticated methods of controlling healthcare costs by limiting coverage and the amount of reimbursement for particular products. In addition, no uniform policy of coverage and reimbursement for procedures exists among third-party payors. Therefore, coverage and reimbursement for procedures can differ significantly from payor to payor. Obtaining coverage and reimbursement can be a time-consuming process that could require supporting scientific, clinical and cost-effectiveness data.

Payors continually review new and existing technologies for possible coverage and can, without notice, deny or reverse coverage for new or existing products and procedures. Further, future coverage and reimbursement may be subject to increased restrictions, such as additional prior authorization requirements, both in the United States and in international markets. In addition, Medicare Administrative Contractors could issue a local coverage determination decision that could restrict the patients eligible for a treatment with our products. Third-party coverage and reimbursement may not be available or adequate in either the United States or international markets. Further, other BPH treatments may be more widely covered or subject to different co-pay policies and requirements, which could impact demand for our products.

Coding and Payment

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. The surgical treatment of BPH using Aquablation therapy is described by CPT code 0421T, which is

the code describing transurethral waterjet ablation of the prostate, a Category III code published by the AMA in January 2017. In February 2021, the AMA approved an extension for CPT code 0421T through December 31, 2026.

Physician reimbursement under Medicare generally is based on a defined fee schedule, the Medicare Physician Fee Schedule, through which payment amounts are determined by the relative values of the professional service rendered. Physician payment rates for Category III codes are determined by the MACs and vary from jurisdiction to jurisdiction. The payment to the surgeon using CPT code 0421T is currently similar to that for a TURP procedure.

In addition to payment to the surgeon for professional services, Medicare provides reimbursement to our hospital customers for procedures under the hospital outpatient prospective payment system, or HOPPS, and inpatient prospective payment system, or IPPS. The HOPPS and IPPS provide bundled amounts generally intended to reimburse the hospital for all facility costs related to procedures performed in the hospital outpatient setting and inpatient setting, respectively. Medicare also provides reimbursement for procedures performed in ASCs. Reimbursement rates from commercial payors vary depending on the commercial payor, contract terms, and other factors.

As part of the 2020 Outpatient Prospective Payment System ruling, the CMS granted approval for a transitional pass-through, or TPT, payment for Aquablation therapy. TPT status is intended to encourage the use of newly FDA-approved medical devices, drugs, and biologics across all fields of medicine and to boost Medicare patients' access to these innovative therapies by temporarily paying more than established facility fees. The TPT payment for Aquablation therapy is effective through December 31, 2022.

Commercial Payor and Government Program Coverage

A core pillar of our reimbursement strategy involves broadening our third-party payor coverage. We continue to have active discussions with commercial payors to establish positive national coverage policies by highlighting our compelling and robust clinical data, increased patient demand and support from leading medical societies and key opinion leaders.

As of December 27, 2020, all MACs cover procedures involving Aquablation therapy are covered for Medicare patients. We believe Medicare accounts for approximately 50% of all hospital-based resective BPH procedures performed in the United States.

Prior Authorization Approval Process

Our reimbursement strategy includes leveraging our market access team as advisors when needed to support in obtaining appropriate prior authorization approvals in advance of treatment. We believe we are highly effective in providing guidance to obtain prior authorizations when needed.

Reimbursement Outside of the United States

Outside of the United States, reimbursement levels vary significantly by country, and within some countries by region, as well as by payor type. Reimbursement is obtained from a variety of sources, including government sponsors, hospital budgets or private health insurance plans, or combinations thereof. Obtaining reimbursement is a key part of our market development strategy outside of the United States. We currently have established reimbursement in Germany, the United Kingdom, Spain and Italy are continuing to establish new, as well as more favorable, reimbursement.

Research and Development

We have established a dedicated research and development team with strong capabilities in surgical robotics and imaging-enabled surgery as well as integrating hardware and software to create an exceptional user and patient experience. We believe our focus on this experience will allow us to continue to bring new upgrades, capabilities and products to market, allowing us to innovate and maintain our competitive positioning.

To improve customer experience, we are continually innovating our technologies to support and improve Aquablation therapy to further satisfy the evolving needs of surgeons and their patients as well as to further enhance the usability and scalability of the AquaBeam Robotic System. We also plan to leverage our treatment data and software development capabilities to enable artificial intelligence assisted anatomy recognition and improved treatment planning and personalization. In the future, we may evaluate the application of the AquaBeam Robotic System in new urologic conditions beyond BPH.

For the years ended December 31, 2021 and 2020, our research, development and clinical expenses were $19.0 million and $16.3 million, respectively.

Manufacturing and Supply

We directly manufacture the AquaBeam Robotic System, the handpiece and other accessories at our facility in Redwood City, California. This includes supporting the supply chain distribution and logistics of the various components. Components, sub-assemblies and services required to manufacture our products are purchased from numerous global suppliers. Each AquaBeam Robotic System is shipped to our customers with a third-party manufactured ultrasound system and probes. We utilize a well-known third-party logistics provider located in United States and the Netherlands to ship our products to our customers globally. While we do not believe we are substantially dependent on any suppliers, currently our principal suppliers include Shantou Institute of Ultrasonic Instruments Co. Ltd. (which manufactures our transrectal ultrasound set), Myriad Fiber Imaging Tech., Inc. (which manufactures our integrated scope), HydroCision, Inc. (which manufactures our pump cartridge contract), and Medical Targeting Technologies GmbH (which manufactures our articulating arms). Our suppliers manufacture the components they produce for us and test our components and devices to our specifications. We have entered into manufacturing and supply agreements with several of our single-source suppliers pursuant to which they supply the components we need. In addition, we intend to maintain sufficient levels of inventory to enable us to continue our operations while we obtain another supplier in the event that one or more of our single-source suppliers were to encounter a delay in supply or end supply.

Competition

The industry in which we operate is subject to rapid change from the introduction of new products and technologies and other activities of industry participants. While we believe Aquablation therapy and the AquaBeam Robotic System provide us with a competitive advantage against other competing BPH treatment modalities, our currently marketed products are, and any future products we commercialize will be, subject to intense competition.

Certain of our current and potential competitors may have significantly greater financial, technical, marketing and other resources than we do and may be able to devote greater resources to the development, regulatory approval, promotion, sale and support of their products. Our competitors may also have more extensive customer bases and broader customer relationships than we do, including relationships with our potential customers. In addition, many of these companies have longer operating histories and greater brand recognition than we do. Additionally, many of these companies have overcome reimbursement barriers and their procedures are covered by nearly all major insurance carriers. Because of the size of the BPH market, we anticipate that companies will dedicate significant resources to developing competing products.

We consider our primary competition to be resective surgical treatments. These include among others, those manufacturers producing devices for the TURP procedure and laser-based therapies marketed by Boston Scientific Corporation. We also believe we will eventually compete with non-resective and non-surgical treatments. The non-resective treatments include, among others, UroLift marketed by Teleflex Incorporated and Rezum marketed by Boston Scientific Corporation. Non-surgical treatments for BPH are primarily pharmaceuticals. The primary pharmaceutical products marketed to treat BPH include Flomax marketed by Boehringer Ingelheim, Rapaflow marketed by Allergan plc, Avodart marketed by GlaxoSmithKline plc, and Proscar marketed by Merck & Co., Inc.

We believe that the primary basis on which we compete include:

- improved outcomes for patients;
- product safety, efficacy, reliability and durability;
- quality and volume of clinical data;
- effective marketing to and education of patients, physicians and hospitals;
- company, product and brand recognition;
- sales force experience and access;
- product support and service;
- technological innovation, product enhancements and speed of innovation;
- pricing and revenue strategies;
- effectiveness of reimbursement teams and strategies

- regulatory status and speed to market; and
- dedicated clinical representatives.

We cannot assure you that we will be able to compete effectively against our competitors in regard to any one or all of these factors.

Intellectual Property

We rely on a combination of patent, copyright, trademark and trade secret laws and confidentiality and invention assignment agreements to protect our intellectual property rights.

As of December 31, 2021, we had rights to 32 issued U.S. patents, expiring between 2028 and 2040, 80 issued foreign patents, expiring between 2028 and 2037, 35 pending U.S. patent applications, four pending PCT applications, and 52 foreign patent applications.

As of December 31, 2021, our rights to foreign issued patents include 12 granted Chinese patents, 19 granted Japanese patents and nine granted European patents, of which nine have been validated in Germany, eight in Spain, nine in France, nine in the United Kingdom, five in Ireland, and eight in Italy. As of December 31, 2021, our rights to foreign patent applications include 15 pending European applications, 11 pending Chinese applications, 11 pending Japanese applications, eight pending Brazilian applications, and seven pending Indian applications.

As of December 31, 2021, we have the rights to issued patents and pending patent applications directed to our current AquaBeam Robotic System, including 13 issued U.S. patents and 33 foreign issued or granted patents. The 13 issued U.S. patents, expiring between 2028 and 2038, include machine and process claims, with nine issued patents directed to the handpiece and four issued patents directed to the system. The 33 foreign issued patents, expiring between 2028 and 2035, include machine claims, with 22 issued patents directed to the handpiece and 11 issued patents directed to the system. The 33 foreign issued patents include one Brazilian patent, four Chinese patents, seven Japanese patents, four German patents, three Spanish patents, four French patents, four United Kingdom patents, three Irish patents and three Italian patents. The remaining 19 of the 32 issued U.S. patents and the remaining 47 of the 80 foreign issued patents have machine and process claims directed to prostate treatments with laser energy, enucleation of the prostate, radiation therapy, cell sampling and hemostasis.

There is no active patent litigation involving any of our patents and we have not received any notices of patent infringement

As of December 31, 2021, we had 36 pending and registered trademark filings worldwide, some of which may provide trademark protection in multiple countries.

We also rely, in part, upon unpatented trade secrets, know-how and continuing technological innovation, and may in the future rely upon licensing opportunities, to develop and maintain our competitive position. We protect our proprietary rights through a variety of methods, including confidentiality and assignment agreements with suppliers, employees, consultants and others who may have access to our proprietary information.

Our pending patent applications may not result in issued patents, and we cannot assure you that any current or subsequently issued patents will protect our intellectual property rights or provide us with any competitive advantage. While there is no active litigation involving any of our patents or other intellectual property rights and we have not received any notices of patent infringement, we may be required to enforce or defend our intellectual property rights against third parties in the future. See the section titled “Risk Factors—Risks Related to Intellectual Property Matters” for additional information regarding these and other risks related to our intellectual property portfolio and their potential effect on us.

License Agreement with AquaBeam

In 2008, we assigned to AquaBeam LLC, or AquaBeam, certain provisional patent applications, or AquaBeam Patent Applications, which have since issued as patents, and any future patent applications that claim priority to the AquaBeam Patent Applications, or AquaBeam Patents.

In September 2019, we entered into an amended and restated license agreement, or the AquaBeam License Agreement, with AquaBeam. Pursuant to the AquaBeam License Agreement, AquaBeam granted us a worldwide, exclusive (even as to AquaBeam), sublicensable, royalty-free license under the AquaBeam Patents and to all other patent rights owned by AquaBeam, that claim certain technology related to delivering energy to tissues by directing a liquid fluid stream, or together with AquaBeam Patents, Licensed Patents, in the field of urology, or Field. Pursuant to the AquaBeam License

Agreement, and subject to the terms therein, we granted AquaBeam a worldwide, exclusive (even as to us), sublicensable, royalty-free license under certain of our patents rights, that claim certain technology related to delivering energy to tissues by directing a liquid fluid stream, or PROCEPT Patents, outside the Field. No payments (except for patent prosecution and maintenance costs) have been made or are otherwise required under the AquaBeam License Agreement.

The AquaBeam License Agreement will remain in full force and effect on a country-by-country basis until the last to expire of the Licensed Patents and the PROCEPT Patents in such country. The expiration date of the last-to-expire of the Licensed Patents and PROCEPT Patents will not be earlier than 2037. The AquaBeam License Agreement may be terminated by either party in the event of uncured material breach by the other party that remains uncured for 90 days (or 30 days for payment related breaches), or bankruptcy of the other party.

Government Regulation

Our products and our operations are subject to extensive regulation by the FDA and other federal and state authorities in the United States, as well as comparable authorities in the EEA. Our products are subject to regulation as medical devices under the Federal Food, Drug, and Cosmetic Act, or FDCA, as implemented and enforced by the FDA. The FDA regulates the development, design, non-clinical and clinical research, manufacturing, safety, efficacy, labeling, packaging, storage, installation, servicing, recordkeeping, premarket clearance or approval, import, export, adverse event reporting, advertising, promotion, marketing and distribution, and import and export of medical devices to ensure that medical devices distributed domestically are safe and effective for their intended uses and otherwise meet the requirements of the FDCA.

In addition to U.S. regulations, we are subject to a variety of regulations in the EEA governing clinical trials and the commercial sales and distribution of our products. Whether or not we have or are required to obtain FDA clearance or approval for a product, we will be required to obtain authorization before commencing clinical trials and to obtain marketing authorization or approval of our products under the comparable regulatory authorities of countries outside of the United States before we can commence clinical trials or commercialize our products in those countries. The approval process varies from country to country and the time may be longer or shorter than that required for FDA clearance or approval.

FDA Premarket Clearance and Approval Requirements

Unless an exemption applies, each medical device commercially distributed in the United States requires either FDA clearance of a 510(k) premarket notification or PMA approval. Under the FDCA, medical devices are classified 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 manufacturer and regulatory control needed to ensure its safety and effectiveness. Class I includes devices with the lowest risk to the patient and are those for which safety and effectiveness can be assured by adherence to the FDA's General Controls for medical devices, which include compliance with the applicable portions of the FDA's Quality System Regulation, or QSR, facility registration and product listing, reporting of adverse medical events, and truthful and non-misleading labeling, advertising, and promotional materials. Class II devices are subject to the FDA's General Controls, and special controls as deemed necessary by the FDA to ensure the safety and effectiveness of the device. These special controls can include performance standards, post-market surveillance, patient registries and FDA guidance documents. While most Class I devices are exempt from the 510(k) premarket notification requirement, manufacturers of most Class II devices are required to submit to the FDA a premarket notification under Section 510(k) of the FDCA requesting permission to commercially distribute the device. The FDA's permission to commercially distribute a device subject to a 510(k) premarket notification is generally known as 510(k) clearance. Under the 510(k) process, the manufacturer must submit to the FDA a premarket notification demonstrating that the device is "substantially equivalent" to either a device that was legally marketed prior to May 28, 1976, the date upon which the Medical Device Amendments of 1976 were enacted, or another commercially available device that was cleared to through the 510(k) process.

Devices deemed by the FDA to pose the greatest risks, such as life-sustaining, life-supporting or some implantable devices, or devices that have a new intended use, or use advanced technology that is not substantially equivalent to that of a legally marketed device, are placed in Class III, requiring are unclassified, but are subject to the FDA's premarket notification and clearance process in order to be commercially distributed.

De Novo Classification

Medical device types that the FDA has not previously classified as Class I, II or III are automatically classified into Class III regardless of the level of risk they pose. The Food and Drug Administration Modernization Act of 1997 established a 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 procedure.

This procedure 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 application. Prior to the enactment of the Food and Drug Administration Safety and Innovation Act of 2012, or FDASIA, a medical device could only be eligible for de novo classification if the manufacturer first submitted a 510(k) pre-market notification and received a determination from the FDA that the device was not substantially equivalent. FDASIA streamlined the de novo classification pathway by permitting manufacturers to request de novo classification directly without first submitting a 510(k) pre-market notification to the FDA and receiving a not substantially equivalent determination. Under FDASIA, the FDA is required to classify the device within 120 days following receipt of the de novo request. 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. In addition, the FDA may reject the de novo request 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 or that general controls would be inadequate to control the risks and special controls cannot be developed.

Our currently marketed AquaBeam Robotic System is a Class II device, which was initially granted marketing authorization pursuant to a de novo classification. We have subsequently received FDA clearance of a 510(k) pre-market notification for modifications to the AquaBeam Robotic System where we used the initially authorized device as the predicate device for our more recent 510(k) clearance.

PMA Approval Pathway

Class III devices require PMA approval before they can be marketed although some pre-amendment Class III devices for which the FDA has not yet required a PMA are cleared through the 510(k) process. The PMA process is more demanding than the 510(k) premarket notification process. In a PMA, the manufacturer must demonstrate that the device is safe and effective, and the PMA must be supported by extensive data, including data from preclinical studies and human clinical trials. The PMA must also contain a full description of the device and its components, a full description of the methods, facilities and controls used for manufacturing, and proposed labeling. Following receipt of a PMA, the FDA determines whether the application is sufficiently complete to permit a substantive review. If the FDA accepts the application for review, it has 180 days under the FDCA to complete its review of a PMA, although in practice, the FDA's review often takes significantly longer, and can take up to several years. An advisory panel of experts from outside the FDA may be convened to review and evaluate the application and provide recommendations to the FDA as to the approvability of the device. The FDA may or may not accept the panel's recommendation. In addition, the FDA will generally conduct a preapproval inspection of the applicant or its third-party manufacturers' or suppliers' manufacturing facility or facilities to ensure compliance with the QSR.

The FDA will approve the new device for commercial distribution if it determines that the data and information in the PMA constitute valid scientific evidence and that there is reasonable assurance that the device is safe and effective for its intended use(s). The FDA may approve a PMA with post-approval conditions intended to ensure the safety and effectiveness of the device, including, among other things, restrictions on labeling, promotion, sale and distribution, and collection of long-term follow-up data from patients in the clinical study that supported PMA approval or requirements to conduct additional clinical studies post-approval. The FDA may condition PMA approval on some form of post-market surveillance when deemed necessary to protect the public health or to provide additional safety and efficacy data for the device in a larger population or for a longer period of use. In such cases, the manufacturer might be required to follow certain patient groups for a number of years and to make periodic reports to the FDA on the clinical status of those patients. Failure to comply with the conditions of approval can result in material adverse enforcement action, including withdrawal of the approval.

Certain changes to an approved device, such as changes in manufacturing facilities, methods, or quality control procedures, or changes in the design performance specifications, which affect the safety or effectiveness of the device, require submission of a PMA supplement. PMA supplements often require submission of the same type of information as a PMA, except that the supplement is limited to information needed to support any changes from the device covered by the original PMA and may not require as extensive clinical data or the convening of an advisory panel. Certain other changes to an approved device require the submission of a new PMA, such as when the design change causes a different intended use, mode of operation, and technical basis of operation, or when the design change is so significant that a new generation of the device will be developed, and the data that were submitted with the original PMA are not applicable for the change in demonstrating a reasonable assurance of safety and effectiveness.

Clinical Trials

Clinical trials are almost always required to support a PMA or de novo request and are sometimes required to support a 510(k) submission. All clinical investigations of investigational devices to determine safety and effectiveness must be conducted in accordance with the FDA's investigational device exemption, or IDE, regulations which govern investigational device labeling, prohibit promotion of the investigational device, and specify an array of recordkeeping, reporting and monitoring responsibilities of study sponsors and study investigators. If the device presents a "significant risk" to human health, as defined by the FDA, the FDA requires the device sponsor to submit an IDE application to the FDA, which must become effective prior to commencing human clinical trials. A significant risk device is one that presents a potential for serious risk to the health, safety or welfare of a patient and either is implanted, used in supporting or sustaining human life, substantially important in diagnosing, curing, mitigating or treating disease or otherwise preventing impairment of human health, or otherwise presents a potential for serious risk to a subject. An IDE application must be supported by appropriate data, such as animal and laboratory test results, showing that it is safe to test the device in humans and that the testing protocol is scientifically sound. The IDE will automatically become effective 30 days after receipt by the FDA unless the FDA notifies the company that the investigation may not begin. If the FDA determines that there are deficiencies or other concerns with an IDE for which it requires modification, the FDA may permit a clinical trial to proceed under a conditional approval.

Regardless of the degree of risk presented by the medical device, clinical studies must be approved by, and conducted under the oversight of, an Institutional Review Board, or IRB, for each clinical site. The IRB is responsible for the initial and continuing review of the IDE, and may impose additional requirements for the conduct of the study. If an IDE application is approved by the FDA and one or more IRBs, human clinical trials may begin at a specific number of investigational sites with a specific number of patients, as approved by the FDA. If the device presents a non-significant risk to the patient, a sponsor may begin the clinical trial after obtaining approval for the trial by one or more IRBs without separate approval from the FDA, but must still follow abbreviated IDE requirements, such as monitoring the investigation, ensuring that the investigators obtain informed consent, and labeling and record-keeping requirements. Acceptance of an IDE application for review does not guarantee that the FDA will allow the IDE to become effective and, if it does become effective, the FDA may or may not determine that the data derived from the trials support the safety and effectiveness of the device or warrant the continuation of clinical trials. An IDE supplement must be submitted to, and approved by, the FDA before a sponsor or investigator may make a change to the investigational plan that may affect its scientific soundness, study plan or the rights, safety or welfare of human subjects.

During a study, the sponsor is required to comply with the applicable FDA requirements, including, for example, trial monitoring, selecting clinical investigators and providing them with the investigational plan, ensuring IRB review, adverse event reporting, record keeping and prohibitions on the promotion of investigational devices or on making safety or effectiveness claims for them. The clinical investigators in the clinical study are also subject to FDA regulations and must obtain patient informed consent, rigorously follow the investigational plan and study protocol, control the disposition of the investigational device, and comply with all reporting and recordkeeping requirements. Additionally, after a trial begins, we, the FDA or the IRB could suspend or terminate a clinical trial at any time for various reasons, including a belief that the risks to study subjects outweigh the anticipated benefits.

Post-Market Regulation

After a device is cleared or approved for marketing, numerous and pervasive regulatory requirements continue to apply. These include:

- establishment registration and device listing with the FDA;
- QSR requirements, which require manufacturers, including third-party manufacturers, to follow stringent design, testing, control, documentation and other quality assurance procedures during all aspects of the design and manufacturing process;
- labeling and marketing regulations, which require that promotion is truthful, not misleading, fairly balanced and provide adequate directions for use and that all claims are substantiated, and also prohibit the promotion of products for unapproved or "off-label" uses and impose other restrictions on labeling; FDA guidance on off-label dissemination of information and responding to unsolicited requests for information;
- clearance or approval of product modifications to 510(k)-cleared devices that could significantly affect safety or effectiveness or that would constitute a major change in intended use of one of our cleared devices, or approval of a supplement for certain modifications to PMA devices;

- medical device reporting regulations, which require that a manufacturer report to the FDA if a device it markets may have caused or contributed to a death or serious injury, or has malfunctioned and the device or a similar device that it markets would be likely to cause or contribute to a death or serious injury, if the malfunction were to recur;
- correction, removal and recall reporting regulations, which require that manufacturers report to the FDA field corrections and product recalls or removals if undertaken to reduce a risk to health posed by the device or to remedy a violation of the FDCA that may present a risk to health;
- complying with the new federal law and regulations requiring Unique Device Identifiers, or UDI, on devices and also requiring the submission of certain information about each device to the FDA's Global Unique Device Identification Database;
- the FDA's recall authority, whereby the agency can order device manufacturers to recall from the market a product that is in violation of governing laws and regulations; and
- post-market surveillance activities and regulations, which apply when deemed by the FDA to be necessary to protect the public health or to provide additional safety and effectiveness data for the device.

Manufacturing processes for medical devices are required to comply with the applicable portions of the QSR, which cover the methods and the facilities and controls for the design, manufacture, testing, production, processes, controls, quality assurance, labeling, packaging, distribution, installation and servicing of finished devices intended for human use. The QSR also requires, among other things, maintenance of a device master file, device history file, and complaint files. As a manufacturer, our facilities, records and manufacturing processes are subject to periodic scheduled or unscheduled inspections by the FDA. Our failure to maintain compliance with the QSR or other applicable regulatory requirements could result in the shut-down of, or restrictions on, our manufacturing operations and the recall or seizure of our products. The discovery of previously unknown problems with any of our products, including unanticipated adverse events or adverse events of increasing severity or frequency, whether resulting from the use of the device within the scope of its clearance or off-label by a physician in the practice of medicine, could result in restrictions on the device, including the removal of the product from the market or voluntary or mandatory device recalls.

The FDA has broad regulatory compliance and enforcement powers. If the FDA determines that we failed to comply with applicable regulatory requirements, it can take a variety of compliance or enforcement actions, which may result in any of the following sanctions:

- warning letters, untitled letters, fines, injunctions, consent decrees and civil penalties;
- recalls, withdrawals, or administrative detention or seizure of our products;
- operating restrictions or partial suspension or total shutdown of production;
- refusing or delaying requests for 510(k) marketing clearance or PMA approvals of new products or modified products;
- withdrawing 510(k) clearances or PMA approvals that have already been granted;
- refusal to grant export or import approvals for our products; or
- criminal prosecution.

Regulation of Medical Devices in the EEA

There is currently no premarket government of medical devices in the EEA (which is comprised of the 28 Member States of the EU plus Norway, Liechtenstein and Iceland). However, all medical devices placed on the market in the EEA must meet the relevant essential requirements laid down in Annex I of Directive 93/42/EEC concerning medical devices, or the Medical Devices Directive, and the regulations laid down in the 2017/745, or the Medical Device Regulations. There is also a directive specifically addressing Active Implantable Medical Devices (Directive 90/385/EEC). The most fundamental essential requirement is that a medical device must be designed and manufactured in such a way that it will not compromise the clinical condition or safety of patients, or the safety and health of users and others. In addition, the device must achieve the performances intended by the manufacturer and be designed, manufactured and packaged in a suitable manner. The European Commission has adopted various standards applicable to medical devices. These include standards governing common requirements, such as sterilization and safety of medical electrical equipment, and product

standards for certain types of medical devices. There are also harmonized standards relating to design and manufacture. While not mandatory, compliance with these standards is viewed as the easiest way to satisfy the essential requirements as a practical matter. Compliance with a standard developed to implement an essential requirement also creates a rebuttable presumption that the device satisfies that essential requirement.

To demonstrate compliance with the essential requirements laid down in Annex I to the Medical Devices Directive, medical device manufacturers must undergo a conformity assessment procedure, which varies according to the type of medical device and its classification. Conformity assessment procedures require an assessment of available clinical evidence, literature data for the product and post-market experience in respect of similar products already marketed. Except for low-risk medical devices (Class I non-sterile, non-measuring devices), where the manufacturer can self-declare the conformity of its products with the essential requirements (except for any parts which relate to sterility or metrology), a conformity assessment procedure requires the intervention of a Notified Body. Notified bodies are often separate entities and are authorized or licensed to perform such assessments by government authorities. The notified body would typically audit and examine a product's technical dossiers and the manufacturers' quality system. If satisfied that the relevant product conforms to the relevant essential requirements, the notified body issues a certificate of conformity, which the manufacturer uses as a basis for its own declaration of conformity. The manufacturer may then apply the CE Mark to the device, which allows the device to be placed on the market throughout the EEA. Once the product has been placed on the market in the EEA, the manufacturer must comply with requirements for reporting incidents and field safety corrective actions associated with the medical device.

In order to demonstrate safety and efficacy for their medical devices, manufacturers must conduct clinical investigations in accordance with the requirements of Annex X to the Medical Devices Directive, Annex 7 of the Active Implantable Medical Devices Directive, and applicable European and International Organization for Standardization standards, as implemented or adopted in the EEA member states. Clinical trials for medical devices usually require the approval of an ethics review board and approval by or notification to the national regulatory authorities. Both regulators and ethics committees also require the submission of serious adverse event reports during a study and may request a copy of the final study report.

On May 25, 2017 the new Medical Devices Regulation, or 2017/745 or MDR, was adopted by the European Parliament, which repeals and replaces the EU Medical Devices Directive and the Active Implantable Medical Devices Directive. Following its entry into application on May 26, 2021, the MDR will introduce 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. Unlike directives, which must be implemented into the national laws of the EEA member states, the regulations would be directly applicable, i.e., without the need for adoption of EEA member state laws implementing them, in all EEA member states and are intended to eliminate current differences in the regulation of medical devices among EEA member States. The Medical Devices Regulation, among other things, is intended to establish a uniform, transparent, predictable and sustainable regulatory framework across the EEA for medical devices and ensure a high level of safety and health while supporting innovation.

On the effective date, May 26, 2021, the new regulations will among other things:

- strengthen the rules on placing devices on the market and reinforce surveillance once they are available;
- establish explicit provisions on manufacturers' responsibilities for the follow-up of the quality, performance and safety of devices placed on the market;
- improve the traceability of medical devices throughout the supply chain to the end-user or patient through a unique identification number;
- set up a central database to provide patients, healthcare professionals and the public with comprehensive information on products available in the EU;
- strengthened rules for the assessment of certain high-risk devices, such as implants, which may have to undergo an additional check by experts before they are placed on the market.

We are subject to regulations and product registration requirements in many foreign countries in which we may sell our products, including in the areas of:

- design, development, manufacturing and testing;
- product standards;

- product safety;
- product safety reporting;
- marketing, sales and distribution;
- packaging and storage requirements;
- labeling requirements;
- content and language of instructions for use;
- clinical trials;
- record keeping procedures;
- advertising and promotion;
- recalls and field corrective actions;
- post-market surveillance, including reporting of deaths or serious injuries and malfunctions that, if they were to recur, could lead to death or serious injury;
- import and export restrictions;
- tariff regulations, duties and tax requirements;
- registration for reimbursement; and
- necessity of testing performed in country by distributors for licensees.

The time required to obtain clearance required by foreign countries may be longer or shorter than that required for FDA clearance, and requirements for licensing a product in a foreign country may differ significantly from FDA requirements.

We expect this revised regulation to include further controls and requirements on the following activities:

- high level of request for premarket clinical evidence for high risk devices;
- increased scrutiny of technical files for implantable devices;
- monitoring of notified bodies, by independent auditors;
- increased requirements regarding vigilance and product traceability (specifically related to labeling requirements); and
- increased regulation for non-traditional roles such as importer and distributor.

Federal, State and Foreign Fraud and Abuse and Physician Payment Transparency Laws

In addition to FDA restrictions on marketing and promotion of drugs and devices, other federal and state laws restrict our business practices. These laws include, without limitation, foreign, federal, and state anti-kickback and false claims laws, as well as transparency laws regarding payments or other items of value provided to healthcare providers.

The federal Anti-Kickback Statute prohibits, among other things, knowingly and willfully offering, paying, soliciting or receiving any remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind to induce or in return for purchasing, leasing, ordering or arranging for or recommending the purchase, lease or order of any good, facility, item or service reimbursable, in whole or in part, under Medicare, Medicaid or other federal healthcare programs. The term “remuneration” has been broadly interpreted to include anything of value, including stock, stock options, and the compensation derived through ownership interests.

Although there are a number of statutory exceptions and regulatory safe harbors protecting some common activities from prosecution, the exceptions and safe harbors are drawn narrowly. Our arrangements with physicians, hospitals and other persons or entities who are in a position to refer may not fully meet the stringent criteria specified in the various safe

harbors. Practices that involve remuneration that may be alleged to be intended to induce prescribing, purchases or recommendations may be subject to scrutiny if they do not qualify for an exception or safe harbor. Failure to meet all of the requirements of a particular applicable statutory exception or regulatory safe harbor does not make the conduct per se illegal under the federal Anti-Kickback Statute. Instead, the legality of the arrangement will be evaluated on a case-by-case basis based on a cumulative review of all its facts and circumstances. Several courts have interpreted the statute's intent requirement to mean that if any one purpose of an arrangement involving remuneration is to induce referrals of federal healthcare covered business, the federal Anti-Kickback Statute has been violated. In addition, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation.

Violations of the federal Anti-Kickback Statute may result in significant civil monetary penalties for each violation, plus up to three times the remuneration involved. Civil penalties for such conduct can further be assessed under the federal False Claims Act. Violations can also result in criminal penalties, including significant criminal fines and imprisonment, as well as exclusion from participation in government healthcare programs, including Medicare and Medicaid. Liability under the federal Anti-Kickback Statute may also arise because of the intentions or actions of the parties with whom we do business. Conduct and business arrangements that do not fully satisfy one of these safe harbor provisions may result in increased scrutiny by government enforcement authorities. The majority of states also have anti-kickback laws which establish similar prohibitions and, in some cases, may apply more broadly to items or services covered by any third-party payor, including commercial insurers and self-pay patients.

The federal civil False Claims Act prohibits, among other things, any person or entity from knowingly presenting, or causing to be presented, a false or fraudulent claim for payment of government funds or knowingly making, using or causing to be made or used a false record or statement material to a false or fraudulent claim to the federal government. In addition, private parties may initiate "qui tam" whistleblower lawsuits against any person or entity under the federal civil False Claims Act in the name of the government and share in the proceeds of any monetary recovery. Moreover, 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 federal civil False Claims Act. Penalties for federal civil False Claim Act violations include penalties for each false claim, plus up to three times the amount of damages sustained by the federal government and, most critically, may provide the basis for exclusion from the federally funded healthcare program. There are also criminal penalties for making or presenting of a claim to the government knowing such claim to be false, fictitious or fraudulent.

HIPAA created additional federal criminal statutes that prohibit among other actions, knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program, including private third-party payors, knowingly and willfully embezzling or stealing from a healthcare benefit program, willfully obstructing a criminal investigation of a healthcare offense, and knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services. Similar to the federal Anti-Kickback Statute, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation.

Many foreign countries have similar laws relating to healthcare fraud and abuse. Foreign laws and regulations may vary greatly from country to country. For example, the advertising and promotion of our products is subject to EU Directives concerning misleading and comparative advertising and unfair commercial practices, as well as other EEA Member State legislation governing the advertising and promotion of medical devices. These laws may limit or restrict the advertising and promotion of our products to the general public and may impose limitations on our promotional activities with healthcare professionals.

Additionally, there has been a recent trend of increased foreign, federal, and state regulation of payments and transfers of value provided to healthcare professionals or entities. The federal Physician Payments Sunshine Act requires manufacturers of drugs, devices, biologics and medical supplies for which payment is available under Medicare, Medicaid, or the Children's Health Insurance Program to report annually to the CMS, information related to payments or and other "transfers of value" made to physicians (currently defined to include doctors, dentists, optometrists, podiatrists and chiropractors), certain non-physician practitioners (physician assistants, nurse practitioners, clinical nurse specialists, certified nurse anesthetists, anesthesiology assistants and certified nurse-midwives) and teaching hospitals, and requires applicable manufacturers to report annually to CMS ownership and investment interests held by physicians and their immediate family members and payments or other "transfers of value" to such physician owners. Certain foreign countries and U.S. states also mandate implementation of commercial compliance programs, impose restrictions on device manufacturer marketing practices and require tracking and reporting of gifts, compensation and other remuneration to healthcare professionals and entities.

Healthcare Reform Measures

In the United States, there have been, and may continue to be, a number of legislative and regulatory changes to the healthcare system. Federal and state lawmakers regularly propose and, at times, enact legislation that would result in significant changes to the healthcare system, some of which are intended to contain or reduce the costs of medical products and services.

By way of example, in the United States, the ACA was enacted in March 2010 and substantially changed the way healthcare is financed by both governmental and private insurers, and significantly impacts our industry. The ACA contained a number of provisions, including those governing enrollment in federal healthcare programs, reimbursement changes and fraud and abuse measures, all of which have impacted existing government healthcare programs and will result in the development of new programs. Since its enactment, there have been judicial, executive and Congressional challenges to certain aspects of the ACA. On June 17, 2021, the Supreme Court ruled that states and individuals lacked standing to challenge the constitutionality of the ACA's individual mandate, post-repeal of its associated tax penalty. Additionally, President Biden issued an executive order that initiated a special enrollment period for purposes of obtaining health insurance coverage through the ACA marketplace, from February 15, 2021 through August 15, 2021. The executive order also instructed certain governmental agencies to review and reconsider their existing policies and rules that limit access to healthcare, including among others, reexamining Medicaid demonstration projects and waiver programs that include work requirements, and policies that create unnecessary barriers to obtaining access to health insurance coverage through Medicaid or the ACA.

In addition, other legislative changes have been proposed and adopted since the ACA was enacted. For example, the Budget Control Act of 2011, among other things, and in connection with subsequent legislation, reduced Medicare payments to providers of, on average, 2% per fiscal year, which went into effect on April 1, 2013 and, due to subsequent legislative amendments to the statute, will remain in effect through 2030, with the exception of a temporary suspension from May 1, 2020 through March 31, 2022 and a 1% reduction from April 1, 2022 through June 30, 2022, unless additional Congressional action is taken. Additionally, the American Taxpayer Relief Act of 2012, among other things, further reduced Medicare payments to several categories of healthcare providers, including hospitals, and increased the statute of limitations period for the government to recover Medicare overpayments to providers from three to five years. The current presidential administration and Congress may continue to pursue significant changes to the current healthcare laws.

Data Privacy and Security Laws

Numerous state, federal and foreign laws, including consumer protection laws and regulations, govern the collection, dissemination, use, access to, confidentiality and security of personal information, including health-related information. In the United States, numerous federal and state laws and regulations, including data breach notification laws, health information privacy and security laws, and consumer protection laws and regulations that govern the collection, use, disclosure, and protection of health-related and other personal information could apply to our operations or the operations of our partners. For example, HIPAA, as amended by HITECH, and their implementing regulations, impose obligations, including mandatory contractual terms, on certain covered healthcare providers, health plans, and healthcare clearinghouses and their respective business associates and covered subcontractors that perform services for them that involve the use, or disclosure of, individually identifiable health information with respect to safeguarding the privacy, security and transmission of individually identifiable health information. In addition, certain foreign laws govern the privacy and security of personal information, including health-related information in certain circumstances, 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. Privacy and security laws, regulations, and other obligations are constantly evolving, may conflict with each other to complicate compliance efforts, and can result in investigations, proceedings, or actions that lead to significant civil and/or criminal penalties and restrictions on data processing.

Anti-Bribery and Corruption Laws

Our U.S. operations are subject to the FCPA. We are required to comply with the FCPA, which generally prohibits covered entities and their employees, agents and intermediaries from engaging in bribery or authorizing, promising, providing, or offering, directly or indirectly, anything of value to foreign officials for the purpose of obtaining or retaining business or other benefits. In addition, the FCPA imposes accounting standards and requirements on publicly traded U.S. corporations and their foreign affiliates, which requires such companies to maintain complete and accurate books and records and maintain a system of internal accounting controls. We also are subject to similar anticorruption laws and

regulations implementing the Organization for Economic Co-operation and Development's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Facilities

Our principal office is located at 900 Island Drive, Redwood City, California, where we lease approximately 43,485 square feet of office space. We lease this space under a lease that terminates on October 29, 2023. On December 31, 2021, we entered into a lease agreement for two existing buildings, comprising approximately 158,221 square feet of space, in San Jose, California. The term of the lease is anticipated to commence no later than December 31, 2022, and continue for 122 months following the lease commencement, with two five year options to extend the term of the lease. This facility is expected to support our expected growth in headcount and production volume.

Employees and Human Capital Resources

We employ a growing and skilled employee base across all functions focused on attaining our vision of becoming the treatment of choice in all prostates and united by our shared values. As of December 31, 2021, we had 234 employees.

Our human capital resources objectives include, as applicable, identifying, recruiting, retaining, engaging, incentivizing and integrating our existing and additional employees. Our recruiting practices and decisions on whom to hire are among our most important activities and we strive to recruit a diverse team of people who align with our values. Our compensation programs are designed to align the compensation of our employees with PROCEPT BioRobotics' performance and to provide the proper incentives to attract, retain and motivate employees to achieve superior results. Our team strives to develop and implement compensation and benefits policies and programs that are grounded in the competitive market, support our business objectives and pay for performance, whilst managing for fiscal responsibility. We provide our employees with competitive fixed and variable pay, company equity programs, access to health and life insurance benefits, disability coverage, 401(k) program, employee stock purchase plan, paid time off and numerous well-being benefits. Our equity incentive plans are designed to attract, retain and motivate selected employees, consultants and directors through the granting of stock-based awards which create ownership and participation in our value creation. In order to assess and improve employee retention and engagement, we survey employees frequently with the assistance of third-party consultants and take actions to address areas of employee concern.

Due to the essential nature of our business, we have continued operating during the COVID-19 pandemic and health and safety of our employees is a key focus. In response to the pandemic, we have established safety protocols and work from home flexibility where possible to protect our employees. Employees that work on site are required to adhere to protocols following guidelines issued by the Centers for Disease Control or mandated by local regulations. We regularly communicate regarding safety protocols, potential exposures and changes that are made based on the COVID-19 transmission rate.

Legal Proceedings

From time to time, we may be involved in legal proceedings arising in the ordinary course of our business. We are not presently a party to any legal proceedings that, in the opinion of management, would have a material adverse effect on our business. Regardless of outcome, litigation can have an adverse impact on us due to defense and settlement costs, diversion of management resources, negative publicity and reputation harm, and other factors.

Available Information

We make our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports, available free of charge at our website as soon as reasonably practicable after they have been filed with the SEC. Our website address is www.procept-biorobotics.com. Information on our website is not part of this report. The SEC maintains a website that contains the materials we file with the SEC at www.sec.gov.

Item 1A. Risk Factors

Our operations and financial results are subject to various risks and uncertainties including those described below. You should consider carefully the risks and uncertainties described below, in addition to other information contained in this Annual Report on Form 10-K, including our consolidated financial statements and related notes. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties that we are unaware of, or that we currently believe are not material, may also become important factors that adversely affect our business. If any of the following risks or others not specified below materialize, our business, financial condition and results of operations could be materially and adversely affected. In that case, the trading price of our common stock could decline.

Risks Related to Our Business

We are an early-stage company with a history of significant net losses, we expect to continue to incur operating losses for the foreseeable future and we may not be able to achieve or sustain profitability.

We have incurred significant net losses in each reporting period since our inception. For the years ended December 31, 2021 and 2020, we had a net loss of and $59.9 million and $53.0 million, respectively. We expect to continue to incur additional losses in the future. As of December 31, 2021, we had an accumulated deficit of $261.5 million. To date, we have financed our operations primarily through net proceeds from our initial public offering in September 2021 and the sale of our redeemable convertible preferred stock in private placements, indebtedness, including our loan and security agreement, and, to a lesser extent, product revenue from sales of our AquaBeam Robotic System and single-use disposable handpieces. The losses and accumulated deficit have primarily been due to the substantial investments we have made to develop our products, costs related to our sales and marketing efforts, including costs related to clinical and regulatory initiatives to obtain marketing approval, and infrastructure improvements.

We may also encounter unforeseen expenses, difficulties, complications, delays and other known and unknown factors and risks frequently experienced by early-stage medical technology companies in rapidly evolving fields. In addition, as a public company, we will incur significant legal, accounting and other expenses that we did not incur as a private company. Accordingly, we expect to continue to incur significant operating losses for the foreseeable future and we cannot assure you that we will achieve profitability in the future or that, if we do become profitable, we will sustain profitability. Our failure to achieve and sustain profitability in the future will make it more difficult to finance our capital requirements needed to operate our business and accomplish our strategic objectives, which would have a material adverse effect on our business, financial condition and results of operations and cause the market price of our common stock to decline.

Our revenue is primarily generated from sales of our AquaBeam Robotic System and the accompanying single-use disposable handpieces, and we are therefore highly dependent on the success of those products.

To date, substantially all of our revenue has been derived, and we expect it to continue to be substantially derived, from sales of our AquaBeam Robotic System and its accompanying single-use disposable handpieces. Our products deliver our Aquablation therapy, the first and only image-guided, heat-free robotic therapy for BPH. We began commercializing our products in the United States in 2017 and physician awareness of, and experience with, our products has been and is currently limited. As a result, our products have limited product and brand recognition within the medical industry for the treatment of BPH. We do not have a long history operating as a commercial company, and the novelty of our products, together with our limited commercialization experience, makes it difficult to evaluate our current business and predict our future prospects with precision. These factors also make it difficult for us to forecast our financial performance and future growth, and such forecasts are subject to a number of uncertainties, including those outside of our control.

Our quarterly and annual operating results may fluctuate significantly and may not fully reflect the underlying performance of our business. This makes our future operating results difficult to predict and could cause our operating results to fall below expectations or any guidance we may provide.

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 operating results may fluctuate significantly 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. Such fluctuations in quarterly and annual operating results may decrease the value of our common stock. Because our quarterly operating 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. These fluctuations may occur due to a variety of factors, many of which are outside of our control, including, but not limited to:

- the level of surgeon and hospital adoption and demand for our products and Aquablation therapy;
- changes in reimbursement rates by government or commercial payors;
- positive or negative coverage in the media or clinical publications, or changes in public, patient and/or physician perception, of our products or competing products and treatments, including our brand reputation;
- the degree of competition in our industry and any change in the competitive landscape, including consolidation among competitors or future partners;
- any safety, reliability or effectiveness concerns that arise regarding our products or other procedures to treat BPH;
- unanticipated pricing pressures in connection with the sale of our products and downward pressure on healthcare costs in general;
- the effectiveness of our sales and marketing efforts, including our ability to deploy a sufficient number of qualified sales representatives to sell and market our products;
- the timing of customer orders or medical procedures using our products and the number of available selling days in any quarterly period, which can be impacted by holidays, the mix of products sold and the geographic mix of where products are sold;
- unanticipated delays in product development or product launches;
- the cost of manufacturing our products, which may vary depending on the quantity of production and the terms of our agreements with third-party suppliers;
- our ability to raise additional capital on acceptable terms, or at all, if needed to support the commercialization of our products;
- our ability to achieve and maintain compliance with all regulatory requirements applicable to our products and services;
- our ability to obtain, maintain and enforce our intellectual property rights;
- our ability and our third-party suppliers' ability to supply the components of our products in a timely manner, in accordance with our specifications, and in compliance with applicable regulatory requirements; and
- introduction of new products, technologies or alternative treatments for BPH that compete with our products.

The cumulative effects of these factors could result in large fluctuations and unpredictability in our quarterly and annual operating results. 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 deviate materially from our expectations and our business could suffer.

This variability and unpredictability could also result in our failure to meet the expectations of industry or financial analysts or investors for any period. If our revenue or operating results fall below the expectations of analysts or investors or below any forecasts we may provide to the market, it will negatively affect our business, financial condition and results of operations.

The terms of our loan and security agreement require us to meet certain operating and financial covenants and place restrictions on our operating and financial flexibility. If we raise additional capital through debt financing, the terms of any new debt could further restrict our ability to operate our business.

As of December 31, 2021, we had $50.0 million outstanding in the form of a term loan under our loan and security agreement with Oxford Finance LLC, which was entered into in September 2019. The loan is secured by substantially all of our assets, including all of the capital stock held by us, if any. The loan and security agreement contains a number of restrictive covenants, and the terms may restrict our current and future operations, particularly our ability to respond to certain changes in our business or industry, or take future actions. See the section of this Annual Report on Form 10-K

titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Indebtedness.”

The loan and security agreement contains customary representations and warranties and affirmative covenants and also contains certain restrictive covenants, including, among others, limitations on: the incurrence of additional debt, liens or other encumbrances on property, acquisitions and investments, loans and guarantees, mergers, consolidations, liquidations and dissolutions, asset sales, dividends and other payments in respect of our capital stock, prepayments of certain debt, transactions with affiliates and changes to our type of business, management of the business, control of the business or business locations. The loan and security agreement also includes financial covenants that require us to, among other things, meet certain revenue targets detailed in an approved forecast. The loan and security agreement also contains customary events of default. If we fail to comply with such covenants, payments or other terms of the agreement, our lender could declare an event of default, which would give it the right to declare all borrowings outstanding, together with accrued and unpaid interest and fees, to be immediately due and payable. In addition, our lender would have the right to proceed against the assets we provided as collateral pursuant to the loan and security agreement. If the debt under the loan and security agreement were accelerated, we may not have sufficient cash or be able to sell sufficient assets to repay this debt, which would harm our business and financial condition.

We may need additional funding to finance our planned operations, and may not be able to raise capital when needed, which could force us to delay, reduce or eliminate one or more of our product development programs and future commercialization efforts.

Since our inception, we have incurred significant net losses and expect to continue to incur net losses for the foreseeable future. Since our inception, our operations have been financed primarily by net proceeds from our initial public offering in September 2021 and the sale of our redeemable convertible preferred stock in private placements, indebtedness and, to a lesser extent, product revenue from sales of our AquaBeam Robotic System and single-use disposable handpieces. As of December 31, 2021, we had $304.3 million in cash and cash equivalents, and an accumulated deficit of $261.5 million. Based on our current operating plan, we currently believe that our cash and cash equivalents, anticipated revenue and available debt financing arrangements, will be sufficient to meet our capital requirements and fund our operations through at least the next 12 months. However, we have based these estimates on assumptions that may prove to be wrong, and we could utilize our available capital resources sooner than we currently expect. Changing circumstances could result in lower revenues or cause us to consume capital significantly faster than we currently anticipate, and we may need to raise capital sooner or in greater amounts than currently expected because of circumstances beyond our control.

We may require additional capital in the future as we expect to continue to expand our sales and marketing organization, invest in clinical trials and registries that are designed to provide clinical evidence of the safety and efficacy of our products and research and development of product improvements and future products. Moreover, we expect to continue to incur additional expenses associated with operating as a public company, including legal, accounting, insurance, exchange listing and SEC compliance, investor relations and other expenses. To the extent additional capital is necessary, there are no assurances that we will be able to raise additional capital on favorable terms or at all, and therefore we may not be able to execute our business plan. Our future funding requirements will depend on many factors, including:

- the degree and rate of market acceptance of our current and future products and Aquablation therapy;
- the scope and timing of investment in our sales force and expansion of our commercial organization;
- the impact on our business from the ongoing and global COVID-19 pandemic and the end of the COVID-19 pandemic, or any other pandemic, epidemic or outbreak of an infectious disease;
- the scope, rate of progress and cost of our current or future clinical trials and registries;
- the cost of our research and development activities;
- the cost and timing of additional regulatory clearances or approvals;
- the costs associated with any product recall that may occur;
- the costs associated with the manufacturing of our products at increased production levels;
- the costs of attaining, defending and enforcing our intellectual property rights;
- whether we acquire third-party companies, products or technologies;

- the terms and timing of any other collaborative, licensing and other arrangements that we may establish;
- the emergence of competing technologies or other adverse market developments; and
- the rate at which we expand internationally.

We may seek to raise additional capital through equity offerings or debt financings and such additional financing may not be available to us on acceptable terms, or at all. In addition, any additional equity or debt financing that we raise may contain terms that are not favorable to us or our stockholders. For example, if we raise funds by issuing equity or equity-linked securities, the issuance of such securities could result in dilution to our stockholders. Any equity securities issued may also provide for rights, preferences or privileges senior to those of holders of our common stock. In addition, the issuance of additional equity securities by us, or the possibility of such issuance, may cause the market price of our common stock to decline, and the price per share at which we sell additional shares of our common stock, or securities convertible into or exercisable or exchangeable for shares of our common stock, in future transactions may be higher or lower than the price per share paid by investors in our prior offerings.

In addition, the terms of debt securities issued or borrowings could impose significant restrictions on our operations including restrictive covenants, such as limitations on our ability to incur additional debt or issue additional equity, limitations on our ability to pay dividends, limitations on our ability to acquire or license intellectual property rights, and other operating restrictions that could adversely affect our ability to conduct our business. For example, our current loan and security agreement prohibits us from incurring additional indebtedness without the prior written consent of our lender. In the event that we enter into collaborations or licensing arrangements to raise capital, we may be required to accept unfavorable terms, such as relinquishment or licensing of certain technologies or products that we otherwise would seek to develop or commercialize ourselves, or reserve for future potential arrangements when we might otherwise be able to achieve more favorable terms. In addition, we may be forced to work with a partner on one or more of our products or market development programs, which could lower the economic value of those programs to us.

If we are unable to obtain adequate financing on terms satisfactory to us when we require it, we may be required to terminate or delay the development of one or more of our products, delay clinical trials necessary to market our products, or delay establishment of sales and marketing capabilities or other activities necessary to commercialize our products. If this were to occur, our ability to grow and support our business and to respond to market challenges could be significantly limited, which could have a material adverse effect on our business, financial condition and results of operations.

The commercial success of our AquaBeam Robotic System and Aquablation therapy will depend upon the degree of market acceptance of our products among hospitals, surgeons and patients.

Our success will depend, in large part, on the acceptance of our AquaBeam Robotic System as safe, effective, reliable and durable and, with respect to hospitals, healthcare providers and patients, as cost-effective. We believe Aquablation therapy represents a new approach for treating BPH, employing a computer-assisted patient-specific visualization system, a heat-free waterjet and automated robotic system to target and remove prostate tissue. We believe that market acceptance will be driven primarily by surgeons and hospitals, and if they do not adopt the concept of computer-assisted robotics-enabled technology and perceive such technology as having significant advantages over other surgical alternatives, patients will be less likely to accept or be offered Aquablation therapy and we will fail to meet our business objectives. Surgeons' and hospitals' perceptions of such technology having significant advantages are likely to be based on a determination that, among other factors, our products are safe, cost-effective and represent acceptable methods of treatment. Even if we can prove the effectiveness of Aquablation therapy through clinical trials, there may not be broad adoption and use of our products and surgeons may elect not to use our products for any number of other reasons, including:

- lack of experience with our products and concerns that we are relatively new to market;
- perceived liability risk generally associated with the use of new products and treatment options;
- lack or perceived lack of sufficient clinical evidence, including long-term data, supporting clinical benefits or the cost-effectiveness of our products over existing treatment alternatives;
- the failure of key opinion leaders to provide recommendations regarding our products, or to assure surgeons, patients and healthcare payors of the benefits of our products as an attractive alternative to other treatment options;
- perception that our products are unproven;

- long-standing relationships with companies and distributors that sell other products or treatment options for BPH;
- concerns over the capital investment required to purchase our AquaBeam Robotic System and perform Aquablation therapy procedures;
- lack of availability of adequate third-party payor coverage or reimbursement;
- pricing pressure, including from Group Purchasing Organizations, or GPOs, and Integrated Delivery Networks, or IDNs, seeking to obtain discounts on our AquaBeam Robotic System based on the collective buying power of the GPO and IDN members;
- competitive response and negative selling efforts from providers of alternative treatments;
- limitations or warnings contained in the labeling cleared or approved by the FDA or other authorities.

Even if our AquaBeam Robotic System achieves widespread market acceptance, it may not maintain such level of market acceptance over the long term if competing products or technologies, which are more cost-effective or received more favorably, are introduced. In addition, our limited commercialization experience makes it difficult to evaluate our current business and predict our future prospects. We cannot predict how quickly, if at all, hospitals, surgeons and patients will accept our AquaBeam Robotic System or, if accepted, how frequently it will be used. Failure to achieve or maintain market acceptance and/or market share could materially and adversely affect our ability to generate revenue and would have a material adverse effect on our business, financial condition and results of operations.

We have limited experience in training and marketing and selling our products and we may provide inadequate training, fail to increase our sales and marketing capabilities or fail to develop and maintain broad brand awareness in a cost-effective manner.

We have limited experience marketing and selling our products. We currently rely on our direct sales force and distributors to sell our products in targeted geographic regions and territories, and any failure to maintain and grow our direct sales force and distributor relationships could harm our business. The members of our direct sales force are adequately trained and possess technical expertise, which we believe is critical in driving the awareness and adoption of our products. The members of our U.S. 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 comparable expertise and qualifications, or if we are unable to successfully instill such expertise in replacement personnel, our product sales, revenues and results of operations could be materially harmed.

In order to generate future growth, we plan to continue to significantly expand and leverage our commercial infrastructure to increase our customer base and increase awareness and adoption by existing customers to drive our growth. Identifying and recruiting qualified sales and marketing professionals and training them on our products and Aquablation therapy, on applicable federal and state laws and regulations and on our internal policies and procedures requires significant time, expense and attention. It can take several months or more before a sales representative is fully trained and productive. Our sales force may subject us to higher fixed costs than those of companies with competing products or treatments that can utilize independent third parties, placing us at a competitive disadvantage. Our business may be harmed if our efforts to expand and train our sales force do not generate a corresponding increase in product sales and revenue, and our higher fixed costs may slow our ability to reduce costs in the face of a sudden decline in demand for our products. Any failure to hire, develop and retain talented sales personnel, to achieve desired productivity levels in a reasonable period of time or timely reduce fixed costs, could have material adverse effect on our business, financial condition and results of operations.

Our ability to increase our customer base and achieve broader market acceptance of our products will depend, to a significant extent, on our ability to expand our sales and marketing and educational efforts. We plan to dedicate significant resources to our sales and marketing and educational programs. Our business may be harmed if these efforts and expenditures do not generate a corresponding increase in revenue. In addition, we believe that developing and maintaining broad awareness of our Aquablation therapy in a cost-effective manner is critical to achieving broad acceptance of our products and reaching new physicians, hospitals and patients. Promotion and educational activities may not generate hospital or surgeon awareness or increase revenue, and even if they do, any increase in revenue may not offset the costs and expenses we incur. If we fail to successfully promote Aquablation therapy in a cost-effective manner, we may fail to attract or retain the market acceptance necessary to realize a sufficient return on our promotional and educational efforts, or to achieve broad adoption of our products.

We may not be able to obtain or maintain adequate levels of third-party coverage and reimbursement, and third parties may rescind or modify their coverage or delay payments related to our products.

We derive the majority of our revenue from sales of our AquaBeam Robotic System and single-use disposable handpieces to hospitals. Sales of our products will depend, in part, on the extent to which the procedures using our products are covered and reimbursed by third-party payors, including private insurers and government healthcare programs. Even if a third-party payor covers a particular treatment that uses our products, the resulting reimbursement rate may not be adequate to cover a provider's cost to purchase our products or ensure such purchase is profitable for the provider. As a result, access to adequate coverage and reimbursement for our products by third-party payors is essential to the acceptance and adoption of our products

Coverage and reimbursement by governmental and third-party payors may depend upon a number of factors, including the determination that the product or service and its use or administration for a particular patient is:

- a covered benefit;
- safe, effective and medically necessary;
- appropriate for the specific patient;
- supported by guidelines established by the relevant professional societies;
- cost-effective; and
- neither experimental nor investigational.

Our customers typically bill third-party payors for the costs and fees associated with the procedures in which our products are used. Effective January 1, 2020, hospitals receive an additional payment for the single-use handpiece when performing Aquablation therapy on Medicare patients in the hospital outpatient setting until December 31, 2022. When that payment expires, hospitals will no longer receive separate reimbursement for our device and instead, receive a single bundled payment rate intended to cover the costs of all items and services, including our products, used during the Aquablation therapy. Some of our target customers may be unwilling to adopt our products in light of potential additional associated cost. In addition, customers that perform the procedure may be subject to reimbursement claim denials upon submission of the claim. Customers may also be subject to recovery of overpayments if a payor makes payment for the claim and subsequently determines that the payor's coding, billing or coverage policies were not followed. These events, or any other decline in the amount payors are willing to reimburse our customers, could make it difficult for existing customers to continue using or to adopt our products and could create additional pricing pressure for us. If we are forced to lower the price we charge for our products, our gross margins will decrease, which could have a material adverse effect on our business, financial condition and results of operations and impair our ability to grow our business.

Third-party payors, whether foreign or domestic, or governmental or commercial, are developing increasingly sophisticated methods of controlling healthcare costs by limiting coverage and the amount of reimbursement for particular products. In addition, no uniform policy of coverage and reimbursement for procedures using our products exists among third-party payors. Therefore, coverage and reimbursement for procedures using our products can differ significantly from payor to payor. Obtaining coverage and reimbursement can be a time-consuming process that could require us to provide supporting scientific, clinical and cost-effectiveness data for the use of our products. We may not be able to provide data sufficient to satisfy governmental and third-party payors that procedures using our products should be covered and reimbursed.

Payors continually review new and existing technologies for possible coverage and can, without notice, deny or reverse coverage for new or existing products and procedures. There can be no assurance that third-party payor policies will provide coverage for procedures in which our products are used. Many third-party payors do not currently cover our products and the related procedures because they have determined that our products and the related procedures are experimental or investigational. When our products and the related procedures are reimbursed, they are reimbursed primarily on a per-patient prior authorization basis for patients covered by commercial insurers.

Further, we believe that future coverage and reimbursement may be subject to increased restrictions, such as additional prior authorization requirements, both in the United States and in relevant international markets in which we plan to operate. If Medicare no longer covers any of our products, there would be a material adverse effect on our business, financial condition and results of operations. In addition, Medicare Administrative Contractors could issue a local coverage determination decision that could restrict the patients eligible for the treatment with our products or in another manner

unfavorable to our business. Third-party coverage and reimbursement for procedures using our products or any of our products in development for which we may receive regulatory clearance or approval may not be available or adequate in either the United States or international markets. Further, other BPH treatments may be more widely covered or subject to different co-pay policies and requirements, which could impact demand for our products. If hospital, surgeon and/or patient demand for our products is adversely affected by changes in third-party reimbursement policies and decisions, it could have a material adverse effect on our business, financial condition and results of operations.

We face competition from many sources, including larger companies, and we may be unable to compete successfully.

The medical device industry is highly competitive, subject to rapid change and significantly affected by the introduction of new products and technologies and other activities of industry participants. We compete with pharmaceutical products marketed to treat BPH, such as Flomax marketed by Boehringer Ingelheim, Rapaflow marketed by Allergan plc, Avodart marketed by GlaxoSmithKline plc, and Proscar marketed by Merck & Co., Inc., and with medical device companies that manufacture resective or non-resective surgical alternatives for treating BPH. Resective alternatives include devices for the TURP procedure, laser-based therapies and simple prostatectomy, each of which is intended to remove the prostate tissue, and non-resective alternatives such as UroLift marketed by Teleflex Incorporated and Rezum marketed by Boston Scientific Corporation, which are intended to reshape the prostate and widen the cavity. Our primary medical device competitors are Boston Scientific Corporation and smaller companies that have single products or a limited range of products. Moreover, other products that are in current clinical trials, new drugs or additional indications for existing drugs could demonstrate better safety, effectiveness, clinical results, lower costs or greater physician and market acceptance than our products.

We compete, or may compete in the future, against other companies which have longer, more established operating histories and significantly greater financial, technical, marketing, sales, distribution and other resources, which may prevent us from achieving significant market penetration or improved operating results. These companies may enjoy several competitive advantages, including:

- established treatment patterns pursuant to which drugs are generally first-line or concurrent therapies for the treatment of BPH;
- established relationships with hospitals and physicians who are familiar with other surgical alternatives for the treatment of BPH;
- greater financial and human capital resources;
- significantly greater name recognition;
- additional lines of products, and the ability to offer rebates or bundle products to offer greater discounts or incentives to gain a competitive advantage; and
- established sales, marketing and worldwide distribution networks.
- Our continued success depends on our ability to:
- improve outcomes for patients;
- maintain product safety, efficacy, reliability and durability;
- expand the quality and volume of our clinical data;
- effectively market to and educate patients, physicians and hospitals;
- maintain company, product and brand recognition;
- broaden our sales force experience and access;
- maintain product support and service;
- maintain and widen our technology lead over competitors by continuing to innovate and deliver new product enhancements on a continuous basis;
- develop successful pricing and revenue strategies;

- continue to maintain and expand reimbursement coverage for procedures using our products;
- achieve desired regulatory status and speed to market; and
- maintain dedicated clinical representatives.

One of the major hurdles to adoption of our products will be overcoming established treatment patterns, which will require education of surgeons and supportive clinical data. However, because of the size of the market opportunity for the treatment of BPH, we believe current and potential future competitors will dedicate significant resources to aggressively promote their products or develop new products or treatments. New treatment options may be developed that could compete more effectively with our products due to the prevalence of BPH and the research and technological progress that exist within the market.

If we are unable to continue to innovate and improve our AquaBeam Robotic System, we could lose customers or market share.

Our success will depend on our ability to keep ahead of innovative developments in the treatment of BPH. It is critical to our competitiveness that we continue to innovate and make improvements to our AquaBeam Robotic System's functionality and efficiency. If we fail to make improvements to our AquaBeam Robotic System's functionality over time, our competitors may develop products that offer features and functionality similar or superior to those of our AquaBeam Robotic System. If we fail to make improvements to our AquaBeam Robotic System's efficiency, our competitors may develop products that are more cost-effective than our AquaBeam Robotic System. Our failure to make continuous improvements to our AquaBeam Robotic System to keep ahead of the products of our competitors could result in the loss of customers or market share that would adversely affect our business, results of operations, and financial condition.

We have limited experience manufacturing our products in large-scale commercial quantities, and we face a number of manufacturing risks that may adversely affect our manufacturing abilities which could delay, prevent or impair our growth.

Our growth strategy depends on our ability to manufacture our current and future products in sufficient quantities and on a timely basis to meet customer demand, while adhering to product quality standards, complying with regulatory quality system requirements and managing manufacturing costs in our current manufacturing facility or any future manufacturing facilities. We have a sole manufacturing facility located in Redwood City, California, where we manufacture, assemble, inspect, test, package and ship our products. We currently assemble all of our AquaBeam Robotic System and single-use disposable handpieces at this one facility, and we do not have additional facilities. If this facility, or any of our future manufacturing facilities, suffers damage, or a force majeure event, such damage or event could materially impact our ability to operate, which could materially and adversely affect our business and financial performance.

We are also subject to numerous other risks relating to our manufacturing capabilities, including:

- quality and reliability of components, sub-assemblies and materials that we source from third-party suppliers, who are required to meet our quality specifications, almost all of whom are single source suppliers for the items and materials that they supply;
- our inability to secure components, sub-assemblies and materials in a timely manner, in sufficient quantities or on commercially reasonable terms;
- our inability to maintain compliance with quality system requirements or pass regulatory quality inspections;
- our failure to increase production capacity or volumes to meet demand;
- potential risks associated with disruptions in our supply chain, such as on account of the COVID-19 pandemic or other macroeconomic events;
- lead times associated with securing key components;
- our inability to design or modify production processes to enable us to produce future products efficiently or implement changes in current products in response to design or regulatory requirements; and
- difficulty identifying and qualifying, and obtaining new regulatory approvals, for alternative suppliers for components in a timely manner.

These risks are likely to be exacerbated by our limited experience with our current products and manufacturing processes. For instance, in both 2019 and 2021, we initiated voluntary recalls for a limited number of lots of our handpiece. These were both due to certain issues related to our supply chain and manufacturing processes. We have remedied the issue leading to the 2019 and 2021 recalls as we continue to develop and improve our manufacturing processes to scale the production of our handpieces at a higher volume. As demand for our products increases, we will have to invest additional resources to purchase components, sub-assemblies and materials, hire and train employees and enhance our manufacturing processes. If we fail to increase our production capacity efficiently, we may not be able to fill customer orders on a timely basis, our sales may not increase in line with our expectations and our operating margins could fluctuate or decline. In addition, although some future products may share product features, components, sub-assemblies and materials with our existing products, the manufacture of these products may require modification of our current production processes or unique production processes, the hiring of specialized employees, the identification of new suppliers for specific components, sub-assemblies and materials or the development of new manufacturing technologies. It may not be possible for us to manufacture these products at a cost or in quantities sufficient to make these products commercially viable or to maintain current operating margins, all of which could have a material adverse effect on our business, financial condition and results of operations.

We depend upon third-party suppliers, including contract manufacturers and single source suppliers, making us vulnerable to supply shortages and price fluctuations that could negatively affect our business, financial condition and results of operations.

We rely on third-party suppliers, almost all of whom are single source suppliers, to provide us with certain components, sub-assemblies and materials for our products. These components, sub-assemblies and materials are critical and, for certain items, there are relatively few alternative sources of supply. These single source suppliers may be unwilling or unable to supply the necessary materials and components or manufacture and assemble our products in a reliable manner and at the levels we anticipate or at levels adequate to satisfy demand for our products. While our suppliers have generally met our demand for their products and services on a timely basis in the past, we cannot guarantee that they will in the future be able to meet our demand for such products, either because of acts of nature, the nature of our agreements with those suppliers or our relative importance to them as a customer, and our suppliers may decide in the future to discontinue or reduce the level of business they conduct with us.

We have not been qualified or obtained necessary regulatory approvals for additional suppliers for most of these components, sub-assemblies and materials. While we currently believe that alternative sources of supply or sterilization may be available, we cannot be certain whether they will be available if and when we need them, or that any alternative suppliers or providers would be able to provide the quantity and quality of components, materials and sterilization that we would need to manufacture and ship our products if our existing suppliers and providers were unable to satisfy our requirements. To utilize other sources, we would need to identify and qualify new providers to our quality standards and obtain any additional regulatory approvals required to change providers, which could result in manufacturing delays and increase our expenses.

Our dependence on third-parties subjects us to a number of risks that could impact our ability to manufacture our products and harm our business, including:

- interruption of supply or sterilization resulting from modifications to, or discontinuation of, a third party's operations;
- delays in product shipments resulting from uncorrected defects, reliability issues or a third party's failure to produce components or complete sterilizations that consistently meet our quality specifications;
- price fluctuations due to a lack of long-term supply arrangements with our third parties for key components or sterilization requirements;
- inability to obtain adequate supply or services in a timely manner or on commercially reasonable terms;
- difficulty identifying and qualifying alternative third parties for the supply of components or for sterilization of our products in a timely manner;
- inability of third parties to comply with applicable provisions of the FDA's Quality System Regulations, or QSR, or other applicable laws or regulations enforced by the FDA, state and global regulatory authorities;
- inability to ensure the quality of products manufactured or sterilization conducted by third parties;

- production delays related to the evaluation and testing of products and services from alternative third parties and corresponding regulatory qualifications;
- trends towards consolidation within the medical device manufacturing supplier industry; and
- delays in delivery by our suppliers and service providers.

Although we require our third-party suppliers and providers to supply us with components and services that meet our specifications and other applicable legal and regulatory requirements in our agreements and contracts, and we perform incoming inspection, testing or other acceptance activities to ensure the components meet our requirements, there is a risk that these third parties will not always act consistent with our best interests, and may not always supply components or provide services that meet our requirements or in a timely manner.

If we receive a significant number of warranty claims or our AquaBeam Robotic Systems require significant amounts of service after sale, our operating expenses may substantially increase and our business and financial results will be adversely affected.

We currently warrant each AquaBeam Robotic System against defects in materials and workmanship for a period of approximately 12 months from the installation of our product by a customer. We also expect to continue to provide technical and other services to customers beyond the warranty period pursuant to a supplemental service plan that we sell for our AquaBeam Robotic System. We have a limited history of commercial placements from which to judge our rate of warranty claims, and we expect that the number of warranty claims we receive may increase as we scale our operations and as our existing commercial placements age. If product returns or warranty claims are significant or exceed our expectations, we could incur unanticipated reductions in sales or additional operating expenditures for parts and service. In addition, our reputation could be damaged and our products may not achieve the level of market acceptance that we are targeting in order to achieve and maintain profitability. Unforeseen warranty exposure could negatively impact our business and financial results.

We need to ensure strong product performance and reliability to maintain and grow our business.

We need to maintain and continuously improve the performance and reliability of our AquaBeam Robotic System to achieve our profitability objectives. Poor product performance and reliability could lead to customer dissatisfaction, adversely affect our reputation and revenues, and increase our service and distribution costs and working capital requirements. In addition, software and hardware incorporated into our AquaBeam Robotic System may contain errors or defects, especially when first introduced and while we have made efforts to test this software and hardware extensively, we cannot assure that the software and hardware, or software and hardware developed in the future, will not experience errors or performance problems.

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

We are subject to risks related to the public health crises such as the global pandemic associated with COVID-19. The COVID-19 outbreak and the consequential economic disruptions have negatively impacted and may continue to negatively impact, including the emergence and impact of the various COVID-19 variants, our operations and revenues and overall financial condition by decreasing the number of BPH procedures generally, which has slowed adoption of our AquaBeam Robotic System during the course of the pandemic. We believe the number of our systems sold has also been impacted as health care organizations globally have prioritized the treatment of patients with COVID-19, and as health care organizations have dealt with other consequential economic disruptions from the COVID-19 pandemic such as budget shortfalls and staffing shortages. For example, for a period of time in the United States, governmental authorities 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 led to our decision to reforecast our revenue for 2020, and they may continue or resume for the duration of the pandemic, which is uncertain, and may negatively impact our revenue growth while the pandemic continues. Further, once the pandemic subsides, we anticipate that health care organizations may face budgetary and personnel disruptions during the recovery, and that there may be a backlog of patients seeking appointments with physicians and surgeries to be performed at hospitals relating to a variety of medical conditions. As a result, patients seeking to have our Aquablation therapy performed will have to navigate limited provider capacity. We also experienced a slowdown of enrollment in certain clinical trials.

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 are located, issued “shelter-in-place” or “stay at home” orders restricting non-essential activities, travel, and business operations, subject to certain exceptions for necessary activities. Such orders or restrictions have resulted in our headquarters closing, slowdowns and delays, travel restrictions, and cancellation of training and other events, among other effects, thereby negatively impacting our operations. Employees whose tasks can be performed offsite have been encouraged to work from home. Additionally, if the COVID-19 situation persists or worsens in certain geographies around the world, shutdowns and continued government restrictions may impact our sales activities, supply chain, and business.

Identifying and recruiting qualified sales and marketing personnel and training them has been, and continues to be, more difficult as a result of the COVID-19 pandemic as many of these activities must be conducted remotely, and we believe that some candidates are reluctant to change jobs during the pandemic. In addition, even when we are able to hire additional sales and marketing personnel, we must then train them on our product, applicable federal and state laws, and regulations, and on our internal policies and procedures. This training process was initially conducted remotely, which made training more challenging. We recently resumed partial in-person training with respect to training sales and marketing personnel, among others. Upon completion of the training, the lead time that our territory managers typically require in the field to grow their network of accounts and achieve the productivity levels we expect them to reach in any individual territory, has been, and continues to be, prolonged during and as a result of the COVID-19 pandemic. We have also experienced disruptions, and may experience future disruptions, including: delays in territory managers becoming fully trained and productive; challenges in analyzing territory manager performance and in recruiting and hiring new employees; difficulties and delays in physician outreach and training physicians to use our AquaBeam Robotic System; restrictions on personnel to travel; delays in initiation, enrollment and follow-ups of our clinical studies; challenges with maintaining adequate supply from third-party manufacturers of components and finished goods and distribution providers; and access to physicians for training and case support. In addition, our customers have experienced and may continue to experience financial and staffing hardship during the COVID-19 pandemic and the consequential economic disruptions, 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 or additional pricing pressure on our products.

In addition, to the extent the recovery from the COVID-19 pandemic is prolonged for any reason, including due to the emergence and impact of the various COVID-19 variants or other consequential economic disruptions, and continues to adversely affect our business and results of operations, it may also have the effect of heightening many of the other risks and uncertainties described in this “Risk Factors” section.

We may encounter difficulties in managing our growth, which could disrupt our operations.

We have experienced substantial growth in our operations, and we expect to experience continued substantial growth in our business. Over the next several years, we expect to increase significantly the scope of our operations, particularly in the areas of manufacturing, sales and support, research and development, product development, regulatory affairs, marketing and other functional areas, including finance, accounting, quality control, and legal, especially as we transition to operating as a public company. To manage our anticipated future growth, we must continue to implement and improve our managerial, operational quality and financial systems, expand our facilities and continue to recruit and train additional qualified personnel. Due to our limited financial resources, we may not be able to manage the expansion of our operations or recruit and train additional qualified personnel in an effective manner. In addition, the physical expansion of our operations may lead to significant costs and may divert our management and business development resources. Any inability to manage growth could delay the execution of our business plans or disrupt our operations.

Our results of operations will be materially harmed if we are unable to accurately forecast customer demand for, and utilization of, our AquaBeam Robotic System and manage our inventory.

To ensure adequate inventory supply, we must forecast inventory needs and manufacture our AquaBeam Robotic System console and the single-use disposable handpieces based on our estimates of future demand for, and utilization of, our AquaBeam Robotic System. Our ability to accurately forecast demand and utilization could be negatively affected by many factors, including our failure to accurately manage our expansion strategy, product introductions by competitors, an increase or decrease in customer demand for our products or for products of our competitors, 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 may result in inventory write-downs or write-offs, which would cause our gross margin to be adversely affected and could impair the strength of our brand. Conversely, if we underestimate customer demand and

utilization, our supply chain, manufacturing partners and/or internal manufacturing team may not be able to deliver components and products to meet our requirements, and this could result in damage to our reputation and customer relationships. In addition, if we experience a significant increase in demand or utilization, additional supplies of raw materials or additional manufacturing capacity may not be available when required on terms that are acceptable to us, or at all, or suppliers may not be able to allocate sufficient capacity in order to meet our increased requirements, which will adversely affect our business, financial condition and results of operations.

Our information technology systems, or those used by third party service providers, partners, our contractors or consultants, may fail or suffer security breaches, and such failure could negatively affect our business, financial condition and results of operations.

We depend on our information technology systems for the efficient functioning of our business, including the manufacture, distribution and maintenance of our products, as well as for accounting, data storage, compliance, purchasing, inventory management and other related functions. We do not have redundant information technology in all aspects of our systems at this time. Despite the implementation of security and back-up measures, our internal computer, server, and other information technology systems as well as those of our third-party partners, consultants, contractors, suppliers, and service providers, may be vulnerable to attack and damage from physical or electronic break-ins, accidental or intentional exposure of our data by employees or others with authorized access to our networks, computer viruses, malware, ransomware, malicious code, phishing attacks and other social engineering schemes, denial or degradation of service attacks, attacks by sophisticated nation-state and nation-state-supported actors, supply chain attacks, natural disasters, terrorism, war, telecommunication and electrical failure, denial of service, and other cyberattacks or disruptive incidents that could result in unauthorized access to, use or disclosure of, corruption of, or loss of sensitive, and/or proprietary data, including health-related and other personal information, and could subject us to significant liabilities and regulatory and enforcement actions, and reputational damage. We and certain of our partners or service providers are from time to time subject to cyberattacks and security incidents. While we do not believe that we have experienced any significant system failure, accident or security breach to date, if such an event were to occur and cause interruptions in our operations, it could result in a material disruption of our business operations, whether due to a loss, corruption or unauthorized disclosure of our trade secrets, personal information or other proprietary or sensitive information or other similar disruptions. Additionally, theft of our intellectual property or proprietary business information could require substantial expenditures to remedy. Such theft could also lead to loss of intellectual property rights through disclosure of our proprietary business information, and such loss may not be capable of remedying. If we or our third-party partners, consultants, contractors, suppliers, or service providers were to suffer an attack or breach, for example, that resulted in the unauthorized access to or use or disclosure of health-related or other personal information, we may have to notify consumers, partners, collaborators, government authorities, and the media, and may be subject to investigations, civil penalties, administrative and enforcement actions, and litigation, any of which could harm our business and reputation. Likewise, we rely on third parties to conduct clinical trials, and similar events relating to their computer systems and networks could also have a material adverse effect on our business. The COVID-19 pandemic has generally increased the risk of cybersecurity intrusions. Our reliance on internet technology and the number of our employees who are working remotely may create additional opportunities for cybercriminals to exploit vulnerabilities. For example, there has been an increase in phishing and spam emails as well as social engineering attempts from “hackers” hoping to use the recent COVID-19 pandemic to their advantage. Furthermore, because the techniques used to obtain unauthorized access to, or to sabotage, systems change frequently and often are not recognized until launched against a target, we may be unable to anticipate these techniques or implement adequate preventative measures. We may also experience security breaches that may remain undetected for an extended period. Even if identified, we may be unable to adequately investigate or remediate incidents or breaches due to attackers increasingly using tools and techniques that are designed to circumvent controls, to avoid detection, and to remove or obfuscate forensic evidence.

To the extent that any disruption or security breach were to result in a loss of, or damage to, our data or systems or data or systems of our commercial partners, or inappropriate or unauthorized access to or disclosure or use of confidential, proprietary, or other sensitive, personal, or health information, we could incur liability and suffer reputational harm. Failure to maintain or protect our information technology systems effectively could negatively affect our business, financial condition and results of operations.

Actual of perceived failure to comply with data protection, privacy and security laws, regulations, standards and other requirements could lead to government enforcement actions (which could include civil or criminal penalties), private litigation, and/or adverse publicity and could negatively affect our operating results and business.

The global data protection landscape is rapidly evolving, and we are or we may become subject to federal, state, and foreign data protection laws, regulations and requirements governing the collection, use, disclosure, retention and security

of personal information. In the United States, numerous federal and state laws and regulations, including state data breach notification laws, state health information privacy laws, and federal and state consumer protection laws and regulations that govern the collection, processing, use, disclosure, and protection of health-related and other personal information could apply to our operations or the operations of our partners. For example, the federal Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, and regulations promulgated thereunder, or collectively, HIPAA, imposes obligations on "covered entities," including certain health care providers, health plans, and health care clearinghouses, and their respective "business associates" that create, receive, maintain or transmit individually identifiable health information for or on behalf of a covered entity, as well as their covered subcontractors with respect to safeguarding the privacy, security and transmission of individually identifiable health information. We may obtain health information from third parties (including research institutions from which we obtain clinical trial data) that are subject to privacy and security requirements under HIPAA. Entities that are found to be in violation of HIPAA, whether as the result of a breach of unsecured PHI, a complaint about privacy practices, or an audit by the Department of Health and Human Services, or 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. Depending on the facts and circumstances, we could be subject to penalties if we violate HIPAA.

Even when HIPAA does not apply, according to the Federal Trade Commission, or the FTC, failing to take appropriate steps to keep consumers' personal information secure may constitute unfair acts or practices in or affecting commerce in violation of the Federal Trade Commission Act. The FTC and many state Attorneys General continue to enforce federal and state consumer protection laws against companies for online collection, use, dissemination and security practices that appear to be unfair or deceptive. 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.

In addition, certain state laws govern the privacy and security of health-related and other personal information, many of which may differ from each other, thus, complicating compliance efforts. For example, California recently enacted the California Consumer Privacy Act, or CCPA, which creates individual privacy rights for California consumers (as defined in the law), including the right to opt out of certain disclosures of their information, and places increased privacy and security obligations on entities handling certain personal data of consumers or households and may apply to us in the future. The CCPA also creates a private right of action with statutory damages for certain data breaches, thereby potentially increasing risks associated with a data breach. Further, the California Privacy Rights Act, or CPRA, recently passed in California. The CPRA significantly amends the CCPA and will impose additional data protection obligations on covered businesses, including additional consumer rights processes, limitations on data uses, new audit requirements for higher risk data, and opt outs for certain uses of sensitive data. It will also create a new California data protection agency authorized to issue substantive regulations and could result in increased privacy and information security enforcement. The majority of the provisions will go into effect on January 1, 2023, and additional compliance investment and potential business process changes may be required. The CCPA and CPRA could mark the beginning of a trend toward more stringent privacy legislation in the United States, as other states or the federal government may follow California's lead and increase protections for U.S. residents. For example, on March 2, 2021, the Virginia Consumer Data Protection Act, which will take effect on January 1, 2023, was signed into law. The CCPA has already prompted a number of proposals for new federal and state privacy legislation that, if passed, could increase our potential liability, add layers of complexity to compliance in the U.S. market, increase its compliance costs and adversely affect its business.

Foreign data protection laws, including the General Data Protection Regulation, or GDPR, which went into effect in May 2018, may also apply to our processing of health-related and other personal data regardless of where the processing in question is carried out.

The GDPR imposes stringent requirements for controllers and processors of personal data of individuals within the European Economic Area, or EEA. The GDPR applies to any company established in the EEA as well as to those outside the EEA if they collect, process, and use personal data in connection with the offering of goods or services to individuals in the EEA or the monitoring of their behavior. The GDPR, together with national legislation, regulations and guidelines of the EEA Member States governing the processing of personal data, impose strict obligations and restrictions on the ability to collect, analyze and transfer personal data, including health data from clinical trials and adverse event reporting. In particular, these obligations and restrictions involve the consent of the individuals to whom the personal data relates, the information provided to the individuals, the transfer of personal data out of the EEA to jurisdictions deemed to have inadequate, security breach notifications, security and confidentiality of the personal data and imposition of substantial potential fines for breaches of the data protection obligations. Companies that must comply with the GDPR face increased compliance obligations and risk, including more robust regulatory enforcement of data protection requirements and

potential fines for noncompliance of up to €20 million or 4% of the annual global revenues of the noncompliant company, whichever is greater. Among other requirements, the GDPR regulates transfers of personal data subject to the GDPR to third countries that have not been found to provide adequate protection to such personal data, including the United States; in July 2020, the Court of Justice of the EU, or CJEU, limited how organizations could lawfully transfer personal data from the EU/EEA to the United States by invalidating the Privacy Shield for purposes of international transfers and imposing further restrictions on the use of standard contractual clauses, or SCCs. The European Commission issued revised SCCs on June 4, 2021 to account for the decision of the CJEU and recommendations made by the European Data Protection Board. The revised SCCs must be used for relevant new data transfers from September 27, 2021; existing standard contractual clauses arrangements must be migrated to the revised clauses by December 27, 2022. The new SCCs apply only to the transfer of personal data outside of the EEA and not the UK; the UK's Information Commissioner's Office launched a public consultation on its draft revised data transfers mechanisms in August 2021 and laid its proposal before Parliament, with the UK SCCs expected to come into force in March 2022, with a two-year grace period. There is some uncertainty around whether the revised clauses can be used for all types of data transfers, particularly whether they can be relied on for data transfers to non-EEA entities subject to the GDPR. As supervisory authorities issue further guidance on personal data export mechanisms, including circumstances where the SCCs cannot be used, and/or start taking enforcement action, we could suffer additional costs, complaints and/or regulatory investigations or fines, and/or if we are otherwise unable to transfer personal data between and among countries and regions in which we operate, it could affect the manner in which we provide our services, the geographical location or segregation of our relevant systems and operations, and could adversely affect our financial results.

Further, from January 1, 2021, companies have to comply with the GDPR and also the UK GDPR, which, together with the amended UK Data Protection Act 2018, retains the GDPR in UK national law. The UK GDPR mirrors the fines under the GDPR, e.g. fines up to the greater of €20 million (£17.5 million) or 4% of global turnover. On June 28, 2021, the EU Commission adopted an adequacy decision to enable data transfers from EU Member States to the UK for a four-year period, subject to subsequent extensions.

Implementing mechanisms that endeavor to ensure compliance with the GDPR and relevant local legislation in EEA Member States and the UK may be onerous and may interrupt or delay our development activities, and adversely affect our business, financial condition, results of operations, and prospects. In addition to the foregoing, a breach of the GDPR or other applicable privacy and data protection laws and regulations could result in regulatory investigations, reputational damage, and orders to cease/change our use of data, enforcement notices, or potential civil claims including class action-type litigation. While we have taken steps to comply with the GDPR where applicable, including by reviewing our security procedures, and entering into data processing agreements with relevant contractors, our efforts to achieve and remain in compliance may not be fully successful.

Compliance with US, foreign, and local privacy and security laws, rules and regulations could require us to take on more onerous obligations in our contracts, require us to engage in costly compliance exercises, restrict our ability to collect, use and disclose data, or in some cases, impact our or our partners' or suppliers' ability to operate in certain jurisdictions. Each of these constantly evolving laws can be subject to varying interpretations. Failure to comply with US and foreign data protection laws and regulations could result in government investigations and enforcement actions (which could include civil or criminal penalties), fines, private litigation, and/or adverse publicity and could negatively affect our operating results and business. Moreover, patients about whom we or our partners obtain information, as well as the providers who share this information with us, may contractually limit our ability to use and disclose the information. Claims that we have violated individuals' privacy rights, failed to comply with data protection laws, or breached our contractual obligations, even if we are not found liable, could be expensive and time-consuming to defend and could result in adverse publicity that could harm our business.

Natural or man-made disasters and other similar events may significantly disrupt our business, and negatively impact our business, financial condition and results of operations.

A significant portion of our employee base, and our primary operating facility and infrastructure are centralized in Northern California. Our facility may be harmed or rendered inoperable by natural or man-made disasters, including earthquakes, wildfires, floods, nuclear disasters, riots, acts of terrorism or other criminal activities, public health emergencies such as infectious disease outbreaks, including the COVID-19 pandemic, power outages and other infrastructure failures, which may render it difficult or impossible for us to operate our business for some period of time. Our facilities would likely be costly to repair or replace, and any such efforts would likely require substantial time. Any disruptions in our operations could adversely affect our business and results of operations and harm our reputation. Moreover, although we have disaster recovery plans, they may prove inadequate. We may not carry sufficient business insurance to compensate for losses that may occur. Any such losses or damages could have a material adverse effect on our

business and results of operations. In addition, the facilities of our suppliers and manufacturers may be harmed or rendered inoperable by such natural or man-made disasters, which may cause disruptions, difficulties or otherwise materially and adversely affect our business, financial condition and results of operations.

The sizes of the addressable markets for our AquaBeam Robotic System have not been established with precision and our potential market opportunity may be smaller than we estimate and may decline.

Our estimates of the annual total addressable market for our AquaBeam Robotic System are based on a number of internal and third-party estimates, including, without limitation, the assumed prices at which we can sell our AquaBeam Robotic System and the single-use disposable handpieces. 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. As a result, our estimates of the annual total addressable market for our AquaBeam Robotic System may prove to be incorrect. If the actual number of patients who would benefit from our AquaBeam Robotic System, the price at which we can sell our AquaBeam Robotic System, or the total addressable market for our AquaBeam Robotic System is smaller than we have estimated, it may impair our sales growth and materially and adversely affect our business, financial condition and results of operations.

Until we are able to achieve broader market acceptance of our AquaBeam Robotic System and Aquablation therapy, we may face risks associated with a more concentrated customer base.

No customers accounted for more than 10% of revenue during the years ended December 31, 2021 and 2020. One of our customers accounted for 11% of accounts receivable at December 31, 2021. Two of our customers accounted for 22% and 13% of accounts receivable at December 31, 2020. While we believe this concentration is primarily attributable to our limited history of commercial operations, until we are able to achieve broader market acceptance of our AquaBeam Robotic System and Aquablation therapy, we may face risks associated with a more concentrated customer base. There are risks whenever a significant percentage of revenue is concentrated with a limited number of customers. For example, revenue from these customers may fluctuate from time to time based on these customers' business needs, the timing of which may be affected by market conditions or other facts outside of our control. These customers could also potentially pressure us to reduce the prices we charge for our single-use disposable handpieces, which could have an adverse effect on our margins and financial position and could negatively affect our revenue and results of operations. If any of our largest customers terminates its relationship with us, such termination could negatively affect our revenues and results of operations.

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 AquaBeam Robotic System, the single-use disposable handpiece or any of their component parts causes, or is perceived to cause, injury or is found to be otherwise unsuitable during manufacturing, marketing or sale. We may also be subject to product liability claims if our products or services are deemed non-compliant with applicable laws or regulations. 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 conditions of the patient. 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, or manufacturers who produce our AquaBeam Robotic System and the single-use disposable handpieces.

If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities or be required to limit or halt the marketing and sale 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;
- harm to our reputation;
- initiation of investigations by regulators, which could result in enforcement action against us or our contract manufacturers;
- 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; and
- exhaustion of any available insurance and our capital resources.

The risk of a product liability lawsuit may increase if our products were deemed to be non-compliant with applicable laws and regulation. In the event we face a product liability lawsuit, 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 our products. 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.

Cost-containment efforts of our customers, purchasing groups and governmental organizations could have a material adverse effect on our sales and profitability.

In an effort to reduce costs, many hospitals in the United States have become members of GPOs and IDNs. GPOs and IDNs negotiate pricing arrangements with medical device companies and distributors and then offer these negotiated prices to affiliated hospitals and other members. GPOs and IDNs typically award contracts on a category-by-category basis through a competitive bidding process. Bids are generally solicited from multiple providers with the intention of driving down pricing or reducing the number of vendors. Due to the highly competitive nature of the GPO and IDN contracting processes, we may not be able to obtain new, or maintain existing, contract positions with major GPOs and IDNs. Furthermore, the increasing leverage of organized buying groups may reduce market prices for our AquaBeam Robotic System, thereby reducing our revenue and margins.

While having a contract with a GPO or IDN for a given product category can facilitate sales to members of that GPO or IDN, such contract positions can offer no assurance that any level of sales will be achieved, as sales are typically made pursuant to individual purchase orders. Even when a provider is the sole contracted supplier of a GPO or IDN for a certain product category, members of the GPO or IDN are generally free to purchase from other suppliers. Furthermore, GPO and IDN contracts typically are terminable without cause by the GPO or IDN upon 60 to 90 days' notice. Accordingly, the members of such groups may choose to purchase alternative products due to the price or quality offered by other companies, which could result in a decline in our revenue.

We may seek strategic alliances, joint ventures or collaborations, or enter into licensing or partnership arrangements in the future and may not be successful in doing so, and even if we are, we may not realize the benefits or costs of such relationships.

We may form or seek strategic alliances, create joint ventures or collaborations or enter into licensing or partnership arrangements with third parties that we believe will compliment or augment our sales and marketing efforts with respect to our AquaBeam Robotic System. We may not be successful in our efforts to establish such collaborations. Any of these relationships may require us to incur non-recurring and other charges, increase our near and long-term expenditures, issue securities that dilute our existing stockholders or disrupt our management and business. In addition, we face significant competition in seeking appropriate strategic partners and the negotiation process is time-consuming and complex. Moreover, we may not be successful in our efforts to establish a strategic alliance or other alternative arrangements for our products. We cannot be certain that, following a strategic alliance or similar arrangement, we will achieve the revenue or specific net income that justifies such transaction. In addition, any potential future collaborations may be terminable by our collaborators, and we may not be able to adequately protect our rights under these agreements. Any termination of collaborations we enter into in the future, or delays in entering into new strategic partnership agreements could delay tour sales and marketing efforts, which would harm our business prospects, financial condition and results of operations.

Our future growth may depend, in part, on our ability to penetrate foreign markets, where we would be subject to additional regulatory burdens and other risks and uncertainties.

We currently market and sell our products in 11 countries outside of the United States, including Germany, France, Italy, Spain and the United Kingdom. The sale and shipment of our products across international borders, as well as the purchase of components and products from international sources, subjects us to extensive U.S. and other foreign governmental trade, import and export and customs laws and regulations. Compliance with these laws and regulations is costly and exposes us to penalties for non-compliance. We expect our international activities will be dynamic over the foreseeable future as we continue to pursue opportunities in international markets. Our international business operations are subject to a variety of risks, including:

- difficulties in staffing and managing foreign and geographically dispersed operations, to the extent we establish non-U.S. operations;
- differing and multiple payor reimbursement regimes, government payors or patient self-pay systems;
- difficulties in determining and creating the proper sales pathway in new, international markets;
- compliance with various U.S. and international laws, including export control laws and the U.S. Foreign Corrupt Practices Act of 1977, or the FCPA, and anti-money laundering laws;
- differing regulatory requirements for obtaining clearances or approvals to market our products;
- changes in, or uncertainties relating to, foreign rules and regulations that may impact our ability to sell our products, perform services or repatriate profits to the United States;
- tariffs and trade barriers, export regulations, sanctions and other regulatory and contractual limitations on our ability to sell our products in certain foreign markets;
- potential adverse tax consequences, including imposition of limitations on or increase of withholding and other taxes on remittances and other payments by foreign subsidiaries or joint ventures;
- imposition of differing labor laws and standards;
- armed conflicts or economic, political or social instability in foreign countries and regions;
- fluctuations in foreign currency exchange rates;
- an inability, or reduced ability, to protect our intellectual property, including any effect of compulsory licensing imposed by government action; and
- availability of government subsidies or other incentives that benefit competitors in their local markets that are not available to us.

We are assessing the opportunity to expand into other international markets. However, our expansion plans may not be realized, or if realized, may not be successful. We expect each market to have particular regulatory hurdles to overcome, and future developments in these markets, including the uncertainty relating to governmental policies and regulations, could harm our business.

We are highly dependent on our senior management team and key personnel, and our business could be harmed if we are unable to attract and retain personnel necessary for our success.

We are highly dependent on our senior management, including our chief executive officer, Reza Zadno, Ph.D., and other key personnel. Our success will depend on our ability to retain senior management and to attract, recruit, retain, manage and motivate qualified personnel in the future, particularly with respect to an expected increase in hiring in connection with becoming a public company, including sales and marketing professionals, scientists, clinical specialists, engineers and other highly skilled personnel and to integrate current and additional personnel in all departments. The loss of members of our senior management, sales and marketing professionals, scientists, clinical and regulatory specialists and engineers could result in delays in product development and harm our business. If we are not successful in attracting and retaining highly qualified personnel, it would have a material adverse effect on our business, financial condition and results of operations.

Competition for skilled personnel in our market is intense and may limit our ability to hire and retain highly qualified personnel on acceptable terms, or at all. To induce valuable employees to remain at our company, we have issued and may continue to issue equity awards that vest over time, in addition to salary and cash incentives. The value to employees of equity awards that vest over time may be significantly affected by movements in our stock price that are beyond our control, and may at any time be insufficient to counteract more lucrative offers from other companies. Despite our efforts to retain valuable employees, members of our management, scientific and development teams may terminate their employment with us on short notice. Our employment arrangements with our employees provide for at-will employment, which means that any of our employees could leave our employment at any time, with or without notice. We also do not maintain "key man" insurance policies on the lives of these individuals or the lives of any of our other employees. This lack of insurance means that we may not have adequate compensation for the loss of the services of these individuals.

We could be adversely affected by violations of the FCPA and similar worldwide anti-bribery laws, as well as violations of export or import controls or economic sanctions laws and regulations. Any investigation, and the outcome of any investigation, by government agencies of possible violations by us of such laws and regulations could have a material adverse effect on our business.

We are subject to anti-corruption laws and regulations, including the U.S. Foreign Corrupt Practices Act of 1977, as amended, the U.S. domestic bribery statute in 18 U.S.C. 201, the International Travel Act of 1961, as amended, or the U.S. Travel Act, the U.K. Bribery Act 2010, or the Bribery Act, and similar anti-bribery laws in jurisdictions in which we conduct activities. Anti-corruption laws are interpreted broadly and prohibit companies and their employees, agents, and intermediaries from corruptly authorizing, promising, providing, or offering, directly or indirectly, improper payments or anything else of value to government officials and persons in the private sector for the purpose of obtaining or retaining business. In addition, an organization that fails to prevent bribery by anyone associated with the organization can be charged under the Bribery Act, unless the organization can establish the defense of having implemented adequate procedures to prevent bribery.

We are also subject to export control and import laws and regulations, including the U.S. Export Administration Regulations, U.S. Customs regulations, and various economic and trade sanctions regulations administered by the U.S. Treasury Department's Office of Foreign Assets Controls. Compliance with applicable regulatory requirements regarding the export of our products may require us to obtain licenses and authorizations prior to export, create delays in the introduction of our products in certain international markets or, in some cases, prevent the export of our products to some countries altogether. Furthermore, U.S. export control laws and economic sanctions prohibit the shipment of certain products and services to countries, governments, and persons targeted by U.S. sanctions.

We are in the process of further enhancing policies designed to ensure compliance by us and our directors, officers, employees, representatives, consultants and agents with the FCPA, the Bribery Act, OFAC laws and regulations, and other export control, anti-corruption, anti-money-laundering and anti-terrorism laws and regulations. In the future, we may operate in parts of the world that pose a heightened corruption risk. Moreover, because of the significant role government entities play in the regulation of many foreign healthcare markets, we may be exposed to heightened FCPA and similar risks arising from our efforts to seek regulatory approval of and reimbursement for our products in such countries. We cannot assure you that our internal control policies and procedures will protect us from improper acts committed by our employees or agents, nor can we assure you that our business partners have not engaged and will not engage in improper conduct that could materially affect their ability to perform their contractual obligations to us or even result in our being held liable for such conduct. The U.S. Departments of Justice, Commerce, State and Treasury and other federal agencies and authorities have a broad range of civil and criminal penalties they may seek to impose against corporations and individuals for violations of anti-corruption laws, economic sanctions laws, and export control and import laws. In addition, violations of these laws, or allegations of such violations, would significantly disrupt our business and have a material adverse effect on our business, financial condition and results of operations.

Our ability to utilize our net operating loss carryforwards and research and development credit may be limited.

As of December 31, 2021, we had U.S. federal and state net operating loss, or NOL, carryforwards of approximately $215.0 million and $123.5 million, respectively, and U.S. federal and state research and development credit carryforwards of $4.2 million and $3.4 million, respectively. NOLs incurred in taxable years beginning after December 31, 2017, may be carried forward indefinitely, but the deductibility of such federal NOLs in taxable years beginning after December 31, 2020, is limited to 80% of current year taxable income. In general, under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, or the Code, a corporation that undergoes an "ownership change," generally defined as a greater than 50 percentage point change by value in its equity ownership over a rolling three-year period, is subject to limitations on its ability to utilize its pre-change NOLs and its research and development credit carryforwards to offset post-change taxable income. Similar rules may apply under state tax laws. Our existing NOLs and research and

development credit carryforwards have been, and may in the future be, subject to limitations arising from previous ownership changes, and if we undergo an ownership change, our ability to utilize NOLs and research and development credit carryforwards could be further limited by Sections 382 and 383 of the Code. Future changes in our stock ownership, some of which might be beyond our control, could result in an ownership change under Section 382 of the Code. For these reasons, in the event we experience a future change of control, we may not be able to utilize a material portion of the NOLs, research and development credit carryforwards or disallowed interest expense carryovers, even if we attain profitability. In addition, for state income tax purposes, the extent to which states will conform to the federal laws is uncertain and there may be periods during which the use of NOL carryforwards is suspended or otherwise limited, which could accelerate or permanently increase state taxes owed. For example, California imposed limits on the usability of California state NOLs and tax credits in tax years beginning after 2019 and before 2023.

In addition, the tax benefit of NOLs, temporary differences and credit carryforwards are required to be recorded as an asset to the extent that we assess that realization is more likely than not. We believe that recognition of the deferred tax asset arising from these future tax benefits is not likely to be realized and, accordingly, have provided a full valuation allowance against our net deferred tax asset.

We may acquire other businesses which could require significant management attention, disrupt our business, dilute stockholder value and adversely affect our results of operations.

As part of our business strategy, we may in the future make acquisitions or investments in complementary companies, products or technologies that we believe fit within our business model and can address the needs of our existing and potential customers. However, we may not be able to acquire and integrate other companies, products or technologies in a successful manner. We may not be able to find suitable acquisition candidates, and we may not be able to complete such acquisitions on favorable terms, if at all. In addition, the pursuit of potential acquisitions may divert the attention of management and cause us to incur additional expenses in identifying, investigating and pursuing suitable acquisitions, whether or not they are consummated. If we do complete acquisitions, we may not ultimately strengthen our competitive position or achieve our goals, including increases in revenue, and any acquisitions we complete could be viewed negatively by our customers, investors and industry analysts.

Future acquisitions may reduce our cash available for operations and other uses and could result in amortization expense related to identifiable assets acquired. We may have to pay cash, incur debt or issue equity securities to pay for any such acquisition, each of which could adversely affect our financial condition or the value of our common stock. The sale or issuance of equity to finance any such acquisitions would result in dilution to our stockholders. The incurrence of indebtedness to finance any such acquisition would result in fixed obligations and could also include covenants or other restrictions that could impede our ability to manage our operations. In addition, our future results of operations may be adversely affected by the dilutive effect of an acquisition, performance earn-outs or contingent bonuses associated with an acquisition. Furthermore, acquisitions may require large, one-time charges and can result in increased debt or contingent liabilities, adverse tax consequences, additional stock-based compensation expenses and the recording and subsequent amortization of amounts related to certain purchased intangible assets, any of which items could negatively affect our future results of operations. We may also incur goodwill impairment charges in the future if we do not realize the expected value of any such acquisitions.

Also, the anticipated benefit of any acquisition may not materialize, or such acquisition may be prohibited. In September 2019, we entered into the loan and security agreement with Oxford Finance LLC which also restricts our ability to pursue certain mergers, acquisitions, amalgamations or consolidations that we may believe to be in our best interest. Additionally, future acquisitions or dispositions could result in potentially dilutive issuances of our equity securities, the incurrence of debt, contingent liabilities or amortization expenses or write-offs of goodwill, any of which could harm our financial condition. We cannot predict the number, timing or size of future joint ventures or acquisitions, or the effect that any such transactions might have on our operating results.

Risks Related to Governmental Regulation

Changes to the reimbursement rates for BPH treatments and measures to reduce healthcare costs may adversely impact our business.

We derive our revenue from sales of our products to hospitals, ambulatory surgery centers and other healthcare facilities, which typically bill all or a portion of the costs and fees associated with using our products to various third-party payors, including Medicare, Medicaid, private commercial insurance companies, health maintenance organizations and other healthcare-related organizations. Because a vast majority of U.S. patients with BPH are covered by Medicare, the Medicare coverage policy and reimbursement rate are important factors in a physician’s decision to use Aquablation

therapy and limits the prices we may charge for our products. In order to facilitate access for Medicare beneficiaries to new devices, the Centers for Medicare & Medicaid Services, or CMS, the federal agency responsible for administering the Medicare program, grants approval for transitional pass-through payments under the Medicare hospital outpatient prospective payment system, or OPPS, and ambulatory surgical center, or ASC, payment system for medical devices that meet certain criteria. Effective January 1, 2020, hospitals and ASCs receive an additional payment for the single-use handpiece when performing Aquablation therapy in the hospital outpatient setting until December 31, 2022. When that payment expires, hospitals will no longer receive separate reimbursement for our device and instead, receive a single bundled payment rate intended to cover the costs of all items and services, including our products, using during the Aquablation therapy. Accordingly, the additional cost associated with the use of our products may affect the profit margin of the hospital or ASC where the procedure is performed. Some of our target customers may be unwilling to adopt our products in light of potential additional associated cost.

Many BPH patients have Medicaid coverage that is supplemental to Medicare coverage, and some BPH patients may have Medicaid as their primary coverage. Because Medicaid is a state-administered program, Medicaid coverage policies and reimbursement vary by state. Changes in state Medicaid or other non-Medicare government-based programs or payment rates could have an adverse effect on our customer's business.

Finally, some patients may have coverage through private insurance, for example through a marketplace plan set up under the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act, or collectively, the ACA, or through an employer or union group health plan. Private insurance coverage policies can vary and reimbursement is generally higher than government reimbursement, but it varies by sponsor and plan. Commercial payment rates are negotiated between our customers and insurers or other third-party administrators, and commercial payors may also exert downward pressure on payment rates.

Any reduction in reimbursement rates for Aquablation therapy may adversely affect our customers' businesses and cause them to enact cost reduction measures that may include reducing the scope of their programs, which could result in a reduced demand for our product or additional pricing pressures.

Healthcare reform measures could hinder or prevent the commercial success of our AquaBeam Robotic System.

In the United States, there have been, and we expect there will continue to be, a number of legislative and regulatory changes to the healthcare system in ways that may harm our future revenues and profitability and the demand for our AquaBeam Robotic System. Federal and state lawmakers regularly propose and, at times, enact legislation that would result in significant changes to the healthcare system, some of which are intended to contain or reduce the costs of medical products and services. Current and future legislative and regulatory 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 AquaBeam Robotic System. 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 AquaBeam Robotic System.

By way of example, in the United States, the ACA was enacted in March 2010 and substantially changed the way healthcare is financed by both governmental and private insurers, and significantly impacts our industry. The ACA contained a number of provisions, including those governing enrollment in federal healthcare programs, reimbursement changes and fraud and abuse measures, all of which have impacted existing government healthcare programs and will result in the development of new programs. Since its enactment, there have been numerous amendments to the ACA and revisions to implementing regulations, along with judicial, executive and Congressional challenges to certain aspects of the ACA. On June 17, 2021, the Supreme Court ruled that states and individuals lacked standing to challenge the constitutionality of the ACA's individual mandate, post-repeal of its associated tax penalty. Additionally, President Biden issued an executive order that initiated a special enrollment period for purposes of obtaining health insurance coverage through the ACA marketplace, from February 15, 2021 to August 15, 2021. The executive order also instructed certain governmental agencies to review and reconsider their existing policies and rules that limit access to healthcare, including among others, reexamining Medicaid demonstration projects and waiver programs that include work requirements, and policies that create unnecessary barriers to obtaining access to health insurance coverage through Medicaid or the ACA.

In addition, other legislative changes have been proposed and adopted since the ACA was enacted. For example, the Budget Control Act of 2011, among other things, and in connection with subsequent legislation, reduced Medicare payments to providers of, on average, 2% per fiscal year, which went into effect on April 1, 2013 and, due to subsequent legislative amendments to the statute, will remain in effect through 2030, with the exception of a temporary suspension from May 1, 2020 through March 31, 2022 and a 1% reduction from April 1, 2022 through June 30, 2022, unless additional Congressional action is taken. Additionally, the American Taxpayer Relief Act of 2012, among other things, further

reduced Medicare payments to several categories of healthcare providers, including hospitals, and increased the statute of limitations period for the government to recover Medicare overpayments to providers from three to five years.

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 AquaBeam Robotic System;
- our ability to generate revenue and achieve or maintain profitability; and
- the availability of capital.

The current presidential administration and Congress may continue to pursue significant changes to the current healthcare laws. We cannot predict what other laws and regulations will ultimately be enacted and implemented at the federal or state level or the effect of any future legislation or regulation in the United States on our business, financial condition, and results of operations. Future changes in healthcare policy could increase our costs and subject us to additional requirements that may interrupt commercialization of our current and future solutions, decrease our revenue and impact sales of and pricing for our current and future products.

We must comply with anti-kickback, fraud and abuse, false claims, transparency, and other healthcare laws and regulations.

Our current and future operations are subject to various federal and state healthcare laws and regulations. These laws affect our sales, marketing and other promotional activities by limiting the kinds of financial arrangements, including sales programs, we may have with hospitals, physicians or other potential purchasers or users, including patients, of medical devices and services. They also impose additional administrative and compliance burdens on us. In particular, these laws influence, among other things, how we structure our sales, placement and rental offerings, including discount practices, customer support, education and training programs and physician consulting and other service arrangements. The laws that affect our practices and arrangements include, but are not limited to:

- the U.S. federal Anti-Kickback Statute, which prohibits, among other things, persons or entities from knowingly and willfully soliciting, offering, receiving or paying any remuneration, directly or indirectly, overtly or covertly, in cash or in kind, to induce or reward either the referral of an individual for, or the purchase, lease, order, or arranging for or recommending the purchase, lease or order of, any good or service, for which payment may be made, in whole or in part, under federal healthcare programs such as Medicare and Medicaid. The term “remuneration” has been broadly interpreted to include anything of value, and the government can establish a violation of the Anti-Kickback Statute without proving that a person or entity had actual knowledge of, or a specific intent to violate, the law. The Anti-Kickback Statute is subject to evolving interpretations and has been applied by government enforcement officials to a number of common business arrangements in the medical device industry. There are a number of statutory exceptions and regulatory safe harbors protecting some common activities from prosecution; however, those exceptions and safe harbors are drawn narrowly, and there is no exception or safe harbor for many common business activities. Failure to meet all of the requirements of a particular statutory exception or regulatory safe harbor does not make the conduct per se illegal under the Anti-Kickback Statute, but the legality of the arrangement will be evaluated on a case-by-case basis based on the totality of the facts and circumstances. Practices that involve remuneration to those who prescribe, purchase, or recommend medical device products, including discounts, or engaging individuals as speakers, consultants, or advisors, may be subject to scrutiny if they do not fit squarely within an exception or safe harbor. Our practices may not in all cases meet all of the criteria for safe harbor protection from anti-kickback liability. Moreover, there are no safe harbors for many common practices, such as reimbursement support programs, educational or research grants, or charitable donations;
- the U.S. federal civil False Claims Act, which prohibits any person from, among other things, knowingly presenting, or causing to be presented false or fraudulent claims for payment of government funds; knowingly making, using or causing to be made or used, a false record or statement material to an obligation to pay money to the government or knowingly and improperly avoiding, decreasing or concealing an obligation to pay money to the U.S. federal government. In addition, any claims submitted as a result of a violation of the federal Anti-Kickback Statute constitute false claims and are subject to enforcement under the False Claims Act. Actions under the False Claims Act may be brought by the government or as a qui tam action by a private individual in the name of the government and to share in any monetary recovery. Qui tam actions are filed under seal and impose a mandatory duty on the U.S. Department of Justice to investigate such allegations. False Claims Act liability is

potentially significant in the healthcare industry because the statute provides for treble damages and significant mandatory penalties (adjusted annually for inflation) per false claim or statement for violations. Because of the potential for large monetary exposure, healthcare companies often resolve allegations without admissions of liability for significant and sometimes large settlement amounts to avoid the uncertainty of treble damages and per claim penalties that may be awarded in litigation proceedings. Many device manufacturers have resolved investigations of alleged improper activities, including causing false claims to be submitted as a result of the marketing of their products for unapproved and thus non reimbursable uses, and other interactions with prescribers and other customers including those that may have affected their billing or coding practices and submission to the federal government. Moreover, to avoid the risk of exclusion from federal healthcare programs as a result of a False Claims Act settlement, companies may enter into corporate integrity agreements with the government, which may impose substantial costs on companies to ensure compliance. There are also criminal penalties, including imprisonment and criminal fines, for making or presenting a false or fictitious or fraudulent claim or statement to the federal government;

- criminal healthcare statutes that were added by HIPAA, and its implementing regulations, which imposes criminal and civil liability for, among other things, knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program, or knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false statement, in connection with the delivery of, or payment for healthcare benefits, items or services by a healthcare benefit program, which includes both government and privately funded benefits programs; similar to the U.S. federal Anti-Kickback Statute, a person or entity does not need to have actual knowledge of the statute or specific intent to violate them in order to have committed a violation;

- the Physician Payments Sunshine Act, or Sunshine Act, and its implementing regulations, which requires certain manufacturers of drugs, devices, biologics and medical supplies that are reimbursable under Medicare, Medicaid, or the Children's Health Insurance Program to report annually to the CMS information related to certain payments made in the preceding calendar year and other transfers of value to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors), certain non-physician practitioners (physician assistants, nurse practitioners, clinical nurse specialists, certified nurse anesthetists, anesthesiology assistants and certified nurse-midwives) and teaching hospitals, as well as ownership and investment interests held by physicians and their immediate family members; and

- foreign and state laws and regulations, including state payment reporting, anti-kickback and false claims laws, that may apply to items or services reimbursed by any third-party payor, including private insurers; foreign and state laws that require medical device companies to comply with the medical device industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the U.S. federal government and other national governments, or otherwise restrict payments that may be made to healthcare providers and other potential referral sources; and foreign and state laws and regulations that require drug and device manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers or marketing expenditures, many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts.

The scope and enforcement of these laws is substantial and subject to rapid change. The shifting compliance environment and the need to build and maintain robust compliance programs, systems, and processes to comply with different compliance and/or reporting requirements in multiple jurisdictions increase the possibility that we may run afoul of one or more of the requirements or that federal or state regulatory authorities might challenge our current or future activities under these laws. Additionally, we cannot predict the impact of any changes in these laws, whether or not retroactive. 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 physicians or our practice of loaning equipment to customers at no additional cost, could be subject to challenge under one or more of such laws. Any government investigation, even if we are able to successfully defend against it, will require the expenditure of significant resources, is likely to generate negative publicity, harm our reputation and potentially our financial condition and divert the attention of our management. Moreover, any investigation into our practices could cause adverse publicity and require a costly and time-consuming response. If our operations are found to be in violation of any of these laws or any other governmental regulations that may apply to us, we may be subject to significant civil, criminal and administrative penalties, damages, fines, imprisonment of individuals, exclusion from government funded healthcare programs, such as Medicare and Medicaid, imposition of compliance obligations and monitoring, and the curtailment or restructuring of our operations. Any of the foregoing consequences could seriously harm our business and our financial results.

Our AquaBeam Robotic System and our operations are subject to extensive government regulation and oversight in the United States. If we fail to maintain necessary marketing authorizations for our AquaBeam Robotic System, or if approvals or clearances for future products or modifications to existing products are delayed or not issued, it will negatively affect our business, financial condition and results of operations.

Our AquaBeam Robotic System is a medical device subject to extensive regulation in the United States and elsewhere, including by the FDA and its foreign counterparts. Government regulations specific to medical devices are wide ranging and govern, among other things:

- product design, development, manufacture, and release;
- laboratory and clinical testing, labeling, packaging, storage and distribution;
- product safety and efficacy;
- premarketing clearance or approval;
- service operations, including relationships with healthcare providers;
- record keeping;
- product marketing, promotion and advertising, registration, sales and distribution;
- post-marketing surveillance, including reporting of deaths or serious injuries and recalls and correction and removals;
- post-market approval studies; and
- product import and export.

The regulations to which we are subject are complex and have tended to become more stringent over time. Regulatory changes could result in restrictions on our ability to carry on or expand our operations, higher than anticipated costs or lower than anticipated sales. The FDA enforces these regulatory requirements through, among other means, periodic unannounced inspections. We do not know whether we will be found compliant in connection with any future regulatory inspections. Moreover, the FDA and state authorities have broad enforcement powers. Our failure to comply with applicable regulatory requirements could result in enforcement action by any such agency, which may include any of the following sanctions:

- adverse publicity, warning letters, untitled letters, it has come to our attention letters, fines, injunctions, consent decrees and civil penalties;
- repair, replacement, refunds, recall or seizure of our AquaBeam Robotic System;
- operating restrictions, partial suspension or total shutdown of production;
- denial of our requests for regulatory clearance or approval of new products, new intended uses or modifications to existing products;
- withdrawal or suspension of regulatory clearance or approval that have already been granted; or
- criminal prosecution.

If any of these events were to occur, it will negatively affect our business, financial condition and results of operations.

We may not receive, or may be delayed in receiving, the necessary clearances or approvals for our future products or modifications to our current products, and failure to timely obtain necessary clearances or approvals for our future products or modifications to our current products would adversely affect our ability to grow our business.

The FDA classifies medical devices into one of three classes on the basis of the intended use of the device, the risk associated with the use of the device for that indication, as determined by the FDA, and on the controls deemed by the FDA to be necessary to reasonably ensure their safety and effectiveness.

Class I includes devices with the lowest risk to the patient and are those for which safety and effectiveness can be assured by adherence to the FDA's General Controls for medical devices, which include compliance with the applicable

portions of the QSR, facility registration and product listing, reporting of adverse medical events, and truthful and non-misleading labeling, advertising, and promotional materials. Class II devices are subject to the FDA's General Controls, and special controls as deemed necessary by the FDA to ensure the safety and effectiveness of the device. These special controls can include performance standards, post-market surveillance, patient registries and FDA guidance documents.

While most Class I devices are exempt from the 510(k) premarket notification requirement, manufacturers of most Class II devices are required to submit to the FDA a premarket notification under Section 510(k) of the FDCA requesting permission to commercially distribute the device. The FDA's permission to commercially distribute a device subject to a 510(k) premarket notification is generally known as 510(k) clearance. Devices deemed by the FDA to pose the greatest risks, such as life sustaining, life supporting or some implantable devices, or devices that have a new intended use, or use advanced technology that is not substantially equivalent to that of a legally marketed device, are placed in Class III, requiring approval of a premarket approval application, or PMA. Some pre-amendment devices are unclassified, but are subject to FDA's premarket notification and clearance process in order to be commercially distributed. Our AquaBeam Robotic System is a Class II device subject to 510(k) clearance.

Before a new medical device, or a new intended use of, claim for, or significant modification to an existing device, can be marketed in the United States, a company must first submit an application for and receive either 510(k) clearance pursuant to a premarket notification submitted under Section 510(k) of the FDCA, de novo classification, or approval of a PMA from the FDA, unless an exemption applies. Most Class I devices and some Class II devices are exempt from these premarket review requirements. In the 510(k) clearance process, before a device may be marketed, the FDA must determine that a proposed device is substantially equivalent to a legally-marketed predicate device, which includes a device that has been previously cleared through the 510(k) process, a device that was legally marketed prior to May 28, 1976 (pre-amendments device), a device that was originally on the U.S. market pursuant to an approved PMA and later down-classified, or a 510(k)-exempt device. 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 are sometimes required to support substantial equivalence.

In the process of obtaining PMA approval the FDA must determine that a proposed device is safe and effective for its intended use based, in part, on extensive data, including, but not limited to, technical, clinical trial, manufacturing and labeling data.

In the de novo classification process, a manufacturer whose novel device would otherwise be automatically classified as Class III and require the submission and approval of a PMA prior to marketing is able to request down-classification of the device to Class I or Class II on the basis that the device presents a low or moderate risk. If the FDA grants the de novo classification request, the applicant will receive authorization to market the device. This device type may be used subsequently as a predicate device for future 510(k) submissions.

The 510(k), de novo or PMA processes can be expensive, lengthy and unpredictable. The FDA's 510(k) clearance process usually takes from three to 12 months, but can last longer. The process of obtaining a PMA is much more costly and uncertain than the 510(k) clearance process and generally takes from one to three years, or even longer, from the time the application is filed with the FDA. In addition, a PMA or de novo request generally requires the performance of one or more clinical trials. Despite the time, effort and cost, a device may not be approved or cleared by the FDA. Any delay or failure to obtain necessary regulatory clearances or approvals could harm our business. Furthermore, even if we are granted regulatory clearances or approvals, they may include significant limitations on the indicated uses for the device, which may limit the market for the device.

We originally obtained de novo classification of our AquaBeam Robotic System for use in patients with BPH, and have subsequently obtained 510(k) clearances for modifications to the system. Any modification to these systems that has not been previously cleared may require us to submit a new 510(k) premarket notification and obtain clearance, or depending on the change, we may be required to submit a PMA and obtain FDA approval before implementing the change. Specifically, any modification to a 510(k)-cleared device that could significantly affect its safety or effectiveness, or that would constitute a major change in its intended use, design or manufacture, requires a new 510(k) clearance or, possibly, approval of a PMA. The FDA requires every manufacturer to make this determination in the first instance, but the FDA may review any manufacturer's decision. The FDA may not agree with our decisions regarding whether new clearances or approvals are necessary. We have made modifications to 510(k)-cleared products in the past and have determined based on our review of the applicable FDA regulations and guidance that in certain instances new 510(k) clearances or PMA approvals were not required. We may make modifications or add additional features in the future that we believe do not require a new 510(k) clearance or approval of a PMA. If the FDA disagrees with our determination and requires us to submit new 510(k) notifications or PMA applications for modifications to our previously cleared products for which we

have concluded that new clearances or approvals are unnecessary, we may be required to cease marketing or to recall the modified product until we obtain clearance or approval, and we may be subject to significant regulatory fines or penalties. If the FDA requires us to go through a lengthier, more rigorous examination for future products or modifications to existing products than we had expected, product introductions or modifications could be delayed or canceled, which could adversely affect our ability to grow our business.

The FDA or other regulators 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 AquaBeam Robotic System, or any other future device, and any accessories are substantially equivalent to a legally marketed predicate device or safe or effective for their proposed intended uses;
- the disagreement of the FDA with the design or implementation of any clinical trials or the interpretation of data from preclinical studies or clinical trials;
- serious and unexpected adverse device effects experienced by participants in our clinical trials;
- the insufficiency of the data from preclinical studies or clinical trials to support clearance or approval, where required;
- our inability to demonstrate that the clinical and other benefits of the device outweigh the risks;
- the failure of our manufacturing process or facilities to meet applicable requirements; and
- 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.

Our future success depends on our ability to develop, receive regulatory clearance or approval for, and introduce new products that will be accepted by the market in a timely manner. There is no guarantee that the FDA will grant 510(k) clearance or PMA approval of our future products on a timely basis, if at all, and failure to obtain necessary clearances or approvals for our future products would adversely affect our ability to grow our business.

It is important to our business that we build a pipeline of product offerings that address limitations of current BPH products. As such, our success will depend in part on our ability to develop and introduce new products. However, we may not be able to successfully develop and obtain regulatory clearance or approval for product enhancements, or new products for any number of reasons, including due to the cost associated with certain regulatory approval requirements, or these products may not be accepted by physicians or users.

The success of any new product offering or enhancement to an existing product will depend on a number of factors, including our ability to, among others:

- identify and anticipate physician and patient needs properly;
- develop and introduce new products or product enhancements in a timely manner;
- avoid infringing upon the intellectual property rights of third parties;
- demonstrate, if required, the safety and efficacy of new products with data from clinical studies;
- obtain the necessary regulatory clearances or approvals for new products or product enhancements;
- comply fully with the FDA and foreign regulations on marketing of new products or modified products; and
- provide adequate training to potential users of our AquaBeam Robotic System.

If we do not develop new products or product enhancements in time to meet market demand or if there is insufficient demand for these products or enhancements, or if our competitors introduce new products with functionalities that are superior to ours, our results of operations will suffer.

We believe some of our future products will require FDA clearance of a 510(k). Other future products may require the approval of a PMA. In addition, some of our future products may require clinical trials to support marketing authorization and we may not successfully complete these clinical trials. The FDA may not approve or clear these products for the indications that are necessary or desirable for successful commercialization. Indeed, the FDA may refuse our requests for

510(k) clearance or PMA approval of new products. Failure to receive clearance or approval for our new products would have an adverse effect on our ability to expand our business.

Modifications to our marketed products may require new 510(k) clearances or PMA approvals, or may require us to cease marketing or recall the modified products until clearances or approvals are obtained.

Modifications to our AquaBeam Robotic System and associated consumables may require new regulatory approvals or clearances, including 510(k) clearances or PMAs, or require us to recall or cease marketing the modified systems until these clearances or approvals are obtained. The FDA requires device manufacturers to initially make and document a determination of whether or not a modification requires a new approval, supplement or clearance. A manufacturer may determine that a modification could not significantly affect safety or efficacy and does not represent a major change in its intended use, so that no new 510(k) clearance is necessary. However, the FDA can review a manufacturer's decision and may disagree. The FDA may also on its own initiative determine that a new clearance or approval is required. We have made modifications to our AquaBeam Robotic System in the past and may make additional modifications in the future that we believe do not or will not require additional clearances or approvals. If the FDA disagrees and requires new clearances or approvals for the modifications, we may be required to recall and to stop marketing our AquaBeam Robotic System as modified, which could require us to redesign our AquaBeam Robotic System and/or seek new marketing authorizations and harm our operating results. In these circumstances, we may be subject to significant enforcement actions.

If a manufacturer determines that a modification to an FDA-cleared device could significantly affect its safety or effectiveness, or would constitute a major change in its intended use, then the manufacturer must apply for a new 510(k) clearance or possibly a PMA approval. If we determine that modifications to our AquaBeam Robotic System require a new 510(k) clearance or PMA application, we may not be able to obtain those additional clearances or approvals for the modifications or additional indications in a timely manner, or at all. Obtaining clearances and approvals can be a time-consuming process, and 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.

Even though we have obtained marketing authorization for our AquaBeam Robotic System, we are subject to ongoing regulatory review and scrutiny. Failure to comply with post-marketing regulatory requirements could subject us to enforcement actions, including substantial penalties, and might require us to recall or withdraw a product from the market.

Even though we have obtained marketing authorization for our AquaBeam Robotic System, it and any other product for which we obtain clearance or approval, and the manufacturing processes, post-market surveillance, post-approval clinical data and promotional activities for such product, are or, in the case of future products, will be, subject to continued regulatory review, oversight, requirements, and periodic inspections by the FDA and other domestic and foreign regulatory bodies. In particular, we and our suppliers are required to comply with FDA's QSR and other regulations enforced outside the United States which cover the manufacture of our products and the methods and documentation of the design, testing, production, control, quality assurance, labeling, packaging, storage and shipping of medical devices. Regulatory bodies, such as the FDA, enforce the QSR and other regulations through periodic inspections. The failure by us or one of our suppliers to comply with applicable statutes and regulations administered by the FDA and other regulatory bodies, or the failure to timely and adequately respond to any adverse inspectional observations or product safety issues, could result in, among other things, any of the following enforcement actions:

- untitled letters, warning letters, fines, injunctions, consent decrees and civil penalties;
- unanticipated expenditures to address or defend such actions;
- customer notifications for repair, replacement, refunds;
- recall, detention or seizure of our products;
- operating restrictions or partial suspension or total shutdown of production;
- refusing or delaying our requests for 510(k) clearance or PMA of new products or modified products;
- operating restrictions;
- withdrawal of 510(k) clearances on PMA approvals that have already been granted;
- refusal to grant export approval for our products; or

- criminal prosecution.

If any of these actions were to occur it would harm our reputation and cause our product sales and profitability to suffer and may prevent us from generating revenue. Furthermore, our key component suppliers may not currently be or may not continue to be in compliance with all applicable regulatory requirements which could result in our failure to produce our products on a timely basis and in the required quantities, if at all.

In addition, we are required to conduct costly post-market testing and surveillance to monitor the safety or effectiveness of our products, and we must comply with medical device reporting requirements, including the reporting of adverse events and malfunctions related to our products. Later discovery of previously unknown problems with our products, including unanticipated adverse events or adverse events of unanticipated severity or frequency, manufacturing problems, or failure to comply with regulatory requirements such as QSR, may result in changes to labeling, restrictions on such products or manufacturing processes, withdrawal of the products from the market, voluntary or mandatory recalls, a requirement to repair, replace or refund the cost of any medical device we manufacture or distribute, fines, suspension of regulatory approvals, product seizures, injunctions or the imposition of civil or criminal penalties which would adversely affect our business, operating results and prospects.

Our products may cause or contribute to adverse medical events or be subject to failures or malfunctions that we are required to report to the FDA, and if we fail to do so, we would be subject to sanctions that could harm our reputation, business, financial condition and results of operations. The discovery of serious safety issues with our products, or a recall of our products either voluntarily or at the direction of the FDA or another governmental authority, could have a negative impact on us.

We are subject to the FDA's medical device reporting regulations and similar foreign regulations, which require us to report to the FDA when we receive or become aware of information that reasonably suggests that one or more of our products may have caused or contributed to a death or serious injury or malfunctioned in a way that, if the malfunction were to recur, it could cause or contribute to a death or serious injury. The timing of our obligation to report is triggered by the date we become aware of the adverse event as well as the nature of the event. We may fail to report adverse events of which we become aware within the prescribed timeframe. We may also fail to recognize that we have become aware of a reportable adverse event, especially if it is not reported to us as an adverse event or if it is an adverse event that is unexpected or removed in time from the use of the product. If we fail to comply with our reporting obligations, the FDA could take action, including warning letters, untitled letters, administrative actions, criminal prosecution, imposition of civil monetary penalties, revocation of our device clearance or approval, seizure of our products or delay in clearance or approval of future products.

The FDA and foreign regulatory bodies have the authority to require the recall of commercialized products in the event of material deficiencies or defects in design or manufacture of a product or in the event that a product poses an unacceptable risk to health. The FDA's authority to require a recall must be based on a finding that there is reasonable probability that the device could cause serious injury or death. We may also choose to voluntarily recall a product if any material deficiency is found. A government-mandated or voluntary recall by us could occur as a result of an unacceptable risk to health, component failures, malfunctions, manufacturing defects, labeling or design deficiencies, packaging defects or other deficiencies or failures to comply with applicable regulations. Product defects or other errors may occur in the future.

Depending on the corrective action we take to redress a product's deficiencies or defects, the FDA may require, or we may decide, that we will need to obtain new clearances or approvals for the device before we may market or distribute the corrected device. Seeking such clearances or approvals may delay our ability to replace the recalled devices in a timely manner. Moreover, if we do not adequately address problems associated with our devices, we may face additional regulatory enforcement action, including FDA warning letters, product seizure, injunctions, administrative penalties or civil or criminal fines.

Companies are required to maintain certain records of recalls and corrections, even if they are not reportable to the FDA. We may initiate voluntary withdrawals or corrections for our products in the future that we determine do not require notification of the FDA. If the FDA disagrees with our determinations, it could require us to report those actions as recalls and we may be subject to enforcement action. A future recall announcement could harm our reputation with customers, potentially lead to product liability claims against us and negatively affect our sales. Any corrective action, whether voluntary or involuntary, as well as defending ourselves in a lawsuit, will require the dedication of our time and capital, will distract management from operating our business and may harm our reputation and financial results.

Our products must be manufactured in accordance with federal and state regulations, and we could be forced to recall our devices or terminate production if we fail to comply with these regulations.

The methods used in, and the facilities used for, the manufacture of our products must comply with the FDA's QSR, which is a complex regulatory scheme that covers the procedures and documentation of the design, testing, production, process controls, quality assurance, labeling, packaging, handling, storage, distribution, installation, servicing and shipping of medical devices. Furthermore, we are required to verify that our suppliers maintain facilities, procedures and operations that comply with our quality standards and applicable regulatory requirements. The FDA enforces the QSR through periodic announced or unannounced inspections of medical device manufacturing facilities, which may include the facilities of subcontractors. Our products are also subject to similar state regulations and various laws and regulations of foreign countries governing manufacturing.

We or our third-party manufacturers may not take the necessary steps to comply with applicable regulations, which could cause delays in the delivery of our products. For instance, in 2021 we initiated a voluntary recall for a limited number of lots of our handpiece due to certain issues related to our supply chain. We have remedied these issues as we developed our manufacturing processes to scale the production of our handpieces at a higher volume. In addition, failure to comply with applicable FDA requirements or later discovery of previously unknown problems with our products or manufacturing processes could result in, among other things: warning letters or untitled letters; fines, injunctions or civil penalties; suspension or withdrawal of approvals; seizures or recalls of our products; total or partial suspension of production or distribution; administrative or judicially imposed sanctions; the FDA's refusal to grant pending or future clearances or approvals for our products; clinical holds; refusal to permit the import or export of our products; and criminal prosecution of us, our suppliers, or our employees.

Any of these actions could significantly and negatively affect supply of our products. If any of these events occurs, our reputation could be harmed, we could be exposed to product liability claims and we could lose customers and experience reduced sales and increased costs.

Our products, such as our AquaBeam Robotic System, may in the future be subject to product recalls that could harm our reputation, business and financial results.

Medical devices can experience performance problems in the field that require review and possible corrective action. The occurrence of component failures, manufacturing errors, software errors, design defects or labeling inadequacies affecting a medical device could lead to a government-mandated or voluntary recall by the device manufacturer, in particular when such deficiencies may endanger health. The FDA requires that certain corrections and removals be reported to the FDA within 10 working days after such correction or removal is initiated. Companies are required to maintain certain records of recalls, even if they are not reportable to the FDA. We may initiate voluntary recalls involving our AquaBeam Robotic System in the future that we determine do not require notification of the FDA. If the FDA disagrees with our determinations, they could require us to report those actions as recalls. Product recalls may divert management attention and financial resources, expose us to product liability or other claims, harm our reputation with customers and adversely impact our business, financial condition and results of operations.

We may be subject to regulatory or enforcement actions if we engage in improper marketing or promotion of our AquaBeam Robotic System.

Our educational and promotional activities and training methods must comply with FDA and other applicable laws, including the prohibition of the promotion of a medical device for a use that has not been cleared or approved by the FDA. Use of a device outside of its cleared or approved indications is known as "off-label" use. Physicians may use our AquaBeam Robotic System off-label in their professional medical judgment, as the FDA does not restrict or regulate a physician's choice of treatment within the practice of medicine. However, if the FDA determines that our educational and promotional activities or training constitutes promotion of an off-label use, it could request that we modify our training or promotional materials or subject us to regulatory or enforcement actions, including the issuance of warning letters, untitled letters, fines, penalties, injunctions, or seizures, which could have an adverse impact on our reputation and financial results.

It is also possible that other federal, state or foreign enforcement authorities might take action if they consider our educational and promotional activities or training methods 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. In that event, our reputation could be damaged, and adoption of the products could be impaired. Although our policy is to refrain from statements that could be considered off-label promotion of our AquaBeam Robotic System, the FDA or another regulatory agency could disagree and conclude that we have engaged in off-label promotion. It is also possible that other federal, state or foreign enforcement authorities might take action, including, but not limited to, through a

whistleblower action under the federal civil False Claims Act, or FCA, if they consider our business activities constitute promotion of an off-label use, which could result in significant penalties, including, but not limited to, criminal, civil or administrative penalties, treble damages, fines, disgorgement, exclusion from participation in government healthcare programs, additional reporting requirements and oversight if we become subject to a corporate integrity agreement or similar agreement to resolve allegations of non-compliance with these laws, and the curtailment or restructuring of our operations.

In addition, physicians may misuse our products or use improper techniques if they are not adequately trained, potentially leading to injury and an increased risk of product liability. If our devices are misused or used with improper technique, we may become subject to costly litigation by our customers or their patients. Product liability claims are expensive to defend and could divert our management's attention, result in substantial damage awards against us, and harm our reputation.

Product liability claims are expensive to defend and could divert our management's attention, result in substantial damage awards against us, and harm our reputation.

Legislative or regulatory reforms may make it more difficult and costly for us to obtain regulatory clearance or approval of any 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, the FDA may change its clearance and approval policies, adopt additional regulations or revise existing regulations, or take other actions, which may prevent or delay approval or clearance of our future products under development or impact our ability to modify our currently cleared products on a timely basis. 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.

Over the last several years, the FDA has proposed reforms to its 510(k) clearance process, and such proposals could include increased requirements for clinical data and a longer review period, or could make it more difficult for manufacturers to utilize the 510(k) clearance process for their products. For example, in November 2018, FDA officials announced steps that the FDA intended to take to modernize the premarket notification pathway under Section 510(k) of the FDCA. Among other things, the FDA announced that it planned to develop proposals to drive manufacturers utilizing the 510(k) pathway toward the use of newer predicates. These proposals included plans to potentially sunset certain older devices that were used as predicates under the 510(k) clearance pathway, and to potentially publish a list of devices that have been cleared on the basis of demonstrated substantial equivalence to predicate devices that are more than 10 years old.

More recently, in September 2019, the FDA issued revised final guidance describing an optional "safety and performance based" premarket review pathway for manufacturers of "certain, well-understood device types" to demonstrate substantial equivalence under the 510(k) clearance pathway by showing that such device meets objective safety and performance criteria established by the FDA, thereby obviating the need for manufacturers to compare the safety and performance of their medical devices to specific predicate devices in the clearance process. The FDA maintains a list device types appropriate for the "safety and performance based" pathway and continues to develop product-specific guidance documents that identify the performance criteria for each such device type, as well as recommended testing methods, where feasible. The FDA may establish performance criteria for classes of devices similar to ours, and it is unclear the extent to which such performance standards, if established, could impact our ability to obtain marketing authorization or otherwise create competition that may negatively affect our business.

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 statutes, regulations or revisions or reinterpretations of existing regulations may impose additional costs or lengthen review times of any future products or make it more difficult to obtain clearance or approval for, manufacture, market or distribute our products. We cannot determine what effect changes in regulations, statutes, legal interpretation or policies, when and if promulgated, enacted or adopted may have on our business in the future. Such changes could, among other things, require additional testing prior to obtaining clearance or approval; changes to manufacturing methods; recall, replacement or discontinuance of our products; or additional record keeping.

The FDA's and other regulatory authorities' policies may change and additional government regulations may be promulgated that could prevent, limit or delay regulatory clearance or approval of our product candidates. We cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative action, either in the United States or abroad. 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 be subject to enforcement action, and we may not achieve or sustain profitability.

Clinical trials may be necessary to support future product submissions to the FDA. The clinical trial process is lengthy and expensive with uncertain outcomes, and often requires the enrollment of large numbers of patients, and suitable patients may be difficult to identify and recruit. Delays or failures in our clinical trials will prevent us from commercializing any modified or new products and will adversely affect our business, operating results and prospects.

Initiating and completing clinical trials necessary to support any future PMA applications or de novo requests, or to provide additional safety and efficacy data beyond those typically required for a 510(k) clearance, for our possible future product candidates, will be time-consuming and expensive and the outcome uncertain. Moreover, the results of early clinical trials are not necessarily predictive of future results, and any product we advance into clinical trials may not have favorable results in later clinical trials. 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 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. 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. Failure can occur at any stage of clinical testing. Our clinical studies may produce negative or inconclusive results, and we may decide, or regulators may require us, to conduct additional clinical and non-clinical testing in addition to those we have planned.

The initiation and completion of any clinical studies may be prevented, delayed, or halted for numerous reasons. We may experience delays in our ongoing clinical trials for a number of reasons, which could adversely affect the costs, timing or successful completion of our clinical trials, including related to the following:

- we may be required to submit an investigational device exemption application, or IDE, to the FDA, which must become effective prior to commencing certain human clinical trials of medical devices, and the FDA may reject our IDE and notify us that we may not begin clinical trials;
- regulators and other comparable foreign regulatory authorities may disagree as to the design or implementation of our clinical trials;
- regulators and/or an Institutional Review Board, or IRB, or other reviewing bodies may not authorize us or our investigators to commence a clinical trial, or to conduct or continue a clinical trial at a prospective or specific trial site;
- we may not reach agreement on acceptable terms with prospective contract research organizations, or CROs, and clinical trial sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites;
- clinical trials may produce negative or inconclusive results, and we may decide, or regulators may require us, to conduct additional clinical trials or abandon product development programs;
- the number of subjects or patients required for clinical trials may be larger than we anticipate, enrollment in these clinical trials may be insufficient or slower than we anticipate, and the number of clinical trials being conducted at any given time may be high and result in fewer available patients for any given clinical trial, or patients may drop out of these clinical trials at a higher rate than we anticipate;
- our third-party contractors, including those manufacturing products or conducting clinical trials on our behalf, may fail to comply with regulatory requirements or meet their contractual obligations to us in a timely manner, or at all;
- we might have to suspend or terminate clinical trials for various reasons, including a finding that the subjects are being exposed to unacceptable health risks;
- we may have to amend clinical trial protocols or conduct additional studies to reflect changes in regulatory requirements or guidance, which we may be required to submit to an IRB and/or regulatory authorities for re-examination;

- regulators, IRBs, or other parties may require or recommend that we or our investigators suspend or terminate clinical research for various reasons, including safety signals or noncompliance with regulatory requirements;
- the cost of clinical trials may be greater than we anticipate;
- clinical sites may not adhere to the clinical protocol or may drop out of a clinical trial;
- we may be unable to recruit a sufficient number of clinical trial sites;
- regulators, IRBs, or other reviewing bodies may fail to approve or subsequently find fault with our manufacturing processes or facilities of third-party manufacturers with which we enter into agreement for clinical and commercial supplies, the supply of devices or other materials necessary to conduct clinical trials may be insufficient, inadequate or not available at an acceptable cost, or we may experience interruptions in supply;
- approval policies or regulations of the FDA or applicable foreign regulatory agencies may change in a manner rendering our clinical data insufficient for approval; and
- our current or future products may have undesirable side effects or other unexpected characteristics.

Any of these occurrences may significantly harm our business, financial condition and prospects. In addition, many of the factors that cause, or lead to, a delay in the commencement or completion of clinical trials may also ultimately lead to the denial of regulatory approval of our product candidates.

Clinical trials must be conducted in accordance with the laws and regulations of the FDA and other applicable regulatory authorities' legal requirements, regulations or guidelines, and are subject to oversight by these governmental agencies and IRBs at the medical institutions where the clinical trials are conducted. Conducting successful clinical studies will require the enrollment of large numbers of patients, and suitable patients may be difficult to identify and recruit. Patient enrollment in clinical trials and completion of patient participation and follow-up depends on many factors, including the size of the patient population, the nature of the trial protocol, the attractiveness of, or the discomforts and risks associated with, the treatments received by enrolled subjects, the availability of appropriate clinical trial investigators, support staff, and proximity of patients to clinical sites and able to comply with the eligibility and exclusion criteria for participation in the clinical trial and patient compliance. For example, patients may be discouraged from enrolling in our clinical trials if the trial protocol requires them to undergo extensive post-treatment procedures or follow-up to assess the safety and effectiveness of our products or if they determine that the treatments received under the trial protocols are not attractive or involve unacceptable risks or discomforts.

We depend on our collaborators and on medical institutions and CROs to conduct our clinical trials in compliance with good clinical practice, or GCP, requirements. To the extent our collaborators or the CROs fail to enroll participants for our clinical trials, fail to conduct the study in accordance with GCP standards or are delayed for a significant time in the execution of trials, including achieving full enrollment, we may be affected by increased costs, program delays or both. In addition, clinical trials that are conducted in countries outside the United States may subject us to further delays and expenses as a result of increased shipment costs, additional regulatory requirements and the engagement of non-U.S. CROs, as well as expose us to risks associated with clinical investigators who are unknown to the FDA, and different standards of diagnosis, screening and medical care.

Development of sufficient and appropriate clinical protocols to demonstrate safety and efficacy are required and we may not adequately develop such protocols to support clearance and approval. Further, the FDA may require us to submit data on a greater number of patients than we originally anticipated and/or for a longer follow-up period or change the data collection requirements or data analysis applicable to our clinical trials. Delays in patient enrollment or failure of patients to continue to participate in a clinical trial may cause an increase in costs and delays in the approval and attempted commercialization of our products or result in the failure of the clinical trial. In addition, despite considerable time and expense invested in our clinical trials, the FDA may not consider our data adequate to demonstrate safety and efficacy. Such increased costs and delays or failures could adversely affect our business, operating results and prospects.

If the third parties on which we rely to conduct our clinical trials and to assist us with pre-clinical development do not perform as required or expected, we may not be able to obtain regulatory clearance or approval for or commercialize our products.

We may not have the ability to independently conduct our pre-clinical and clinical trials for our future products and we may need to rely on third parties, such as CROs, medical institutions, collaborators, clinical investigators and contract laboratories to conduct such trials. Nevertheless, we are responsible for ensuring that each of our studies is conducted in

accordance with applicable protocol, legal and regulatory requirements and scientific standards, and our reliance on third parties does not relieve us of our regulatory responsibilities. We and these third parties are required to comply with GCP requirements, which are regulations and guidelines enforced by the FDA and comparable foreign regulatory authorities for products in clinical development. Regulatory authorities enforce these GCP requirements through periodic inspections of trial sponsors, principal investigators and trial sites.

If we or any of these third parties fail to comply with applicable GCP regulations, the clinical data generated in our clinical trials may be deemed unreliable and the FDA or comparable foreign regulatory authorities may require us to perform additional clinical trials before clearing or approving our marketing applications. We cannot assure you that, upon inspection, such regulatory authorities will determine that any of our future clinical trials complies with the GCP regulations. To the extent our collaborators or the CROs fail to enroll participants for our clinical trials, fail to conduct the study to GCP standards or are delayed for a significant time in the execution of trials, including achieving full enrollment, including on account of the outbreak of infectious disease, such as the COVID-19 pandemic, or otherwise, we may be affected by increased costs, program delays or both, any resulting data may be unreliable or unusable for regulatory purposes, and we may be subject to enforcement action.

If these third parties do not successfully carry out their contractual duties or regulatory obligations or meet expected deadlines, if these third parties need to be replaced, or if the quality or accuracy of the data they obtain is compromised due to the failure to adhere to our clinical protocols or regulatory requirements or for other reasons, our pre-clinical development activities or clinical trials may be extended, delayed, suspended or terminated, and we may not be able to obtain regulatory approval for, or successfully commercialize, our products on a timely basis, if at all, and our business, operating results and prospects may be adversely affected.

Changes in funding or disruptions at the FDA and other government agencies caused by funding shortages or global health concerns could hinder their ability to hire and retain key leadership and other personnel, or otherwise prevent new or modified products from being developed, approved or commercialized in a timely manner or at all, 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, and other events that may otherwise affect the FDA's ability to perform routine functions. Average review times at the agency have fluctuated in recent years as a result. In addition, government funding of other government agencies on which our operations may rely, including those that fund research and development activities is subject to the political process, which is inherently fluid and unpredictable.

Disruptions at the FDA and other agencies may also slow the time necessary for new product applications to be reviewed and/or approved by necessary government agencies, which would adversely affect our business. For example, over the last several years, the U.S. government has shut down several times and certain regulatory agencies, such as the FDA, have had to furlough critical FDA employees and stop critical activities.

Separately, in response to the COVID-19 pandemic, in March 2020, the FDA announced its intention to postpone most inspections of foreign manufacturing facilities, and on March 18, 2020, the FDA temporarily postponed routine surveillance inspections of domestic manufacturing facilities. Subsequently, in July 2020, the FDA resumed certain on-site inspections of domestic manufacturing facilities subject to a risk-based prioritization system. The FDA utilized this risk-based assessment system to assist in determining when and where it was safest to conduct prioritized domestic inspections. In May 2021, the FDA outlined a detailed plan to move toward a more consistent state of inspectional operations, and in July 2021, the FDA resumed standard inspectional operations of domestic facilities and was continuing to maintain this level of operation as of September 2021. More recently, the FDA has continued to monitor and implement changes to its inspectional activities to ensure the safety of its employees and those of the firms it regulates as it adapts to the evolving COVID-19 pandemic. Regulatory authorities outside the United States may adopt similar restrictions or other policy measures in response to the COVID-19 pandemic. If a prolonged government shutdown occurs, or if global health concerns continue to hinder or prevent the FDA or other regulatory authorities from conducting their regular inspections, reviews, or other regulatory activities, it could significantly impact the ability of the FDA or other regulatory authorities to timely review and process our regulatory submissions, which could have a material adverse effect on our business.

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

We are exposed to the risk that our employees, collaborators, independent contractors and consultants may engage in fraudulent or other illegal activity with respect to our business. Misconduct by these persons could include intentional, reckless and/or negligent conduct or unauthorized activity that violates:

- FDA requirements, including those laws requiring the reporting of true, complete and accurate information to the FDA authorities;
- manufacturing standards;
- federal and state healthcare fraud and abuse laws and regulations; or
- laws that require the true, complete and accurate reporting of financial information or data.

In particular, sales, marketing and business arrangements in the healthcare industry are subject to extensive laws and regulations intended 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, sales commission, customer incentive programs and other business arrangements. Misconduct by these parties could also involve individually identifiable information, including, without limitation, the improper use of information obtained in the course of clinical trials, which could result in regulatory sanctions and serious harm to our reputation. Any incidents or any other conduct that leads to an employee, contractor, or other agent, or our company, receiving an FDA debarment or exclusion by OIG could result in penalties, a loss of business from third parties, and severe reputational harm.

It is not always possible to identify and deter misconduct by our employees and other agents, and the precautions we take to detect and prevent this activity 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 have a significant impact on our business, including the imposition of civil, criminal and administrative penalties, treble damages, monetary fines, disgorgement, imprisonment, possible exclusion from participation in Medicare, Medicaid and other federal healthcare programs, contractual damages, reputational harm, diminished profits and future earnings, additional reporting requirements and oversight if we become subject to a corporate integrity agreement or similar agreement to resolve allegations of non-compliance with these laws, and curtailment of our operations.

We must comply with environmental and occupational safety laws.

Our research and development programs as well as our manufacturing operations involve the controlled use of hazardous materials. Accordingly, we are subject to federal, state and local laws, as well as the laws of foreign countries, governing the use, handling and disposal of these materials. In the event of an accident or failure to comply with environmental or occupational safety laws, we could be held liable for resulting damages, and any such liability could exceed our insurance coverage.

Risks Related to Our Intellectual Property

We have to obtain, maintain and protect our intellectual property and failure to do so may adversely impact our competitive position.

Our commercial success and ability to compete will depend in part in our ability to obtain, maintain and enforce issued patents, trademark and other intellectual property rights and proprietary technology in the United States and elsewhere. If we cannot adequately obtain, maintain and enforce our intellectual property rights and proprietary technology, competitors may be able to use our technologies or the goodwill we have acquired in the marketplace and erode or negate any competitive advantage we may have and our ability to compete, which could harm our business and ability to achieve profitability and/or cause us to incur significant expenses.

We rely on a combination of contractual provisions, confidentiality procedures and patent, trade secret, copyright and trademark laws to protect our proprietary technology, products, services, brands, trade secrets, know-how and data and

prevent others from duplicating our AquaBeam Robotic System or its disposable components, and our other current and future products, services and technology. However, these legal means afford only limited protection and may not:

- prevent our competitors from duplicating our AquaBeam Robotic System or its disposable components, and our other current and future products;
- prevent our competitors from gaining access to our proprietary information and technology; or
- permit us to gain or maintain a competitive advantage.

Our success will depend, in part, on preserving our trade secrets, maintaining the security of our data and know-how and obtaining, maintaining and enforcing other intellectual property rights. We may not be able to obtain, maintain and/or enforce our intellectual property or other proprietary rights necessary to our business or in a form that provides us with a competitive advantage.

Failure to obtain, maintain and/or enforce 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 rights, products and services, and may not provide an adequate remedy if our intellectual property rights are infringed, misappropriated or otherwise violated.

We rely in part on our portfolio of issued patents and pending patent applications in the United States and other countries to protect our intellectual property and competitive position. However, our patent applications may not result in issued patents, and any patents that are issued may not provide meaningful protection against competitors or competitive technologies. Further, the examination process may require us to narrow the claims for our pending patent applications, which may limit the scope of patent protection that may be obtained if these applications issue. It is also possible that we will fail to identify patentable aspects of inventions made in the course of our development, manufacture and commercialization activities before it is too late to obtain patent protection on them. If we fail to timely file for a patent in any jurisdiction, we may be precluded from doing so at a later date. Although we enter into non-disclosure and confidentiality agreements with parties who have access to patentable aspects of our research and development output, such as our employees, corporate collaborators, outside scientific collaborators, suppliers, consultants, advisors 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. Furthermore, 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 any of our patents or pending patent applications, or that we were the first to file for patent protection of such inventions. Moreover, should we become a licensee of a third party's patents or patent applications, depending on the terms of any future in-licenses to which we may become a party, we may not have the right to control the preparation, filing and prosecution of patent applications, or to maintain or enforce the patents, covering technology in-licensed from third parties. Therefore, these patents and patent applications may not be prosecuted, maintained and/or enforced in a manner consistent with the best interests of our business. While we generally apply for patents in those countries where we intend to make, have made, use, import, offer to sell or sell patented products, we may not accurately predict all of the countries where patent protection will ultimately be desirable. Furthermore, the issuance of a patent does not give us the right to practice the patented invention. Third parties may have blocking patents that could prevent us from manufacturing and/or commercializing our own products or services, or otherwise practicing our own technology. Any of these outcomes could impair our ability to prevent competition from third parties, which may have an adverse impact on our business.

The patent positions of medical device companies, including our patent position, may involve complex legal and factual questions that have been the subject of much litigation in recent years, and, therefore, the scope of any patent claims that we have or may obtain cannot be predicted with certainty. Accordingly, we cannot provide any assurances about which of our patent applications will issue, the breadth of any resulting patent, whether any of the issued patents will be found to be infringed, invalid or unenforceable or will be threatened or challenged by third parties, that any of our issued patents have, or that any of our currently pending or future patent applications that mature into issued patents will include, claims with a scope sufficient to protect our products and services. Our pending and future patent applications may not result in the issuance of patents or, if issued, may not issue in a form that will be advantageous to us. The coverage claimed in a patent application can be significantly reduced before the patent is issued. The scope of a patent may also be reinterpreted after issuance. The rights that may be granted under our future issued patents may not provide us with the proprietary

protection or competitive advantages we are seeking. We cannot offer any assurances that the breadth of our granted patents will be sufficient to stop a competitor from developing, manufacturing and commercializing a product or a service in a non-infringing manner that would be competitive with one or more of our products or services, or otherwise provide us with any competitive advantage. Furthermore, any successful challenge to these patents or any other patents owned by or licensed to us after patent issuance could deprive us of rights necessary for our commercial success. Further, there can be no assurance that we will have adequate resources to enforce our patents.

Patents have a limited lifespan. In the United States, the natural expiration of a utility patent is generally 20 years from the earliest effective non-provisional filing date. Further, if we encounter delays in any future regulatory approvals, the period of time during which we could market a product or a service under patent protection could be reduced, and, given the amount of time required for the development, testing and regulatory review of planned or future products or services, patents protecting such products or services might expire before or shortly after such products or services are commercialized. As a result, our patent rights may not provide us with sufficient rights to exclude others from manufacturing or commercializing products or services similar or identical to ours.

If we are unable to obtain, maintain and enforce our issued patent, trademarks and other intellectual property rights related to our products, services or technology, or if the scope of the issued patents, trademarks or other intellectual property right protection is insufficient, our competitors could develop, manufacture and commercialize products, services or technology similar or superior to ours, and our competitive position may be adversely affected. 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 or in a timely manner.

Some of our 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, services 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.

The U.S. federal government retains certain rights in inventions produced with its financial assistance under the Bayh-Dole Act. The federal government retains a "nonexclusive, nontransferable, irrevocable, paid-up license" for its own benefit. The Bayh-Dole Act also provides federal agencies with "march-in rights." March-in rights allow the government, in specified circumstances, to require the patent owner or successors in title to the patent to grant a "nonexclusive, partially exclusive, or exclusive license" to a "responsible applicant or applicants." If the patent owner refuses to do so, the government may grant the license to itself. We cannot be sure that if we acquire intellectual property rights in the future it will be free from government rights or regulations pursuant to the Bayh-Dole Act. If, in the future, we own, co-own or license in technology that is critical to our business that is developed in whole or in part with federal funds subject to the Bayh-Dole Act, our ability to enforce or otherwise exploit patents covering such technology may be adversely affected. Any of the foregoing could have a material adverse effect on our business, financial condition and results of operations.

Additionally, while software and other of our proprietary works may be protected under copyright law, we have chosen not to register any copyrights in these works, and instead, primarily rely on protecting our software as a trade secret. In order to bring a copyright infringement lawsuit in the United States, the copyright must be registered. Accordingly, the remedies and damages available to us for unauthorized use of our software may be limited.

Obtaining and maintaining 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 non-compliance with these requirements.

The U.S. Patent and Trademark Office, or USPTO, and various foreign governmental patent agencies require compliance with a number of procedural, documentary, fee payment and other similar provisions during the patent application process. In addition, periodic maintenance fees, renewal fees, annuity fees and various other government fees on issued patents often must be paid to the USPTO and foreign patent agencies over the lifetime of the patent and/or applications and any patent rights we may obtain in the future. While an unintentional lapse of a patent or patent application 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 non-compliance 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. Non-compliance events that could result in abandonment or lapse of a patent or patent application include, but are not limited to, failure to respond to official actions within prescribed time limits, non-payment of fees and failure to properly legalize and submit formal documents. If we fail to maintain the patents and patent applications covering our products or services, we may not be able to stop a competitor

from marketing products or services that are the same as or similar to our products or services, which would have a material adverse effect on our business, financial condition and results of operations.

We may become involved in lawsuits to protect or enforce our patents and other intellectual property rights, which could be expensive, time-consuming and unsuccessful, and if unsuccessful, the commercial value of our products and services will be adversely affected and our competitive position may be harmed.

Third parties, including our competitors, may currently, or in the future, infringe, misappropriate or otherwise violate our issued patents or other intellectual property rights, and 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. While we are not aware of any unauthorized use of our intellectual property rights, we do not regularly conduct monitoring for unauthorized use at this time. In the future, we may, from time to time, seek to analyze our competitors' products and services, or seek to enforce our rights against potential infringement, misappropriation or violation of our intellectual property rights. The steps we have taken to protect our proprietary rights may not be adequate to enforce our rights as against such infringement, misappropriation or violation of our intellectual property rights. In certain circumstances it may not be practicable or cost-effective for us to enforce our intellectual property rights fully, particularly in certain developing countries or where the initiation of a claim might harm our business relationships. We may also be hindered or prevented from enforcing our rights with respect to a government entity or instrumentality because of the doctrine of sovereign immunity. Our ability to enforce our patent or other intellectual property rights depends on our ability to detect infringement. It may be difficult to detect infringers who do not advertise the components or methods that are used in connection with their products and services. Moreover, it may be difficult or impossible to obtain evidence of infringement in a competitor's or potential competitor's product or service. Thus, we may not be able to detect unauthorized use of, or take appropriate steps to enforce, our intellectual property rights. Any inability to meaningfully enforce our intellectual property rights could harm our ability to compete and reduce demand for our products and services.

In the future, we may become involved in lawsuits to protect or enforce our intellectual property rights. An adverse result in any litigation proceeding could harm our business. In any lawsuit we bring to enforce our intellectual property rights, a court may refuse to stop the other party from using the technology at issue on grounds that our intellectual property rights do not cover the technology in question. If we initiate legal proceedings against a third party to enforce a patent covering a product or a service, the defendant could counterclaim that such patent is invalid or unenforceable. In patent litigation in the United States, defendant counterclaims alleging invalidity or unenforceability are common, and there are numerous grounds upon which a third party can assert invalidity or unenforceability of a patent. Any claims we assert against perceived infringers could also provoke these parties to assert counterclaims against us alleging that we infringe, misappropriate or otherwise violate their intellectual property rights. Grounds for a validity challenge could be an alleged failure to meet any of several statutory requirements, including lack of patentable subject matter, 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 USPTO, or made a misleading statement, during prosecution. Mechanisms for such challenges include re-examination, post-grant review, inter partes review, interference proceedings, derivation proceedings, and equivalent proceedings in foreign jurisdictions (e.g., opposition proceedings).

Decisions by courts and governmental patent agencies may introduce uncertainty in the enforceability or scope of patents and other intellectual properties owned by us. A court may decide that a patent or other intellectual property right of ours is invalid or unenforceable, in whole or in part, construe the patent's claims or other intellectual property narrowly or refuse to stop the other party from using the technology at issue on the grounds that our patents or other intellectual property do not cover the technology in question. An adverse result in any litigation proceeding could put one or more of our patents at risk of being invalidated or interpreted narrowly.

Furthermore, even if our patents or other intellectual property rights 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 administrative proceeding could put one or more of our patents or other intellectual property rights at risk of being invalidated or interpreted narrowly, which could adversely affect our competitive business position, financial condition and results of operations. Moreover, even if we are successful in any litigation, we may incur significant expense in connection with such proceedings, and the amount of any monetary damages may be inadequate to compensate us for damage as a result of the infringement and the proceedings. Even if resolved in our favor, litigation or other legal proceedings relating to intellectual property claims may cause us to incur significant expenses and could distract our management and other 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 our

common stock price. 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. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could have a material adverse effect on our ability to compete in the marketplace. Any of the foregoing could have a material adverse effect on our business, financial condition or results of operations.

We may be unsuccessful in licensing or acquiring intellectual property rights from third parties that may be necessary to develop, manufacture and/or commercialize our current and/or future products or services.

A third party may hold intellectual property rights, including patent rights, that are important or necessary to the development, manufacture and/or commercialization of our current and/or future products or services, in which case we would be need to acquire or obtain a license to such intellectual property rights from such third party. A third party that perceive us to be a competitor may be unwilling to assign or license its intellectual property rights to us. In addition, the licensing or acquisition of third party intellectual property rights is a competitive area, and other companies may also pursue similar strategies to license or acquire such third party's intellectual property rights. Some of these companies may be established and may have a competitive advantage over us due to their size, capital resources and greater development, manufacture and commercialization capabilities. We also may be unable to license or acquire third party intellectual property rights on commercially reasonable terms that would allow us to make an appropriate return on our investment, or at all, or we may be unable to obtain any such license or acquisition at all. If we are unable to successfully obtain rights to necessary third party intellectual property rights, we may not be able to develop, manufacture or commercialize our current and/or future products or services, which could have a material adverse effect on our business, financial condition and results of operations.

We may be subject to claims challenging the ownership or inventorship of our patents and other intellectual property and, if unsuccessful in any of these proceedings, we may be required to obtain licenses from third parties, which may not be available on commercially reasonable terms, or at all, or to cease the development, manufacture and commercialization of our AquaBeam Robotic System and our other current and future products.

We may be subject to claims that current or former employees, collaborators or other third parties have an interest in our current or future patents, patent applications, trade secrets or other intellectual property rights as an inventor or co-inventor. For example, we may have inventorship disputes arise from conflicting obligations of employees, consultants or others who are involved in developing our AquaBeam Robotic System or our other current or future products, services or technology. Although it is our policy to require our employees and contractors who may be involved in the conception or development of intellectual property rights to execute agreements assigning such intellectual property rights to us, we may be unsuccessful in executing such an agreement with each party who, in fact, conceives or develops intellectual property rights that we regard as our own, and we cannot 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. The assignment of intellectual property rights may not be self-executing, or the assignment agreements may be breached, and litigation may be necessary to defend against these and other claims challenging inventorship or ownership. If we 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, valuable intellectual property rights, and other owners may be able to license their rights to other third parties, including our competitors. Such an outcome could have a material adverse effect on our business. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management and other employees.

Additionally, we may be subject to claims from third parties challenging ownership interest in or inventorship of intellectual property rights we regard as our own, based on claims that our agreements with employees or consultants obligating them to assign their intellectual property rights to us are ineffective or in conflict with prior or competing contractual obligations to assign inventions and intellectual property rights to another employer, to a former employer, or to another person or entity. Litigation may be necessary to defend against such claims, and it may be necessary or we may desire to obtain a license to such third party's intellectual property rights to settle any such claim, however, there can be no assurance that we would be able to obtain such license on commercially reasonable terms, if at all. If we 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 AquaBeam Robotic System and our other current and future products, services or technology. If we were to lose exclusive ownership of such intellectual property, other owners may be able to license their rights to other third parties, including our competitors. We also may be

required to obtain and maintain licenses from third parties, including parties involved in any such disputes. Such licenses may not be available on commercially reasonable terms, or at all, or may be non-exclusive. If we are unable to obtain and maintain such licenses, we may need to cease the development, manufacture and commercialization of our AquaBeam Robotic System, or our other current or future products, services and technologies, and we could be prohibited from using our other technologies, features or intellectual property rights that are essential to our products or services, if such technologies or features are found to incorporate or be derived from the trade secrets or other proprietary information of another person or entity, including another or former employers. An inability to incorporate technologies, features or other intellectual property rights that are important or essential to our products or services could have a material adverse effect on our business, financial condition, results of operations, and competitive position, and may prevent us from developing, manufacturing and/or selling our products or services. 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 and our employees. 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 develop, manufacture and/or commercialize our products or services, which could materially and adversely affect our business, financial condition and results of operations. The loss of exclusivity or the narrowing of our patent claims could limit our ability to stop others from using or commercializing similar or identical technology and products. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management and other employees. Any of the foregoing 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, our business and competitive position may be harmed.

In addition to seeking patent protection for our AquaBeam Robotic System and our other current and future products and services, we also rely upon unpatented trade secrets, know-how and continuing technological innovation to develop and maintain a competitive position. We seek to protect such proprietary information, in part, through confidentiality agreements with our employees, collaborators, contractors, advisors, consultants and other third parties and invention assignment agreements with our employees. We also have agreements with some of our consultants that require them to assign to us any inventions created as a result of their working with us. The confidentiality agreements are designed to protect our proprietary information and, in the case of agreements or clauses containing invention assignment, to grant us ownership of technologies that are developed through a relationship with employees or third parties.

We cannot guarantee that we have entered into such agreements with each party that has or may have had access to our trade secrets or proprietary information and we may not enter into such agreements with all employees, consultants and third parties who have been involved in the development of our intellectual property rights. Although we generally require all of our employees, consultants, advisors and any third parties who have access to our proprietary know-how, information, or technology to enter into confidentiality agreements, we cannot provide any assurances that all such agreements have been duly executed. In addition, despite the protections we place on our intellectual property or other proprietary rights, monitoring unauthorized use and disclosure of our intellectual property rights by employees, consultants and other third parties who have access to such intellectual property or other proprietary rights 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. Therefore, we may not be able to prevent the unauthorized disclosure or use of our technical knowledge or other trade secrets by such employees, consultants, advisors or third parties, despite the existence generally of these confidentiality restrictions. These agreements may not provide meaningful protection against the unauthorized use or disclosure of our trade secrets, know-how or other proprietary information in the event the unwanted use is outside the scope of the provisions of the contracts or in the event of any unauthorized use, misappropriation, or disclosure of such trade secrets, know-how, or other proprietary information. There can be no assurances that such employees, consultants, advisors or 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 third parties, including our competitors. If any of our trade secrets were to be lawfully obtained or independently developed by a competitor, we would have no right to prevent them, or those to whom they communicate it, from using that technology or information to compete with us. If any of our trade secrets were to be disclosed to or independently developed by a competitor, our competitive position would be harmed. The exposure of our trade secrets and other proprietary information would impair our competitive advantages and could have a material adverse effect on our business, financial condition and results of operations. In particular, a failure to protect our proprietary rights may allow competitors to copy our technology, which could adversely affect our pricing and market share.

Enforcing a claim that a party illegally disclosed or misappropriated a trade secret is difficult, expensive and time-consuming, and the outcome is unpredictable. In addition, some courts inside and outside the United States are less willing or unwilling to protect trade secrets. If any of our trade secrets were to be lawfully obtained or independently developed by

a competitor or other third party, we would have no right to prevent them from using that technology or information to compete with us. If any of our trade secrets were to be disclosed to, or independently developed by, a competitor or other third party, our competitive position would be materially and adversely harmed. Furthermore, we expect these trade secrets, know-how and proprietary information to over time be disseminated within the industry through independent development, the publication of journal articles describing the methodology, the movement of personnel within the industry and from academic to industry scientific positions.

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. While we have confidence in these individuals, organizations and systems, agreements or security measures may be breached, and we may not have adequate remedies for any breach. In addition, our trade secrets may otherwise become known, or be independently discovered by, competitors. To the extent that our employees, consultants, contractors or collaborators use intellectual property owned by others in their work for us, disputes may arise as to the rights in related or resulting know-how and inventions could have a material adverse effect on our competitive position, business, financial condition, results of operations and prospects.

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.

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 AquaBeam Robotic System or our other current and future products or services, if such technologies or features are found to incorporate or be derived from the trade secrets or other proprietary information of the former employers.

An inability to incorporate technologies or features that are important or essential to our product could have a material adverse effect on our business, financial condition and results of operations, and may prevent us from selling our AquaBeam Robotic System or our other current and future products or services. 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 product, which could have an adverse effect on our business, financial condition and results of operations.

Changes in patent law could diminish the value of patents in general, thereby impairing our ability to protect our existing and future products or services, and could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our current or future patents.

Our ability to obtain patents and the breadth of any patents obtained is uncertain in part because, to date, some legal principles remain unresolved, and there has not been a consistent policy regarding the breadth or interpretation of claims allowed in patents in the United States and other countries. Changes in either patent laws or in interpretations of patent laws in the United States and other countries may diminish the value of our intellectual property rights or narrow the scope of our patent protection, which in turn could diminish the commercial value of our products and services.

Patent reform legislation may pass in the future that could lead to additional uncertainties and increased costs surrounding the prosecution, enforcement and defense of our patents and applications. Furthermore, the U.S. Supreme

Court and the U.S. Court of Appeals for the Federal Circuit have made, and will likely continue to make, changes in how the patent laws of the United States are interpreted.

The United States 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. Depending on actions by the United States 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 own or that we might obtain or license in the future. An inability to obtain, enforce, and defend patents covering our proprietary technologies would materially and adversely affect our business prospects and financial condition.

Similarly, foreign courts have made, and will likely continue to make, changes in how the patent laws in their respective jurisdictions are interpreted. We cannot predict future changes in the interpretation of patent laws or changes to patent laws that might be enacted into law by U.S. and foreign legislative bodies. Those changes may materially affect our patents or patent applications and our ability to obtain additional patent protection in the future. Further, the laws of some foreign countries do not protect proprietary rights to the same extent or in the same manner as the laws of the United States. In addition, any protection afforded by foreign patents may be more limited than that provided under U.S. patent and intellectual property laws. We may encounter significant problems in enforcing and defending our intellectual property both in the United States and abroad. For example, if the issuance in a given country of a patent covering an invention is not followed by the issuance in other countries of patents covering the same invention, or if any judicial interpretation of the validity, enforceability or scope of the claims or the written description or enablement in a patent issued in one country is not similar to the interpretation given to the corresponding patent issued in other countries, our ability to protect our intellectual property rights in those countries may be limited. Changes in either patent laws or in interpretations of patent laws in the United States and other countries may materially diminish the value of our intellectual property rights or narrow the scope of our patent protection. We cannot predict future changes in the interpretation of patent laws or changes to patent laws that might be enacted into law by U.S. and foreign legislative bodies. Those changes may materially affect our patents or patent applications and our ability to obtain additional patent protection in the future. Any of the foregoing could have a material adverse effect on our competitive position, business, financial condition, results of operations and prospects.

If our trademarks 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 our trademarks, trade names and brand names to distinguish our products and services from the products and services of our competitors, and have registered or applied to register many of these trademarks in the United States and certain countries outside the United States. There can be no assurance that our trademark applications will be approved for registration. During trademark 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 may also oppose our trademark applications and may seek to cancel trademark registrations or otherwise challenge our use of the trademarks. Opposition or cancellation proceedings may be filed against our trademark filings in these agencies, and such filings may not survive such proceedings. While we may be able to continue the use of our trademarks in the event registration is not available, particularly in the United States, where trademark rights are acquired based on use and not registration, third parties may be able to enjoin the continued use of our trademarks if such parties are able to successfully claim infringement in court.

Our trademarks or trade names may be challenged, invalidated, infringed, circumvented and circumvented by third parties, and our trademarks could also be diluted, declared generic or determined to be violating or infringing on other marks. We may not be able to protect our rights to these trademarks and trade names, which we need to build name recognition among potential partners and customers in our markets of interest. If any of the foregoing occurs, we could be forced to re-brand our products or services, 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. Further, there can be no assurance that competitors will not infringe our trademarks or that we will have adequate resources to enforce our trademarks. At times, competitors or other third parties may adopt trade names or trademarks similar to ours, thereby impeding our ability to build brand identity and possibly leading to market confusion. Certain of our current or future trademarks may become so well known by the public that their use becomes generic and they lose trademark protection. Over the long term, if we are unable to establish name recognition based on our trademarks and trade names, then we may not be able to compete

effectively and our business may be adversely affected. Any of the foregoing could have a material adverse effect on our competitive position, business, financial condition, operating results and prospects.

We may become a party to intellectual property litigation or administrative proceedings that could be expensive, time-consuming, unsuccessful, and could interfere with our ability to sell and market our products or services.

Our commercial success depends, in part, on our ability to develop, manufacture, market and sell our products and services and use our proprietary technologies without infringing, misappropriating or otherwise violating the proprietary rights and intellectual property of third parties. 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. While we take steps to ensure that we do not infringe upon, misappropriate or otherwise violate the intellectual property rights of others, there may be other more pertinent rights of which we are presently unaware.

Third parties may initiate legal proceedings alleging that we are infringing, misappropriating or otherwise violating their intellectual property rights, the outcome of which would be uncertain and could have a negative impact on the success of our business. It is possible that U.S. and foreign patents and pending patent applications controlled by third parties may be alleged to cover our products and services, or that we may be accused of misappropriating third parties' trade secrets or infringing third parties' trademarks. We may in the future become party to, or be threatened with, adversarial proceedings or litigation regarding intellectual property rights with respect to our products or services, including interference proceedings, post grant review and inter partes review before the USPTO or equivalent foreign regulatory authority. Furthermore, we may also become involved in other proceedings, such as reexamination, derivation or opposition proceedings before the USPTO or other jurisdictional body relating to our intellectual property rights or the intellectual property rights of others. Third parties may assert infringement claims against us based on existing patents or patents that may be granted in the future, regardless of their merit. Because patent applications can take many years to issue and because publication schedules for pending applications vary by jurisdiction, there may be applications now pending of which we are unaware and which may result in issued patents, which our current or future products or services infringe. Also, because the claims of published patent applications can change between publication and patent grant, there may be published patent applications that may ultimately issue with claims that we infringe. There is a risk that third parties may choose to engage in litigation with us to enforce or to otherwise assert their patent rights against us. Even if we believe such claims are without merit, a court of competent jurisdiction could hold that these third party patents are valid and enforceable, and infringed by the use of our products and/or services, which could have a negative impact on the commercial success of our current and any future products or services. If we were to challenge the validity of any such third party 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, in the United States, the patent owner need only prove infringement by a preponderance of the evidence, which is a lower burden of proof. We will have similar burdens to overcome in foreign courts in order to successfully challenge a third party claim of patent infringement.

Our defense of any litigation or interference proceedings may fail and, even if successful, defending such claims brought against us would cause us to incur substantial expenses. If such claims are successfully asserted against us, they may result in substantial costs and distract our management and other employees and could cause us to pay substantial damages. Further, if a patent infringement or other intellectual property rights-related lawsuit were brought against us, we could be forced, including by court order, to cease developing, manufacturing and/or commercializing the infringing product or service. In addition, we could be found liable for monetary damages, including treble damages and attorneys' fees, if we are found to have willfully infringed a patent or other intellectual property right. Although patent, 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 not be able to obtain licenses on commercially reasonable terms, or at all, in which event our business would be materially and adversely affected. Even if we were able to obtain a license, the rights may be nonexclusive, which could result in our competitors and other third parties gaining access to the same intellectual property. Ultimately, if we are unable to obtain such licenses or make any necessary changes to our products or services, we could be forced to cease some aspect of our business operations, which could harm our business significantly.

A finding of infringement, or an unfavorable interference or derivation proceedings outcome could prevent us from developing, manufacturing and/or commercializing our products or services, or force us to cease some or all of our business operations, which could materially harm our business. Claims that we have misappropriated the confidential information or trade secrets of third parties could have a similar negative impact on our business, financial condition,

results of operations and prospects. 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 litigation or administrative proceedings more effectively than we can because of greater financial resources and more mature and developed intellectual property portfolios. We could encounter delays in product or service introductions while we attempt to develop alternative products or services.

If third parties assert infringement, misappropriation or other claims against our customers, these claims may require us to initiate or defend protracted and costly litigation on behalf of our customers, regardless of the merits of these claims. If any of these claims succeed or settle, we may be forced to pay damages or settlement payments on behalf of our customers or may be required to obtain licenses for the products they use. If we cannot obtain all necessary licenses on commercially reasonable terms, our customers may be forced to stop using our products or services.

Additionally, our products include components that we purchase from suppliers 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, trademarks, and competing technologies, may have applied for or obtained, or may in the future apply for or obtain, patents or trademarks that will prevent, limit or otherwise interfere with our ability to make, use, sell and/or export our products, services or to use our technologies or product names. As the number of competitors in our market grows and the number of patents issued in this area increases, the possibility of patent infringement claims against us may increase. Moreover, individuals and groups that are non-practicing entities, commonly referred to as “patent trolls,” purchase 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, services and business operations infringe, misappropriate or otherwise violate the intellectual property rights of others. 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. In addition, suppliers 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.

Third parties may also raise similar 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 and equivalent proceedings in foreign jurisdictions (for example, opposition proceedings). Such proceedings could result in revocation of or amendment to our patents in such a way that they no longer cover our products or services. Two of our applications filed in Europe are currently subject to opposition challenges. The outcome following legal assertions of invalidity and unenforceability is unpredictable. With respect to the validity question, for example, we cannot be certain that there is no invalidating prior art, of which we, our patent counsel, and the patent examiner were unaware during prosecution. If a third party were to prevail on a legal assertion of invalidity and/or unenforceability, we may lose at least part, and perhaps all, of the patent protection on our products or services. Such a loss of patent protection would have a material adverse impact on our business, financial condition, results of operations, and prospects.

Because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during litigation. There could also be public announcements of the results of hearing, motions, or other interim developments. If securities analysts or investors perceive these results to be negative, it could have a material adverse effect on the price of shares of our common stock. Even if we ultimately prevail, a court may decide not to grant an injunction against further infringing activity and instead award only monetary damages, which may not be an adequate remedy. Furthermore, the monetary cost of such litigation and the diversion of the attention of our management could outweigh any benefit we receive as a result of the proceedings. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could have a material adverse effect on our business. Any of the foregoing may cause us to incur substantial costs, and could place a significant strain on our financial resources, divert the attention of management from our core business and harm our reputation.

Our use of “open source” software could subject our proprietary software to general release, adversely affect our ability to sell our AquaBeam Robotic System or our other current or future products and services and subject us to possible litigation.

A portion of the products or technologies licensed, developed and/or distributed by us incorporate so-called “open source” software and we may incorporate open source software into other products in the future. Such 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 code in that software, as

well as distribute our software that uses particular open source software at no cost to the user. We 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 AquaBeam Robotic System and our 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 AquaBeam Robotic System and our other current and future 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.

Intellectual property rights do not necessarily address all potential threats.

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. For example:

- others may be able to make products that are similar to our AquaBeam Robotic System and our other current or future products or utilize similar technology but that are not covered by the claims of our patents or that incorporate certain technology in our AquaBeam Robotic System and our other current and future products that is in the public domain;
- we, or our future licensors or collaborators, might not have been the first to make the inventions covered by the applicable issued patent or pending patent application that we own now or may own or license in the future;
- we, or our future licensors or collaborators, might not have been the first to file patent applications covering certain of our or their inventions;
- others may independently develop similar or alternative technologies or duplicate any of our technologies without infringing our intellectual property rights;
- it is possible that our current or future pending patent applications will not lead to issued patents;
- issued patents that we hold rights to may be held invalid or unenforceable, including as a result of legal challenges by our competitors or other third parties;
- our competitors or other third parties might conduct research and development activities 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;
- the patents of others may harm our business; and
- we may choose not to file a patent in order to maintain certain trade secrets or know-how, and a third party may subsequently file a patent covering such intellectual property.

Any of the foregoing could have a material adverse effect on our business, financial condition and results of operations.

We may not be able to protect our intellectual property and proprietary rights throughout the world.

Third parties may attempt to develop, manufacture and/or commercialize competitive products or services in foreign countries utilizing our proprietary technology, design, trademarks or tradenames in foreign countries where we do not have any patents or patent applications, trademarks, and/or other forms of intellectual property rights and/or where legal recourse may be limited. This may have a significant commercial impact on our foreign business operations.

Filing, prosecuting and defending patents or trademarks on our AquaBeam Robotic System and all of our other current and future products and services in all countries throughout the world would be prohibitively expensive, and the laws of foreign countries particularly those of developing countries, may not protect our rights to the same extent as the laws of the United States. For example, as of May 1, 2021, the Patent Cooperation Treaty had 153 contracting states, and it is only economically feasible to file for protection in a portion of these countries. With the COVID-19 pandemic, some of our foreign associates have requested instructions well in advance of deadlines, which could adversely affect our ability to meet foreign deadlines for filing and prosecuting patent applications. Also, it is unclear to what extent the COVID-19 pandemic will adversely impact operations at some foreign patent offices where we have sought protection. Consequently, we may not be able to prevent third parties from practicing our inventions or trademarks in all jurisdictions outside the United States to the same extent as the United States, or from developing, manufacturing, selling or importing products or services using or incorporating our inventions or trademarks in and into the United States or other jurisdictions. Competitors may use our technologies in jurisdictions where we have not obtained patent or trademark protection to develop, manufacture and/or market their own products or services and, further, may export otherwise infringing products or services to territories where we have patent or trademark protection, but enforcement on infringing activities is inadequate or not as strong as that in the United States. These products or services may compete with our AquaBeam Robotic System or other current or future products or services, and our patents, trademarks or other intellectual property rights may not be effective or sufficient to prevent them from competing.

In addition, we may decide to abandon national and regional patent applications before they are granted. The examination of each national or regional patent application is an independent proceeding. As a result, patent applications in the same family may issue as patents in some jurisdictions, such as in the United States, but may issue as patents with claims of different scope or may even be refused in other jurisdictions. It is also quite common that depending on the country, the scope of patent protection may vary for the same product or technology. For example, certain jurisdictions do not allow for patent protection with respect to method of treatment.

While we seek to protect our intellectual property rights in our expected significant markets, we cannot ensure that we will be able to initiate or maintain similar efforts in all jurisdictions in which we may wish to manufacture or market our products or services. Accordingly, our efforts to protect our intellectual property rights in such countries may be inadequate, which may have an adverse effect on our ability to successfully manufacture or commercialize our products or services in all of our expected significant foreign markets. If we encounter difficulties in protecting, or are otherwise precluded from effectively protecting, the intellectual property rights important for our business in such jurisdictions, the value of these rights may be diminished, and we may face additional competition from others in those jurisdictions. Many companies have encountered significant problems in protecting 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 or marketing of competing products in violation of our intellectual property and proprietary rights generally. Proceedings to enforce our intellectual property and proprietary 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, could put our patent applications at risk of not issuing and could provoke third parties to assert claims against us. We may not prevail in any lawsuits that we initiate, and the damages or other remedies awarded, if any, may not be commercially meaningful. Accordingly, our efforts to enforce our intellectual property and proprietary 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 are forced to grant a license to third parties with respect to any patents relevant to our business, our competitive position may be impaired, and our business, financial condition and results of operations may be adversely affected.

We heavily depend on intellectual property licensed from third parties and our licensors may not always act in our best interest. If we fail to comply with our obligations under our intellectual property licenses, if the licenses are terminated, or if disputes regarding these licenses arise, we could lose significant rights that are important to our business.

We are dependent on patents, know-how and other proprietary technology licensed from AquaBeam LLC. This and other licenses we currently possess or may possess in the future 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. Moreover, if we fail to comply with our obligations under such licenses, or if disputes over intellectual property that we have licensed prevent or impair our ability to maintain our current licensing arrangements on acceptable terms, we may be unable to successfully develop and commercialize the affected technology or products.

Certain provisions in our intellectual property agreements with third parties may also be susceptible to multiple interpretations. The resolution of any contract interpretation disagreement that may arise could affect the scope of our rights to the relevant intellectual property or technology, or affect financial or other obligations under the relevant agreement, either of which could have a material adverse effect on our business, results of operations, financial condition, cash flows and prospects. In spite of our efforts, our current and future licensors might also conclude that we have breached our obligations under our license agreements and might therefore seek to terminate such license agreements, thereby removing or limiting our ability to develop and commercialize products and technology covered by these license agreements. As a result, any termination of these licenses could result in the loss of significant rights and could harm our ability to commercialize our products, including, for example, the AquaBeam Robotic System, and our financial results.

In addition, we may need to obtain additional licenses from our existing licensors and others to allow commercialization of products we may develop. Moreover, 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 technology or products. Even if we are able to obtain such additional licenses, they may be non-exclusive thereby giving our competitors and other third parties access to the same technology licensed to us. Any of the foregoing could have an adverse impact on our business and financial results.

Risks Related to Ownership of Our Common Stock

The market price of our common stock may be volatile or may decline steeply or suddenly regardless of our operating performance, which could result in substantial losses for holders of our common stock, and we may not be able to meet investor or analyst expectations.

The market price of our common stock may be highly volatile and fluctuate or decline significantly in response to numerous factors, many of which are beyond our control, including:

- variations between our actual operating results, or those of companies that are perceived to be similar to us, and the expectations of securities analysts, investors and the financial community;
- any forward-looking financial or operating information we may provide to the public or securities analysts, any changes in this information or our failure to meet expectations based on this information;
- actions of securities analysts who initiate or maintain coverage of us, changes in financial estimates by any securities analysts who follow our Company or our failure to meet these estimates or the expectations of investors;
- additional shares of our common stock being sold into the market by us or our existing stockholders, or the anticipation of such sales;
- hedging activities by market participants;
- announcements by us or our competitors of significant products or features, technical innovations, acquisitions, strategic partnerships, joint ventures or capital commitments;
- changes in operating performance and stock market valuations of companies in our industry, including our competitors;
- changes in third-party payor reimbursement policies;
- an inability to obtain additional funding;
- general economic, industry and market conditions, including price and volume fluctuations in the overall stock market;
- lawsuits threatened or filed against us;

- developments in new legislation and pending lawsuits or regulatory actions, including interim or final rulings by judicial or regulatory bodies; and
- other events or factors, including those resulting from political conditions, election cycles, war or incidents of terrorism, or responses to these events, many of which are outside of our control.

In addition, extreme price and volume fluctuations in the stock markets have affected and continue to affect many life sciences and technology companies' stock prices. Stock prices often fluctuate in ways unrelated or disproportionate to the companies' operating performance. In the past, stockholders have filed securities class action litigation following periods of market volatility. This risk is especially relevant for us because medical technology companies have experienced significant stock price volatility in recent years. If we were to become involved in securities litigation, it could subject us to substantial costs, divert resources and the attention of management from our business and seriously harm our business.

Moreover, because of these fluctuations, comparing our operating results on a period-to-period basis may not be meaningful. You should not rely on our past results as an indication of our future performance. This variability and unpredictability could also result in our failure to meet the expectations of industry or financial analysts or investors for any period. If our revenues or operating results fall below the expectations of analysts or investors or below any forecasts we may provide to the market, or if the forecasts we provide to the market are below the expectations of analysts or investors, the price of our common stock could decline substantially. Such a stock price decline could occur even when we have met any previously publicly stated revenue or earnings forecasts that we may provide.

We do not intend to pay dividends for the foreseeable future and, as a result, your ability to achieve a return on your investment will depend on appreciation in the price of our common stock.

We have never declared or paid any cash dividends on our common stock and do not intend to pay any cash dividends in the foreseeable future. We anticipate that we will retain all of our future earnings for use in the development of our business and for general corporate purposes. Any determination to pay dividends in the future will be at the discretion of our board of directors. In addition, the terms of our loan and security agreement with Oxford Finance LLC restrict our ability to pay dividends to limited circumstances. Accordingly, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investments.

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

As of December 31, 2021, our executive officers, directors and 5% stockholders beneficially own a substantial amount of our common stock. Therefore these stockholders will have the ability to influence us through this ownership position. The interests of these stockholders may not be the same as or may even conflict with your interests. For example, these stockholders could attempt to delay or prevent a change in control of us, even if such change in control would benefit our other stockholders, which could deprive our stockholders of an opportunity to receive a premium for their common stock as part of a sale of us or our assets, and might affect the prevailing market price of our common stock due to investors' perceptions that conflicts of interest may exist or arise. As a result, this concentration of ownership may not be in the best interests of our other stockholders.

Future securities issuances could result in significant dilution to our stockholders and impair the market price of our common stock.

Future issuances of shares of our common stock, or the perception that these sales may occur, could depress the market price of our common stock and result in dilution to existing holders of our common stock. Also, to the extent outstanding options to purchase shares of our common stock are exercised or options, restricted stock units or other stock-based awards are issued or become vested, there will be further dilution. The amount of dilution could be substantial depending upon the size of the issuances or exercises. Furthermore, we may issue additional equity securities that could have rights senior to those of our common stock. As a result, holders of our common stock bear the risk that future issuances of debt or equity securities may reduce the value of our common stock and further dilute their ownership interest.

Delaware law and provisions in our amended and restated certificate of incorporation and bylaws could make a merger, tender offer or proxy contest difficult, thereby depressing the trading price of our common stock.

Our amended and restated certificate of incorporation and bylaws currently in effect contain provisions that could depress the trading price of our common stock by acting to discourage, delay or prevent a change of control of our

company or changes in our management that the stockholders of our company may deem advantageous. These provisions include the following:

- establishing a classified board of directors so that not all members of our board of directors are elected at one time;
- permitting our board of directors to establish the number of directors and fill any vacancies and newly-created directorships;
- providing that directors may only be removed for cause and only by the affirmative vote of the holders of at least a majority of the voting power of all then outstanding shares of our capital stock;
- requiring the approval of holders of two-thirds of our outstanding common stock to amend some provisions in our amended and restated certificate of incorporation and bylaws;
- authorizing the issuance of “blank check” preferred stock that our board of directors could use to implement a stockholder rights plan;
- prohibiting stockholders from calling special meetings of stockholders;
- prohibiting stockholder action by written consent, which has the effect of requiring all stockholder actions to be taken at a meeting of our stockholders;
- providing that the board of directors is expressly authorized to make, alter or repeal our bylaws;
- restricting the forum for certain litigation involving us to Delaware or federal courts, as applicable; and
- establishing advance notice requirements for nominations for election to our board of directors or for proposing matters that can be acted upon by stockholders at annual stockholder meetings.

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

The provisions of our amended and restated certificate of incorporation requiring exclusive forum in the Court of Chancery of the State of Delaware and the federal district courts of the United States for certain types of lawsuits may have the effect of discouraging lawsuits against our directors and officers.

Our amended and restated certificate of incorporation currently in effect provide that, unless we consent in writing to the selection of an alternative forum, the sole and exclusive forum, to the fullest extent permitted by law, for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a breach of a fiduciary duty owed by any director, officer or other employee to us or our stockholders, (iii) any action asserting a claim against us or any director, officer, or other employee arising pursuant to the Delaware General Corporation Law, (iv) any action to interpret, apply, enforce, or determine the validity of our second amended and restated certificate of incorporation or amended and restated bylaws, or (v) any other action asserting a claim that is governed by the internal affairs doctrine, shall be the Court of Chancery of the State of Delaware (or another state court or the federal court located within the State of Delaware if the Court of Chancery does not have or declines to accept jurisdiction), in all cases subject to the court’s having jurisdiction over indispensable parties named as defendants. In addition, our amended and restated certificate of incorporation will provide that the federal district courts of the United States will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act but that the forum selection provision will not apply to claims brought to enforce a duty or liability created by the Exchange Act.

Although we believe these provisions benefit us by providing increased consistency in the application of Delaware law for the specified types of actions and proceedings, the provisions may have the effect of discouraging lawsuits against us or our directors and officers. Alternatively, if a court were to find the choice of forum provision contained in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm our business, financial condition, and operating results. For example, under the Securities Act, federal courts have concurrent jurisdiction over all suits brought to enforce any duty or liability created by the Securities Act, and investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder. Any person or entity purchasing or otherwise acquiring any interest in our shares of capital stock shall be deemed to have notice of and consented to this exclusive forum provision, but

will not be deemed to have waived our compliance with the federal securities laws and the rules and regulations thereunder. These provisions may also result in increased costs for investors seeking to bring a claim against us or any of our directors, officers or other employees.

Risks Related to Being a Public Company

If we are not able to maintain adequate internal control over financial reporting, or if we are unable to produce timely or accurate financial statements, investors may lose confidence in our operating results and the trading price of our common stock could decline.

We are subject to the periodic reporting requirements of the Exchange Act. As a result, our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. As a result of becoming a public company, we will be required, in order to comply with the SEC's rules and regulations, to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting. We designed our disclosure controls and procedures to provide reasonable assurance that information we must disclose in reports we file or submit under the Exchange Act is accumulated and communicated to management, and recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC. As previously reported, in connection with the preparation of our consolidated financial statements, a material weakness in our internal control over financial reporting was identified as of December 31, 2020, which was remediated as of December 31, 2021.

If we are not able to maintain adequate internal control over financial reporting, or if we identify material weaknesses in future periods, we may not be able to produce timely or accurate financial statements, investors may lose confidence in our operating results, and the trading price of our common stock could decline.

In addition, once we cease to be an "emerging growth company" under the federal securities laws, our auditors will be required to express an opinion on the effectiveness of our internal control over financial reporting in order to comply with the SEC's rules and regulations. While we may remain an "emerging growth company" until as late as December 31, 2026, the fiscal year-end following the fifth anniversary of the completion of our IPO, we may cease to be an "emerging growth company" earlier under certain circumstances and that could accelerate our timeline for complying with Section 404(b).

The requirements of being a public company may strain our resources, result in more litigation, and divert management's attention.

As a public company, we are subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, or the Dodd-Frank Act, the listing requirements of The Nasdaq Stock Market, and other applicable securities rules and regulations. Complying with these rules and regulations has increased and will increase our legal and financial compliance costs, make some activities more difficult, time consuming or costly, and increase demand on our systems and resources. The Exchange Act requires, among other things, that we file annual, quarterly, and current reports with respect to our business and operating results. The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. We are required to disclose changes made in our internal control and procedures on a quarterly basis. In order to maintain and, if required, improve our disclosure controls and procedures and internal control over financial reporting to meet this standard, significant resources and management oversight may be required. As a result, management's attention may be diverted from other business concerns, which could adversely affect our business and operating results. We may also need to hire additional employees or engage outside consultants to comply with these requirements, which will increase our costs and expenses.

In addition, changing laws, regulations, and standards relating to corporate governance and public disclosure are creating uncertainty for public companies, increasing legal and financial compliance costs, and making some activities more time consuming. These laws, regulations, and standards are subject to varying interpretations, in many cases due to their lack of specificity and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. We intend to invest resources to comply with evolving laws, regulations, and standards, and this investment may result in increased general and administrative expenses and a diversion of management's time and attention from revenue-generating activities to compliance activities. If our efforts to comply with new laws, regulations, and standards differ from the activities intended by regulatory or governing bodies due to ambiguities related to their application and practice, regulatory authorities may initiate legal proceedings against us and our business may be adversely affected.

These new rules and regulations may make it more expensive for us to obtain director and officer liability insurance and, in the future, we may be required to accept reduced coverage or incur substantially higher costs to obtain coverage. These factors could also make it more difficult for us to attract and retain qualified members of our Board, particularly to serve on our audit committee and compensation committee, and qualified executive officers.

By disclosing information in this Annual Report on Form 10-K and in future filings required of a public company, our business and financial condition will become more visible, which we believe may result in threatened or actual litigation, including by competitors and other third parties. If those claims are successful, our business could be seriously harmed. Even if the claims do not result in litigation or are resolved in our favor, the time and resources needed to resolve them could divert our management's resources and seriously harm our business.

General Risks

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 AquaBeam Robotic System, even if the regulatory or legal action is unfounded or not material to our operations.

General economic and financial market conditions may exacerbate our business risks.

Global macroeconomic conditions and the world's financial markets remain susceptible to significant stresses, resulting in reductions in available credit and government spending, economic downturn or stagnation, foreign currency fluctuations and volatility in the valuations of securities generally. Our customers and distributors may respond to such economic pressures by reducing or deferring their capital spending or reducing staff. Furthermore, unfavorable changes in foreign exchange rates versus the U.S. dollar could increase our product and labor costs, thus reducing our gross profit.

If securities or industry analysts either do not publish research about us or publish inaccurate or unfavorable research about us, our business or our market, or if they change their recommendations regarding our common stock adversely, the trading price or trading volume of our common stock could decline.

The trading market for our common stock will be influenced in part by the research and reports that securities or industry analysts may publish about us, our business, our market or our competitors. If one or more analysts initiate research with an unfavorable rating or downgrade our common stock, provide a more favorable recommendation about our competitors or publish inaccurate or unfavorable research about our business, our common stock price would likely decline. If any analyst who may cover us were to cease coverage of us or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause the trading price or trading volume of our common stock to decline.

We are an emerging growth company and a "smaller reporting company," and any decision on our part to comply only with certain reduced reporting and disclosure requirements applicable to emerging growth companies and smaller growth companies could make our common stock less attractive to investors.

We are an "emerging growth company" as defined in the JOBS Act and, for as long as we continue to be an emerging growth company, we may choose to take advantage of exemptions from various reporting requirements applicable to other public companies but not to emerging growth companies, including:

- not being required to have our independent registered public accounting firm audit our internal control over financial reporting under Section 404 of the Sarbanes-Oxley Act;
- reduced disclosure obligations regarding executive compensation in our periodic reports and annual report on Form 10-K; and

- exemptions from the requirements of holding non-binding advisory votes on executive compensation and stockholder approval of any golden parachute payments not previously approved.

We could be an emerging growth company for up to five years following the completion of our initial public offering. Our status as an emerging growth company will end as soon as any of the following takes place:

- 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;”
- the date on which we have issued, in any three-year period, more than $1.0 billion in non-convertible debt securities; or
- December 31, 2026.

We cannot predict if investors will find our common stock less attractive if we choose to rely on any of the exemptions afforded to emerging growth companies. If some investors find our common stock less attractive because we rely on any of these exemptions, there may be a less active trading market for our common stock and the market price of our common stock may be more volatile.

We are an emerging growth company, as defined in 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. We have elected to avail ourselves of this exemption and, therefore, for new or revised accounting standards applicable to public companies, we will be subject to an extended transition period until those standards would otherwise apply to private companies. As a result, our consolidated financial statements may not be comparable to the financial statements of issuers who are required to comply with the effective dates for new or revised accounting standards that are applicable to public companies, which may make comparison of our financials to those of other public companies more difficult.

Even after we no longer qualify as an “emerging growth company,” we may still qualify as a “smaller reporting company,” which would allow us to continue to take advantage of many of the same exemptions from disclosure requirements, including, among other things, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act and reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

Our principal office is located at 900 Island Drive, Redwood City, California, where we lease approximately 43,485 square feet of office space. We lease this space under a lease that terminates on October 29, 2023. We intend to add new facilities as we add employees, and we believe that suitable additional or substitute space will be available as needed to accommodate any such expansion of our operations.

On December 31, 2021, we entered into a lease for two existing buildings, comprising approximately 158,221 square feet of space, located in San Jose, California. The term of the lease is anticipated to commence no later than December 31, 2022, and continue for 122 months following the lease commencement, with two five year options to extend the term of the lease. We intend to relocate our operations to the facility in San Jose prior to the end of the term of the lease for our facility in Redwood City, California.

Item 3. Legal Matters

From time to time, we may be involved in legal proceedings arising in the ordinary course of our business. We are not presently a party to any legal proceedings that, in the opinion of management, would have a material adverse effect on our business. Regardless of outcome, litigation can have an adverse impact on us due to defense and settlement costs, diversion of management resources, negative publicity and reputation harm, and other factors.

Item 4. Mine Safety Disclosures

None.

Part II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issue Purchases of Equity Securities

Market Information

Our common stock has been listed on the Nasdaq Global Select Market under the symbol “PRCT” since September 14, 2021. Prior to that date, there was no public trading market for our common stock.

Holders of Common Stock

As of February 28, 2022, there were 204 holders of record of our common stock. The actual number of stockholders is greater than this number of record holders and includes stockholders who are beneficial owners but whose shares are held in street name by brokers and other nominees.

Dividend Policy

We have never declared or paid any cash dividends on our capital stock. 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. Any future determination related to our dividend policy will be made at the discretion of our board of directors after considering our financial condition, results of operations, capital requirements, business prospects and other factors our board of directors deems relevant, and subject to the restrictions contained in any future financing instruments. In addition, our ability to pay cash dividends is currently restricted by the terms of our loan and security agreement with Oxford Finance LLC. Our ability to pay cash dividends on our capital stock in the future may also be limited by the terms of any preferred securities we may issue or agreements governing any additional indebtedness we may incur.

Recent Sales of Unregistered Securities

During the year ended December 31, 2021, we issued the following securities which were not registered under the Securities Act of 1933, as amended:

1. In June 2021, we completed the sale of an aggregate of 4,447,530 shares of our Series G redeemable convertible preferred stock to certain investors at a purchase price of $19.1116 per share, for an aggregate purchase price of approximately $85.0 million. All of our shares of Series G redeemable convertible preferred stock converted into shares of our common stock immediately prior to the closing of our initial public offering.

2. During 2021, warrants were exercised for an aggregate of 82,159 shares of our Series E redeemable convertible preferred stock. All of our shares of Series E redeemable convertible preferred stock converted into shares of our common stock immediately prior to the closing of our initial public offering.

3. We granted stock options to employees, directors and consultants, covering an aggregate of 7,950,935 shares of our common stock under our 2008 Stock Plan, at exercise prices ranging from $4.37 to $12.35 per share, and have issued 2,613,697 shares of common stock upon exercise of stock options under our 2008 Stock Plan with an aggregate exercise price of $6.1 million.

The issuances of the securities in the transactions described above were deemed to be exempt from registration under the Securities Act in reliance upon Section 4(a)(2) of the Securities Act or Rules 506 and 701 promulgated thereunder. The securities were issued directly by the registrant and did not involve a public offering or general solicitation. The recipients of such securities represented their intentions to acquire the securities for investment purposes only and not with a view to, or for sale in connection with, any distribution thereof.

Use of Proceeds

On September 17, 2021, we closed our initial public offering (“IPO”) of our common stock in which we issued and sold 6,556,000 shares of our common stock, and sold an additional 983,400 shares of common stock upon the full exercise of the underwriters’ option to purchase additional shares at a price to the public of $25.00 per share. The shares were offered pursuant to registration statements on Form S-1 (File Nos. 333-258898 and 333-259527), which became effective on September 14, 2021. The underwriters of the offering were led by BofA Securities, Inc. and Goldman Sachs & Co. LLC. The offering did not terminate until after the sale of all shares of common stock registered on the registration statements.

We raised approximately $172.4 million in proceeds, net of underwriting discounts and commissions of $13.2 million and estimated offering costs of $2.9 million. No payments for such expenses were made directly or indirectly to (i) any of our officers or directors or their associates, (ii) any persons owning 10% or more of any class of our equity securities or (iii) any of our affiliates.

The net proceeds from our IPO have been used and will be used, together with our cash and cash equivalents: (i) to hire additional sales and marketing personnel; (ii) to fund product development and research and development activities; and (iii) for working capital and other general corporate purposes.

We may also use a portion of the net proceeds from the IPO to acquire, in-license or invest in products, technologies or businesses that are complementary to our business.

There has been no material change in the intended use of proceeds from our IPO as described in our final prospectus dated September 14, 2021 and filed with the SEC pursuant to Rule 424(b)(4) on September 16, 2021.

Issuer Purchases of Equity Securities

None.

Item 6. [Reserved]

Item 7. 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 together with our financial statements and related notes are included elsewhere in this report. 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 in the section titled "Risk Factors" and elsewhere in this report. Please also see the section titled "Cautionary Note Regarding Forward-Looking Statements."

Overview

We are a surgical robotics company focused on advancing patient care by developing transformative solutions in urology. We develop, manufacture and sell the AquaBeam Robotic System, an advanced, image-guided, surgical robotic system for use in minimally invasive urologic surgery, with an initial focus on treating benign prostatic hyperplasia, or BPH. BPH is the most common prostate disease and impacts approximately 40 million men in the United States. The AquaBeam Robotic System employs a single-use disposable handpiece to deliver our proprietary Aquablation therapy, which combines real-time, multi-dimensional imaging, personalized treatment planning, automated robotics and heat-free waterjet ablation for targeted and rapid removal of prostate tissue. We designed our AquaBeam Robotic System to enable consistent and reproducible BPH surgery outcomes. We believe that Aquablation therapy represents a paradigm shift in the surgical treatment of BPH by addressing compromises associated with alternative surgical interventions. We designed Aquablation therapy to deliver effective, safe and durable outcomes for males suffering from lower urinary tract symptoms, or LUTS, due to BPH that are independent of prostate size and shape or surgeon experience. We have developed a significant and growing body of clinical evidence, which includes nine clinical studies and over 100 peer-reviewed publications, supporting the benefits and clinical advantages of Aquablation therapy. As of December 31, 2021, we had an install base of 130 AquaBeam Robotic Systems globally, including 78 in the United States.

Our U.S. pivotal trial, the WATER study, is the only FDA pivotal study randomized against transurethral resection of prostate, or TURP, which is the historical standard of care for the surgical treatment of BPH. In this study, Aquablation therapy demonstrated superior safety and non-inferior efficacy compared to TURP across prostate sizes between 30 ml and 80 ml, and superior efficacy in a subset of patients with prostates larger than 50 ml. We have established strong relationships with key opinion leaders, or KOLs, within the urology community and collaborated with key urological societies in global markets. This support has been instrumental in facilitating broader acceptance and adoption of Aquablation therapy. As a result of our strong KOL network and our compelling clinical evidence, Aquablation therapy has been added to clinical guidelines of various professional associations, including the American Urological Association.

In the United States, we sell our products to hospitals. We are initially targeting 860 high-volume hospitals that perform, on average, more than 200 resective procedures annually and account for approximately 70% of all hospital-based resective procedures. Over time, we will gradually expand our focus to also include mid- and low-volume hospitals. These customers in turn bill various third-party payors, such as commercial payors and government agencies, for treatment payment of each patient. Effective in 2021, all local Medicare Administrative Contractors, or MACs, which represent 100% of eligible Medicare patients, issued final positive local coverage determinations to provide Medicare beneficiaries with access to Aquablation therapy in all 50 states. We also have favorable coverage decisions from several large commercial payors, including Anthem, Cigna, Humana, Health Care Service Corporation, BlueCross – Massachusetts, Emblem Health, and CareFirst. We plan to leverage these recent successes in our active discussions with all commercial payors to establish additional positive national and regional coverage policies. Outside of the United States, we have ongoing efforts in key markets to expand established coverage and improve payment which we believe will expand patient access to Aquablation therapy.

We manufacture the AquaBeam Robotic System, the handpiece, integrated scope and other accessories at our facility in Redwood City, California. This includes supporting the supply chain distribution and logistics of the various components. Components, sub-assemblies and services required to manufacture our products are purchased from numerous global suppliers. Each AquaBeam Robotic System is shipped to our customers with a third-party manufactured ultrasound system and probe. We utilize a well-known third-party logistics provider located in the United States and the Netherlands to ship our products to our customers globally.

We generated revenue of $34.5 million and $7.7 million, for the years ended December 31, 2021 and 2020, respectively, and incurred a net loss of $59.9 million and $53.0 million for the years ended December 31, 2021 and 2020, respectively. As of December 31, 2021, we had an accumulated deficit of $261.5 million.

We completed our IPO in September 2021, which raised $172.4 million, net of issuance costs. Previously, our primary sources of capital have been from private placements of redeemable convertible preferred securities and debt financing agreements. As of December 31, 2021, we have raised $337.1 million from private placements of redeemable convertible preferred securities from our investors. We expect our expenses will increase for the foreseeable future, in particular as we continue to make substantial investments in sales and marketing, operations and research and development. Moreover, we expect to incur additional expenses as a result of operating as a public company, including legal, accounting, insurance, compliance with the rules and regulations of the SEC and those of any stock exchange on which our securities are traded, investor relations, and other administrative and professional services expenses. Based on our operating plan, we currently believe that our existing cash and cash equivalents, anticipated revenue and available debt financing arrangements will be sufficient to meet our capital requirements and fund our operations through at least the next twelve months from the issuance date of the financial statements. If these sources are insufficient to satisfy our liquidity requirements, we may seek to sell additional public equity or debt securities or obtain an additional credit facility. The sale of equity and convertible debt securities may result in dilution to our stockholders and, in the case of preferred equity securities or convertible debt, those securities could provide for rights, preferences or privileges senior to those of our common stock. Debt financing, if available, may involve covenants restricting our operations or our ability to incur additional debt. Any debt financing or additional equity that we raise may contain terms that are not favorable to us or our stockholders. Additional financing may not be available at all, or in amounts or on terms unacceptable to us. If we are unable to obtain additional financing, we may be required to delay the development, commercialization and marketing of our products.

Factors Affecting Our Performance

We believe there are several important factors that have impacted and that we expect will impact our operating performance and results of operations for the foreseeable future. While these factors may present significant opportunities for us, they also pose significant risks and challenges that we must address. See the section titled “Risk Factors” for more information. These factors include:

- *Grow our install base of AquaBeam Robotic Systems:* As of December 31, 2021, we had an install base of 130 AquaBeam Robotic Systems globally, including 78 in the United States. In the United States, we are initially focused on driving adoption of Aquablation therapy among urologists that perform hospital-based resective BPH surgery. We are initially targeting 860 high-volume hospitals that we estimate perform, on average, more than 200 resective procedures annually and account for approximately 70% of all hospital-based resective procedures. To penetrate these hospitals, we will continue to increase our direct team of capital sales representatives, who are focused on driving system placement within hospitals by engaging with key surgeons and decision makers to educate them about the compelling value proposition of Aquablation therapy. As we increase our install base of AquaBeam Robotic systems our revenue will increase as a result of the system sale and resulting utilization.

- *Increase system utilization:* Our revenue is significantly impacted by the utilization of our AquaBeam robotic system. Once we place a system within a hospital our objective is to establish Aquablation therapy as the surgical treatment of choice for BPH. Within each hospital we are initially focused on targeting urologists who perform medium-to-high volumes of resective procedures and converting their resective cases to Aquablation therapy. To accomplish this, we will continue expanding our team of highly trained Aquablation representatives and clinical specialists who are focused on driving system utilization within the hospital, providing education and training support and ensuring excellent user experiences. As urologists gain experience with Aquablation therapy we will leverage their experiences to capture more surgical volumes and establish Aquablation therapy as the surgical standard of care.

- *Reimbursement and coverage decisions by third-party payors.* Healthcare providers in the United States generally rely on third-party payors, principally federal Medicare, state Medicaid and private health insurance plans, to cover all or part of the cost of procedures using our AquaBeam Robotic System. The revenue we are able to generate from sales of our products depends in large part on the availability of sufficient reimbursement from such payors. Effective in 2021, all local MACs, representing 100% of eligible Medicare patients, issued final positive local coverage determinations to provide Medicare beneficiaries with access to Aquablation therapy in all 50 states. We believe that these favorable coverage decisions have been a catalyst for hospital adoption of our AquaBeam Robotic System. We believe our strong body of clinical evidence and support from key societies, supplemented by the momentum from Medicare coverage, have led to favorable coverage decisions from several large commercial payors, including Anthem, Cigna, Humana, Health Care Service Corporation, BlueCross – Massachusetts, Emblem Health, and CareFirst. We plan to leverage these recent successes in our active discussions with commercial payors to establish additional positive national and regional coverage policies. We believe that additional commercial payor coverage will contribute to increasing utilization of our system over

time. Outside of the United States, we have ongoing efforts in key markets to expand established coverage and further improve patient access to Aquablation therapy.

- *Cost of sales.* The results of our operations will depend, in part, on our ability to increase our gross margins by more effectively managing our costs to produce our AquaBeam Robotic System and single-use disposable handpieces, and to scale our manufacturing operations efficiently. We anticipate that as we expand our sales and marketing efforts and drive further sales growth, our purchasing costs on a per unit basis may decrease, and in turn improve our gross margin. As our commercial operations continue to grow, we expect to continue to realize operating leverage through increased scale efficiencies.

- *Investment in research and development to drive continuous improvements and innovation.* We are currently developing additional and next generation technologies to support and improve Aquablation therapy to further satisfy the evolving needs of surgeons and their patients as well as to further enhance the usability and scalability of the AquaBeam Robotic System. We also plan to leverage our treatment data and software development capabilities to integrate artificial intelligence and machine learning to enable computer-assisted anatomy recognition and improved treatment planning and personalization. Our future growth is dependent on these continuous improvements which require significant resources and investment.

Impact of the COVID-19 Pandemic

The COVID-19 outbreak and the consequential economic disruptions have negatively impacted and may continue to negatively impact our operations, revenue and overall financial condition. In response to the pandemic, numerous state and local jurisdictions 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 are located, issued “shelter-in-place” or “stay at home” orders restricting non-essential activities, travel, and business operations, subject to certain exceptions for necessary activities. Such orders or restrictions have resulted in our headquarters closing, slowdowns and delays, travel restrictions, and cancellation of training and other events, among other effects, thereby negatively impacting our operations. Additionally, in the United States, governmental authorities have 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 have decreased the number of BPH procedures generally, and consequently could have slowed adoption of our AquaBeam therapy and may have impacted our ability to sell our AquaBeam Robotic System. We believe the number of our systems sold has been impacted as health care organizations globally have prioritized the treatment of patients with COVID-19, and as health care organizations continue to experience consequential economic disruptions from the COVID-19 pandemic such as budget shortfalls and staffing shortages. Numerous procedures have been and in certain jurisdictions in which we operate are continuing to be cancelled or delayed as a result of local public health measures and hospital policies. We have also experienced disruptions, and may experience future disruptions, including: delays in sales personnel becoming fully trained and productive; difficulties and delays in physician outreach and training physicians to use our AquaBeam Robotic System; restrictions on personnel to travel; delays in follow-ups of our clinical studies; challenges with maintaining adequate supply from third-party manufacturers of components and finished goods and distribution providers; and access to physicians for training and case support.

While many restrictions associated with COVID-19 have more recently been relaxed, the longevity and extent of the various COVID-19 pandemic remains uncertain, including due to the emergence and impact of the COVID-19 variants and continued economic disruptions. These measures and challenges may continue for the duration of the pandemic and may negatively impact our revenue growth while the pandemic continues.

Components of Our Results of Operations

Revenue

We generate our revenue primarily from the capital portion of our business, which includes sales and rentals of our AquaBeam Robotic System, and from the recurring revenue associated with sales of our single-use disposable handpieces that are used during each surgery performed with our system. Other revenue is derived primarily from service and repair and extended service contracts with our existing customers. We expect our revenue to increase in absolute dollars for the foreseeable future as we continue to focus on driving adoption of Aquablation therapy, and increased system utilization, though it may fluctuate from quarter to quarter.

The following table presents revenue by significant geographical locations for the periods indicated:

	Year Ended December 31,	
	2021	2020
United States	84 %	53 %
Outside the United States	16 %	47 %
Germany	*	31 %

* Less than 10% of total net revenues for the period indicated.

We expect that both our U.S. and international revenue will increase in the near term as we continue to expand the install base of AquaBeam Robotic Systems and increase the related customer utilization. We expect our increase in revenues in absolute dollars to be larger in the United States.

Cost of Sales and Gross Margin

Cost of sales consists primarily of manufacturing overhead costs, material costs, warranty and service costs, direct labor and other direct costs such as shipping costs. A significant portion of our cost of sales currently consists of manufacturing overhead costs. These overhead costs include compensation for personnel, including stock-based compensation, facilities, equipment and operations supervision, quality assurance and material procurement. We expect our cost of sales to increase in absolute dollars for the foreseeable future primarily as, and to the extent, our revenue grows, or we make additional investments in our manufacturing capabilities, though it may fluctuate from period to period.

We calculate gross margin percentage as gross profit divided by revenue. Our gross margin has been and will continue to be affected by a variety of factors, primarily, product and geographic mix and the resulting average selling prices, production volumes, manufacturing costs and product yields, and to a lesser extent the implementation of cost reduction strategies. We expect our gross margin to increase over the long term as our production volume increases and as we spread the fixed portion of our manufacturing overhead costs over a larger number of units produced, thereby significantly reducing our per unit manufacturing costs, though it may fluctuate from quarter to quarter. Our gross margins can fluctuate due to geographic mix. To the extent we sell more systems and handpieces in the United States, we expect our margins will increase due to the higher average selling prices as compared to sales outside of the United States.

Operating Expenses

Research and Development

Research and development, or R&D, expenses consist primarily of engineering, product development, regulatory affairs, consulting services, materials, depreciation and other costs associated with products and technologies being developed. These expenses include employee and non-employee compensation, including stock-based compensation, supplies, materials, quality assurance expenses, consulting, related travel expenses and facilities expenses. We expect our R&D expenses to increase in absolute dollars for the foreseeable future as we continue to develop, enhance and commercialize new products and technologies, though it may fluctuate from quarter to quarter. However, we expect our R&D expenses as a percentage of revenue to vary over time depending on the level and timing of initiating new product development efforts.

Selling, General and Administrative

Selling, general and administrative, or SG&A, expenses consist primarily of compensation for personnel, including stock-based compensation, related to selling, marketing, clinical affairs, professional education, finance, information technology, and human resource functions. SG&A expenses also include commissions, training, travel expenses, promotional activities, conferences, trade shows, professional services fees, audit fees, legal fees, insurance costs and general corporate expenses including allocated facilities-related expenses. Clinical expenses include clinical trial design, clinical site reimbursement, data management and travel expenses. We expect our SG&A expenses to increase in absolute dollars for the foreseeable future as we expand our commercial infrastructure and incur additional fees associated with operating as a public company, including legal, accounting, insurance, compliance with the rules and regulations of the SEC and those of any stock exchange on which our securities are traded, investor relations, and other administrative and professional services expenses, though it may fluctuate from quarter to quarter. However, over time, we expect our SG&A expenses to decrease as a percentage of revenue.

Interest and Other Income (Expense), Net

Interest Expense

Interest expense consists primarily of interest expense from our loan payable.

Interest and Other Income (Expense), Net

Interest and other income (expense), net, consists primarily of interest income from our cash and cash equivalents balances, and fair value adjustments from our redeemable convertible preferred stock warrant liabilities and our loan facility derivative liability.

In connection with our sales of redeemable convertible preferred stock, we issued warrants to purchase shares of our Series B, Series D and Series E redeemable convertible preferred stock. We classify these warrants as a liability on our balance sheets that we remeasure to fair value at each reporting date with the corresponding change in fair value being recognized in our statements of operations. Upon completion of our IPO in September 2021, the redeemable convertible preferred stock warrant liability was reclassified to additional paid-in capital in stockholders' equity (deficit) for warrants exercised and statement of operations for warrants expired.

Additionally, in connection with the loan facility, we are obligated to pay a fee upon the earlier occurrence of a defined liquidity event, including but not limited to, a merger or sale of our assets or voting stock, or our achieving a $200 million trailing twelve months revenue target, in each case, by September 2029. The fee is calculated at the time of the liquidity event occurrence to be $1.0 million if only the first installment has been drawn, $2.0 million if the first two installments have been drawn, $2.4 million if the first three installments have been drawn, or $3.0 million if all four installments have been drawn, in each case, upon the occurrence of the liquidity event. We adjust the carrying values of the loan facility derivative liability for changes in fair value and recognize those changes in interest and other income (expense), net.

Results of Operations

Comparison of Years Ended December 31, 2021 and 2020

The following table shows our results of operations for the years ended December 31, 2021 and 2020:

	Year Ended December 31,		Change	
	2021	2020	$	%
	(in thousands, except percentages)			
Revenue	$ 34,473	$ 7,717	$ 26,756	347 %
Cost of sales	18,608	8,972	9,636	107
Gross profit	15,865	(1,255)	17,120	1,364
Gross margin	*46 %*	*(16)%*		
Operating expenses:				
Research and development	18,993	16,275	2,718	17
Selling, general and administrative	51,036	30,272	20,764	69
Total operating expenses	70,029	46,547	23,482	50
Loss from operations	(54,164)	(47,802)	(6,362)	(13)
Interest expense	(5,810)	(5,261)	(549)	(10)
Interest and other income (expense), net	121	44	77	175
Net loss	$ (59,853)	$ (53,019)	(6,834)	(13)

Revenue

	Year Ended December 31,		Change	
	2021	2020	$	%
	(in thousands, except percentages)			
System sales and rentals	$ 21,868	$ 4,158	$ 17,710	426 %
Hand pieces and other consumables	11,527	3,421	8,106	237
Service	1,078	138	940	681
Total revenue	$ 34,473	$ 7,717	26,756	347

Revenue increased $26.8 million, or 347%, to $34.5 million during the year ended December 31, 2021, compared to $7.7 million during the year ended December 31, 2020. The growth in revenue was primarily attributable to an increase of $24.2 million in the sales volumes of both our AquaBeam Robotic System and our single-use disposable handpieces in the United States, resulting from the expansion of insurance coverage and the increase in personnel in our sales and marketing organizations. In addition, sales of both our AquaBeam Robotic System and our single-use disposable handpieces outside of the United States increased by $1.6 million in sales volume.

Cost of Sales and Gross Margin

Cost of sales increased $9.6 million, or 107%, to $18.6 million during the year ended December 31, 2021, compared to $9.0 million during the year ended December 31, 2020. The increase in cost of sales was primarily attributable to the growth in the number of units sold.

Gross margin increased to 46% during the year ended December 31, 2021, compared to a negative 16% for the year ended December 31, 2020. The increase in gross margin was primarily attributable to the growth in unit sales, which allowed us to spread the fixed portion of our manufacturing overhead costs over more production units, and a higher percentage of sales in the United States at higher average selling prices.

Research and Development Expenses

R&D expenses increased $2.7 million, or 17%, to $19.0 million during the year ended December 31, 2021, compared to $16.3 million during the year ended December 31, 2020. The increase in R&D expenses was primarily due to employee-related expenses of our R&D organization. These expenses support ongoing product improvements and the development of additional and next generation technologies.

Selling, General and Administrative Expenses

SG&A expenses increased $20.8 million, or 69%, to $51.0 million during the year ended December 31, 2021, compared to $30.3 million during the year ended December 31, 2020. The increase in SG&A expenses was primarily due to employee-related expenses of our sales and marketing organization and reimbursement and administrative organizations as we expanded our infrastructure to drive and support our growth in revenue.

Interest Expense

Interest expense increased $0.5 million to $5.8 million during the year ended December 31, 2021, compared to $5.3 million during the year ended December 31, 2020. The increase in interest expense was due to higher borrowings during the year ended December 31, 2021 because we increased our borrowings during the year ended December 31, 2020 under our debt financing arrangements.

Interest and Other Income (Expense), Net

Interest and other income (expense), net, was consistent during the years ended December 31, 2021 and 2020.

Liquidity and Capital Resources

Overview

We completed our IPO in September 2021, which raised $172.4 million, net of issuance costs. Previously, our primary sources of capital have been from private placements of redeemable convertible preferred securities and debt financing agreements.

As of December 31, 2021, we had cash and cash equivalents of $304.3 million, an accumulated deficit of $261.5 million, and $50.0 million outstanding on our loan facility. We expect our expenses will increase for the foreseeable future, in particular as we continue to make substantial investments in sales and marketing, operations and research and development. Moreover, we expect to incur additional expenses as a result of operating as a public company, including legal, accounting, insurance, compliance with the rules and regulations of the SEC and those of any stock exchange on which our securities are traded, investor relations, and other administrative and professional services expenses. Our future funding requirements will depend on many factors, including:

- the degree and rate of market acceptance of our products and Aquablation therapy;
- the scope and timing of investment in our sales force and expansion of our commercial organization;
- the impact on our business from the ongoing and global COVID-19 pandemic and the end of the COVID-19 pandemic, or any other pandemic, epidemic or outbreak of an infectious disease;
- the scope, rate of progress and cost of our current or future clinical trials and registries;
- the cost of our research and development activities;
- the cost and timing of additional regulatory clearances or approvals;
- the costs associated with any product recall that may occur;
- the costs associated with the manufacturing of our products at increased production levels;
- the costs of attaining, defending and enforcing our intellectual property rights;
- whether we acquire third-party companies, products or technologies;
- the terms and timing of any other collaborative, licensing and other arrangements that we may establish;
- the emergence of competing technologies or other adverse market developments; and
- the rate at which we expand internationally.

Based on our operating plan, we currently believe that our existing cash and cash equivalents, anticipated revenue and available debt financing arrangements will be sufficient to meet our capital requirements and fund our operations through at least the next twelve months from the issuance date of the financial statements. We have based this estimate on assumptions that may prove to be wrong, and we may need to utilize additional available capital resources. If these sources are insufficient to satisfy our liquidity requirements, we may seek to sell additional public equity or debt securities or obtain an additional credit facility. The sale of equity and convertible debt securities may result in dilution to our stockholders and, in the case of preferred equity securities or convertible debt, those securities could provide for rights, preferences or privileges senior to those of our common stock. Debt financing, if available, may involve covenants restricting our operations or our ability to incur additional debt. Any debt financing or additional equity that we raise may contain terms that are not favorable to us or our stockholders. Additional financing may not be available at all, or in amounts or on terms unacceptable to us. If we are unable to obtain additional financing, we may be required to delay the development, commercialization and marketing of our products.

Indebtedness

In September 2019, we entered into a loan facility for up to $75.0 million available in four installments. We borrowed $25.0 million in September 2019 and an additional $25.0 million in March 2020. The third installment is for $10.0 million and was originally available for draw through March 31, 2021 contingent upon our achieving $20.0 million trailing six months revenue in any month before March 31, 2021.

The remaining $15.0 million was originally available for draw through June 30, 2021 contingent upon achieving $25.0 million in trailing six months revenue. In January 2021, the third installment was amended to be available for draw through March 31, 2022 contingent upon our achieving $6.4 million trailing six months revenue prior to June 30, 2021, and the fourth installment was amended to be available for draw though June 30, 2022. The facility bears an interest rate of the greater of (i) 9.37% and (ii) 7.17% plus 30-day LIBOR. The facility includes customary negative covenants that, among other things, restrict our ability to incur indebtedness or enter into certain change of control transactions. It also contains customary events of default that would result in the termination of the commitments under the facility and permit the lender to accelerate payment on outstanding borrowings. As of December 31, 2021, we were in compliance with all covenants under the facility. The initial term of the facility is 60 months with interest-only payments, with the repayment of principal being amortized over a period of: 36 months, if we fail to achieve the revenue target for the third installment, 24 months if we achieve the revenue target for the third installment but have not raised at least $50.0 million in an initial public offering, or 12 months if we achieve the revenue target for the third installment and raise at least $50.0 million in an initial public offering. Upon completion of raising over $50.0 million in our IPO in September 2021, interest-only payments was extended an additional 12 months followed by 12 months amortization of principal and interest. We pledged substantially all of our assets as collateral for the loan. Commencing with the quarter ended June 30, 2021, we are required to achieve revenue for the previous six months ended equal to 70% of the forecast for the commensurate quarterly period. Additionally, in connection with the loan facility, we are obligated to pay a fee upon the earlier occurrence of a defined liquidity event, including but not limited to, a merger or sale of our assets or voting stock, or our achieving a $200.0 million trailing twelve months revenue target, in each case, by September 2029. The fee is calculated at the time of the liquidity event occurrence to be $1.0 million if only the first installment has been drawn, $2.0 million if the first two installments have been drawn, $2.4 million if the first three installments have been drawn, or $3.0 million if all four installments have been drawn, in each case, upon the occurrence of the liquidity event. As of December 31, 2021, we had $50.0 million outstanding under the loan facility.

Cash Flows

The following table summarizes our cash flows for the years ended December 31, 2021 and 2020:

	Year Ended December 31,	
	2021	2020
	(in thousands)	
Net cash (used in) provided by:		
Operating activities	$ (57,334)	$ (48,343)
Investing activities	(592)	(233)
Financing activities	262,116	106,771
Net increase in cash, cash equivalents and restricted cash	$ 204,190	$ 58,195

Net Cash Used in Operating Activities

During the year ended December 31, 2021, net cash used in operating activities was $57.3 million, consisting primarily of a net loss of $59.9 million and an increase in net operating assets of $4.7 million, partially offset by non-cash charges of $7.2 million. The cash used in operations was primarily due to our net loss due to the increase in operating expenses to support our commercialization and development activities. The expansion of our commercialization resulted in an increase in inventory, accounts receivable and prepaid expenses and other current assets, partially offset by an increase in other current liabilities, accrued compensation and accrued interest expense. Non-cash charges consisted primarily of stock-based compensation and depreciation.

During the year ended December 31, 2020, net cash used in operating activities was $48.3 million, consisting primarily of a net loss of $53.0 million and an increase in net operating assets of $0.5 million, partially offset by non-cash charges of $5.2 million. The cash used in operations was primarily due to the increase in net loss primarily due to the increase in operating expenses and interest expense to service the loan payable all of which support the commercialization and development. The expansion of our commercialization and development activities resulted in an increase in inventory, partially offset by an increase in accrued compensation and interest. Non-cash charges consisted primarily of depreciation and stock-based compensation.

Net Cash (Used in) Provided by Investing Activities

During the year ended December 31, 2021, net cash used in investing activities was $0.6 million, consisting of purchases of property and equipment.

During the year ended December 31, 2020, net cash used in investing activities was $0.2 million, consisting of purchases of property and equipment.

Net Cash Provided by Financing Activities

During the year ended December 31, 2021, net cash provided by financing activities was $262.1 million, consisting primarily of net proceeds from our IPO of $172.4 million and the issuance of shares of our Series G redeemable convertible preferred stock of $84.7 million.

During the year ended December 31, 2020, net cash provided by financing activities was $106.8 million, consisting primarily of net proceeds from the issuance of shares of our Series F redeemable convertible preferred stock of $76.5 million and notes payable of $24.7 million.

Contractual Commitments and Contingencies

The information included in Note 9 to the consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K is incorporated herein by reference.

Off-Balance Sheet Arrangements

We did not have during the periods presented, and we do not currently have any off-balance sheet arrangements, such as structured finance, special purpose entities or variable interest entities.

Critical Accounting Policies and Estimates

Management’s discussion and analysis of our 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. The preparation of the financial statements requires us to make estimates and assumptions for the reported amounts of assets, liabilities, revenue, expenses and related disclosures. 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 and any such differences may be material.

While our significant accounting policies are more fully described in Note 2 of our consolidated financial statements included elsewhere in this prospectus, we believe the following discussion addresses our most critical accounting policies, which are those that are most important to the portrayal of our financial condition and results of operations and require our most difficult, subjective and complex judgments.

Revenue Recognition

Revenue is derived primarily from the sales of the AquaBeam Robotic Systems, and handpieces that are for one-time use during each surgery using the AquaBeam Robotic System. The AquaBeam Robotic System contains both software and non-software components that are delivered together as a single product and generally contain a one-year warranty.

To determine revenue recognition for arrangements that we determine are within the scope of Accounting Standards Codification, or ASC, Topic 606, "*Revenue from Contracts with Customers*," or ASC 606, we perform the following five steps: (i) identify the contract 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 the performance obligations. We only apply the five-step model to contracts when it is probable that we will collect the consideration we are entitled to in exchange for the goods or services we transfer to the customer. At contract inception, once the contract is determined to be within the scope of ASC 606, we assess the goods or services promised within each contract and determines those that are performance obligations and assesses whether each promised good or service is distinct based on the contract.

The contracts are typically in the form of an agreement and a purchase order from the customer. Our AquaBeam Robotic System sales generally contain multiple products and services and can include a combination of the following performance obligations: robotic system, handpieces and consumables, and service.

The Company determines the transaction price it expects to be entitled to in exchange for transferring the promised product to the customer, which is based on the invoiced price for the products. All prices are at fixed amounts per the sales agreement with the customer and there are generally no discounts, rebates or other price concessions or a right of return, once the agreement is signed.

For multiple-element arrangements, revenue is allocated to each performance obligation based on its relative standalone selling price. Standalone selling prices are based on observable prices at which we separately sell the products or services. If a standalone selling price is not directly observable, then we estimate the standalone selling price considering market conditions and entity-specific factors including, but not limited to, features and functionality of the products and services, geographies, and type of customer. We regularly review standalone selling prices and updates these estimates as necessary.

We recognize revenue as the performance obligations are satisfied by transferring control of the product or service to a customer. We generally recognize revenue for the performance obligations at the following points in time:

AquaBeam Robotic Systems - For systems (including system components and system accessories) sold directly to end customers, revenue is recognized when we transfer control to the customer, which is generally at the time of delivery. Systems rented for a fixed monthly fee during an evaluation period, typically three to 12 months, are recognized as revenue straight-line during the lease term, in accordance with ASC 842, and are not material. For systems sold following an evaluation period, revenue is recognized generally once sales terms are mutually agreed (as the system is already installed at the customer site). For systems sold through distributors, revenue is recognized generally at the time of delivery. Our system arrangements generally do not provide a right of return. The systems are generally covered by a one-year service agreement. The service agreements have a stand alone selling price and are typically recognized as deferred revenue and amortized over the one-year service period.

Hand pieces and other consumables - Revenue from sales of handpieces and other consumables is recognized when control is transferred to the customers, which generally occurs at the time of shipment but also occurs at the time of delivery.

Service - Service revenue, inclusive of the amounts associated with the AquaBeam Robotic System warranties, is recognized over the term of the service period, as the customer benefits from the services throughout the service period.

We determined that certain promises in the multiple-element arrangements, such as installation, training and certain ancillary products, are immaterial, and/or do not represent separate performance obligations for which transaction price is allocated.

The timing of revenue recognition may differ from the timing of invoicing to customers. We record deferred revenue when revenue is recognized subsequent to invoicing, such as service contracts, which are recognized ratably as revenue over the performance period, which is not material.

Our typical payment terms are between approximately 30 to 90 days. We expense shipping and handling costs as incurred and include them in the cost of sales. In those cases where shipping and handling costs are billed to customers, we classify the amounts billed as a component of revenue. Taxes collected from customers and remitted to governmental authorities are excluded from revenue. We expense any incremental costs of obtaining a contract, including but not limited to, sales commissions, as and when incurred as the expected amortization period of the incremental costs would have been less than one year and are reported in selling, general and administrative expense in the statements of operations and comprehensive loss.

We must make significant assumptions regarding the future collectability of amounts receivable from customers to determine whether revenue recognition criteria have been met. If collectability is not assured at the time of shipment, we defer revenue until such criteria have been met. Our standard terms and conditions of sale do not allow for product returns, and we generally do not allow product returns, except in the case of damaged goods, and we have not experienced any significant returns of our products.

Stock-Based Compensation

We maintain a payment equity incentive plan to provide long-term incentives for employees, consultants and members of the board of directors. The plan allows for the issuance of non-statutory and incentive stock options to employees and non-statutory stock options to consultants and non-employee directors.

We are required to determine the fair value of equity incentive awards and recognize compensation expense for all equity incentive awards made to employees and directors, including employee stock options. Stock-based compensation expense is recognized over the requisite service period in the statements of operations and comprehensive loss. We use the straight-line method for expense attribution. We amortize all stock-based compensation over the requisite service period of the awards, which is generally the same as the vesting period of the awards. We amortize the grant date fair value on a straight-line basis over the expected service periods. For performance-based grants, we estimate when and if they will be earned. If we consider such award to be probable, we recognize expense over the estimated service period, which would be the estimated period of performance. If we do not consider such awards probable of achievement, we recognize no amount of stock-based compensation. Additionally, we have elected to account for forfeitures as they occur.

The valuation model used for calculating the fair value of awards for stock-based compensation expense is the Black-Scholes option pricing model. The Black-Scholes option pricing model requires us to make assumptions and judgments about the variables used in the calculation, including the following:

Fair Value of Common Stock. As discussed in the subsection titled "—Common Stock Valuations" below, the fair value of the shares of our common stock underlying the stock options has historically been determined by our board of directors. Because there has been no public market for our common stock prior to the IPO, our board of directors had determined the fair value of our common stock at the time of grant of the option by considering a number of objective and subjective factors. Following the completion of our IPO in September 2021, the fair value of our common stock is determined based on the closing price of our common stock on The Nasdaq Global Market.

Expected Term. The expected term of stock options represents the weighted-average period that the stock options are expected to remain outstanding. We estimated the expected term based on the simplified method, which is the average of the weighted-average vesting period and contractual term of the option.

Expected Volatility. Since there has been no public market for our common stock and limited company specific historical volatility, we have determined the share price volatility for options granted based on an analysis of the volatility of a peer group of publicly traded companies. In evaluating similarity, we consider factors such as industry, stage of life cycle and size.

Risk-Free Interest Rate. The risk-free interest rate is based on the U.S. Treasury yield in effect at the time of the grant for zero-coupon U.S. Treasury notes with remaining terms similar to the expected term of the options.

Expected Dividend Rate. We assumed the expected dividend rate to be zero as we have never paid dividends and have no current plans to do so.

See Note 8 to our consolidated financial statements included elsewhere in this prospectus for information concerning certain of the specific assumption we used in applying the Black-Scholes option pricing model to determine the fair value of our stock options granted in the years ended December 31, 2021 and 2020. If factors change and we employ different assumptions, stock-based compensation expense may differ significantly from what we have recorded in the past. If there

are any modifications or cancellations of the underlying unvested securities, we may be required to accelerate, increase or cancel any remaining unearned stock-based compensation expense.

Common Stock Valuations

Our intent has been to grant all options with an exercise price not less than the fair value of our common stock underlying those options on the date of grant. We have determined the estimated fair value of our common stock at each valuation date in accordance with the guidelines outlined in the American Institute of Certified Public Accountants Practice Aid, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation*, or the Practice Aid. Our board of directors, with the assistance of management, developed these valuations using significant judgment and taking into account numerous factors, including:

- valuations of our common stock with the assistance of independent third-party valuation specialists;
- our stage of development and business strategy, including the status of research and development efforts, of our products and product candidates, and the material risks related to our business and industry;
- our results of operations and financial position, including our levels of available capital resources;
- the valuation of publicly traded companies in the life sciences and medical device sectors, as well as recently completed mergers and acquisitions of peer companies;
- the prices of our redeemable convertible preferred stock sold to investors in arm's length transactions and the rights, preferences, and privileges of our redeemable convertible preferred stock relative to those of our common stock;
- the likelihood of achieving a liquidity event for the holders of our common stock, such as an initial public offering or a sale of our company given prevailing market conditions;
- the inability of our stockholders to freely trade our common stock in the public markets, resulting in a discount to reflect the lack of marketability of our common stock based on the weighted-average expected time to liquidity;
- trends and developments in our industry; and
- external market conditions affecting the life sciences and medical device industry sectors.

Our board of directors determined the fair value of our common stock by first determining the aggregate enterprise value of our business using the market approach, income approach or from the value implied by the latest round of equity financing, and then allocating the value among the various classes of our equity securities to derive a per share value of our common stock. The Practice Aid identifies various available methods for allocating enterprise value across classes and series of capital stock to determine the estimated fair value of common stock at each valuation date. In accordance with the Practice Aid, we considered the option pricing method, or OPM, under which shares are valued by creating a series of call options with exercise prices based on the liquidation preferences and conversion terms of each equity class. The estimated fair values of the preferred and common stock are inferred by analyzing these options.

For all options granted prior to our IPO in September 2021, our board allocated the enterprise value based on the OPM, which was determined to be the most appropriate method based on our stage of development and other relevant factors. OPM treats the rights of the holders of preferred and common stock as equivalent to call options on any value of the enterprise above certain break points of value based upon the liquidation preferences of the holders of preferred stock, as well as their rights to participation and conversion. Thus, the estimated value of the common stock can be determined by estimating the value of its portion of each of these call option rights. When valuing options granted around the time of an equity financing that is considered arms-length, OPM derives our equity value from the price of our securities issued in the equity financing. Following the completion of our IPO in September 2021, the fair value of our common stock is determined based on the closing price of our common stock on The Nasdaq Global Market.

Redeemable Convertible Preferred Stock Warrant Liability

We have issued freestanding warrants to purchase shares of convertible preferred stock to investors in connection with sales of certain of our redeemable convertible preferred stock. We classified these warrants as a derivative liability because they contained liquidation features that were not solely within our control. We recorded the fair value of the warrant on the balance sheet at the inception of such classification and adjusted to fair value at each financial reporting date. The changes in the fair value of the warrants were recorded in the statement of operations as a component of interest and other income

or expense as appropriate. We continued to adjust the carrying value of the redeemable convertible preferred stock warrant liability for changes in the fair value of the warrants until the earlier of: the exercise of the warrants, at which time the liability was reclassified to temporary equity or the expiration of the warrant, at which time the entire amount was reversed and reflected in the consolidated statements of operations and comprehensive loss. Our assumptions with regard to the warrant valuation were based on estimates of the valuation of the underlying preferred stock, volatility, interest rate and such estimates could have varied significantly. Upon the completion of the Company's IPO in September 2021, warrants exercised for redeemable convertible preferred stock were automatically converted into 62,454 shares of common stock and the remaining unexercised warrants expired.

Loan Facility Derivative Liability

We have determined that our obligation to pay success fees to a lender upon a successful liquidation event or achieving a revenue target represents freestanding financial instruments. The instrument is classified as a long-term liability in the consolidated balance sheets and is subject to remeasurement at each consolidated balance sheet date. Any change in fair value is recognized through other income (expense) in the consolidated statements of operations and comprehensive loss. We adjust the carrying values of the loan facility derivative liability for changes in fair value and will continue to do so until the earlier of cash payment or expiration. The assumptions used in determining the fair value of the obligation require significant judgment.

JOBS Act Accounting Election and Smaller Reporting Company Status

We are an "emerging growth company," as defined in 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. We have elected to use this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date that we (i) are no longer an emerging growth company or (ii) affirmatively and irrevocably opt out of the extended transition period provided in the JOBS Act. As a result, our consolidated financial statements may not be comparable to companies that comply with new or revised accounting pronouncements as of public company effective dates.

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.

Recent Accounting Pronouncements

The information included in Note 2 to the consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K is incorporated herein by reference.

Item 7A. Quantitative and Qualitative Disclosures

Interest Rate Risk

Cash and cash equivalents of $304.3 million as of December 31, 2021, consisted of securities carried at quoted market prices with an original maturity of three months or less and therefore there is minimal risk associated with fluctuating interest rates. We do not currently use or plan to use financial derivatives in our investment portfolio.

In addition, as described above under the subsection titled "Indebtedness," amounts outstanding under our loan facility bear interest at a floating rate equal to 7.17% plus the greater of 2.2% or 30-day LIBOR. As a result, we are exposed to risks from changes in interest rates. We do not believe that a hypothetical 100 basis point increase or decrease in interest rates or 30-day LIBOR would have had a material impact on our financial statements included elsewhere in this Annual Report on Form 10-K.

Credit Risk

We maintain our cash and cash equivalents with multiple financial institutions in the United States, and our current deposits are in excess of insured limits. We have reviewed the financial statements of these institutions and believe it has sufficient assets and liquidity to conduct its operations in the ordinary course of business with little or no credit risk to us.

Our accounts receivable primarily relate to revenue from the sale or rental of our products. One customers accounted for 11% of accounts receivable at December 31, 2021. We believe that credit risk in our accounts receivable is mitigated by our credit evaluation process, relatively short collection terms and diversity of our customer base.

Foreign Currency Risk

A portion of our net sales and expenses are denominated in foreign currencies, most notably the Euro. Future fluctuations in the value of the U.S. Dollar may affect the price competitiveness of our products outside the United States. For direct sales outside the United States, we sell in both U.S. Dollars and local currencies, which could expose us to additional foreign currency risks, including changes in currency exchange rates. Our operating expenses in countries outside the United States, are payable in foreign currencies and therefore expose us to currency risk. We do not believe that a hypothetical 10% increase or decrease in the relative value of the U.S. dollar to other currencies would have had a material impact on our financial statements included elsewhere in this Annual Report on Form 10-K.

We do not currently maintain a program to hedge exposures to non-U.S. dollar currencies.

Effects of Inflation

Inflation generally affects us by increasing our cost of labor and research and development contract costs. We do not believe that inflation had a material effect on our financial statements included elsewhere in this Annual Report on Form 10-K.

Item 8. Financial Statements - Audited Financial Statements

PROCEPT BioRobotics Corporation

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

Years Ended December 31, 2021 and 2020

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders of PROCEPT BioRobotics Corporation

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of PROCEPT BioRobotics Corporation and its subsidiaries (the "Company") as of December 31, 2021 and 2020, and the related consolidated statements of operations and comprehensive loss, of redeemable convertible preferred stock and stockholders' equity (deficit), and of cash flows for the years then ended, including 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 as of December 31, 2021 and 2020, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's consolidated 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 of these consolidated financial statements in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated 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 consolidated 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 consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers LLP

San Jose, California
March 22, 2022

We have served as the Company's auditor since 2020.

PROCEPT BioRobotics Corporation
CONSOLIDATED BALANCE SHEETS
(in thousands, except per share data)

	December 31,	
	2021	**2020**
Assets		
Current assets:		
Cash and cash equivalents	$ 304,320	$ 100,130
Accounts receivable, net	4,464	1,549
Inventory	13,147	6,924
Prepaid expenses and other current assets	4,242	1,653
Total current assets	326,173	110,256
Restricted cash	777	777
Property and equipment, net	5,045	8,274
Operating lease right-of-use assets, net	3,279	4,641
Intangible assets, net	1,750	2,023
Total assets	$ 337,024	$ 125,971
Liabilities, Redeemable Convertible Preferred Stock and Stockholders' Equity (Deficit)		
Current liabilities:		
Accounts payable	$ 2,029	$ 1,240
Accrued compensation	6,475	4,640
Deferred revenue	1,025	233
Note payable – current portion	—	4,551
Operating lease – current portion	2,105	1,708
Convertible preferred stock warrant liability	—	177
Other current liabilities	4,608	1,977
Total current liabilities	16,242	14,526
Note payable – non-current portion	50,004	44,407
Operating lease – non-current portion	1,991	4,096
Loan facility derivative liability	1,496	1,782
Other non-current liabilities	200	200
Total liabilities	69,933	65,011
Commitments and contingencies (see Note 9)		
Redeemable convertible preferred stock issuable in series, $0.00001 par value;		
Authorized shares: none and 26,984 at and December 31, 2021 and 2020, respectively		
Issued and outstanding shares: none and 25,402 at December 31, 2021 and 2020, respectively		
Aggregate liquidation preference: none and $245,768 at December 31, 2021 and 2020, respectively	—	243,854
Stockholders' equity (deficit):		
Preferred stock, $0.00001 par value;		
Authorized shares: 10,000 and none at December 31, 2021 and 2020, respectively		
Issued and outstanding shares: none at December 31, 2021 and 2020	—	—
Common stock, $0.00001 par value;		
Authorized shares: 300,000 and 40,000 at December 31, 2021 and 2020, respectively		
Issued and outstanding shares: 43,676 and 4,713 at December 31, 2021 and 2020, respectively	—	—
Additional paid-in capital	528,666	18,788
Accumulated other comprehensive loss	(54)	(14)
Accumulated deficit	(261,521)	(201,668)
Total stockholders' equity (deficit)	267,091	(182,894)
Total liabilities, convertible redeemable preferred stock and stockholders' equity (deficit)	$ 337,024	$ 125,971

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

PROCEPT BioRobotics Corporation
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(in thousands, except per share data)

	Year Ended December 31,	
	2021	**2020**
Revenue	$ 34,473	$ 7,717
Cost of sales	18,608	8,972
Gross profit	15,865	(1,255)
Operating expenses:		
Research and development	18,993	16,275
Selling, general and administrative	51,036	30,272
Total operating expenses	70,029	46,547
Loss from operations	(54,164)	(47,802)
Interest expense	(5,810)	(5,261)
Interest and other income (expense), net	121	44
Net loss	$ (59,853)	$ (53,019)
Net loss per share, basic and diluted	$ (3.63)	$ (14.47)
Weighted-average common shares used to compute net loss per share attributable to common shareholders, basic and diluted	16,480	3,663
Other comprehensive loss:		
Unrealized loss on cash equivalents	(40)	(18)
Comprehensive loss	$ (59,893)	$ (53,037)

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

PROCEPT BioRobotics Corporation
CONSOLIDATED STATEMENTS OF REDEEMABLE CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (DEFICIT)
(in thousands)

	Redeemable Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' (Deficit) Equity
	Shares	Amount	Shares	Amount				
Balance at December 31, 2019	20,998	$ 173,068	2,290	$ —	$ 4,808	$ 4	$ (148,649)	$ (143,837)
Conversion of redeemable convertible preferred stock to common stock	(1,474)	(9,520)	1,474	—	9,520	—	—	9,520
Issuance upon exercise of warrants	651	3,818	12	—	11	—	—	11
Issuance of redeemable convertible preferred stock, net of issuance costs of $496	5,227	76,488	—	—	—	—	—	—
Issuance upon exercise of options	—	—	937	—	2,276	—	—	2,276
Stock-based compensation expense	—	—	—	—	2,173	—	—	2,173
Unrealized loss on cash equivalents	—	—	—	—	—	(18)	—	(18)
Net loss	—	—	—	—	—	—	(53,019)	(53,019)
Balance at December 31, 2020	25,402	243,854	4,713	—	18,788	(14)	(201,668)	(182,894)
Issuance of redeemable convertible preferred stock, net of issuance costs of $290	4,448	84,710	—	—	—	—	—	—
Issuance upon exercise of warrants	62	970	—	—	—	—	—	—
Conversion of redeemable convertible preferred stock to common stock upon initial public offering	(29,912)	(329,534)	29,912	—	329,534	—	—	329,534
Issuance of common stock upon initial public offering, net of underwriting discounts, commissions and offering expenses of $16,121	—	—	7,539	—	172,364	—	—	172,364
Issuance upon exercise of options	—	—	1,512	—	4,184	—	—	4,184
Stock-based compensation expense	—	—	—	—	3,796	—	—	3,796
Unrealized loss on cash equivalents	—	—	—	—	—	(40)	—	(40)
Net loss	—	—	—	—	—	—	(59,853)	(59,853)
Balance at December 31, 2021	—	$ —	43,676	$ —	$ 528,666	$ (54)	$ (261,521)	$ 267,091

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

PROCEPT BioRobotics Corporation
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Year Ended December 31,	
	2021	**2020**
Cash flows from operating activities:		
Net loss	$ (59,853)	$ (53,019)
Adjustments to reconcile net loss to cash used in operating activities:		
Depreciation and amortization	3,324	2,860
Stock-based compensation expense	3,796	2,173
Change in fair value of redeemable convertible preferred stock warrants and derivative liability	(199)	114
Non-cash lease adjustment	(345)	(157)
Inventory write-down	650	109
Other non-cash expense	—	60
Changes in operating assets and liabilities:		
Accounts receivable, net	(2,914)	(511)
Inventory	(6,124)	(3,105)
Prepaid expenses and other current assets	(2,631)	(339)
Accounts payable	812	(205)
Accrued compensation	1,834	2,302
Accrued interest expense	1,045	1,049
Deferred revenue	792	127
Other liabilities	2,479	199
Net cash used in operating activities	(57,334)	(48,343)
Cash flows from investing activities:		
Purchases of property and equipment	(592)	(233)
Net cash (used in) provided by investing activities	(592)	(233)
Cash flows from financing activities:		
Proceeds from issuance of common stock from the exercise of stock options	4,184	2,288
Proceeds from issuance of common stock from the initial public offering, net of underwriting discounts, commissions and offering expenses	172,364	—
Proceeds from issuance of note payable, net of issuance costs	—	24,685
Proceeds from the exercise of redeemable convertible preferred stock warrants	858	3,310
Proceeds from issuance of Series F redeemable convertible preferred stock, net of issuance costs	—	76,488
Proceeds from issuance of Series G redeemable convertible preferred stock, net of issuance costs	84,710	—
Net cash provided by financing activities	262,116	106,771
Net increase in cash, cash equivalents and restricted cash	204,190	58,195
Cash, cash equivalents and restricted cash		
Beginning of the period	100,907	42,712
End of the period	$ 305,097	$ 100,907
Reconciliation of cash, cash equivalents and restricted cash to balance sheets:		
Cash and cash equivalents	$ 304,320	$ 100,130
Restricted cash	777	777
Cash, cash equivalents and restricted cash in balance sheets	$ 305,097	$ 100,907
Supplemental cash flow information		
Interest paid	$ 4,750	$ 3,969
Non-cash investing and financing activities		
Transfer of evaluation units from inventory to property and equipment, net	$ (679)	$ 2,822
Property and equipment included in accounts payable and accrued expenses	$ 210	$ 210
Conversion of redeemable convertible preferred stock to common stock	$ 329,534	$ —

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

PROCEPT BioRobotics Corporation

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Organization

Description of Business

PROCEPT BioRobotics Corporation (the "Company") was incorporated in the state of California in 2007 and its headquarters are located in Redwood City, California. In April 2021, the Company re-incorporated in the state of Delaware. The Company received U.S. Food and Drug Administration clearance in December 2017 to market its AquaBeam® Robotic System, an automated surgical robot providing tissue removal for the treatment of benign prostatic hyperplasia, a prostate gland enlargement condition.

Liquidity

As of December 31, 2021, the Company had cash and cash equivalents of $304.3 million and an accumulated deficit of $261.5 million. In September 2021, the Company completed its initial public offering ("IPO") for net proceeds of approximately $172.4 million, after deducting underwriting discounts and commissions, and offering expenses. Since its inception, the Company has financed its operations with a combination of debt and equity financing arrangements. The Company expects its cash and cash equivalents, revenue and available debt financing arrangements, will be sufficient to fund its operations through at least the next twelve months from the issuance date of these consolidated financial statements. The Company has not achieved positive cashflow from operations to date and expects to continue incurring losses for the foreseeable future as it focuses on growing its business.

The COVID-19 pandemic and the resulting economic downturn are affecting business conditions in the industry in which the Company operates. In response to the pandemic, many state and local governments in the United States issued orders that temporarily precluded elective medical procedures in order to conserve scarce health system resources. The Company has taken necessary precautions to safeguard its employees, patients, customers, and other stakeholders from the COVID-19 pandemic, while maintaining business continuity to support its patients, customers and employees. The timing, extent and continuation of any increase in procedures, and any corresponding increase in sales of the Company's products, and whether there could be a future decrease in the current level of procedures as a result of the COVID-19 pandemic or otherwise, remain uncertain and are subject to a variety of factors.

2. Summary of Significant Accounting Policies

Basis of Preparation

The consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP") and pursuant to the rules and regulations of the United States Securities and Exchange Commission ("SEC"). These consolidated financial statements include the accounts of the Company and its consolidated subsidiaries. All intercompany balances and transactions have been eliminated upon consolidation.

Use of Estimates

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts and disclosures reported in the consolidated financial statements. Management uses significant judgment when making estimates related to its common stock valuation in periods before the Company's IPO and related stock-based compensation expense, right-of-use lease asset, lease liability, the valuations of the redeemable convertible preferred stock warrant liability and loan facility derivative liability, as well as certain accrued liabilities. Management bases its estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities. Actual results could differ from those estimates.

Reverse Stock Split

In September 2021, the Board of Directors and stockholders approved, and the Company filed, an amended and restated certificate of incorporation effecting a 1-for-4.75 reverse stock split of common stock and all redeemable convertible preferred stock. The par value of the common and redeemable convertible preferred stock was not adjusted as a result of the reverse stock split. All authorized, issued and outstanding common stock, redeemable convertible preferred stock, warrants for preferred stock, stock options and per share amounts contained in the financial statements have been retroactively adjusted to reflect this reverse stock split for all periods presented.

Initial Public Offering

In September 2021, the Company completed its IPO by issuing 6,556,000 shares of common stock, and the exercise of the underwriters option for 983,400 shares, at an offering price of $25.00 per share, for total net proceeds of approximately $172.4 million, after deducting underwriting discounts and commissions of $13.2 million and offering expenses of $2.9 million. Offering costs are capitalized, and consist of fees and expenses incurred in connection with the sale of common stock in its IPO, including legal, accounting, printing and other IPO-related costs. Upon completion of its IPO, these deferred offering costs were reclassified to stockholders' equity and recorded against the proceeds from the offering. In addition, all 29,912,264 shares of its then-outstanding redeemable convertible preferred stock automatically converted into 29,912,264 shares of common stock and it reclassified $329.5 million of redeemable convertible preferred stock to additional paid-in capital on its consolidated balance sheet.

Par Value and Shares Authorized Change

In June 2021, the Board of Directors and stockholders approved, and the Company filed, an amended and restated certificate of incorporation effecting a change in par value from $0.001 to $0.00001 per share of common stock and all redeemable convertible preferred stock. All issued and outstanding common stock and redeemable convertible preferred stock contained in the financial statements have been retroactively corrected to reflect this immaterial change in par value for all periods presented.

In September 2021, 10.0 million shares of preferred stock was authorized and the shares of common stock authorized was increased to 300.0 million shares, both having a par value of $0.00001 per share.

Cash, Cash Equivalents and Restricted Cash

Cash and cash equivalents consist of cash in banks and highly liquid securities, which are readily convertible to cash, that mature within 90 days or less from the original date of purchase, to be cash equivalents, which include money market funds.

Cash equivalents are considered available-for-sale marketable securities and are recorded at fair value, based on quoted market prices. Unrealized gains and losses are recorded in other comprehensive income (loss) and included as a separate component of stockholders' equity (deficit).

Restricted cash is related to the Company's letter of credit for the lease of its corporate headquarters.

Fair Value of Financial Instruments

The Company measures certain financial assets and liabilities at fair value on a recurring basis, including cash and cash equivalents, and accounts receivable, accounts payable and accrued liabilities, which approximate fair value due to their relatively short maturities as well as the redeemable convertible preferred stock warrant liability and loan facility derivative liability. Fair value is an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or a liability. A three-tier fair value hierarchy is established as a basis for considering such assumptions and for inputs used in the valuation methodologies in measuring fair value:

Level 1- Observable inputs such as quoted prices (unadjusted) for identical assets or liabilities in active markets.

Level 2- Other inputs that are based upon quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active and model-based valuation techniques for which all significant inputs are observable in the market or can be derived from observable market data.

Level 3- Unobservable inputs that are supported by little or no market activities, which would require the Company to develop its own assumptions.

The fair value hierarchy also requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value.

The following is a summary of assets and liabilities measured at fair value on a recurring basis (in thousands):

	December 31,							
	2021				2020			
	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total
Cash and cash equivalents:								
Cash	$ 13,621	$ —	$ —	$ 13,621	$ 1,502	$ —	$ —	$ 1,502
Cash equivalents	290,699	—	—	290,699	98,628	—	—	98,628
Total cash and cash equivalents	$ 304,320	$ —	$ —	$ 304,320	$ 100,130	$ —	$ —	$ 100,130
Preferred stock warrant liability	$ —	$ —	$ —	$ —	$ —	$ —	$ 177	$ 177
Loan facility derivative liability	$ —	$ —	$ 1,496	$ 1,496	$ —	$ —	$ 1,782	$ 1,782

Cash equivalents consist primarily of money market funds.

There were no transfers in and out of Level 3 during the years ended December 31, 2021 and 2020.

Redeemable Convertible Preferred Stock Warrants

The following table sets forth a summary of the changes in the estimated fair value of the Company's redeemable convertible preferred stock warrants, which represents financial instruments with valuations classified as Level 3. When a determination is made to classify a financial instrument within Level 3, the determination is based upon the significance of the unobservable inputs to the overall fair value measurement. However, Level 3 financial instruments typically include, in addition to the unobservable inputs, observable inputs (that is, components that are actively quoted and can be validated to external sources). Accordingly, the gain or loss in the table below includes changes in fair value due in part to observable factors that are part of the Level 3 methodology recognized in the statement of operations as a component of interest and other income or expense as appropriate (in thousands):

	Year Ended December 31,	
	2021	2020
Beginning of the period	$ 177	$ 870
Exercised	(113)	(508)
Cancelled	(16)	—
Change in fair value	(48)	(185)
End of the period	$ —	$ 177

Upon the completion of the Company's IPO in September 2021, warrants exercised for redeemable convertible preferred stock were automatically converted into 62,454 shares of common stock and the remaining unexercised warrants expired, therefore no warrants outstanding at December 31, 2021.

The fair value of the redeemable convertible preferred stock warrant liability was determined using the Black-Scholes option pricing model using the following assumptions:

	Year Ended December 31,
	2020
Expected life (years)	1.7
Expected volatility	68 %
Risk-free interest rate	0.1 %
Expected dividend rate	— %

Loan facility derivative liability

In connection with the Company's loan facility, the Company is obligated to pay a fee upon the earlier occurrence of a defined liquidity event, including but not limited to, a merger or sale of our assets or voting stock, or achieving a $200.0 million trailing 12 months revenue target, in each case, by September 2029. The fee is calculated at the time of the liquidity event occurrence to be $1.0 million if only the first installment has been drawn, $2.0 million if the first two installments have been drawn, $2.4 million if the first three installments have been drawn, or $3.0 million if all four installments have been drawn, in each case, upon the occurrence of the liquidity event. As of December 31, 2021, the Company has drawn on

the first two installments. The Company has determined this fee is a freestanding derivative instrument. The $1.4 million fair value of this loan facility derivative was recorded as a debt discount and liability on the date of issuance in connection with obtaining additional financing as applicable and will be revalued every reporting period until the earlier occurrence of a defined liquidity event or achieving a revenue target by September 2029 or termination of such fee arrangement.

The following table sets forth a summary of the changes in the estimated fair value of the Company's loan facility derivative liability, classified as Level 3 (in thousands):

	Year Ended December 31,	
	2021	2020
Beginning of the period	$ 1,782	$ 1,482
Issued	—	—
Payment of success fee	(150)	—
Change in fair value	$ (136)	$ 300
End of the period	$ 1,496	$ 1,782

The fair value of the loan facility derivative liability was determined using a discounted cash flow calculation discounted at 10%.

Concentration of Credit Risk

Financial instruments, which potentially subject the Company to concentrations of credit risk, consist principally of cash and cash equivalents and, to a lesser extent, accounts receivable. The Company believes that credit risk in its accounts receivable is mitigated by its credit evaluation process, relatively short collection terms and diversity of its customer base. The Company generally does not require collateral and losses on accounts receivable have historically been within management's expectations.

The Company's investment policy limits investments to certain types of debt securities issued by the U.S. government, its agencies, and institutions with investment-grade credit ratings, as well as corporate debt or commercial paper issued by the highest quality financial and non-financial companies, and places restrictions on maturities and concentration by type and issuer. The Company is exposed to credit risk in the event of a default by the financial institutions holding its cash and cash equivalents and issuers of investments to the extent recorded on the balance sheets. The Company has limited its credit risk associated with cash and cash equivalents by placing its investments with banks it believes are highly creditworthy and with highly rated investments.

Allowance for Doubtful Accounts

The Company provides for uncollectible accounts receivable by recording an allowance for doubtful accounts for balances deemed uncollectible. The Company evaluates the collectability of its accounts receivable based on known collection risks and historical experience. In circumstances where the Company is aware of a specific customer's inability to meet its financial obligations to the Company (e.g., bankruptcy filings, substantial downgrading of credit ratings), the Company records a specific allowance for bad debts against amounts due to reduce the carrying amount of accounts receivable to the amount it reasonably believes will be collected. The Company has not experienced any significant collection issues and the allowance for doubtful accounts has not been material.

Inventory

Inventories are valued at the lower of cost, computed on a first-in, first-out basis, or net realizable value. The allocation of production overhead to inventory costs is based on normal production capacity. Abnormal amounts of idle facility expense, freight, handling costs, and consumption are expensed as incurred, and not included in overhead. The Company maintains provisions for excess and obsolete inventory based on management's estimates of forecasted demand and, where applicable, product expiration. The Company has initiated voluntary recalls for a limited number of handpieces due to certain issues related to supply chain and manufacturing processes, of which the provision recognized was not material.

Property and Equipment and Intangible Assets

Property and equipment and intangible assets are stated at cost, less accumulated depreciation and amortization. Depreciation and amortization for property and equipment are determined using the straight-line method over the estimated useful lives of the respective assets, generally three to five years. The Company reclassifies inventory used at customer sites for evaluation purposes to property and equipment due to a limited history of sales of evaluation units. Amortization

of intangible assets are determined using the straight-line method over the estimated useful lives, generally through the patent expiration date. Leasehold improvements are amortized on a straight-line basis over the shorter of their estimated useful lives or the term of the lease. Maintenance and repairs are charged to operating expenses as incurred.

Impairment of Long-Lived Assets

Long-lived assets consist primarily of property and equipment and intangible assets, net, and are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. If circumstances require that a long-lived asset be tested for possible impairment, the Company compares the undiscounted cash flows expected to be generated by the asset group to the carrying amount of the asset group. If the carrying amount of the long-lived asset is not recoverable on an undiscounted cash flow basis, an impairment is recognized to the extent that the carrying amount exceeds its fair value. The Company determines fair value using the income approach based on the present value of expected future cash flows or other appropriate measures of estimated fair value. The Company's cash flow assumptions consider historical and forecasted revenue and operating costs and other relevant factors. During the years ended December 31, 2021 and 2020, the Company has not recorded impairment charges on its long-lived assets.

Deferred Offering Costs

The Company capitalizes, within other assets, certain legal, accounting and other third-party fees that are directly related to the Company's in-process equity financings, including its recent initial public offering, until such financings are consummated. After consummation of the equity financing, these costs are recorded to additional paid in capital as a reduction of the proceeds received as a result of the offering. Should a planned equity financing be abandoned, terminated or significantly delayed, the deferred offering costs are immediately written off to operating expenses. There were no deferred offering costs as of December 31, 2021 and 2020. Upon the completion of the Company's IPO in September 2021, all deferred offering costs were reclassified to equity in additional paid in capital.

Deferred Revenue

The timing of revenue recognition may differ from the timing of invoicing to customers. The Company records deferred revenue when revenue will be recognized subsequent to invoicing. Service agreements are generally invoiced annually at the beginning of each coverage period and recorded as deferred revenue and recognized as revenue ratably over the coverage period. Deferred revenue that will be recognized during the 12 months following the balance sheet date is recorded as the current portion of deferred revenue, and the remaining portion, if any, would be recorded as non-current.

Redeemable Convertible Preferred Stock

The Company records redeemable convertible preferred stock at fair value on the date of issuance, net of issuance costs. The redeemable convertible preferred stock is recorded outside of permanent equity because it contains liquidation features that are not solely within the Company's control. The Company determined that the carrying values of the redeemable convertible preferred stock should not be adjusted to the liquidation preferences because it is uncertain whether or when an event would occur that would obligate the Company to pay the liquidation preferences to holders of shares of redeemable convertible preferred stock. Subsequent adjustments to the carrying values of the redeemable convertible preferred stock to the liquidation preferences will be made only when it is probable that the redeemable convertible preferred stock will become redeemable. Upon the completion of the Company's IPO in September 2021, all 29,912,264 shares of its then-outstanding redeemable convertible preferred stock automatically converted into 29,912,264 shares of common stock and it reclassified $329.5 million of redeemable convertible preferred stock to additional paid-in capital on its condensed consolidated balance sheet.

Redeemable Convertible Preferred Stock Warrant Liability

The Company has issued freestanding warrants to purchase shares of redeemable convertible preferred stock to investors in connection with sales of certain of its redeemable convertible preferred stock. The Company classified these warrants as a derivative liability because they create a conditional obligation for the Company to repurchase its own shares for cash or other assets. The fair value of the warrants are recorded on the consolidated balance sheets at the issuance of the warrants and remeasured to fair value at each financial reporting date. The changes in the fair value of the warrants are recorded in the statement of operations as a component of interest and other income or expense as appropriate. Upon the completion of the Company's IPO in September 2021, warrants exercised for redeemable convertible preferred stock were automatically converted into 62,454 shares of common stock and the remaining unexercised warrants expired.

Loan Facility Derivative Liability

The Company has determined that its obligation to pay success fees to a lender upon a successful liquidation event or achieving a revenue target represents freestanding financial instruments. The instruments are classified as a non-current liability in the consolidated balance sheets and are subject to remeasurement at each financial reporting date. Any change in fair value was recognized through other income (expense) in the consolidated statements of operations and comprehensive loss.

Leases

For agreements with a term of more than 12 months, the Company determines if the agreement contains a lease at inception. Operating lease liabilities represent an obligation to make lease payments arising from the lease agreement. Operating lease liabilities are recognized at the lease commencement date based on the present value of lease payments over the remaining lease term. In determining the present value of lease payments, the Company estimates its incremental borrowing rate as the rate of interest that the Company would have to pay to borrow on a collateralized basis over a similar term, of an amount equal to the lease payments in a similar economic environment. Operating lease liabilities are included in the Company's consolidated balance sheet. Right-of-use assets represent our right to use an underlying asset for the lease term and are classified as non-current assets. Lease expense is recognized on a straight-line basis over the expected lease term in the Company's consolidated statements of operations and comprehensive loss.

The Company has not elected to separate lease and non-lease components for any leases within its existing classes of assets and, as a result, records a right-of-use asset and lease liability based on the present value of the future minimum lease payments over the term at commencement date. Variable lease payments are expensed as incurred. The Company has also elected to not apply the recognition requirement to any leases within its existing classes of assets with a term of 12 months or less and does not include an option to purchase the underlying asset that the Company is reasonably certain to exercise.

The Company has lessor arrangements with customers for a fixed monthly fee with no non-lease components, typically for 3-12 months. These arrangements are accounted for as an operating lease in accordance with ASC 842. These arrangements and related revenue are immaterial to the periods presented.

Revenue Recognition

Revenue is derived primarily from the sales of the AquaBeam® Robotic Systems, and handpieces that are for one-time use during each surgery using the AquaBeam Robotic System. The AquaBeam Robotic System contains both software and non-software components that are delivered together as a single product and generally contain a one-year warranty.

To determine revenue recognition for arrangements that the Company determines are within the scope of ASC Topic 606, Revenue from Contracts with Customers ("ASC 606"), the Company performs the following five steps: (i) identify the contract 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 the performance obligations. The Company only applies the five-step model to contracts when it is probable that the Company will collect the consideration it is entitled to in exchange for the goods or services it transfers to the customer. At contract inception, once the contract is determined to be within the scope of ASC 606, the Company assesses the goods or services promised within each contract and determines those that are performance obligations and assesses whether each promised good or service is distinct based on the contract.

The contracts are typically in the form of an agreement and a purchase order from the customer. The Company's AquaBeam Robotic System sales generally contain multiple products and services and can include a combination of the following performance obligations: robotic system, handpieces and consumables, and service.

The Company determines the transaction price it expects to be entitled to in exchange for transferring the promised product to the customer, which is based on the invoiced price for the products. All prices are at fixed amounts per the sales agreement with the customer and there are generally no discounts, rebates or other price concessions or a right of return, once the agreement is signed.

For multiple-element arrangements, revenue is allocated to each performance obligation based on its relative standalone selling price. Standalone selling prices are based on observable prices at which the Company separately sells the products or services. If a standalone selling price is not directly observable, then the Company estimates the standalone selling price considering market conditions and entity-specific factors including, but not limited to, features and functionality of the products and services, geographies, and type of customer. The Company regularly reviews standalone selling prices and updates these estimates as necessary.

The Company recognizes revenue as the performance obligations are satisfied by transferring control of the product or service to a customer. The Company generally recognizes revenue for the performance obligations at the following points in time:

AquaBeam Robotic Systems - For systems (including system components and system accessories) sold directly to end customers, revenue is recognized when the Company transfers control to the customer, which is generally at the time of delivery. Systems rented for a fixed monthly fee during an evaluation period, typically 3-12 months, are recognized as revenue straight-line during the lease term, in accordance with ASC 842, and are not material. For systems sold following an evaluation period, revenue is recognized generally once sales terms are mutually agreed (as the system is already installed at the customer site). For systems sold through distributors, revenue is recognized generally at the time of delivery. The Company's system arrangements generally do not provide a right of return. The systems are generally covered by a one-year service agreement included in the warranty. The service agreements have a stand alone selling price and are typically recognized as deferred revenue and amortized over the one-year service period.

Hand pieces and other consumables - Revenue from sales of handpieces and other consumables is recognized when control is transferred to the customers, which generally occurs at the time of shipment but also occurs at the time of delivery.

Service - Service revenue, inclusive of the amounts associated with the AquaBeam Robotic System warranties, is recognized over the term of the service period, as the customer benefits from the services throughout the service period.

The Company has determined that certain promises in the multiple-element arrangements, such as installation, training and certain ancillary products, are immaterial, and/or do not represent separate performance obligations for which transaction price is allocated.

The timing of revenue recognition may differ from the timing of invoicing to customers. The Company records deferred revenue when revenue is recognized subsequent to invoicing, such as service contracts, which are recognized ratably as revenue over the performance period.

The Company's typical payment terms are between approximately 30 to 90 days. The Company expenses shipping and handling costs as incurred and includes them in the cost of sales. In those cases where shipping and handling costs are billed to customers, the Company classifies the amounts billed as a component of revenue. Taxes collected from customers and remitted to governmental authorities are excluded from revenue. The Company expenses any incremental costs of obtaining a contract, including but not limited to, sales commissions, as and when incurred as the expected amortization period of the incremental costs would have been less than one year and are reported in selling, general and administrative expense in the statements of operations and comprehensive loss.

The following table presents revenue disaggregated by type and geography (in thousands):

	Year Ended December 31,	
	2021	2020
U.S.		
System sales and rentals	$ 19,375	$ 2,334
Handpieces and other consumables	8,893	1,699
Service	680	67
Total U.S. revenue	28,948	4,100
Outside of U.S.		
System sales and rentals	2,493	1,824
Handpieces and other consumables	2,634	1,722
Service	398	71
Total outside of U.S. revenue	5,525	3,617
Total revenue	$ 34,473	$ 7,717

Cost of Sales

Cost of sales consists primarily of manufacturing overhead costs, material costs and direct labor, including stock-based compensation. A significant portion of the Company's cost of sales currently consists of manufacturing overhead costs. These overhead costs include the cost of quality assurance, material procurement, inventory control, facilities, equipment and operations supervision and management. Cost of sales also includes depreciation expense for production equipment,

warranty, including any recalls, and field service costs, and purchased intangibles and certain direct costs such as shipping costs.

Research and Development

Research and development costs are expensed as incurred. Research and development costs consist primarily of engineering, product development, and regulatory affairs, consulting services, materials, depreciation and other costs associated with products and technologies being developed, including employee and non-employee compensation, stock-based compensation, supplies, quality assurance expenses, related travel expenses and facilities expenses.

Stock-Based Compensation

The Company maintains an equity incentive plan to provide long-term incentives for employees, consultants and members of the board of directors. The plan allows for the issuance of non-statutory and incentive stock options to employees and non-statutory stock options to consultants and non-employee directors.

The Company is required to determine the fair value of equity incentive awards and recognize compensation expense for all equity incentive awards made to employees and directors, including employee stock options. Stock-based compensation expense is recognized over the requisite service period in the statements of operations and comprehensive loss. The Company uses the straight-line method for expense attribution.

The valuation model used for calculating the fair value of awards for stock-based compensation expense is the Black-Scholes option-pricing model (the "Black-Scholes model"). The Black-Scholes model requires the Company to make assumptions and judgments about the variables used in the calculation, including the fair value of the Company's common stock, the expected term (weighted-average period of time that the options granted are expected to be outstanding), the expected volatility of common stock, an assumed risk-free interest rate and an expected dividend rate.

The fair value of the Company's common stock underlying the stock options has historically been determined by the Company's board of directors ("Board"). Because there was no public market for the Company's common stock prior to the IPO, the Board determined the fair value of the Company's common stock at the time of grant of the option by considering a number of objective and subjective factors, including valuations of comparable companies, sales of the Company's redeemable convertible preferred stock, operating and financial performance and the general and industry-specific economic outlook. The Company uses the "simplified method" to determine the expected term of the stock option. Expected volatility is based on an average of the historical volatilities of the common stock of publicly-traded companies with characteristics similar to those of the Company. The risk-free rate is based on the U.S. Treasury yield curve in effect at the time of grant for periods corresponding with the expected term of the option. The Company has elected to account for forfeitures when they occur.

Common Stock Valuation

The Company's intent has been to grant all options with an exercise price not less than the fair value of its common stock underlying those options on the date of grant. Prior to its IPO, the Company has determined the estimated fair value of its common stock at each valuation date in accordance with the guidelines outlined in the American Institute of Certified Public Accountants Practice Aid, Valuation of Privately-Held-Company Equity Securities Issued as Compensation (the "Practice Aid"). The Company's board of directors, with the assistance of management, developed these valuations using significant judgment and taking into account numerous factors, including:

- valuations of its common stock with the assistance of independent third-party valuation specialists;
- the stage of development and business strategy, including the status of research and development efforts, of its products and product candidates, and the material risks related to its business and industry;
- the results of operations and financial position, including its levels of available capital resources;
- the valuation of publicly traded companies in the life sciences and medical device sectors, as well as recently completed mergers and acquisitions of peer companies;
- the prices of its redeemable convertible preferred stock sold to investors in arm's length transactions and the rights, preferences, and privileges of its redeemable convertible preferred stock relative to those of its common stock;

- the likelihood of achieving a liquidity event for the holders of its common stock, such as an initial public offering or a sale of the Company given prevailing market conditions;
- the inability of the Company's stockholders to freely trade its common stock in the public markets, resulting in a discount to reflect the lack of marketability of the Company's common stock based on the weighted-average expected time to liquidity.
- trends and developments in its industry; and
- external market conditions affecting the life sciences and medical device industry sectors.

The Company's board of directors determined the fair value of its common stock by first determining the enterprise value of the Company's business using the market approach, income approach or from the value implied by the latest round of equity financing, and then allocating the value among the various classes of its equity securities to derive a per share value of its common stock. The Practice Aid identifies various available methods for allocating enterprise value across classes and series of capital stock to determine the estimated fair value of common stock at each valuation date.

For all options granted prior to the Company's IPO in September 2021, the Board allocated the enterprise value based on the option pricing method ("OPM"). OPM treats the rights of the holders of preferred and common stock as equivalent to call options on any value of the enterprise above certain break points of value based upon the liquidation preferences of the holders of preferred stock, as well as their rights to participation and conversion. Thus, the estimated value of the common stock can be determined by estimating the value of its portion of each of these call option rights. When valuing options granted around the time of an equity financing that is considered arms-length, OPM derived the Company's equity value of a company from the price of the securities issued by the Company in the equity financing. Following the completion of the Company's IPO in September 2021, the fair value of the Company's common stock is determined based on the closing price of its common stock on The Nasdaq Global Market.

Advertising Expenses

The Company expenses the costs of advertising, including promotional expenses, as incurred. Advertising expenses were not significant.

Defined Contribution Plan

The Company has a defined contribution retirement savings plan under Section 401(k) of the Internal Revenue Code. This plan allows eligible employees to defer a portion of their annual compensation on a pre-tax basis. The Company is authorized to make matching contributions but has not made such contributions for the years ended December 31, 2021 and 2020.

Income Taxes

The Company accounts for income taxes under the asset and liability method. Under this method, deferred tax assets and liabilities are determined based on the differences between the financial reporting and tax bases of assets and liabilities and are measured using the enacted tax rates that will be in effect when the differences are expected to reverse. Valuation allowances against deferred tax assets are established when necessary to reduce deferred tax assets to the amounts expected to be realized. Currently, the Company has recorded a full valuation allowance against its deferred tax assets and there is no provision for income taxes, as the Company has incurred operating losses to-date. The Company's policy is to record interest and penalties related to uncertain tax positions as a component of income tax expense in the statement of operations. To date, there have been no interest or penalties charged in relation to the unrecognized tax benefits.

Net Loss Per Share

Basic net loss per share is computed by dividing the net loss by the weighted-average number of shares of common stock outstanding during the period. Diluted net loss per share is computed by dividing the net loss by the weighted-average number of shares of common stock and common stock equivalent shares from dilutive stock options and common stock warrants outstanding during the period. Because the Company has reported a net loss for all periods presented, diluted net loss per share is the same as basic net loss per share for those periods as all potentially dilutive securities were antidilutive in those periods.

The Company allocates no loss to participating securities because they have no contractual obligation to share in the losses of the Company. The shares of the Company's redeemable convertible preferred stock participated in any dividends declared by the Company and were therefore considered to be participating securities.

Upon the completion of the Company's IPO in September 2021, all 29,912,264 shares of its then-outstanding redeemable convertible preferred stock automatically converted into 29,912,264 shares of common stock.

Net loss per share was determined as follows (in thousands, except per share amounts):

	Year Ended December 31,	
	2021	2020
Net loss	$ (59,853)	$ (53,019)
Weighted-average common stock outstanding	16,480	3,663
Net loss per share, basic and diluted	$ (3.63)	$ (14.47)

The following potentially dilutive securities outstanding have been excluded from the computations of weighted-average shares outstanding because such securities have an antidilutive impact due to losses reported (in common stock equivalent shares, in thousands):

	December 31,	
	2021	2020
Redeemable convertible preferred stock outstanding	—	25,402
Redeemable convertible preferred stock warrants	—	72
Common stock warrants	—	—
Common stock options	6,365	6,507
Restricted stock units	35	—
Employee stock purchase plan	193	—
Total	6,593	31,981

Comprehensive Loss

Comprehensive loss consists of net loss and changes in unrealized gains and losses on cash equivalents and available-for-sale marketable securities. Accumulated other comprehensive income (loss) is presented in the accompanying balance sheets, when applicable.

Segment, Geographical and Customer Concentration

The Company operates as a single operating segment. The Company's chief operating decision maker, its Chief Executive Officer, reviews financial information on an aggregate basis for the purposes of allocating resources and evaluating financial performance. The Company's assets are primarily based in the United States.

No customers accounted for more than 10% of revenue during the year ended December 31, 2021 and 2020.

The following table presents revenue by significant geographical locations outside the United States for the periods presented:

	Year Ended December 31,	
	2021	2020
Germany	*	31 %

* Less than 10% of total net revenues for the period indicated.

One customer accounted for 11% of accounts receivable at December 31, 2021. Two customers each accounted for 22% and 13% of accounts receivable at December 31, 2020.

JOBS Act Accounting Election

The Company is an emerging growth company, as defined in 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 elected to avail itself of this exemption and, therefore, for new or revised accounting standards applicable to public companies, the Company will be subject to an extended transition period until those standards would otherwise apply to private companies.

Recent Accounting Pronouncements

In March 2020, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2020-4, Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting ("ASU 2020-4"). The amendments in ASU 2020-4 provide optional expedients and exceptions for applying GAAP to contracts, hedging relationships, and other transactions affected by reference rate reform if certain criteria are met. These amendments apply only to contracts, hedging relationships, and other transactions that reference LIBOR or another reference rate expected to be discontinued because of reference rate reform. The expedients and exceptions provided do not apply to contract modifications made and hedging relationships entered into or evaluated after December 31, 2022, except for hedging relationships existing as of December 31, 2022, that an entity has elected certain optional expedients for and that are retained through the end of the hedging relationship. These amendments are effective for all entities as of March 12, 2020 through December 31, 2022. The Company is currently evaluating the impact of the adoption of ASU 2020-4 on its consolidated financial statements.

In June 2016, the FASB issued ASU No. 2016-13, Financial Instruments—Credit Losses (Topic 326) Measurement of Credit Losses on Financial Instruments ("ASU 2016-13"), which requires an entity to utilize a new impairment model known as the current expected credit loss ("CECL") model to estimate its lifetime "expected credit loss" and record an allowance that, when deducted from the amortized cost basis of the financial assets and certain other instruments, including but not limited to available-for-sale debt securities. Credit losses relating to available-for-sale debt securities will be recorded through an allowance for credit losses rather than as a direct write-down to the security. ASU 2016-13 requires a cumulative effect adjustment to the balance sheet as of the beginning of the first reporting period in which the guidance is effective. In November 2019, the FASB issued ASU 2019-10, Financial Instruments—Credit Losses (Topic 326), Derivatives and Hedging (Topic 815) and Leases (Topic 842): Effective Dates, which defers the effective date of ASU 2016-13 to fiscal years beginning after December 15, 2022 for all entities except SEC reporting companies that are not smaller reporting companies. ASU 2016-13 will be effective for the Company beginning January 1, 2023. The Company is currently evaluating the impact of the adoption of ASU 2016-13 on its consolidated financial statements.

In December 2019, the FASB issued ASU No. 2019-12, Income Taxes (Topic 740), which simplifies the accounting for income taxes, primarily by eliminating certain exceptions to ASC 740. This standard is effective for fiscal periods beginning after December 15, 2021, and for fiscal years beginning after December 15, 2020 for public business entities. The Company adopted ASU 2019-12, effective January 1, 2021, and the adoption did not have a material impact on its consolidated financial statements.

3. Composition of Certain Consolidated Financial Statement Items

Inventory (in thousands):

	December 31,	
	2021	2020
Raw materials	$ 6,740	$ 2,647
Work-in-process	905	51
Finished goods	5,502	4,226
Total inventory	$ 13,147	$ 6,924

Prepaid Expenses and Other Current Assets (in thousands):

	December 31,	
	2021	2020
Insurance	$ 2,333	$ 124
Inventory	830	553
Software	428	375
Rent	253	245
Other	398	356
Total prepaid expenses and other current assets	$ 4,242	$ 1,653

Property and Equipment, Net (in thousands):

	December 31,	
	2021	2020
Laboratory, manufacturing and computer equipment, and furniture and fixtures	$ 2,874	$ 2,645
Rental equipment	1,082	1,247
Leasehold improvements	4,941	4,941
Evaluation units	2,842	4,229
Total property and equipment	11,739	13,062
Less: accumulated depreciation and amortization	(6,694)	(4,788)
Total property and equipment, net	$ 5,045	$ 8,274

Other Current Liabilities (in thousands):

	December 31,	
	2021	2020
Accrued purchases	1,105	432
Customer deposit	741	—
Professional services	600	339
Sales tax	515	302
Interest	405	403
Travel expenses	281	138
Clinical trial expenses	183	47
Other	778	316
Total other current liabilities	$ 4,608	$ 1,977

As of December 31, 2021 and 2020, other non-current liabilities consisted of an asset retirement obligation for the facility lease.

Interest and Other Income (Expense), net (in thousands):

	Year Ended December 31,	
	2021	2020
Interest income	$ 76	$ 184
Decrease in fair value of preferred stock warrants	64	185
Decrease (increase) in fair value of loan facility derivative liability	135	(300)
Other	(154)	(25)
Total interest and other income, net	$ 121	$ 44

4. Intangible Assets

In March 2019, the Company entered into a license agreement with HydroCision, Inc. This agreement grants the Company an exclusive, perpetual, irrevocable, worldwide, fully paid-up license to develop, manufacture and commercialize products in the field of urology using the patented technology and know-how controlled by HydroCision as of the effective date and as well as new patented technology developed by HydroCision that cover certain activities and improvements that relate to the use of fluid jet technology in connection with the licensed products during the period commencing on the effective date and ending on the earlier of the date that the Company ceases to use HydroCision's existing contract manufacturers and the third anniversary of the effective date. Also included is the right to utilize HydroCision's contract manufacturers, if desired. The consideration paid was a one-time upfront payment of $2.5 million, as well as allowing HydroCision (a reciprocal license) to use any new patented technology and know-how developed by the Company relating to the HydroCision patented technology and know-how in the field of urology for HydroCision use outside the field of urology. HydroCision will pay for any patent maintenance fees on HydroCision's licensed patents. As of December 31, 2021, accumulated amortization was $0.8 million, respectively, and the net carrying amount is expected to be amortized at a rate of $0.3 million per year until fully amortized.

Amortization expense for intangible assets for the years ended December 31, 2021 and 2020, was $0.3 million and $0.3 million, respectively.

5. Loan Facility

In September 2019, the Company entered into a loan facility for up to $75 million available in four installments. The Company borrowed $25 million in September 2019. An additional $25 million was borrowed in March 2020. The third installment of $10 million was originally available for draw through March 31, 2021 contingent upon achieving $20 million in trailing six months revenue. In January 2021, the third installment was amended to be available for draw through June 30, 2021 contingent upon achieving $6.4 million trailing six months revenue. The remaining $15 million was originally available for draw through June 30, 2021 and is contingent upon achieving $25 million in trailing six months revenue. In January 2021, this installment was amended to be available for draw through June 30, 2022. The facility bears an interest rate of 9.37%, which is 7.17% plus the greater of 2.2% or 30-day LIBOR. The initial term of the facility is 60 months with interest-only payments each month for 24 months followed by 36 months amortization of principal and interest. In January 2021, the interest-only period was amended to 36 months followed by 24 months amortization (principal and interest) beginning October 1, 2022 since the amended trailing six months target revenue of $6.4 million was achieved, and accordingly, the current portion of the amount due was reclassified to non-current. Upon drawing the final $15 million tranche, interest-only period is extended 12 months followed by 24 months amortization of principal and interest. Upon the completion of the Company raising over $50 million in its IPO in September 2021, interest-only payments were extended an additional 12 months followed by 12 months amortization of principal and interest. Substantially all assets of the Company are pledged as collateral. Commencing with the earlier of June 30, 2021 and the month following the funding of either the third or final installment, the Company is required to achieve revenues for the previous six months ended equal to the greater of (1) 70% of the forecast for the commensurate period, (2) $15 million if neither third or final installments have been drawn, (3) $20 million if the third but not final installment has been drawn and (4) $25 million if both the third and final installments have been drawn.

The loan facility includes certain fees payable to the lender recorded as a loan discount that are accrued and amortized to interest expense during the loan term. A 6% final payment fee of each funded tranche is payable at the earlier of prepayment or loan maturity and a 0.25% facility fee paid at each funded tranche. A prepayment fee was originally payable if the loan is paid before maturity in the amount of 3% of loans outstanding if paid in full during first 12 months, 2% if loan is paid in full during second 12 months, or 1% if loan is paid in full thereafter before maturity. In January 2021, the prepayment fee was removed as part of the amendments. In addition, the Company should pay the lender's loan initiation fees and a fee upon the earlier occurrence of a defined liquidity event, including but not limited to, a merger or sale of the Company's assets or voting stock, or achieving a $200.0 million trailing 12 months revenue target, in each case, by September 2029. The success fees are calculated at the time of the liquidity event occurrence to be $1.0 million if only the first installment has been drawn, $2.0 million if the first two installments have been drawn, $2.4 million if the first three installments have been drawn, or $3.0 million if all four installments have been drawn, in each case, upon the occurrence of the defined liquidity event. The Company determined that this obligation to pay success fees represents freestanding financial instruments.

The amendments in January 2021 were accounted for as a debt modification under ASC 470-50-40 as the changes in the debt terms are not considered substantial, and thus no gain or loss was recorded and a new effective interest rate was established based on the carrying value of the loan and the revised cash flows.

6. Redeemable Convertible Preferred Stock Warrant Liability

Warrants to purchase shares of redeemable convertible preferred stock outstanding and exercisable are as follows (in thousands, except per share data):

Dates				Shares Outstanding at December 31,			Fair Value at December 31,	
Issuance	Expiration	Series	Exercise Price	2021	2020	Initial Value	2021	2020
June 2017	June 2022	E	13.73	—	72	763	$ —	$ 177

In July 2015, in connection with the issuance of convertible notes, the Company issued 869,842 redeemable convertible preferred stock warrants that were exercisable into Series D redeemable convertible preferred stock immediately, with $5.08 exercise price and expiration in five years. During the year ended December 31, 2020, warrants for 651,334 shares were exercised and none were outstanding at December 31, 2020.

In June 2017, in connection with the issuance of convertible notes, the Company issued 108,145 redeemable convertible preferred stock warrants that were exercisable into Series E or the next round of redeemable convertible

preferred stock. During the years ended December 31, 2021 and 2020, warrants for 62,454 and zero shares were exercised, respectively. Upon the completion of the Company's IPO in September 2021, the remaining unexercised warrants expired, none were outstanding at December 31, 2021.

7. Redeemable Convertible Preferred Stock

A summary of the Company's redeemable convertible preferred stock are as follows:

	December 31, 2020		
Series	Shares Authorized	Shares Issued and Outstanding	Carrying Value (in thousands)
A	1,243,223	1,104,728	$ 2,781
B	1,841,805	1,543,804	5,404
C	1,564,851	1,564,851	7,073
D	8,245,295	7,547,542	36,879
E	8,825,653	8,414,496	115,229
F	5,263,157	5,226,981	76,488
Total	26,983,984	25,402,402	$ 243,854

Upon the completion of the Company's IPO in September 2021, all 29,912,264 shares of its then-outstanding redeemable convertible preferred stock automatically converted into 29,912,264 shares of common stock and it reclassified $329.5 million of redeemable convertible preferred stock to additional paid-in capital on our condensed consolidated balance sheet.

In July 2020, an aggregate of $1.5 million shares of redeemable convertible preferred stock was converted to common stock as requested by the holder. The corresponding carrying value was reclassified from redeemable convertible preferred stock to common stock and additional paid in capital.

Series G Redeemable Convertible Preferred Stock

In June 2021, the Company issued 4,447,530 shares of Series G redeemable convertible preferred stock for gross proceeds of $85.0 million. Issuance costs totaled $0.3 million and were recorded as an offset to gross proceeds.

Series F Redeemable Convertible Preferred Stock

In July and August 2020, the Company issued 5,226,969 shares of Series F redeemable convertible preferred stock for gross proceeds of $77.0 million. Issuance costs totaled $0.5 million and were recorded an offset to gross proceeds.

A summary of the Company's redeemable convertible preferred stock terms were as follows:

Series	Liquidation Preference Per Share	8% Dividend Per Share
A	$ 2.5175	$ 0.2014
B	3.2376	0.2590
C	4.5600	0.3648
D	5.0825	0.4066
E	13.7275	1.0982
F	14.7279	1.1782
G	19.1116	1.5289

The Company recorded its redeemable convertible preferred stock at fair value on the dates of issuance, net of issuance costs. A redemption event would only occur upon the liquidation or winding up of the Company, a greater than 50% change in control, or sale of substantially all of the assets of the Company. As the redemption event was outside the control of the Company, all shares of redeemable convertible preferred stock were presented outside of permanent equity. Further, the Company had determined the carrying values of the redeemable convertible preferred stock should not be adjusted to the redemption value of such shares, since it was uncertain whether or when a redemption event would occur. Subsequent adjustments to increase the carrying values of the redeemable convertible preferred stock to the redemption values would have been made when it became probable that such redemption would occur. As of December 31, 2021, no shares of

redeemable convertible preferred stock were outstanding, and as of December 31, 2020, it was not probable that such redemption would occur.

Dividends

The holders of the Series D, E, F and G redeemable convertible preferred stock, in preference to the holders of Series A, B and C redeemable convertible preferred stock and common stock, were entitled to receive noncumulative dividends at the rate of 8% per share of the original issuance price, when and as declared by the board of directors. After the payment of any dividends to holders of Series D, E, F and G redeemable convertible preferred stock, and in preference to the holders of common stock, the holders of Series A, B, and C redeemable convertible preferred stock would have been entitled to receive noncumulative dividends at the rate of 8% per share of the original issuance price, when and as declared by the board of directors. No dividends were declared and payable for the years ended December 31, 2021 and 2020.

Liquidation

In the event of any liquidation, dissolution, or winding-up of the Company, including a merger, acquisition, or sale of assets, as defined in the certificate of incorporation, each holder of Series G redeemable convertible preferred stock was entitled to receive a liquidation preference amount, plus any dividends declared but unpaid before any payments to holders of Series A, B, C, D, E or F redeemable convertible preferred stock and common stock. If the assets of the Company were insufficient to make payment in full to all Series G redeemable convertible preferred stockholders, then the assets or consideration would have been distributed ratably among such holders in proportion to the full liquidation preference amounts to which the holders would otherwise have been entitled to.

After the full payment of the liquidation preference to the holders of Series G redeemable convertible preferred stock, each holder of Series F redeemable convertible preferred stock would have been entitled to be paid a liquidation preference amount, plus any dividends declared but unpaid before any payments to holders of Series A, B, C, D or E redeemable convertible preferred stock and common stock. If the assets of the Company were insufficient to make payment in full to all Series F redeemable convertible preferred stockholders, then the assets or consideration would have been distributed ratably among such holders in proportion to the full liquidation preference amounts to which the holders would otherwise have been entitled to.

After the full payment of the liquidation preference to the holders of Series F redeemable convertible preferred stock, each holder of Series E redeemable convertible preferred stock would have been entitled to be paid a liquidation preference amount, plus any dividends declared but unpaid before any payments to holders of Series A, B, C or D redeemable convertible preferred stock and common stock. If the assets of the Company were insufficient to make payment in full to all Series E redeemable convertible preferred stockholders, then the assets or consideration would have been distributed ratably among such holders in proportion to the full liquidation preference amounts to which the holders would otherwise have been entitled to.

After the full payment of the liquidation preference to the holders of Series E redeemable convertible preferred stock, each holder of Series D redeemable convertible preferred stock would have been entitled to be paid a liquidation preference amount, plus any dividends declared but unpaid before any payments to holders of Series A, B or C redeemable convertible preferred stock and common stock. If the assets of the Company were insufficient to make payment in full to all Series D redeemable convertible preferred stockholders, then the assets or consideration would have been distributed ratably among such holders in proportion to the full liquidation preference amounts to which the holders would otherwise have been entitled to.

After the full payment of the liquidation preference to the holders of Series D redeemable convertible preferred stock, each holder of Series A, B and C redeemable convertible preferred stock would have been entitled to be paid a liquidation preference amount, plus any dividends declared but unpaid before any payments to holders of common stock. If the assets of the Company were insufficient to make payment in full to all holders of Series A, B or C redeemable convertible preferred stock, then the assets or consideration would have been distributed ratably among such holders in proportion to the full liquidation preference amounts to which the holders would otherwise have been entitled to.

After the payment of the full liquidation preference to holders of redeemable convertible preferred stock, the remaining assets of the Company legally available for distribution would have been distributed ratably to the holders of the common stock.

Voting

Each holder had the right to one vote for each share of common stock into which such redeemable convertible preferred stock would have been converted. So long as any shares of redeemable convertible preferred stock were outstanding, the Company was prohibited, without first obtaining the approval of more than 50% of the holders of redeemable convertible preferred stock then outstanding, voting together as a separate class to (a) amend certificate of incorporation in any way that would materially and adversely alter or change the rights, preferences, or privileges of the series preferred stock or (b) increase the total number of authorized shares of any Series Preferred stock. Additionally, the vote of at least a majority of the holders of Series D, E, F and G redeemable convertible preferred stock was needed to materially and adversely affect the rights of such holders of each series, including increasing or decreasing the number of authorized shares of Series D, E, F and G redeemable convertible preferred stock, as applicable.

Redemption

The redeemable convertible preferred shares were not mandatorily redeemable.

Conversion

Upon the completion of the Company's IPO in September 2021, all 29,912,264 shares of its then-outstanding redeemable convertible preferred stock automatically converted into 29,912,264 shares of common stock and it reclassified $329.5 million of redeemable convertible preferred stock to additional paid-in capital on our condensed consolidated balance sheet.

8. Stockholder's Equity

2021 Equity Incentive Award Plan

In September 2021, the Company adopted the 2021 Equity Incentive Award Plan (the "2021 Plan"), which allows for the granting of stock options and stock purchase rights to the employees, members of the board of directors, and consultants of the Company. A total of 3,303,910 shares of common stock were initially reserved for issuance under the 2021 Plan. Options granted under the 2021 Plan may be either incentive stock options ("ISOs") or nonqualified stock options ("NSOs"). ISOs may be granted only to the Company's employees, including officers and directors who are also employees. NSOs may be granted to employees and consultants.

Options under the 2021 Plan may be granted for periods of up to 10 years and at prices no less than 100% of the estimated fair value of the shares on the date of grant as determined by the board of directors, provided, however, that the exercise price of an ISO and NSO granted to a 10% shareholder shall not be less than 110% of the estimated fair value of the shares on the date of grant.

Granted options for newly hired employees usually vest over four years monthly with a one-year cliff vesting, and follow-on options vest monthly over four years with no cliff vesting. Options granted to consultants have various vesting schedules depending on the underlying consulting arrangement and anticipated period of service. Granted restricted stock units usually vest over four years annually. As of December 31, 2021, there were 3.1 million shares are available for grant and 0.2 million awards outstanding under the 2021 Plan.

2008 Stock Plan

The Company ceased making awards under the 2008 Stock Plan upon the effective date of the Company's IPO. In 2008, the Company adopted the 2008 Stock Plan (the "2008 Plan"), which allows for the granting of stock options and stock purchase rights to the employees, members of the board of directors, and consultants of the Company. Options granted under the 2008 Plan may be either incentive stock options ("ISOs") or nonqualified stock options ("NSOs"). ISOs may be granted only to the Company's employees, including officers and directors who are also employees. NSOs may be granted to employees and consultants. Options granted under the 2008 Plan will start expiring in August 2021. Options outstanding under the 2008 Plan will expire upon forfeiture. As of December 31, 2021, 6.2 million options were outstanding under the 2008 Plan.

A summary of the Company's stock option activity and related information are as follows (options in thousands):

	Year Ended December 31, 2021	
	Options	Price
Outstanding, beginning of period	6,507	$ 3.94
Granted	1,551	8.82
Exercised	(1,511)	2.77
Forfeited	(182)	6.00
Outstanding, end of period	6,365	5.34
Vested and expected to vest	6,365	5.34
Exercisable	3,082	4.15

As of December 31, 2021, the aggregate pre-tax intrinsic value of options outstanding and exercisable was $64.3 million and options outstanding were $125.7 million. The aggregate pre-tax intrinsic value of options exercised was $10.9 million and $2.0 million during the years ended December 31, 2021 and 2020, respectively. The aggregate pre-tax intrinsic value was calculated as the difference between the exercise prices of the underlying options and the estimated fair value of the common stock on the date of exercise. The total fair value of options vested was $3.4 million and $1.6 million during the years ended December 31, 2021 and 2020, respectively.

A summary of the Company's restricted stock unit activity and related information are as follows (restricted stock units in thousands):

	Year Ended December 31, 2021	
	Restricted Stock Units	Weighted-Average Fair Value
Outstanding, beginning of period	—	$ —
Awarded	35	34.78
Outstanding, end of period	35	34.78

As of December 31, 2021, the aggregate pre-tax intrinsic value of restricted stock units outstanding was $0.9 million, calculated based on the closing price of the Company's common stock at the end of the period, and the weighted-average remaining contractual term was 3.6 years.

2021 Employee Stock Purchase Plan

In September 2021, the Company adopted the 2021 Employee Stock Purchase Plan (the "2021 ESPP"). The 2021 ESPP became effective on the effective date of the IPO. A total of 412,988 shares were initially reserved for issuance under the 2021 ESPP. Additionally, the number of shares of common stock reserved for issuance under the 2021 ESPP will increase automatically each year, beginning on January 1, 2022, and continuing through and including January 1, 2031, by the lesser of (1) 1% of the total number of shares of common stock outstanding on December 31 of the preceding calendar year; or (2) such lesser number as determined by the Company's board of directors. The number of shares that may be issued under the 2021 ESPP shall not exceed a total of 10,526,315 shares. As of December 31, 2021, no shares have been issued under the 2021 ESPP.

The Company estimates the fair value of stock-based compensation on the date of grant using the Black-Scholes option-pricing model. The Black-Scholes model determines the fair value of stock-based payment awards based on the fair market value of the Company's common stock on the date of grant and is affected by assumptions regarding a number of highly complex and subjective variables. These variables include, but are not limited to, the fair market value of the Company's common stock, volatility over the expected term of the awards and actual and projected employee stock option exercise behaviors. The Company has opted to use the "simplified method" for estimating the expected term of options, whereby the expected term equals the arithmetic average of the vesting term and the original contractual term of the option. Due to the Company's limited operating history and a lack of company specific historical and implied volatility data, the Company has based its estimate of expected volatility on the historical volatility of a group of similar companies that are publicly traded. When selecting these public companies on which it has based its expected stock price volatility, the Company generally selected companies with comparable characteristics to it, including enterprise value, stages of clinical

development, risk profiles, position within the industry and with historical share price information sufficient to meet the expected life of the stock-based awards. The historical volatility data was computed using the daily closing prices for the selected companies' shares during the equivalent period of the calculated expected term of the share-based payments. The Company will continue to analyze the historical stock price volatility and expected term assumptions as more historical data for the Company's common stock becomes available. The risk-free rate assumption is based on the U.S. Treasury instruments with maturities similar to the expected term of the Company's stock options. The expected dividend assumption is based on the Company's history of not paying dividends and its expectation that it will not declare dividends for the foreseeable future.

Total stock-based compensation recognized, before taxes, are as follows (in thousands):

	Year Ended December 31,	
	2021	2020
Cost of sales	$ 253	$ 80
Research and development	783	543
Sales, general and administrative	2,760	1,550
Total stock-based compensation	$ 3,796	$ 2,173

The amount of unearned stock-based compensation related to unvested employee stock-based payment awards as of December 31, 2021 is $10.6 million. The weighted-average period over which the unearned stock-based compensation is expected to be recognized as of December 31, 2021 is 2.8 years.

The fair value of the options granted to employees or directors was estimated as of the grant date using the Black-Scholes model assuming the weighted-average assumptions listed in the following table:

	Year Ended December 31,	
	2021	2020
Expected life (years)	6.0	6.0
Expected volatility	50 %	41 %
Risk-free interest rate	1.0 %	0.9 %
Expected dividend rate	— %	— %
Weighted-average fair value	$ 4.36	$ 1.95

The fair value of the options granted under the 2021 ESPP to employees was estimated as of the grant date using the Black-Scholes model assuming the weighted-average assumptions listed in the following table:

	Year Ended December 31, 2021
Expected life (years)	0.9
Expected volatility	50 %
Risk-free interest rate	0.1 %
Expected dividend rate	— %
Weighted-average fair value	$ 8.44

9. Commitments and Contingencies

Guarantees and Indemnifications

In the normal course of business, the Company enters into agreements that contain a variety of representations and provide for general indemnification. The Company's exposure under these agreements is unknown because it involves claims that may be made against the Company in the future. To date, the Company has not paid any claims or been required to defend any action related to its indemnification obligations. As of December 31, 2021, the Company does not have any material indemnification claims that were probable or reasonably possible and consequently has not recorded related liabilities.

Facility Lease

In July 2013, the Company entered into a three-year lease agreement for its current facility located in Redwood City, California. In 2018, the Company expanded the lease space and extended the lease agreement through October 2023. The lease agreement provides for an escalation of rent payments each year and the Company records rent expense on a straight-line basis over the term of the lease. Rent is payable monthly. As of December 31, 2021, the remaining future minimum lease payments under this lease is $4.5 million.

In connection with the Company's adoption of ASC Topic 842, Leases, on January 1, 2020, the Company recorded a right-of-use leased asset of $6.0 million and a corresponding lease liability of $7.4 million and derecognized a deferred rent obligation of $1.4 million. The Company used its borrowing rate of 10% as its discount rate and the remaining operating lease term was 3.8 years. The results for the year ended December 31, 2020 and subsequent periods are presented under Topic 842.

Rent expense recognized under the lease, including additional rent charges for utilities, parking, maintenance and real estate taxes, was $2.7 million and $2.9 million for the years ended December 31, 2021 and 2020, respectively.

As of December 31, 2021, the Company has future commitments of $54.5 million from debt repayments and office space under a non-cancelable operating lease expiring October 2023, respectively.

Future minimum annual operating lease and debt repayments are as follows (in thousands):

As of December 31, 2021	Minimum Lease Payments	Debt Repayments	Total
2022	$ 2,445	$ —	$ 2,445
2023	2,092	12,500	14,592
2024	—	37,500	37,500
Total minimum payments	4,537	50,000	54,537
Less: amount representing interest/unamortized debt discount	(441)	4	(437)
Present value of future payments	4,096	50,004	54,100
Less: current portion	(2,105)	—	(2,105)
Non-current portion	$ 1,991	$ 50,004	$ 51,995

As of December 31, 2021 and 2020, the Company's security deposit is in the form of, and recorded as, restricted cash.

On December 31, 2021, the Company entered into a lease for two existing buildings, comprising approximately 158,221 square feet of space, located in San Jose, California. The term of the lease is anticipated to commence no later than December 31, 2022, and continue for 122 months following the lease commencement, with two five year options to extend the term of the lease. The Lease provides for annual base rent of $4.3 million for the first year, which increases on a yearly basis up to $5.5 million for the tenth year, for an aggregate of $49.2 million. In January 2022, the Company issued a standby letter of credit to the landlord in the amount of $3.0 million as the security deposit for the lease. The standby letter of credit is secured by a $3.0 million bank deposit and will be recorded as restricted cash. Under the terms of the lease, the Company will receive an allowance of up to $7.9 million from the landlord to be applied to the Company's construction of tenant improvements following the landlord's delivery of the two buildings to the Company. The Company intends to relocate its operations to the facility in San Jose prior to the end of the term of the lease for its facility in Redwood City, California.

10. Income Taxes

The Company did not record an income tax provision for both periods.

Reconciliation between the tax provision computed at the federal statutory income tax rate and the Company's actual effective income tax rate are as follows:

	Year Ended December 31,	
	2021	2020
Federal statutory tax rate	21 %	21 %
R&D tax credit	2	1
Stock-based compensation and other permanent differences	—	—
Change in valuation allowance	(23)	(22)
Total	— %	— %

The Company’s income taxes are accounted for in accordance with authoritative guidance, which requires the use of the asset and liability method. Under this method, deferred income tax assets and liabilities are determined based upon the difference between the consolidated financial statement carrying amounts and the tax basis of assets and liabilities and are measured using the enacted tax rate expected to apply to taxable income in the years in which the differences are expected to be reversed.

Significant components of net deferred tax assets are as follows (in thousands):

	December 31,	
	2021	2020
Deferred tax assets:		
Net operating losses	$ 52,832	$ 42,331
Property and equipment	555	303
R&D tax credit	5,209	3,830
Stock-based compensation	717	490
Capitalized R&D expenses	6,268	3,109
Inventory	909	511
Lease liability	1,003	1,461
Accruals and reserves	1,418	1,144
Total deferred tax assets	68,911	53,179
Valuation allowance	(68,046)	(52,005)
Net deferred tax assets	865	1,174
Deferred tax liabilities:		
Right-of-use assets	(865)	(1,174)
Total deferred tax liabilities	(865)	(1,174)
Net deferred tax assets	$ —	$ —

The Company has evaluated the positive and negative evidence bearing upon the realizability of its deferred tax assets. Based on the Company's history of operating losses, the Company has concluded that it is more likely than not that the benefit of its deferred tax assets will not be realized. The valuation allowance increased by $16.0 million during the year ended December 31, 2021.

As of December 31, 2021 and 2020, the Company has U.S. federal net operating loss (“NOL”) carryforwards of approximately $215.0 million and $170.8 million, respectively, expiring beginning 2028. As of December 31, 2021 and 2020, the Company has U.S. state and local NOL carryforwards of approximately $123.5 million and $100.7 million, respectively, expiring beginning 2028.

As of December 31, 2021 and 2020, the Company has federal research and development credit carryforwards of approximately $4.2 million and $3.1 million, respectively, available to reduce future taxable income, if any. As of December 31, 2021 and 2020, the Company has California research and development credit carryforwards of approximately $3.4 million and $2.5 million, respectively, available to reduce future taxable income, if any.

The federal research and development credit carryforwards expire beginning 2028 and California research and development credit carryforwards are indefinite.

Internal Revenue Code section 382 places a limitation (the “Section 382 Limitation”) on the amount of taxable income that can be offset by net operating carryforwards after a change in control of a loss corporation. Generally, after a change in control, a loss corporation cannot deduct operating loss carryovers in excess of the Section 382 limitation. The Company has not performed an analysis to determine if a limitation applies and whether the limitation would cause the net operating losses to expire unutilized.

The Company files federal, state, and foreign income tax returns. The tax periods 2008 through 2021 remain open in most jurisdictions. In addition, any tax losses that were generated in prior years and carried forward may also be subject to examination by respective authorities. The Company is not currently under examination by federal, state or foreign income tax authorities.

In March 2020, the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") was passed into law. The CARES Act includes several significant business tax provisions including modification to the taxable income limitation for utilization of NOLs incurred in 2020, 2019 and 2018, and the ability to carry back NOLs from those years for a period of up to five years, an increase to the limitation on deductibility of certain business interest expense, bonus depreciation for purchases of qualified improvement property and special deductions on certain corporate charitable contributions. The Company has analyzed the provision of the CARES Act and determined it did not have an impact on its consolidated financial statements due to the full valuation reserve.

A reconciliation of the change in the unrecognized tax benefit during the year is as follows (in thousands):

	December 31,	
	2021	2020
Beginning of year	$ 1,407	$ 986
Additions for tax positions related to:		
Current year	510	421
Prior years	—	—
End of year	$ 1,917	$ 1,407

As of December 31, 2021, the Company had a total of $1.9 million of gross unrecognized tax benefits, none of which would affect the effective tax rate upon realization. The Company currently has a full valuation allowance against its U.S. net deferred tax assets which would impact the timing of the effective tax rate benefit should any of these uncertain tax positions be favorably settled in the future.

The Company does not expect the unrecognized tax benefits to change significantly over the next 12 months. The Company will recognize interest and penalties accrued on any unrecognized tax benefits as a component of income tax expense. As of December 31, 2021, the Company has not accrued interest or penalties related to uncertain tax positions.

Item 9. Changes in and Disagreements with Accountants

None.

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, have evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this Annual Report on Form 10-K. Based on that evaluation, our Chief Executive Officer and our Chief Financial Officer have concluded that, as of December 31, 2021, our disclosure controls and procedures were effective at the reasonable assurance level

Remediation of Previously Reported Material Weakness

As previously reported, in connection with the preparation of our consolidated financial statements, a material weakness in our internal control over financial reporting was identified as of December 31, 2020. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis. The material weakness was the result of our failure to design and maintain effective controls over certain information technology, or IT, general controls for information systems that are relevant to the preparation of our financial statements. Specifically, we did not design and maintain:

- program change management controls to ensure that information technology program and data changes affecting financial IT applications and underlying accounting records are identified, tested, authorized and implemented appropriately, and
- user access controls to ensure appropriate segregation of duties and that adequately restrict user and privileged access to financial applications, programs and data to appropriate company personnel.

During the year ended December 31, 2021, we implemented measures designed to improve our internal control over financial reporting to remediate the material weakness, including:

- Engaging professional accounting consultants to assist management in the documentation and evaluation of our internal control over financial reporting including testing the design and operating effectiveness of the internal controls; and
- Designing and implementing IT general controls, including controls over the review and update of user access rights and privileges, including segregation of duties, and controls over program changes to our information systems that contain data used for financial reporting.

Management has concluded, through testing of the design and operating effectiveness of the newly designed controls, that the previously identified material weakness is remediated as of December 31, 2021.

Limitations on Effectiveness of Disclosure Controls and Procedures

In designing and evaluating our disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Management's Report on Internal Control over Financial Reporting

This Annual Report on Form 10-K does not include a report of management's assessment regarding our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) or an attestation report of our independent registered public accounting firm due to a transition period established by rules of the SEC for newly public companies.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the quarter ended December 31, 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information

None.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections

None.

Part III

Item 10. Directors, Executive Officers and Corporate Governance

The information required by this Item concerning our directors and executive officers is incorporated by reference to the sections of our Proxy Statement under the headings “Proposal 1 — Election of Directors,” “Board Committees and Meetings,” “Stockholder Communications with the Board of Directors,” “Management” and if applicable, “Delinquent Section 16(a) Reports.”

Our written Code of Ethics applies to all of our directors and employees, including our executive officers, including without limitation our principal executive officer, principal financial officer, principal accounting officer or controller or persons performing similar functions. The Code of Ethics is available on our website at procept-biorobotics.com in the Investors section under “Corporate Governance.” Changes to or waivers of the Code of Ethics will be disclosed on the same website. We intend to satisfy the disclosure requirement under Item 5.05 of Form 8-K regarding any amendment to, or waiver of, any provision of the Code of Ethics by disclosing such information on the same website.

Item 11. Executive Compensation

The information required by this Item is incorporated by reference to the sections of the Proxy Statement under the headings “Executive Compensation,” “Compensation Committee Interlocks and Insider Participation” and “Compensation of Non-Employee Board Members.”

Item 12. Security Ownership of Certain Beneficial Owner and Management and Related Stockholder Matters

The information required by this Item is incorporated by reference to the sections of the Proxy Statement under the headings “Security Ownership of Certain Beneficial Owners and Management” and “Securities Authorized for Issuance under Equity Compensation Plans.”

Item 13. Certain Relationships and Related Party Transactions

The information required by this Item is incorporated by reference to the sections of the Proxy Statement under the headings “Proposal 1 — Election of Directors” and “Certain Relationships and Related Party Transactions.”

Item 14. Principal Accounting Fees and Services

The information required by this Item is incorporated by reference to the section of the Proxy Statement under the heading “Principal Accountant Fees and Services.”

With the exception of the information specifically incorporated by reference in Part III to this Annual Report from our Proxy Statement, our Proxy Statement shall not be deemed to be filed as part of this report.

Part IV

Item 15. Exhibits, Financial Statement Schedules

(a) Exhibits.

Exhibit No.	Exhibit Description
3.1	Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the registrant's Current Report on Form 8-K (File No. 001-40797) filed on September 21, 2021)
3.2	Amended and Restated Bylaws (incorporated by reference to Exhibit 3.2 to the registrant's Current Report on Form 8-K (File No. 001-40797) filed on September 21, 2021)
4.1*	Description of PROCEPT BioRobotics Corporation's Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934
10.1+	Offer Letter, by and between the Registrant and Reza Zadno, Ph.D., dated as of January 31, 2020 (incorporated by reference to Exhibit 10.1 to the registrant's registration statement on Form S-1 (File No. 333-258898))
10.2+	Offer Letter, by and between the Registrant and Kevin Waters, dated as of August 7, 2018 (incorporated by reference to Exhibit 10.2 to the registrant's registration statement on Form S-1 (File No. 333-258898))
10.3+	Offer Letter, by and between the Registrant and Hisham Shiblaq, dated as of March 21, 2019 (incorporated by reference to Exhibit 10.3 to the registrant's registration statement on Form S-1 (File No. 333-258898))
10.4+	Amended and Restated 2008 Stock Plan (incorporated by reference to Exhibit 10.4 to the registrant's registration statement on Form S-1 (File No. 333-258898))
10.4(a)+	Form of Stock Option Agreement under the Amended and Restated 2008 Stock Plan (incorporated by reference to Exhibit 10.4(a) to the registrant's registration statement on Form S-1 (File No. 333-258898))
10.5	Form of Indemnification and Advancement Agreement (incorporated by reference to Exhibit 10.5 to the registrant's registration statement on Form S-1 (File No. 333-258898))
10.6	Amended and Restated Exclusive License Agreement, by and between the Registrant and AquaBeam LLC, dated as of September 13, 2019 (incorporated by reference to Exhibit 10.6 to the registrant's registration statement on Form S-1 (File No. 333-258898))
10.7	Loan and Security Agreement, by and between the Registrant and Oxford Finance LLC, dated as of September 25, 2019 (incorporated by reference to Exhibit 10.7 to the registrant's registration statement on Form S-1 (File No. 333-258898))
10.7(a)	First Amendment to Loan and Security Agreement, by and between the Registrant and Oxford Finance LLC, dated as of January 15, 2021 (incorporated by reference to Exhibit 10.7(a) to the registrant's registration statement on Form S-1 (File No. 333-258898))
10.7(b)	Second Amendment to Loan and Security Agreement, by and between the Registrant and Oxford Finance LLC, dated as of April 6, 2021 (incorporated by reference to Exhibit 10.7(b) to the registrant's registration statement on Form S-1 (File No. 333-258898))
10.7(c)*	Third Amendment to Loan and Security Agreement, by and between the Registrant and Oxford Finance LLC, dated as of January 7, 2022
10.8	Lease Agreement, by and between the Registrant and Westport Office Park LLC, dated as of July 15, 2013 (incorporated by reference to Exhibit 10.8 to the registrant's registration statement on Form S-1 (File No. 333-258898))
10.8(a)	First Amendment to Lease Agreement, by and between the Registrant and Westport Office Park LLC, dated as of March 2, 2016 (incorporated by reference to Exhibit 10.8(a) to the registrant's registration statement on Form S-1 (File No. 333-258898))
10.8(b)	Second Amendment to Lease Agreement, by and between the Registrant and Westport Office Park LLC, dated as of May 20, 2016 (incorporated by reference to Exhibit 10.8(b) to the registrant's registration statement on Form S-1 (File No. 333-258898))

10.8(c)	Third Amendment to Lease Agreement, by and between the Registrant and Westport Office Park LLC, dated as of April 4, 2018 (incorporated by reference to Exhibit 10.8(c) to the registrant's registration statement on Form S-1 (File No. 333-258898))
10.9*	Lease, by and between the Registrant and 150-180 Baytech Drive CA Owner, LLC, dated December 31, 2021
10.10	Amended and Restated Investor Rights Agreement, by and among the Registrant and the investors named therein and the founder named therein, dated June 10, 2021 (incorporated by reference to Exhibit 10.9 to the registrant's registration statement on Form S-1 (File No. 333-258898))
10.11+	Non-Employee Director Compensation Program (incorporated by reference to Exhibit 10.10 to the registrant's registration statement on Form S-1 (File No. 333-258898))
10.12+	2021 Equity Incentive Award Plan (incorporated by reference to Exhibit 10.11 to the registrant's registration statement on Form S-1 (File No. 333-258898))
10.12(a)+	Form of Stock Option Agreement under the 2021 Equity Incentive Award Plan (incorporated by reference to Exhibit 10.11(a) to the registrant's registration statement on Form S-1 (File No. 333-258898))
10.12(b)+	Form of Restricted Stock Unit Agreement under the 2021 Equity Incentive Award Plan (incorporated by reference to Exhibit 10.11(b) to the registrant's registration statement on Form S-1 (File No. 333-258898))
10.13+	2021 Employee Stock Purchase Plan (incorporated by reference to Exhibit 10.12 to the registrant's registration statement on Form S-1 (File No. 333-258898))
10.14+	Amended and Restated Change of Control Severance Agreement, by and between the Registrant and Reza Zadno, Ph.D., dated September 17, 2021 (incorporated by reference to Exhibit 10.13 to the registrant's registration statement on Form S-1 (File No. 333-258898))
10.15+	Amended and Restated Change of Control Severance Agreement, by and between the Registrant and Kevin Waters, dated September 17, 2021 (incorporated by reference to Exhibit 10.14 to the registrant's registration statement on Form S-1 (File No. 333-258898))
10.16+	Amended and Restated Change of Control Severance Agreement, by and between the Registrant and Hisham Shiblaq, dated September 17, 2021 (incorporated by reference to Exhibit 10.15 to the registrant's registration statement on Form S-1 (File No. 333-258898))
21.1	List of subsidiaries of the Registrant (incorporated by reference to Exhibit 21.1 to the registrant's registration statement on Form S-1 (File No. 333-258898))
23.1*	Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm.
24.1*	Power of Attorney (included on signature page).
31.1**	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2**	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1**	Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2**	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data file because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document.
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.

101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104*	Cover Page Interactive Data File (embedded within the Inline XBRL document)

* Filed herewith.
** Furnished herewith.
+ Indicates management contract or compensatory plan.

(b) Financial Statement Schedules.

Schedules not listed above have been omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or the notes thereto.

Item 16. Form 10-K Summary

None**.**

Signatures

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

PROCEPT BIOROBOTICS CORPORATION

Date:	March 22, 2022	By:	/s/ Reza Zadno
			Name: Reza Zadno, Ph.D.
			Title: Chief Executive Officer
Date:	March 22, 2022	By:	/s/ Kevin Waters
			Name: Kevin Waters
			Title: Chief Financial Officer

SIGNATURES AND POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Reza Zadno and Kevin Waters, jointly and severally, his or her attorneys-in-fact, each with the power of substitution, for him or her in any and all capacities, to sign any amendments to this Annual Report on Form 10-K, and to file the same, with exhibits thereto and other documents in connection therewith with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact, or his substitute or substitutes, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Reza Zadno Reza Zadno, Ph.D.	President, Chief Executive Officer and Director (principal executive officer)	March 22, 2022
/s/ Kevin Waters Kevin Waters	SVP, Chief Financial Officer (principal financial and accounting officer)	March 22, 2022
/s/ Frederic Moll, M.D. Frederic Moll, M.D.	Director and Chair of the Board	March 22, 2022
/s/ Antal Desai Antal Desai	Director	March 22, 2022
/s/ Amy Dodrill Amy Dodrill	Director	March 22, 2022
/s/ Mary Garrett Mary Garrett	Director	March 22, 2022
/s/ Taylor Harris Taylor Harris	Director	March 22, 2022
/s/ Thomas Krummel, M.D. Thomas Krummel, M.D.	Director	March 22, 2022
/s/ Elisabeth Sandoval Elisabeth Sandoval	Director	March 22, 2022
/s/ Colby Wood Colby Wood	Director	March 22, 2022

DESCRIPTION OF SECURITIES REGISTERED PURSUANT TO SECTION 12 OF THE EXCHANGE ACT

The following descriptions of the common stock of PROCEPT BioRobotics Corporation (the "Company," "we," "us," and "our") and certain provisions of our amended and restated certificate of incorporation, as amended from time to time (the "amended and restated certificate of incorporation") and amended and restated bylaws, as amended from time to time (the "amended and restated bylaws") is a summary and is qualified in its entirety by reference to the full text of our amended and restated certificate of incorporation and amended and restated bylaws and applicable provisions of the General Corporation Law of the State of Delaware (the "Delaware General Corporation Law").

General

Our amended and restated certificate of incorporation authorizes capital stock consisting of:

300,000,000 shares are designated as common stock, par value $0.00001 per share; and

10,000,000 shares are designated as preferred stock, par value $0.00001 per share.

Common Stock

Voting Rights

Holders of our common stock are entitled to one vote for each share held on all matters submitted to a vote of stockholders and do not have cumulative voting rights. An election of directors by our stockholders shall be determined by a plurality of the votes cast by the stockholders entitled to vote on the election.

Dividend Rights

Holders of common stock are entitled to receive proportionately any dividends as may be declared by our board of directors, subject to any preferential dividend rights of any series of preferred stock that we may designate and issue in the future.

Right to Receive Liquidation Distribution

In the event of our liquidation or dissolution, the holders of common stock are entitled to receive proportionately our net assets available for distribution to stockholders after the payment of all debts and other liabilities and subject to the prior rights of any outstanding preferred stock.

No Preemptive or Similar Rights

Holders of common stock have no preemptive, subscription, redemption or conversion rights. The rights, preferences and privileges of holders of common stock are subject to and may be adversely affected by the rights of the holders of shares of any series of preferred stock that we may designate and issue in the future.

Preferred Stock

Under the terms of our amended and restated certificate of incorporation our board of directors is authorized to direct us to issue shares of preferred stock in one or more series without stockholder approval. Our board of directors has the discretion to determine the rights, preferences, privileges and restrictions, including voting rights, dividend rights, conversion rights, redemption privileges and liquidation preferences, of each series of preferred stock.

The purpose of authorizing our board of directors to issue preferred stock and determine its rights and preferences is to eliminate delays associated with a stockholder vote on specific issuances. The

issuance of preferred stock, while providing flexibility in connection with possible acquisitions, future financings and other corporate purposes, could have the effect of making it more difficult for a third-party to acquire, or could discourage a third-party from seeking to acquire, a majority of our outstanding voting stock. The rights of holders of our common stock would be subject to any preferential rights for any series of preferred stock we may issue in the future.

Anti-Takeover Provisions

Because our stockholders do not have cumulative voting rights, our stockholders holding a majority of the voting power of our shares of common stock outstanding are able to elect all of our directors. Our amended and restated certificate of incorporation and amended and restated bylaws provide that all stockholder actions must be effected at a duly called meeting of stockholders and not by consent in writing. A special meeting of stockholders may be called only by a majority of our board of directors, the chair of our board of directors, or our chief executive officer.

Our amended and restated certificate of incorporation provides that the affirmative vote of holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then outstanding shares of voting stock, voting as a single class, are required to amend certain provisions of our certificate of incorporation, including provisions relating to the size of the board, removal of directors, special meetings, actions by written consent and cumulative voting. The affirmative vote of holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then outstanding shares of voting stock, voting as a single class, are required to amend or repeal our bylaws, although our bylaws may be amended by a simple majority vote of our board of directors.

Our amended and restated certificate of incorporation provides that our board of directors is divided into three classes, Class I, Class II and Class III, with each class serving staggered terms, and gives our board of directors the exclusive right to expand the size of our board of directors and to elect directors to fill a vacancy created by the expansion of the board of directors or the resignation, death or removal of a director.

Finally, our amended and restated certificate of incorporation provides that, unless we consent in writing to the selection of an alternative forum, to the fullest extent permitted by law, the Court of Chancery of the State of Delaware is the sole and exclusive forum for: (i) any derivative action or proceeding brought on behalf of us; (ii) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers or other employees or agents to us or our stockholders; (iii) any action asserting a claim against us arising pursuant to any provision of the Delaware General Corporation Law or our amended and restated certificate of incorporation or amended and restated bylaws; or as to which the Delaware General Corporation Law of the State of Delaware confers jurisdiction to the Court of Chancery of the State of Delaware, or (iv) any action asserting a claim against us governed by the internal affairs doctrine; provided that, the exclusive forum provision does not apply to suits brought to enforce any liability or duty created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction; and provided further that, if and only if the Court of Chancery of the State of Delaware dismisses any such action for lack of subject matter jurisdiction, such action may be brought in another state or federal court sitting in the State of Delaware. Our amended and restated certificate of incorporation provides that the federal district courts of the United States of America is the exclusive forum for the resolution of any complaint asserting a cause of action against us or any of our directors, officers, employees or agents and arising under the Securities Act. Under the Securities Act, federal and state courts have concurrent jurisdiction over all suits brought to enforce any duty or liability created by the Securities Act, and investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder. Accordingly, there is uncertainty as to whether a court would enforce such a forum selection provision as written in connection with claims arising under the Securities Act. The enforceability of similar choice of forum provisions in other companies' certificates of incorporation has been challenged in legal proceedings, and it is possible that, in connection with any action, a future court could find the choice of forum provisions contained in our amended and restated certificate of incorporation to be inapplicable or unenforceable in such action. These provisions may also result in increased costs for investors seeking to bring a claim against us or any of our directors, officers or other employees.

The foregoing provisions make it more difficult for our existing stockholders to replace our board of directors as well as for another party to obtain control of our company by replacing our board of directors. Since our board of directors has the power to retain and discharge our officers, these provisions could also make it more difficult for existing stockholders or another party to effect a change in management. In addition, the authorization of undesignated preferred stock makes it possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to change the control of our company.

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

Section 203 of the Delaware General Corporation Law

We are subject to Section 203 of the DGCL, which prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years after the date that such stockholder became an interested stockholder, with the following exceptions:

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

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

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

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

Limitations on Liability and Indemnification Matters

Our amended and restated certificate of incorporation and amended and restated bylaws provide that we will indemnify each of our directors and executive officers to the fullest extent permitted by the DGCL. We have entered into indemnification agreements with each of our directors and executive officers that may, in some cases, be broader than the specific indemnification provisions contained under Delaware law. Further, pursuant to our indemnification agreements and directors’ and officers’ liability insurance, our directors and executive officers are indemnified and insured against the cost of defense, settlement or payment of a judgment under certain circumstances. In addition, as permitted by Delaware law, our amended and restated certificate of incorporation includes provisions that eliminate the personal liability of our directors for monetary damages resulting from breaches of certain fiduciary duties as a director. The effect of this provision is to restrict our rights and the rights of our stockholders in derivative suits to recover monetary damages against a director for breach of fiduciary duties as a director.

These provisions may be held not to be enforceable for violations of the federal securities laws of the United States.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Computershare Trust Company, N.A. The transfer agent and registrar’s address is 250 Royall Street, Canton, Massachusetts 02021.

Stock Exchange Listing

Our common stock is listed on the Nasdaq Global Market under the symbol “PRCT.”

THIRD AMENDMENT TO LOAN AND SECURITY AGREEMENT

THIS THIRD AMENDMENT to Loan and Security Agreement (this "**Amendment**") is entered into as of January 7, 2022 (the "**Amendment Date**"), by and among OXFORD FINANCE LLC, a Delaware limited liability company with an office located at 115 South Union Street, Suite 300, Alexandria, VA 22314 ("**Oxford**"), as collateral agent (in such capacity, "**Collateral Agent**"), the Lenders listed on Schedule 1.1 to the Loan Agreement (as defined below) or otherwise a party thereto from time to time including Oxford in its capacity as a Lender (each a "**Lender**" and collectively, the "**Lenders**"), and PROCEPT BIOROBOTICS CORPORATION, a Delaware corporation with offices located at 900 Island Drive, Suite 210, Redwood City, California 94065 ("**Borrower**").

WHEREAS, Collateral Agent, Borrower and Lenders have entered into that certain Loan and Security Agreement, dated as of September 25, 2019 (as amended, supplemented or otherwise modified from time to time, the "**Loan Agreement**") pursuant to which Lenders have provided to Borrower certain loans in accordance with the terms and conditions thereof; and

WHEREAS, Borrower, Lenders and Collateral Agent desire to amend certain provisions of the Loan Agreement as provided herein and subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Borrower, Lenders and Collateral Agent hereby agree as follows:

1. Capitalized terms used herein but not otherwise defined shall have the respective meanings given to them in the Loan Agreement.

2. Section 6.2(a)(i) of the Loan Agreement is hereby amended and restated as follows:

   (i) as soon as available, but no later than forty-five (45) days after the last day of each quarter (or within five (5) days of filing with the SEC, if earlier), a company prepared consolidated balance sheet, income statement and cash flow statement covering the consolidated operations of Borrower and its Subsidiaries for such quarter certified by a Responsible Officer and in a form reasonably acceptable to Collateral Agent;

3. Section 6.2(a)(ii) of the Loan Agreement is hereby amended and restated as follows:

   (ii) as soon as available, but no later than ninety five (95) 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 opinion on the financial statements (other than any "going concern" solely in connection with the need to raise equity and negative profits) from an independent certified public accounting firm acceptable to Collateral Agent in its reasonable discretion; provided that certified public accounting firms of recognized national standing shall be acceptable to the Collateral Agent;

4. Section 6.2(b) of the Loan Agreement is hereby amended and restated as follows:

   (b) Concurrently with the delivery of the financial statements specified in Section 6.2(a)(i) above but no later than forty five (45) days after the last day of each quarter, deliver to each Lender, a duly completed Compliance Certificate signed by a Responsible Officer.

5. Section 7.1(e) of the Loan Agreement is hereby amended and restated as follows:

   (e) of cash and Cash Equivalents in connection with transactions not prohibited hereunder in the ordinary course of business and approved by Borrower's Board of Directors (to the extent Board approval is required by Borrower's policies or other organizational documents);

6. Section 8.13 of the Loan Agreement is hereby amended and restated as follows:

   8.13 Delisting. The equity securities of Borrower are delisted from Nasdaq Global Market because of failure to comply with continued listing standards thereof or due to a voluntary delisting which results in such equity securities not being listed on any other nationally recognized stock exchange in the United States having listing standards at least as restrictive as Nasdaq Global Market.

7. Section 13.1 of the Loan Agreement is hereby amended by amending and restating the following definition therein as follows:

"**Basic Rate**" is with respect to any Term Loan, the per annum rate of interest (based on a year of three hundred sixty (360) days) equal to the greater of (a) Nine and Thirty Seven Hundredths percent (9.37%) and (b) the sum of (i) thirty (30) day U.S. LIBOR 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, plus (ii) Seven and Seventeen Hundredths percent (7.17%). 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 the Basic Rate 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 discretion and without consent from any other party. Notwithstanding the foregoing, the Basic Rate for the Term Loan for the period from the Effective Date through and including September 30, 2019 shall be Nine and Thirty Seven Hundredths percent (9.37%).

8. Section 13.1 of the Loan Agreement is hereby further amended by amending and restating the definition of Investment therein as follows:

"**Investment**" is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance or capital contribution to any Person.

9. Section 13.1 of the Loan Agreement is hereby further amended by amending and restating clause (i) of the definition of Permitted Indebtedness therein as follows:

(i) Indebtedness in respect of letters of credit, bank guarantees and similar instruments issued for the account of the Borrower or any Subsidiary in the ordinary course of business supporting obligations under (A) workers' compensation, unemployment insurance and other social security laws and (B) bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and obligations of a like nature; provided the aggregate amount of Indebtedness under this clause (i) may not exceed Four Million Dollars ($4,000,000.00) at any given time;

10. Section 13.1 of the Loan Agreement is hereby further amended by amending and restating clause (m) of the definition of Permitted Liens therein as follows:

(m) Liens or deposits to secure the performance of leases incurred in the ordinary course of business and not representing an obligation for borrowed money and Liens to secure tenant improvements, provided the lessor thereof has executed a landlord consent in favor of, and in form and content reasonably acceptable to, Collateral Agent; provided, however, the sum of the aggregate amount of the Indebtedness secured by such Liens and the aggregate amount of such deposits at any given time may not exceed Four Million Dollars ($4,000,000.00);

11. Section 13.1 of the Loan Agreement is hereby further amended by adding the following definitions thereto in alphabetical order:

"**Federal Reserve Bank of New York's Webs**ite" means the website of the Federal Reserve Bank of New York at http://www.newyorkfed.org, or any successor source.

"LIBOR Replacement Rate" means the sum of: (a) the alternate benchmark rate (which may include SOFR) that has been selected by Collateral Agent in consultation with Borrower 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 the 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 consultation with Borrower 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 or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the LIBOR rate for U.S. dollar-denominated syndicated credit facilities at such time.

"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.

"**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.

"**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.

12. Exhibit C to the Loan Agreement is hereby amended and restated as set forth on Exhibit A hereto.

13. Limitation of Amendment.

    a. The amendments set forth above are effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Loan Document, or (b) otherwise prejudice any right, remedy or obligation which Lenders or Borrower may now have or may have in the future under or in connection with any Loan Document, as amended hereby.

    b. This Amendment shall be construed in connection with and as part of the Loan Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Loan Documents, are hereby ratified and confirmed and shall remain in full force and effect.

14. To induce Collateral Agent and Lenders to enter into this Amendment, Borrower hereby represents and warrants to Collateral Agent and Lenders as follows:

    a. Immediately after giving effect to this Amendment (a) the representations and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct in all material respects as of such date), and (b) no Event of Default has occurred and is continuing;

    b. Borrower has the power and due authority to execute and deliver this Amendment and to perform its obligations under the Loan Agreement, as amended by this Amendment;

    c. The organizational documents of Borrower delivered to Collateral Agent on the Effective Date, and updated pursuant to subsequent deliveries by or on behalf of the Borrower to the Collateral Agent, remain true, accurate and complete and have not been amended, supplemented or restated and are and continue to be in full force and effect;

    d. The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not contravene (i)

any material law or regulation binding on or affecting Borrower, (ii) any material contractual restriction with a Person binding on Borrower, (iii) any material order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Borrower, or (iv) the organizational documents of Borrower;

e. The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on Borrower, except as already has been obtained or made; and

f. This Amendment has been duly executed and delivered by Borrower and is the binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.

15. Except as expressly set forth herein, the Loan Agreement shall continue in full force and effect without alteration or amendment.

16. The Borrower hereby remises, releases, acquits, satisfies and forever discharges the Lenders and Collateral Agent, their agents, employees, officers, directors, predecessors, attorneys and all others acting or purporting to act on behalf of or at the direction of the Lenders and Collateral Agent **("Releasees**"), of and from any and all manner of actions, causes of action, suit, debts, accounts, covenants, contracts, controversies, agreements, variances, damages, judgments, claims and demands whatsoever, in law or in equity, which any of such parties ever had, now has or, to the extent arising from or in connection with any act, omission or state of facts taken or existing on or prior to the date hereof, may have after the date hereof against the Releasees, for, upon or by reason of any matter, cause or thing whatsoever relating to or arising out of the Loan Agreement or the other Loan Documents on or prior to the date hereof and through the date hereof. Without limiting the generality of the foregoing, the Borrower waives and affirmatively agrees not to allege or otherwise pursue any defenses, affirmative defenses, counterclaims, claims, causes of action, setoffs or other rights they do, shall or may have as of the date hereof, including the rights to contest: (a) the right of Collateral Agent and each Lender to exercise its rights and remedies described in the Loan Documents; (b) any provision of this Amendment or the Loan Documents; or (c) any conduct of the Lenders or other Releasees relating to or arising out of the Loan Agreement or the other Loan Documents on or prior to the date hereof.

17. This Amendment shall be deemed effective as of the Amendment Date upon (a) the due execution and delivery to Collateral Agent of this Amendment by each party hereto, and (b) Borrower's payment of all Lenders' Expenses incurred through the date hereof, which may be debited (or ACH'd) from the Designated Deposit Account in accordance with Section 2.3(d) of the Loan Agreement.

18. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same instrument.

19. This Amendment and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of California.

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IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to the Loan Agreement to be executed as of the date first set forth above.

BORROWER:

PROCEPT BIOROBOTICS CORPORATION

By /s/ Kevin Waters
Name: Kevin Waters
Title: EVP, Chief Financial Officer

COLLATERAL AGENT AND LENDER:

OXFORD FINANCE LLC

By /s/ Colette H. Featherly
Name: Colette H. Featherly
Title: Senior Vice President

EXHIBIT A

EXHIBIT C

Compliance Certificate

TO: OXFORD FINANCE LLC, as Collateral Agent and Lender
FROM: PROCEPT BIOROBOTICS CORPORATION

The undersigned authorized officer ("**Officer**") of PROCEPT BIOROBOTICS CORPORATION, a Delaware corporation ("**Borrower**"), hereby certifies, solely in the undersigned's capacity as an officer of the company and not in the undersigned's individual capacity, 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 tax returns and reports, Borrower, and each of Borrower's Subsidiaries, has timely paid all foreign, federal, 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 90 days after FYE		Yes	No	N/A
3)	Annual Financial Projections/Budget (prepared on a monthly basis)	Annually (within 30 days of FYE), and when revised		Yes	No	N/A
4)	A/R & A/P agings	If applicable		Yes	No	N/A
5)	10-K and 10-Q Filings	If applicable, within 5 days of filing		Yes	No	N/A
6)	Compliance Certificate	Quarterly within 45 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

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 (after funding of Term C Loan)

	Covenant	Requirement	Actual	Compliance	
1)	Minimum Revenues (trailing six months)	At least 70% of Approved Forecast: $_____	$_____	Yes	No

Other Matters

1)	Have there been any changes 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 involve more than Five Hundred Thousand Dollars ($500,000.00)?	Yes	No
4)	Have there been any amendments of or other changes to the capitalization table of Borrower 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.)

PROCEPT BIOROBOTICS CORPORATION

By _____
Name: _____
Title: _____

Date:

LENDER USE ONLY

Received by:_____ Date: ____

Verified by: _____ Date: ____

Compliance Status: Yes No

LEASE

BY AND BETWEEN

150-180 BAYTECH DRIVE CA OWNER LLC,
a Delaware limited liability company
as Landlord

and

PROCEPT BIOROBOTICS CORPORATION,
a Delaware corporation
as Tenant

For Premises located at

150-160 Baytech Drive,
San Jose, California

LEASE

This Lease is dated as of the date specified in Section A of the Summary of Basic Lease Terms ("**Summary**") and is made by and between the party identified as Landlord in Section B of the Summary and the party identified as Tenant in Section C of the Summary.

SUMMARY OF BASIC LEASE TERMS

SECTION (LEASE REFERENCE)	TERMS
A. Effective Date:	December 31, 2021.
B. Landlord:	150-180 Baytech Drive CA Owner LLC, a Delaware limited liability company
C. Tenant:	PROCEPT BioRobotics Corporation a Delaware corporation
D. Premises: (§ 1.1)	That area consisting of approximately 158,221 rentable square feet of space consisting of the entire rentable area of the Building (as defined in Section E, below), as further set forth on Exhibit A attached hereto.
E. Building: (§ 1.2)	That certain two (2) story building located at 150-160 Baytech Drive, San Jose, California.
F. Project: (§ 1.2)	That certain project commonly known as "Baytech Business Park", located in San Jose, California, as further set forth in Section 1.2 of this Lease.
G. Tenant's Share: (§ 3.2.2.5)	100% of the Building based on the ratio that the rentable square footage of the Premises bears to the total rentable square footage in the Building.
H. Tenant's Allocated Parking: (Art. 19)	Three and 3/10 unreserved parking pass for every 1,000 rentable square feet of the Premises (i.e., a total of 522 parking passes based on 158,221 rentable square feet of space in the Premises) and the use of 18 electric vehicle charging stations dedicated to the Building.
I. Lease Term: (§ 2.1)	One hundred twenty-two (122) months (plus any partial month at the beginning of the Lease Term).
J. Lease Commencement Date: (§ 2.1)	The earlier to occur of (i) the date upon which Tenant first commences to conduct business in the Premises, and (ii) the date that occurs one hundred eighty (180) days following the Delivery Date (as that term is defined in Section 2.2 of the Lease), which Delivery Date is anticipated to occur on or before July 1, 2022.

K. Lease Expiration Date: (§ 2.1)

The last day of the one hundred twenty-second (122nd) full calendar month following the Lease Commencement Date occurs.

L. Option Term(s): (Exhibit F)

Two (2) five (5)-year options to extend the Lease Term, as more particularly set forth in Exhibit F to this Lease.

M. Base Monthly Rent: (§ 3.1)

Period During Lease Term	Annual Base Rent	Base Monthly Rent	Monthly Base Rental Rate per Rentable Square Foot
Lease Year 1*	$4,271,967.00	$355,997.25	$2.25
Lease Year 2	$4,400,126.04	$366,677.17	$2.32
Lease Year 3	$4,532,129.88	$377,677.49	$2.39
Lease Year 4	$4,668,093.72	$389,007.81	$2.46
Lease Year 5	$4,808,136.48	$400,678.04	$2.53
Lease Year 6	$4,952,380.56	$412,698.38	$2.61
Lease Year 7	$5,100,951.96	$425,079.33	$2.69
Lease Year 8	$5,253,980.52	$437,831.71	$2.77
Lease Year 9	$5,411,599.92	$450,966.66	$2.85
Lease Year 10	$5,573,947.92	$464,495.66	$2.94
Lease Year 11 (Partial)	N/A	$478,430.53	$3.02

* Tenant's obligation to pay Base Monthly Rent during the initial two (2) full calendar months of the Lease Term shall be subject to the terms and conditions of Section 3.1.2 of this Lease.

$355,997.25.

N. Prepaid Rent: (§ 3.3)

$3,037,500.00, subject to the terms of Article 22 of the Lease.

O. Letter of Credit: (§ 22.1)

P. Permitted Use: (§ 4.1)

The Premises shall be used only for general office, research and development, engineering, laboratory, manufacturing, storage and/or warehouse uses, including, but not limited to, administrative offices, acute animal and cadaver studies and other lawful uses reasonably related to or incidental to such specified uses, all (i) consistent with Class A life sciences projects in San Jose, California ("**Class A Life Sciences Projects**"), and (ii) in compliance with, and subject to, applicable Laws and the terms of this Lease.

Q.	Landlord's Address:	**For Notices:** 150-180 Baytech Drive CA Owner LLC c/o DivcoWest Real Estate Services, Inc. 301 Howard Street, Suite 2100 San Francisco, CA 94105 Attn: Asset Manager With a copy to: 150-180 Baytech Drive CA Owner LLC c/o DivcoWest Real Estate Services, Inc. 301 Howard Street, Suite 2100 San Francisco, CA 94105 Attn: Megan Sherman, Esq. And: Allen Matkins Leck Gamble Mallory & Natsis LLP 1901 Avenue of the Stars, Suite 1800 Los Angeles, CA 90067 Attn: Tony N. Natsis, Esq. **For Payment of Rent (Electronic Wiring Instructions):** **[LANDLORD TO PROVIDE]** Account Name: Account Number: Bank Name: Bank Address: Country: ABA Routing: Contact: Re: [Insert Tenant's Name] Monthly Rent Payment
R.	Tenant's Address:	PROCEPT BioRobotics Corporation 900 Island Drive Redwood City, CA 94065 Attention: (Prior to Lease Commencement Date) and PROCEPT BioRobotics Corporation 150-160 Baytech Drive San Jose, California 95134 Attention: (After Lease Commencement Date) With a copy to: Cooley LLP 3 Embarcadero Center, 20th Floor San Francisco, CA 94111-4004 Attention: Rachel Antoinette Boyce
S.	Brokers: (§ 21.25)	Jones Lang LaSalle Brokerage, Inc. (representing Landlord) CBRE (representing Tenant)

T. Intentionally Omitted.

U.	Tenant Improvement Allowance: (§ 2.1 of Exhibit B)	$50.00 per rentable square foot of the Premises (*i.e.*, an amount not to exceed $7,911,050.00, based on 158,221 rentable square feet in the Premises).

The foregoing Summary is hereby incorporated into and made a part of this Lease. Each reference in this Lease to any term of the Summary shall mean the respective information set forth above and shall be construed to incorporate all of the terms provided under the particular paragraph pertaining to such information. In the event of any conflict between the Summary and the Lease, the Summary shall control.

ARTICLE 1
PREMISES, BUILDING, PROJECT AND COMMON AREAS

1.1 Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises set forth in Section D of the Summary for the Lease Term and upon the terms and conditions set forth in this Lease. Landlord reserves the right to use the exterior walls, floor, and roof in, beneath and above the Premises for the installation, repair, maintenance, use, and replacement of structural systems, utility lines and systems, ducts, wires, conduits and pipes leading through the Premises as Landlord deems necessary. In exercising its rights reserved herein, Landlord shall not unreasonably interfere with the operation of Tenant's business operations from the Premises. Subject to applicable Laws and the other provisions of this Lease, and except in the event of an emergency, Tenant shall have access to the Premises twenty-four (24) hours per day, seven (7) days per week, every day of the year, subject to any security requirements and regulations that may be in effect at the time. Landlord shall have no responsibility for any furniture, trade fixtures, and equipment remaining in the Premises from the prior tenant as listed on **Exhibit G** attached hereto (the "**Prior Tenant's FF&E**") thereof upon Landlord’s tender of possession of the Premises to Tenant (including with respect to the removal thereof from the Premises), and Tenant acknowledges that Landlord has no ownership interest in any such Prior Tenant's FF&E.

1.2 Building and Project. The Premises are a part of the building set forth in Section E of the Summary (the "**Building**"). The Building is part of the office project set forth in Section F of the Summary. The term "**Project**", as used in this Lease, shall mean (i) the Building and the Common Areas (as defined in Section 1.3 below), (ii) the land (as improved with any landscaping, parking improvements and other improvements) upon which the Building and the Common Areas are located, (iii) those certain other buildings located in the vicinity of the Building and located at 170 Baytech Drive and 180 Baytech Drive, San Jose, California, respectively, and the land upon which such buildings are located; and (iv) at Landlord's discretion, any additional real property, areas, land, buildings or other improvements added thereto outside of the Project.

1.3 Common Areas. Tenant shall have the non-exclusive right to use in common with other tenants and occupants at the Project, and subject to any rules and regulations promulgated by Landlord from time to time pursuant to Section 4.4 of this Lease, those portions of the Project which are provided, from time to time, for use in common by Landlord, Tenant and any other tenants or occupants at the Project (such areas, together with such other portions of the Project designated by Landlord, in its discretion, are collectively referred to herein as the "**Common Areas**"). The manner in which the Common Areas are maintained and operated shall be in the reasonable discretion of Landlord and the use thereof shall be subject to any rules and regulations, as amended, promulgated by Landlord from time to time in Landlord's reasonable discretion (but shall at least be consistent with the manner in which the common areas of the "Comparable Buildings" (as such term is defined in **Exhibit F** attached hereto) are maintained and operated). Landlord reserves the right to temporarily close, make alterations or additions to, or change the location of elements of the Project and the Common Areas, and to change the name or address of the Building or Project. In exercising its rights with regard to the Common Area set forth above, Landlord shall use commercially reasonable efforts to not materially interfere with Tenant's use of, or access to, the Premises. Tenant shall not store or permit the storage of any materials, supplies, tanks or containers, equipment, finished products or semi-finished products, raw materials, inoperable vehicles or articles of any nature outside of the Premises or in the Common Areas without the prior written approval of Landlord, which approval may be withheld in Landlord's sole and absolute discretion.

1.4 Rentable Square Feet of Premises. For purposes of this Lease, the "rentable square feet" of the Premises shall be calculated pursuant to Landlord's then-current method for measuring rentable square footage, provided however, that any such calculation or remeasurement shall not affect Tenant’s Share or the amount of Base

Monthly Rent payable hereunder. Landlord and Tenant hereby stipulate and agree that the "rentable square feet" of the Premises is as set forth in Section D of the Summary.

ARTICLE 2
LEASE TERM; DELIVERY OF PREMISES

2.1 Lease Term. The terms and conditions of this Lease shall be effective as of the date of this Lease. The term of this Lease (the "**Lease Term**") shall commence on the "**Lease Commencement Date**", as that term is set forth in Section J of the Summary, and shall terminate on the "**Lease Expiration Date**", as that term is set forth in Section K of the Summary, unless this Lease is sooner terminated as provided in this Lease. For purposes of this Lease, the term "**Lease Year**" shall mean each consecutive twelve (12)-month period during the Lease Term; provided, however, that the first Lease Year shall commence on the Lease Commencement Date and end on the last day of the month in which the first anniversary of the Lease Commencement Date occurs (or, if the Lease Commencement Date is the first day of a calendar month, then the first Lease Year shall commence on the Lease Commencement Date and end on the day immediately preceding the first anniversary of the Lease Commencement Date), and the second and each succeeding Lease Year shall commence on the first day of the next calendar month; and further provided that the last Lease Year shall end on the Lease Expiration Date. If Landlord is unable to deliver possession of the Premises to Tenant on any specific date for any reason whatsoever, then this Lease shall not be void or voidable, and Landlord shall not be liable to Tenant for any loss or damage resulting therefrom, except as provided in Section 2.5, below.

2.2 Delivery of Premises. Tenant acknowledges that it has had an opportunity to conduct, and has conducted, such inspections of the Premises as it deems necessary to evaluate its condition. Except as otherwise specifically provided herein, Tenant shall accept possession of the Premises in its then existing "AS-IS" condition, subject to the terms of Section 2.3, below. Landlord shall deliver the Premises to Tenant promptly following the later to occur of (i) the full execution and delivery of this Lease by Landlord and Tenant, (ii) termination of the lease with, and the vacancy of the Premises by, the Existing Tenant, as that term is defined in Section 2.4, below, and (iii) the date Tenant has delivered to Landlord satisfactory evidence of the insurance coverage required to be carried by Tenant in accordance with this Lease (as applicable, the "**Delivery Date**"), for the purpose of Tenant constructing the Tenant Improvements and installing equipment or fixtures (including Tenant's data and telephone equipment) in the Premises. Except as provided hereinbelow, all of the terms and conditions of the Lease shall apply as though the Lease Commencement Date had occurred (although the Lease Commencement Date shall not actually occur until the occurrence of the same pursuant to the terms of Section 2.1, above) upon the Delivery Date; provided, however, notwithstanding the foregoing, Tenant shall have no obligation to pay Base Monthly Rent attributable to the Premises, or Tenant's Share of Project Expenses attributable to the Premises, during any such period prior to the Lease Commencement Date. At any time following the Delivery Date, Landlord may deliver to Tenant a notice in the form attached to this Lease as Exhibit C as a confirmation only of the information set forth therein, which Tenant shall execute and return to Landlord within five (5) days of receipt thereof; provided, however, Tenant's failure to timely execute and return such notice to Landlord shall be deemed Tenant's acknowledgement of the truth of the information set forth in such notice.

2.3 Landlord's Warranty. Notwithstanding anything set forth in this Lease to the contrary, upon the Delivery Date, the "Building Systems," as that term is defined in Section 5.1, below, serving the Premises shall be in good, safe working condition and repair. If the foregoing delivery obligation is not met, Landlord shall not be liable to Tenant for any damages, but if Tenant, within ninety (90) days following the Delivery Date, delivers written notice to Landlord setting forth in reasonable detail a description of such inadequate condition, then Landlord shall, at Landlord's sole cost and expense (which shall not be deemed an Operating Expense), repair or replace any failed or inoperable portion of the Building Systems which were not in good working condition and repair as of the Delivery Date ("**Landlord's Warranty**"), provided that the need to repair or replace was not caused by the misuse, misconduct, damage, destruction and/or negligence (collectively, "**Tenant Damage**") of Tenant, its subtenants and/or assignees, if any. To the extent repairs which Landlord is required to make pursuant to this Section 2.3 are necessitated in part by Tenant Damage, then Tenant shall reimburse Landlord for the reasonable cost of such repair.

2.4 Effectiveness of this Lease. Notwithstanding anything to the contrary contained in this Lease, this Lease shall not be effective until Landlord enters into a lease termination agreement with the existing Tenant of the Premises, Boston Scientific Corporation, a Delaware corporation (the "**Existing Tenant**"), in a form acceptable to Landlord in its sole and absolute discretion. Landlord hereby covenants that Landlord has entered into a lease termination agreement with the Existing Tenant that terminates the Existing Tenant's lease on or before July 1, 2022 and Landlord has no actual knowledge of the Existing Tenant's intention to holdover beyond such early termination date (as applicable, the "the Existing Lease Expiration Date"; (ii) Landlord will not voluntarily agree to extend the term

of the Existing Lease beyond the Existing Lease Expiration Date; and (iii) Landlord shall immediately provide Tenant written notice if Existing Tenant holds over.

2.5 Delayed Delivery of the Premises. Notwithstanding anything contained in this Article 2 to the contrary, if the Delivery Date does not occur on or before July 1, 2022 (the "**Deadline Date**"), then as Tenant's sole and exclusive remedy for such failure, Tenant shall have the right, by notice to Landlord within five (5) business days following the Deadline Date, to terminate this Lease. Upon any termination as set forth in this Section 2.5, Landlord and Tenant shall be relieved from any and all liability to each other resulting hereunder except that Landlord shall return to Tenant any prepaid rent and letter of credit. Notwithstanding the foregoing, if, prior to the Deadline Date, Landlord determines that the Delivery Date will not occur by the Deadline Date, then Landlord shall have the right to deliver a written notice to Tenant stating Landlord's opinion as to the date by which the Delivery Date will occur, and Tenant shall, within five (5) business days after receipt of such notice, deliver a notice to Landlord pursuant to which Tenant shall elect either (i) to terminate this Lease, in which case this Lease shall terminate and be of no further force or effect upon Landlord's receipt of such notice, or (ii) to agree to extend the Deadline Date to that date set forth in Landlord's notice to Tenant. Failure by Tenant to deliver such notice or to make such election shall be deemed to be Tenant's agreement to extend the Deadline Date to that date set forth in Landlord's notice to Tenant.

ARTICLE 3
RENT

3.1 Base Monthly Rent.

3.1.1. In General. Commencing on the Lease Commencement Date, and continuing throughout the Lease Term, Tenant shall pay to Landlord the Base Monthly Rent set forth in Section M of the Summary (the "**Base Monthly Rent**"), in accordance with the terms of Section 3.3, below.

3.1.2. Abated Base Monthly Rent. Provided that Tenant is not in default under this Lease beyond any applicable notice and cure period expressly set forth in this Lease, then during the initial two (2) full calendar months of the Lease Term (the "**Full Base Rent Abatement Period**"), Tenant shall not be obligated to pay Base Monthly Rent otherwise attributable to the Premises during such Full Base Rent Abatement Period (the "**Full Base Rent Abatement**"). Notwithstanding the foregoing or anything to the contrary set forth in this Lease, Tenant shall be required to pay Tenant's Share of Operating Expenses attributable to the Premises and all other Additional Rent (as defined in Section 3.2, below) due pursuant to the terms of this Lease during the Full Base Rent Abatement Period. Landlord and Tenant acknowledge and agree that the aggregate amount of the Full Base Rent Abatement equals Seven Hundred Eleven Thousand Nine Hundred Ninety-Four and 50/100 Dollars ($711,994.50). Provided that Tenant is not in default under this Lease beyond any applicable notice and cure period expressly set forth in this Lease, then during the period commencing on the first day of the third (3rd) full calendar month of the Lease Term and ending on December 31, 2026 (the "**Partial Base Rent Abatement Period**", and together with the Full Base Rent Abatement Period, the "**Rent Abatement Period**"), Tenant shall not be obligated to pay the portion of Base Monthly Rent otherwise attributable to the Premises during such Partial Base Rent Abatement Period listed on the following table (the "**Partial Base Rent Abatement**", and together with the Full Base Rent Abatement, the "**Rent Abatement**"):

Period of Lease Term	Monthly Partial Base Rent Abatement
Lease Month 3 – Lease Month 12	$18,497.25
Lease Month 13 – Lease Month 24	$19,052.17
Lease Month 25 – Lease Month 36	$19,623.74
Lease Month 37 – December 31, 2026	$20,212.45

Notwithstanding the foregoing or anything to the contrary set forth in this Lease, Tenant shall be required to pay Tenant's Share of Operating Expenses attributable to the Premises and all other Additional Rent due pursuant to the terms of this Lease during the Partial Base Rent Abatement Period. Tenant acknowledges and agrees that the foregoing Rent Abatement has been granted to Tenant as additional consideration for entering into this Lease, and for agreeing to pay the rental and perform the terms and conditions otherwise required under this Lease. If at any time during the

Lease Term Tenant is in default under this Lease, and Tenant shall fail to cure such default within any applicable notice and cure period, or if this Lease is terminated for any reason other than Landlord's breach of this Lease, then the dollar amount of the unapplied portion of the Rent Abatement as of the date of such default or termination, as the case may be, shall be converted to a credit to be applied to the Base Monthly Rent applicable at the end of the Lease Term and Tenant shall immediately be obligated to begin paying Base Monthly Rent for the Premises in full. Notwithstanding the foregoing or anything to the contrary set forth in this Lease, at any time during the Rent Abatement Period, Landlord shall have the right (but not the obligation), in its sole and absolute discretion, to pay Tenant the total amount of the then unamortized portion of the Rent Abatement amount, in which event (i) Tenant's obligation to pay Base Monthly Rent shall automatically be reinstated for the remainder of the Rent Abatement Period covered by Landlord's lump sum payment, at the then-applicable amounts and otherwise in accordance with the terms of this Lease, and (ii) Tenant shall not be entitled to any additional rent abatement under this Lease.

3.2 Additional Rent.

3.2.1. General Terms. In addition to paying the Base Monthly Rent specified in Section 3.1, above, Tenant shall pay Tenant's Share of Operating Expenses and Real Property Taxes (as those terms are defined in Section 3.2.2.2 and Section 3.2.2.4, respectively, below). Such payments by Tenant, together with any and all other amounts payable by Tenant to Landlord pursuant to the terms of this Lease, are hereinafter collectively referred to as the "**Additional Rent**," and the Base Monthly Rent and the Additional Rent are herein collectively referred to as "**Rent**." All amounts due under this Section 3.2 as Additional Rent shall be payable for the same periods and in the same manner as the Base Monthly Rent. Without limitation on other obligations of Tenant which survive the expiration of the Lease Term, the obligations of Tenant to pay the Additional Rent provided for in this Section 3.2 shall survive the expiration of the Lease Term.

3.2.2. Definitions.

3.2.2.1 "**Expense Year**" shall mean each calendar year in which any portion of the Lease Term falls, through and including the calendar year in which the Lease Term expires.

3.2.2.2 "**Operating Expenses**" shall mean all expenses, costs and amounts of every kind and nature which Landlord pays or accrues during any Expense Year because of or in connection with the ownership, management, maintenance, security, repair, replacement, restoration or operation of the Project, or any portion thereof. Without limiting the generality of the foregoing, Operating Expenses shall specifically include any and all of the following: (i) the cost of supplying all utilities, the cost of operating, maintaining, repairing, replacing, renovating and managing the utility, mechanical, sanitary, storm drainage and communication systems, and any elevator systems, and the cost of supplies, tools, equipment and maintenance and service contracts in connection therewith; (ii) the cost of licenses, certificates, permits and inspections, and the cost of contesting any governmental enactments in good faith which may affect Operating Expenses, and the costs incurred in connection with any transportation system management program or similar program; (iii) the cost of all commercially reasonable insurance carried by Landlord in connection with the Project as reasonably determined by Landlord (including, without limitation, commercial general liability insurance, physical damage insurance covering damage or other loss caused by fire, earthquake, flood and other water damage, explosion, vandalism and malicious mischief, theft or other casualty, rental interruption insurance, and such insurance as may be required by any lessor under any present or future ground or underlying lease of the Building or Project or any holder of a mortgage, trust deed or other encumbrance now or hereafter in force against the Building or Project or any portion thereof); (iv) the cost of landscaping, directional signage, decorative lighting, and relamping, and the cost of all supplies, tools, equipment and materials used in the operation, repair and maintenance of the Project, or any portion thereof; (v) the cost of parking area repair, restoration, and maintenance, including, without limitation, resurfacing, repainting, restriping and cleaning; (vi) fees, charges and other costs, including management fees (or amounts in lieu thereof) (provided Tenant's Share of such management fees shall not exceed three percent (3.0%) of Base Monthly Rent without regard to the Rent Abatement), consulting fees (including, without limitation, any consulting fees incurred in connection with the procurement of insurance), legal fees and accounting fees, of all contractors, engineers, consultants and all other persons engaged by Landlord or otherwise incurred by or charged by Landlord in connection with the management, operation, administration, maintenance and repair of the Building and the Project, including, without limitation, the amount paid or payable for all labor and/or wages and other payments including cost to Landlord of workers' compensation and disability insurance, payroll taxes, welfare and fringe benefits made to janitors, caretakers, network communication and programing personnel and other employees, contractors and subcontractors of Landlord and its property manager involved in the management, operation, maintenance and repair of the Project, and the cost for the purchase, installation, repair, service and maintenance of network computer programing and equipment to the extent used for the Project; (vii) payments under any equipment rental agreements or management agreements (including the cost of any actual or charged management fee and the fair rental value of any management office space); (viii) wages, salaries and other compensation and benefits, including taxes levied thereon, of all persons

engaged in the operation, maintenance and security of the Project; (ix) costs under any instrument pertaining to the sharing of costs by the Project; (x) operation, repair, maintenance and replacement of all systems and equipment and components thereof of the Project; (xi) the cost of janitorial, alarm, security and other services in the Common Areas, maintenance and replacement of curbs and walkways, repair to roofs and re-roofing; (xii) amortization (including interest on the unamortized cost at an annual interest rate not to exceed the lesser of ten percent (10%) per annum or the maximum interest rate permitted by applicable Law) of the cost of acquiring or the rental expense of personal property used in the maintenance, operation and repair of the Project, or any portion thereof; (xiii) the cost of capital improvements or other costs incurred in connection with the Project (A) which are intended to effect economies in the operation, cleaning or maintenance of the Project, or any portion thereof, (B) that are required to comply with present or anticipated conservation programs, (C) which are replacements or modifications of nonstructural items located in the Common Areas required to keep the Common Areas in good order or condition, (D) that are required under any governmental law or regulation, or (E) which are repairs, replacements or modifications to the Building Systems (as defined in Section 5.1, below); provided, however, that any capital expenditure shall be amortized (including interest on the unamortized cost) over its useful life as determined in accordance with sound real estate management and accounting principles; (xiv) costs, fees, charges or assessments imposed by, or resulting from any mandate imposed on Landlord by, any federal, state or local government for fire and police protection, trash removal, community services, or other services which do not constitute Real Estate Taxes, as that term is defined in Section 3.2.2.4, below; (xv) Intentionally Omitted; (xvi) payments under any easement, license, operating agreement, declaration, restrictive covenant, or instrument pertaining to the sharing of costs by the Project or related to the use or operation of the Project; (xvii) all reasonable and actual costs of applying and reporting for the Project or any part thereof to seek or maintain certification under the U.S. EPA's Energy Star® rating system, the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) rating system or a similar system or standard; and (xviii) the cost to repair damage caused by fire or other peril not covered by the insurance specified in Section 9.2, below, up to a maximum amount in any Expense Year equal to two percent (2%) of the replacement cost of the damaged improvements. Notwithstanding anything to the contrary in this Lease, the following items shall be excluded from Operating Expenses:

(a) any items included in Real Property Taxes;

(b) except as permitted pursuant to items (xii) and (xiii), above, principal or interest on indebtedness, debt amortization or ground rent paid by Landlord in connection with any mortgages, deeds of trust or other financing encumbrances, or ground leases of the Building or the Project;

(c) capital improvements to the Building or the Project, other than those permitted pursuant to items (xii) and (xiii), above

(d) legal, auditing, consulting and professional fees and other costs paid or incurred in connection with financings, refinancings or sales of any interest in Landlord or of Landlord's interest in the Building or the Project or in connection with any ground lease (including, without limitation, recording costs, mortgage recording taxes, title insurance premiums and other similar costs, but excluding those legal, auditing, consulting and professional fees and other costs incurred in connection with the normal and routine maintenance and operation of the Building and/or the Project);

(e) legal fees, space planner's fees, architect's fees, leasing and brokerage commissions, advertising and promotional expenditures and any other expense incurred (i) in connection with the leasing of space in the Building (including new leases, lease amendments, lease terminations and lease renewals), (ii) in connection with negotiations or disputes with tenants, or (iii) in connection with leasing, renovating, or improving space for tenants or other occupants or prospective tenants or other occupants of the Project;

(f) the cost of any items to the extent to which such cost is reimbursed to Landlord by tenants of the Project (other than as a reimbursement of operating expenses), or other third parties, or is covered by a warranty to the extent of reimbursement for such coverage;

(g) expenditures for any leasehold improvement which is made in connection with the preparation of any portion of the Building for occupancy by any tenant of the Building or the Project;

(h) the cost of performing work or furnishing service to or for any tenant other than Tenant, at Landlord's expense, to the extent such work or service is in excess of any work or service Landlord is obligated to provide to Tenant or generally to other tenants in the Building at Landlord's expense and expenses in connection with services or other benefits of a type that are not provided to Tenant but which are provided to another tenant or occupant of the Project without additional cost (other than as a reimbursement of operating expenses);

(i) the cost of repairs or replacements incurred by reason of fire or other casualty, or condemnation, to the extent Landlord actually receives proceeds of property and casualty insurance policies or condemnation awards or would have received such proceeds had Landlord maintained the insurance required to be maintained by Landlord under this Lease;

(j) the cost of acquiring sculptures, paintings or other objects of fine art in the Building or the Project;

(k) bad debt loss, rent loss, or reserves for bad debt or rent loss;

(l) unfunded contributions to operating expense reserves by other tenants;

(m) contributions to charitable or political organizations;

(n) intentionally omitted;

(o) damage and repairs necessitated by the gross negligence or willful misconduct of Landlord Parties;

(p) fees, costs and expenses incurred by Landlord in connection with or relating to claims against or disputes with tenants of the Building or the Project;

(q) interest, fines or penalties for late payment or violations of applicable Laws by Landlord, except to the extent incurring such expense is either (1) a reasonable business expense under the circumstances, or (2) caused by a corresponding late payment or violation of an applicable Law by Tenant, in which event Tenant shall be responsible for the full amount of such expense;

(r) the cost of remediation and removal of "Hazardous Materials," as that term is defined in Section 7.1.6, below, in the Building or on the Project as required by applicable Laws, provided, however, that the provisions of this sub-item (r) shall not preclude the inclusion of costs with respect to materials (whether existing at the Project as of the date of this Lease or subsequently introduced to the Project) which are not, as of the date of this Lease (or as of the date of introduction), deemed to be Hazardous Materials under applicable Laws but which are subsequently deemed to be Hazardous Materials under applicable Laws (it being understood and agreed that Tenant shall nonetheless be responsible under Section 7.1.6 of this Lease for all costs of remediation and removal of Hazardous Materials to the extent caused by Tenant Parties);

(s) costs for the original construction and development of the Building and nonrecurring costs for the repair or replacement of any structural portion of the Building made necessary as a result of defects in the original design, workmanship or materials;

(t) costs and expenses incurred for the administration of the entity which constitutes Landlord, as the same are distinguished from the costs of operation, management, maintenance and repair of the Building and/or the Project, including, without limitation, entity accounting and legal matters;

(u) the wages and benefits of any employee who does not devote substantially all of his or her employed time to the Project unless such wages and benefits are prorated on a reasonable basis;

(v) depreciation for the Building, except as permitted pursuant to items (xii) and (xiii), above;

(w) reserves for future improvements, repairs, additions, etc.;

(x) overhead profit increments paid to Landlord’s subsidiaries or affiliates for management (other than the management fee set for in sub-item (xii), above) or other services on or to the building or for supplies or other materials to the extent that the cost of the services, supplies, or materials exceeds the cost that would have been paid had the services, supplies, or materials been provided by unaffiliated parties on a competitive basis;

(y) costs, fines or penalties, incurred by Landlord as a result of (a) the gross negligence or willful misconduct of Landlord or (b) the breach by Landlord of any lease in the Building;

(z) electric power costs for which any tenant directly contracts with the local public service company;

(aa) increased insurance premiums caused by Landlord's or any tenant's hazardous acts; and

(ab) non-recurring costs of replacements, alterations or improvements necessary to make the Building or the Project comply with applicable Laws in effect and applicable to the Building and/or the Project prior to the date of this Lease, except to the extent the need for such replacements, alterations or improvements is caused by Tenant Parties (in which case Tenant shall nonetheless be responsible for such costs in accordance with Section 4.3 of this Lease), provided, however, that the provisions of this sub-item (y) shall not preclude the inclusion of costs of compliance with applicable Laws enacted prior to the date of this Lease if such compliance is required for the first time by reason of any amendment, modification or reinterpretation of an applicable Law which is imposed after the date of this Lease.

3.2.2.3 "**Project Expenses**" shall mean Operating Expenses and Real Property Taxes.

3.2.2.4 "**Real Property Taxes**" shall mean all federal, state, county, or local governmental or municipal taxes, fees, charges or other impositions of every kind and nature, whether general, special, ordinary or extraordinary (including, without limitation, real estate taxes, general and special assessments, transit taxes, business taxes, leasehold taxes or taxes based upon the receipt of rent, including gross receipts or sales taxes applicable to the receipt of rent, unless required to be paid by Tenant, personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, systems and equipment, appurtenances, furniture and other personal property used in connection with the Project, or any portion thereof), which shall be paid or accrued during any Expense Year (without regard to any different fiscal year used by such governmental or municipal authority) because of or in connection with the ownership, leasing and operation of the Project, or any portion thereof. Real Property Taxes shall include, without limitation: (i) any tax on the rent, right to rent or other income from the Project, or any portion thereof, or as against the business of leasing the Project, or any portion thereof; (ii) any assessment, tax, fee, levy or charge in addition to, or in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property tax, it being acknowledged by Tenant and Landlord that Proposition 13 was adopted by the voters of the State of California in the June 1978 election ("**Proposition 13**") and that assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants, and, in further recognition of the decrease in the level and quality of governmental services and amenities as a result of Proposition 13, Real Property Taxes shall also include any governmental or private assessments or the Project's contribution towards a governmental or private cost-sharing agreement for the purpose of augmenting or improving the quality of services and amenities normally provided by governmental agencies; (iii) any increase in taxes resulting from a reassessment resulting from a change in ownership of the Project, new construction, or any other cause; (iv) any assessment, tax, fee, levy, or charge allocable to or measured by the area of the Premises, the tenant improvements in the Premises, or the Rent payable hereunder, including, without limitation, any business or gross income tax or excise tax with respect to the receipt of such rent, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof; (v) any assessment, tax, fee, levy or charge, upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises; and (vi) all of the real estate taxes and assessments imposed upon or with respect to the Building and all of the real estate taxes and assessments imposed on the land and improvements comprising the Project. Any reasonable costs and expenses (including, without limitation, reasonable attorneys' and consultants' fees) incurred in attempting to protest, reduce or minimize Real Property Taxes shall be included in Real Property Taxes in the Expense Year such expenses are incurred. Tax refunds shall be credited against Real Property Taxes and refunded to Tenant regardless of when received, based on the Expense Year to which the refund is applicable, provided that in no event shall the amount to be refunded to Tenant for any such Expense Year exceed the total amount paid by Tenant as Real Property Taxes under this Section 3.2 for such Expense Year. If Real Property Taxes for any period during the Lease Term or any extension thereof are increased after payment thereof for any reason, including, without limitation, error or reassessment by applicable governmental or municipal authorities, Tenant shall pay Landlord Tenant's Share of any such increased Real Property Taxes pursuant to the terms of this Lease within ten (10) business days following demand therefor. Notwithstanding anything to the contrary set forth in this Lease, only Landlord may institute proceedings to reduce Real Property Taxes. Notwithstanding the foregoing, Landlord shall not be obligated to file any application or institute any proceeding seeking a reduction in Real Property Taxes. Notwithstanding anything to the contrary contained in this Section 3.2.2.4, there shall be excluded from Real Property Taxes (i) all excess profits taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, estate taxes, federal and state income taxes, and other taxes to the extent applicable to Landlord's general or net income (as opposed to rents, receipts or income attributable to operations at the Project), (ii) any items included as Operating Expenses, and (iii) any items paid by Tenant under Section 3.2.5 (taxes for which Tenant is directly

responsible) of this Lease. The parcel on which the Building is located may be a separate tax parcel that may also contain other buildings. In the event that the Building and such other buildings and improvements are included in the same tax bill, Landlord shall have the right to equitably allocate the Real Property Taxes between the Building and such other buildings and improvements, in Landlord's reasonable discretion.

3.2.2.5 "**Tenant's Share**" shall mean the percentage set forth in Section G of the Summary.

3.2.3. Allocation of Project Expenses.

3.2.3.1 Method of Allocation. Notwithstanding anything to the contrary in this Lease, if the Project consists of multiple buildings, certain Operating Expenses may pertain to a particular building(s) and other Operating Expenses to the Project as a whole. Landlord reserves the right in its reasonable discretion to allocate any such costs applicable to any particular building within the Project to the building in question whose tenants shall be responsible for payment of their respective proportionate shares in the pertinent building and other such costs applicable to the Project to each building in the Project (including the Building) with the tenants in each such building being responsible for paying their respective proportionate shares in such building of such costs to the extent required under the applicable leases. Landlord shall in good faith attempt to allocate such costs to the buildings (including the Building) in a reasonable, non-discriminatory manner and such allocation shall be binding on Tenant.

3.2.3.2 Cost Pools. Landlord shall have the right, from time to time, to equitably allocate some or all of the Project Expenses among different portions or tenants of the Project (the "**Cost Pools**"), in Landlord's reasonable discretion. Such Cost Pools may include, but shall not be limited to, the office space tenants of a building of the Project or the Project. The Project Expenses allocable to each such Cost Pool shall be allocated to such Cost Pool and charged to the tenants within such Cost Pool in an equitable manner.

3.2.4. Calculation and Payment of Project Expenses.

3.2.4.1 Statement of Estimated Project Expenses. Landlord shall endeavor to give Tenant a yearly expense estimate statement (the "**Estimate Statement**") which shall set forth Landlord's reasonable estimate (the "**Estimate**") of the total amount of Project Expenses for the then-current Expense Year and the estimated Tenant's Share of Project Expenses (the "**Estimated Project Expenses**"). The failure of Landlord to timely furnish the Estimate Statement for any Expense Year shall not preclude Landlord from enforcing its rights to collect any Estimated Project Expenses under this Section 3.2, nor shall Landlord be prohibited from revising any Estimate Statement theretofore delivered to the extent necessary, provided that the Estimate Statement shall not be revised more than two (2) times per Expense Year. Thereafter, Tenant shall pay, with its next installment of Base Monthly Rent due, a fraction of the Estimated Project Expenses for the then-current Expense Year (reduced by any amounts paid pursuant to the last sentence of this Section 3.2.4.1). Such fraction shall have as its numerator the number of months which have elapsed in such current Expense Year, including the month of such payment, and twelve (12) as its denominator. Until a new Estimate Statement is furnished (which Landlord shall have the right to deliver to Tenant at any time), Tenant shall pay monthly, with the Base Monthly Rent installments, an amount equal to one-twelfth (1/12) of the total Estimated Project Expenses set forth in the previous Estimate Statement delivered by Landlord to Tenant.

3.2.4.2 Statement of Actual Project Expenses. In addition, Landlord shall give to Tenant no later than one hundred eighty (180) days following the end of each Expense Year, a statement (the "**Statement**") which shall state the Project Expenses incurred or accrued for such preceding Expense Year, and which shall indicate the amount of Tenant's Share of Project Expenses. Upon receipt of the Statement for each Expense Year commencing or ending during the Lease Term, Tenant shall pay, with its next installment of Base Monthly Rent due, or within thirty (30) days, whichever is earlier, the full amount of Tenant's Share of Project Expenses for such Expense Year, less the amounts, if any, paid during such Expense Year as Estimated Project Expenses, and if Tenant paid more as Estimated Project Expenses than the actual Tenant's Share of Project Expenses (an "**Excess**"), Tenant shall receive a credit in the amount of such Excess against Rent next due under this Lease. Even though the Lease Term has expired and Tenant has vacated the Premises, when the final determination is made of Tenant's Share of Project Expenses for the Expense Year in which this Lease terminates, if Tenant's Share of Project Expenses is greater than the amount of Estimated Project Expenses previously paid by Tenant to Landlord, Tenant shall, within thirty (30) days after receipt of the Statement, pay to Landlord such amount, and if Tenant paid more as Estimated Project Expenses than the actual Tenant's Share of Project Expenses (again, an Excess), Landlord shall, within thirty (30) days, deliver a check payable to Tenant in the amount of such Excess. The provisions of this Section 3.2.4.2 shall survive the expiration or earlier termination of the Lease Term, provided that, other than Tax Expenses and costs incurred for utilities, Tenant shall not be responsible for Tenant's Share of Project Expenses which are first billed to Tenant more than two (2) calendar years after the end of the Expense Year to which such Project Expenses relate; provided, however, with respect to any

amounts not included in the original Statement, Landlord shall bill Tenant for such Project Expense within sixty (60) days of Landlord’s receipt of the invoice therefor.

3.2.5. Taxes and Other Charges for Which Tenant is Directly Responsible.

3.2.5.1 Tenant shall be liable for and shall pay thirty (30) days before delinquency, any and all taxes levied against Tenant's equipment, furniture, fixtures and any other personal property (including Prior Tenant's FF&E, if any) ("**FF&E**") located in or about the Premises. If any such taxes on Tenant's FF&E are levied against Landlord or Landlord's property, or if the assessed value of Landlord's property is increased by the inclusion therein of a value placed upon such FF&E, and if Landlord pays the taxes based upon such increased assessment, which Landlord shall have the right to do regardless of the validity thereof but only under proper protest if requested by Tenant, Tenant shall, within ten (10) business days following demand, repay to Landlord the taxes so levied against Landlord or the proportion of such taxes resulting from such increase in the assessment, as the case may be.

3.2.5.2 If the tenant improvements in the Premises, whether installed and/or paid for by Landlord or Tenant and whether or not affixed to the real property so as to become a part thereof, are assessed for real property tax purposes at a valuation higher than the valuation at which tenant improvements conforming to Landlord's "building standard" in other space in the Building are assessed, then the Real Property Taxes levied against Landlord or the property by reason of such excess assessed valuation shall be deemed to be taxes levied against personal property of Tenant and shall be governed by the provisions of Section 3.2.5.1, above.

3.2.5.3 Notwithstanding any contrary provision herein, Tenant shall pay prior to delinquency any (i) rent tax or sales tax, gross receipts tax, service tax, transfer tax or value added tax, business tax or any other applicable tax on the rent or services herein or otherwise respecting this Lease, (ii) taxes assessed upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion of the Project, including the parking facility for the Project; or (iii) taxes assessed upon this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises.

3.3 Payment of Rent. Concurrently with the execution of this Lease by Tenant, Tenant shall pay to Landlord the amount set forth in Section N of the Summary as prepayment of the first installment of Base Monthly Rent due after any abatement period. All Rent required to be paid under this Lease in monthly installments shall be paid to Landlord in advance on the first day of each calendar month during the Lease Term. All Rent shall be paid in lawful money of the United States, without any abatement, deduction or offset whatsoever (except as specifically provided herein), and without any prior notice or demand therefor. Rent shall be paid to Landlord pursuant to the electronic wiring instructions set forth in Section Q of the Summary, or, at Landlord's option, pursuant to such other electronic wiring instructions or to such other party or at such other place as Landlord may designate from time to time in writing, by notice to Tenant in accordance with the provisions of Section 21.5 of this Lease. If any Rent payment date (including the Lease Commencement Date) falls on a day of the month other than the first day of such month, or if any payment of Rent is for a period which is shorter than one month, the Rent for any fractional month shall accrue on a daily basis for the period from the date such payment is due to the end of such calendar month or to the end of the Lease Term at a rate per day which is equal to 1/365 of the applicable annual Rent. All other payments or adjustments required to be made under the terms of this Lease that require proration on a time basis shall be prorated on the same basis. Landlord shall have the right, upon at least ten (10) days' prior written notice to Tenant (i) to change the name of the depository for receipt of any payment of Rent made by means of a federal funds wire transfer or such other method of electronic funds transfer ("**Electronic Payment**"), and (ii) to discontinue payment of any sum due from Tenant to Landlord under this Lease by Electronic Payment.

3.4 Late Charge, Interest and Quarterly Payments.

3.4.1. Late Charge. Tenant acknowledges that its failure to pay when due any installment of Rent, or any other sum of money required to be paid by Tenant under this Lease, will cause Landlord to incur certain costs and expenses not contemplated under this Lease, the exact amount of such costs being extremely difficult and impractical to determine. If any installment of Rent is not received by Landlord from Tenant upon the date such payment is due, then Tenant shall pay to Landlord a late charge equal to ten percent (10%) of the overdue amount plus any attorney's fees incurred by Landlord by reason of Tenant's failure to pay Rent and/or other charges when due hereunder, provided, however, that Landlord shall waive the imposition of the late charge for the first late payment in any calendar year during the Lease Term provided Tenant pays such overdue amounts within three (3) business days following written notice from Landlord that such amounts are past due. In no event shall the terms of this Section 3.4.1 be deemed to grant to Tenant a grace period or extension of time within which to pay any installment of Rent when due

hereunder, or prevent Landlord from exercising any right or remedy available to Landlord upon Tenant's failure to pay any installment of Rent due under this Lease in a timely fashion.

3.4.2. Interest. In addition to the late charge set forth above, if any installment of Rent remains delinquent for a period in excess of ten (10) days after the date when due, then such amount shall bear interest at a rate equal to the lesser of (i) ten percent (10%), or (ii) the maximum rate permitted by law in the state in which the Project is located (the "**Agreed Interest Rate**") from the date when such installment of Rent was due until paid.

3.5 Intentionally Omitted.

3.6 Landlord's Books and Records. Following Tenant's receipt of the Statement, Tenant shall have the right, upon prior written notice to Landlord ("**Audit Notice**"), to commence and complete an audit of Landlord's books and records concerning the Project Expenses for the Landlord's fiscal year that is the subject of such Statement (the "**Records**"), within ninety (90) days following the delivery of such Statement (the "**Review Period**"). Following delivery of an Audit Notice, and provided Tenant is not then in default after the expiration of any applicable notice and cure period under this Lease, Tenant shall have the right, at Tenant's sole cost, during Landlord's regular business hours and on ten (10) days prior notice to Landlord, to audit the Records at Landlord's principal business office (or at any other location in northern California designated by Landlord) ("**Tenant's Audit**"). Such audit shall occur within sixty (60) days following the delivery of the Audit Notice. Tenant's audit of the Records pursuant to this Section 3.6 shall be conducted only by a reputable independent nationally or regionally recognized certified public accounting firm, which accounting firm: (i) shall have previous experience in auditing financial operating records of landlords of office buildings; (ii) shall not be retained by Tenant on a contingency fee basis (i.e. Tenant must be billed based on the actual time and materials that are incurred by the accounting firm in the performance of the audit), and a copy of the executed audit agreement between Tenant and auditor shall be provided to Landlord prior to the commencement of the audit; and (iii) at Landlord's option, both Tenant and auditor shall be required to execute a commercially reasonable confidentially agreement prepared by Landlord. Any audit report prepared by Tenant's auditors shall be delivered concurrently to Landlord and Tenant within the Review Period. If the parties are unable to resolve the dispute within sixty (60) days after completion of Tenant's Audit, then, at Tenant's request, a certified public accounting firm mutually selected by Landlord and Tenant, shall, at Tenant's cost, conduct an audit of the relevant Project Expenses (the "**Neutral Audit**"). Tenant shall pay all costs and expenses of the Neutral Audit and Tenant's review of the Records unless the final determination in such Neutral Audit is that Landlord overstated Project Expenses in the annual reconciliation Statement for the year being audited by more than five percent (5%), in which case Landlord shall pay the actual and reasonable costs and expenses of the Neutral Audit and Tenant's Audit, not to exceed an aggregate amount equal to $10,000.00. In any event, Landlord will promptly reimburse Tenant or provide a credit for any overstatement of Project Expenses, and Tenant shall promptly pay to Landlord any understatement of Project Expenses. The foregoing audit and Neutral Audit procedures shall be the sole methods to be used by Tenant to dispute the amount of any Project Expenses payable by Tenant pursuant to the terms of this Lease.

ARTICLE 4
USE OF PREMISES

4.1 Permitted Uses. Tenant shall use the Premises solely for the Permitted Use specified in Section P of the Summary, and Tenant shall not use or permit the Premises, the Building or the Project to be used for any other purpose or purposes whatsoever without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion.

4.2 Prohibited Uses. Tenant further covenants and agrees that Tenant shall not use, or suffer or permit any person(s) to use, the Premises in any manner which (i) will cause structural injury or material damage to the Building; or (ii) is contrary to the provisions of any rules and regulations as promulgated by Landlord from time to time, or is in violation of the laws of the United States of America, the State of California, or the ordinances, regulations or requirements of the local municipal or county governing body having jurisdiction over the Project (collectively, "**Laws**"), including, without limitation, any such laws, ordinances, regulations or requirements relating to Hazardous Materials, as that term is defined in Section 7.1.6, below. Tenant shall not operate any equipment within the Premises which will (A) materially damage the Building or the Common Areas; (B) overload existing electrical systems or other mechanical equipment servicing the Building and/or the Premises; (C) impair the efficient operation of the sprinkler system or the heating, ventilating or air conditioning ("**HVAC**") system and equipment servicing the Building and/or the Premises; or (D) damage, overload or corrode the sanitary sewer system for the Project and/or the Building.

4.3 Compliance with Law.

4.3.1. In General. Tenant shall not do anything or suffer anything to be done in or about the Premises or the Project which will in any way conflict with (i) any Laws now in force or which may hereafter be enacted or promulgated, or (ii) any recorded covenants, conditions and restrictions, private agreements, reciprocal easement agreements, or other recorded instruments affecting the use of the Premises, the Building or the Project (individually and collectively, "**Private Restrictions**"). At its sole cost and expense, Tenant shall promptly observe and comply with all Laws and Private Restrictions. Should any standard or regulation now or hereafter be imposed on Landlord or Tenant by a state, federal or local governmental body charged with the establishment, regulation and enforcement of occupational, health or safety standards for employers, employees, landlords or tenants, then Tenant agrees, at its sole cost and expense, to promptly comply with such standards or regulations and to cooperate with Landlord, including, without limitation, by taking such actions as Landlord may reasonably require, in Landlord's efforts to comply with such standards or regulations. Tenant shall, at Tenant's expense, make any alterations, improvements, additions or changes to the Premises or the Building as are required to comply with any and all Laws, and resulting from or related to (i) the Premises, (ii) Tenant's use of the Premises (but with respect to alterations, improvements, additions or changes to the Building Structure, only if triggered by Tenant's use of the Premises for non-general office use), (iii) Tenant's application for any permit or government approval; or (iv) Tenant's construction or installation of any Alterations (as defined in Section 5.1, below) in the Premises. Any other alterations, improvements, additions, or changes required to comply with any Laws which are not the responsibility of Tenant pursuant to the immediately preceding sentence shall be made by Landlord, and the cost thereof shall be prorated and paid as Operating Expenses. The judgment of any court of competent jurisdiction or the admission of Tenant in any judicial action, regardless of whether Landlord is a party thereto, that Tenant has violated any of said governmental measures, shall be conclusive of that fact as between Landlord and Tenant. Tenant shall promptly pay all fines, penalties and damages that may arise out of or be imposed because of its failure to comply with the provisions of this Section 4.3. Tenant shall not use the Premises, the Building or the Project in any manner which will cause a cancellation of any insurance policy carried by either Landlord or Tenant pursuant to this Lease. Tenant shall not keep, use or sell, or permit to be kept, used, or sold in or about the Premises any article which may be prohibited by a standard form of fire insurance policy. Tenant shall comply with all reasonable requirements of any insurance company, insurance underwriter, or Board of Fire Underwriters which are necessary to maintain the insurance coverage carried by either Landlord or Tenant pursuant to this Lease.

4.3.2. Disability Access Disclosure Under Section 1938 of the California Civil Code. Landlord makes the following statement in accordance with Section 1938 of the California Civil Code. Neither the Leased Premises nor the Complex has undergone an inspection by a Certified Access Specialist to determine if the Leased Premises or Complex meet all applicable construction related accessibility standards pursuant to Section 55.53 of the California Civil Code. As required by Section 1938(e) of the California Civil Code, Landlord hereby states as follows: "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." In furtherance of the foregoing, notwithstanding any provision to the contrary in this Lease, Landlord and Tenant hereby agree as follows: (a) any CASp inspection requested by Tenant shall be conducted, at Tenant's sole cost and expense, by a CASp approved in advance by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) Tenant, at its cost, is responsible for making any repairs within the Leased Premises to correct violations of construction-related accessibility standards; and, if any CASp inspection requested by Tenant shall require repairs to the Building (outside the Leased Premises) to correct violations of construction-related accessibility standards, then Tenant shall, at Landlord's option, either perform such repairs at Tenant's sole cost and expense or reimburse Landlord within ten (10) business days following demand, as additional Rent, for the cost to Landlord of performing such repairs.

4.4 Rules and Regulations. Landlord may from time to time promulgate reasonable and nondiscriminatory rules and regulations ("**Rules and Regulations**") applicable to all occupants of the Project for the care and orderly management of the Project, and the safety of its tenants and invitees. Such Rules and Regulations shall be binding upon Tenant upon delivery of a copy thereof to Tenant, and Tenant hereby agrees to abide by such Rules and Regulations. If there is a conflict between the Rules and Regulations and any of the provisions of this Lease, the provisions of this Lease shall prevail. Landlord shall not be responsible for the violation by any other tenant of the Project of any such Rules and Regulations.

ARTICLE 5
ADDITIONS AND ALTERATIONS

5.1 Landlord's Consent to Alterations. Tenant shall not make or suffer to be made any improvements, alterations, additions, changes or repairs (pursuant to Article 6 or otherwise) to the Premises (collectively, "**Alterations**") without Landlord's prior written approval of same, which approval shall be requested by Tenant not less than twenty (20) business days prior to the commencement thereof, and which approval shall not be unreasonably withheld, conditioned or delayed by Landlord; provided that it shall be deemed reasonable for Landlord to withhold its consent to any Alterations which affect any area(s) outside of the Premises, the exterior of the Building, the Building Systems or any structural portion of the Building. In addition, Tenant shall not make or suffer to be made any Alteration which would invalidate any warranty held by Landlord at the Project (including, without limitation, with respect to the roof of the Building). Notwithstanding the foregoing, Landlord's prior consent shall not be required for any Alteration that: (a) is solely cosmetic in nature (such as painting or decorating); (b) does not affect any area outside of the Premises, or require work inside the walls, or above the ceiling of the Premises; (c) does not affect (1) the roof or any structural portion of the Building (the "**Building Structure**"), or (2) the plumbing, sewer, drainage, electrical, fire protection, elevator, life safety and security systems and equipment, HVAC systems, and all other mechanical, electrical and communications systems and equipment, which are located in the Building or outside the Building and which exclusively serve the Building (collectively, the "**Building Systems**"); (d) cannot be seen from outside the Premises, and (e) costs less than $100,000 in the aggregate during any twelve (12) month period of the Lease Term (herein referred to as "**Cosmetic Alterations**"); provided that Tenant shall provide Landlord with prior written notice of any Cosmetic Alteration at least fifteen (15) business days' prior to Tenant's commencement of same. The construction of any initial improvements in the Premises shall be governed by the terms of the Tenant Work Letter, if any, attached hereto as Exhibit B, and not the terms of this Article 5.

5.2 Manner of Construction. Landlord may impose, as a condition of its consent to any and all Alterations or repairs of the Premises or about the Premises, such requirements as Landlord in its reasonable discretion may deem desirable, including, but not limited to, the requirement that Tenant utilize for such purposes only contractors reasonably approved by Landlord. Tenant shall construct such Alterations and perform such repairs in a good and workmanlike manner, in conformance with any and all Laws and pursuant to a valid building permit, all in conformance with Landlord's construction rules and regulations. In the event Tenant performs any Alterations in the Premises which require or give rise to governmentally required changes to the Base Building, as that term is defined below, then Landlord shall, at Tenant's expense, make such changes to the Base Building. The "**Base Building**" shall mean the Building Structure and the Building Systems. In performing the work of any such Alterations, Tenant shall have the work performed in such manner so as not to obstruct access to the Project or any portion thereof, by any other tenant of the Project, and so as not to obstruct the business of Landlord or other tenants in the Project. Tenant shall not use (and upon notice from Landlord shall cease using) contractors, services, workmen, labor, materials or equipment that, in Landlord's reasonable judgment, would disturb labor harmony with the workforce or trades engaged in performing other work, labor or services in or about the Building or the Common Areas. Upon completion of any Alterations, Tenant agrees to cause a Notice of Completion to be recorded in the office of the recorder of the County in which the Premises are situated in accordance with California Civil Code Section 8180 *et. seq.*, or any successor statute, and Tenant shall deliver to the Project construction manager a reproducible copy of the "as built" drawings of the Alterations, to the extent applicable, as well as all permits, approvals and other documents issued by any governmental agency in connection with the Alterations. If Tenant fails to complete any required removal of any Alterations, improvements, equipment and/or appurtenances in the Premises and/or to repair any damage caused by such removal pursuant to the terms of this Section 5.2, then Rent shall continue to accrue under this Lease in accordance with Article 16, below, after the end of the Lease Term until such work shall be completed, and Landlord shall have the right, but not the obligation, to perform such work and to charge the cost thereof to Tenant. Tenant hereby protects, defends, indemnifies and holds Landlord harmless from any liability, cost, obligation, expense or claim of lien, including but not limited to, court costs and reasonable attorneys' fees, in any manner relating to the installation, placement, removal or financing of any such Alterations, improvements, fixtures, equipment and/or appurtenances in, on or about the Premises, which obligations of Tenant shall survive the expiration or earlier termination of this Lease.

5.3 Payment for Alterations. If payment is made directly to contractors, Tenant shall (i) comply with Landlord's requirements for final lien releases and waivers in connection with Tenant's payment for work to contractors, and (ii) sign Landlord's standard contractor's rules and regulations. Whether or not Tenant orders any work directly from Landlord, Tenant shall reimburse Landlord for Landlord's reasonable, actual, out-of-pocket costs and expenses actually incurred in connection with Landlord's review of such work.

5.4 Construction Insurance. In the event that any Alterations are made pursuant to this Article 5, prior to the commencement of such Alterations, Tenant shall provide Landlord with evidence that Tenant or Tenant's contractor carries "Builder's All Risk" insurance in an amount reasonably approved by Landlord covering the construction of such

Alterations, and such other insurance as Landlord may reasonably require, it being understood and agreed that all of such Alterations shall be insured by Tenant pursuant to Section 9.1.3 of this Lease immediately upon completion thereof. In addition, Landlord may, in its reasonable discretion, require Tenant to obtain a lien and completion bond or some alternate form of security satisfactory to Landlord in an amount sufficient to ensure the lien-free completion of such Alterations and naming Landlord as a co-obligee.

5.5 Restoration. All Alterations, improvements, fixtures, equipment and/or appurtenances which may be installed or placed in or about the Premises from time to time shall be at the sole cost of Tenant, and any permanently affixed Alterations, improvements, fixtures, equipment and/or appurtenances shall become the property of Landlord upon the expiration or earlier termination of this Lease; provided, however, Landlord may, by written notice to Tenant prior to the expiration or earlier termination of the Lease Term, require Tenant, at Tenant's expense, to remove any permanently-fixed Alterations or improvements and to repair any damage to the Premises and Building caused by such removal and return any affected portion of the Premises to the condition existing prior to the installation of such Alterations or improvements; provided further, however, notwithstanding the foregoing, Landlord shall notify Tenant whether the applicable Alteration or improvement will be required to be removed pursuant to the terms of this Section 5.5 at the time of Tenant's request for Landlord's consent to any Alteration or improvement. If Tenant fails to complete the removal of any Alterations or improvements as set forth in this Section 5.5, then Landlord shall have the right, but not the obligation, to perform such work and to charge the cost thereof to Tenant.

5.6 Removal of Communications and Computer Lines. Tenant may install, maintain, replace, remove or use any communications or computer wires and cables (collectively, the "**Lines**") at the Project in or exclusively serving the Premises, provided that (i) Tenant shall obtain Landlord's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed), use an experienced and qualified contractor approved in writing by Landlord, and comply with all of the other provisions of Articles 5 and 6 of this Lease, (ii) if applicable, an acceptable number of spare Lines and space for additional Lines shall be maintained for existing and future occupants of the Building, as determined in Landlord's reasonable opinion, (iii) all Lines (including riser cables) shall be appropriately insulated to prevent excessive electromagnetic fields or radiation, and shall be surrounded by a protective conduit reasonably acceptable to Landlord, (iv) any new or existing Lines servicing the Premises shall comply with all applicable Laws, (v) as a condition to permitting the installation of new Lines, Landlord may require that Tenant remove any existing unused Lines installed by or on behalf of Tenant and located in or serving the Premises, and repair any damage in connection with such removal, and (vi) Tenant shall pay all costs in connection therewith. Landlord reserves the right to require that Tenant remove any Lines located in or serving the Premises which are installed by Tenant in violation of these provisions, or which are at any time in violation of any Laws or represent a dangerous or potentially dangerous condition. Landlord further reserves the right to require that Tenant remove any and all Lines located in or exclusively serving the Premises upon the expiration or earlier termination of this Lease. Notwithstanding the foregoing, Tenant shall identify existing Lines to be removed by Landlord from the Premises prior to the Delivery Date and such Lines shall be removed at no cost to Tenant. The provisions of this Section 5.6 shall survive the expiration or sooner termination of this Lease.

5.7 Covenant Against Liens. Tenant shall keep the Project and Premises free from any liens or encumbrances arising out of work performed, materials furnished, or obligations incurred by or on behalf of Tenant or any employee, contractor, agent or invitee of Tenant (collectively, "**Tenant's Agents**"), and shall protect, defend, indemnify and hold Landlord harmless from and against any claims, liabilities, judgments or costs (including, without limitation, reasonable attorneys' fees and costs) arising out of same or in connection therewith. Tenant shall give Landlord notice at least twenty (20) days prior to the commencement of any work on the Premises which may give rise to a lien on the Premises, Building or Project (or such additional time as may be necessary under applicable laws) to afford Landlord the opportunity of posting and recording appropriate notices of non-responsibility. Tenant shall remove any lien or encumbrance by bond or otherwise within five (5) days after notice by Landlord, and if Tenant shall fail to do so, Landlord may pay the amount necessary to remove such lien or encumbrance, without being responsible for investigating the validity thereof. The amount so paid shall be deemed Additional Rent under this Lease payable within ten (10) business days following demand, without limitation as to other remedies available to Landlord under this Lease. Nothing contained in this Lease shall authorize Tenant to do any act which shall subject Landlord's title to the Building or Premises to any liens or encumbrances whether claimed by operation of law or express or implied contract.

ARTICLE 6
REPAIR AND MAINTENANCE

6.1 Tenant's Obligations. Tenant shall, at Tenant's sole cost and expense, keep and maintain in good order, condition, and repair at all times during the Lease Term the Premises and every part thereof, including, but not

limited to: (i) all plumbing and sewage facilities (including all sinks, toilets, faucets and drains) within or exclusively serving the Premises; (ii) all ducts, pipes, vents and other parts of the HVAC system within or exclusively serving the Premises; (iii) all improvements, fixtures, equipment, interior walls and window coverings, floors and floor coverings, and ceilings within the Premises; (iv) all windows, doors, entrances, plate glass, showcases and skylights within the Premises (including the replacement of any damaged or broken glass); (v) all electrical facilities and equipment (including all electrical wiring and conduits, fans, vents, exhaust equipment and systems) and all other equipment of any type within or exclusively serving the Premises (including without limitation the Building Systems); (vi) any automatic fire extinguisher equipment located in the Premises; and (vii) any restroom(s) exclusively serving the Premises. With respect to the HVAC system located within or exclusively serving the Premises, Tenant shall maintain continuously throughout the Lease Term a service contract for the maintenance of such HVAC system and all related equipment with a licensed HVAC repair and maintenance contractor reasonably approved by Landlord, which contract provides for the periodic inspection and servicing of such HVAC system and equipment in accordance with the manufacturer's recommendations, but in any event at least once every quarter during the Lease Term. In addition, Tenant shall, at Tenant's own expense, but under the supervision and subject to the prior approval of Landlord, and within any reasonable period of time specified by Landlord, promptly and adequately repair all damage to the Premises and replace or repair all damaged, broken, or worn fixtures and appurtenances, except for damage caused by ordinary wear and tear or beyond the reasonable control of Tenant. In the event that Tenant fails to conduct any maintenance, or to make any repairs required pursuant to this Section 6.1, Landlord may, after written notice to Tenant and Tenant's failure to cure such failure within fifteen (15) days thereafter (provided, however, that if such cure cannot reasonably be effected within such fifteen (15) day period and Tenant begins such cure promptly within such fifteen (15) day period and is pursuing such cure in good faith and with diligence and continuity during such fifteen (15) day period, then, Tenant shall have such additional time as is reasonably necessary to effect such cure), make such repairs and replacements on Tenant's behalf (provided, however, that in the event of an emergency no notice from Landlord shall be required and Landlord shall have the right to immediately make such repairs and replacements on Tenant's behalf), and Tenant shall pay Landlord, within fifteen (15) days following receipt of an invoice, the cost thereof, including a percentage of the cost thereof (to be uniformly established for the Project) sufficient to reimburse Landlord for all overhead, general conditions, fees and other costs or expenses arising from Landlord's involvement with such repairs and replacements. All repairs and replacements required of Tenant pursuant to this Section 6.1 shall be promptly made with new materials of like kind and quality.

6.2 Landlord's Obligations. Except as set forth in Section 6.1, above, and subject to the provisions of Articles 11 and 12 of this Lease, Landlord shall repair and maintain in good condition and repair the Building Structure and the Common Areas outside of the Building, except to the extent that such repairs are required due to the negligence or willful misconduct of Tenant; provided, however, that if such repairs are due to the negligence or willful misconduct of Tenant, Landlord shall nevertheless make such repairs at Tenant's expense, or, if covered by Landlord's insurance, Tenant shall only be obligated to pay any deductible in connection therewith. Landlord may, but shall not be required to, enter the Premises at all reasonable times upon at least 24 hours' prior notice to Tenant (which notice, notwithstanding anything to the contrary contained in Section 21.2 of this Lease, may be oral, and which notice shall not be required in the case of an actual or apparent emergency) to make repairs, alterations, improvements or additions to the Premises, the Project or any equipment located in the Project as Landlord shall desire or deem necessary, or as Landlord may be required to perform by governmental or quasi-governmental authority or court order or decree; provided, however, except for (i) emergencies, (ii) repairs, alterations, improvements or additions required by governmental or quasi-governmental authorities or court order or decree, and (iii) repairs which are the obligation of Tenant hereunder, any such entry into the Premises by Landlord shall be performed in a manner so as not to materially interfere with Tenant's use of, or access to, the Premises; provided further that, with respect to items (ii) and (iii) above, Landlord shall use commercially reasonable efforts to not materially interfere with Tenant's use of, or access to, the Premises. Tenant hereby waives any and all rights under and benefits of subsection 1 of Section 1932 and Sections 1941 and 1942 of the California Civil Code or under any similar law, statute, or ordinance now or hereafter in effect.

ARTICLE 7
HAZARDOUS MATERIALS

7.1 Hazardous Materials. Landlord and Tenant agree as follows with respect to the existence or use of Hazardous Materials (as defined in Section 7.1.6, below) on the Project:

7.1.1. Hazardous Materials Disclosure Certificate. Upon request by Landlord from time to time, Tenant shall deliver to Landlord an executed Hazardous Materials disclosure statement, substantially in the form reasonably required by Landlord from time to time describing Tenant's then-present use of Hazardous Materials on the Premises, and shall also deliver any other reasonably necessary documents as requested by Landlord. Tenant shall concurrently file with Landlord a copy of any business response plan or inventory required to be maintained and/or

filed with any federal, state or local regulatory agency under any applicable Laws. Landlord and Tenant acknowledge and agree that, as of the date of this Lease, (i) Tenant has fully and accurately completed Landlord's pre-leasing environmental exposures questionnaire (the "**Environmental Questionnaire**"), and (ii) Tenant has submitted to Landlord a Hazardous Materials Business Plan (the "**HMBP Plan**" and, together with the Environmental Questionnaire, the "**Approved Hazardous Materials**"), each as set forth on Exhibit D attached hereto (the "**Approved Hazardous Materials Exhibit**").

7.1.2. Hazardous Materials Usage. Neither Tenant, nor Tenant's employees, contractors and subcontractors of any tier, entities with a contractual relationship with Tenant (other than Landlord), or any entity acting as an agent or sub-agent of Tenant, shall be entitled to produce, use, store, generate, transport or dispose of any Hazardous Materials on, in, or about any portion of the Premises, Building or the Project, nor cause or permit any Hazardous Materials to be brought upon, placed, stored, manufactured, generated, blended, handled, recycled, used or released on, in, under or about the Premises (herein referred to as "**Hazardous Materials Usage**"), without, in each instance, obtaining Landlord's prior written consent thereto in its sole and absolute discretion, except Tenant shall be entitled to use and/or store only those Hazardous Materials, and their respective quantities, which are (i) specifically listed on the Approved Hazardous Materials Exhibit, and (ii) in full compliance with Laws, and all judicial and administrative decisions pertaining thereto. Tenant shall not be entitled nor permitted to install any tanks under, on or about the Premises, Building or Project for the storage of Hazardous Materials without the express written consent of Landlord, which may be given or withheld in Landlord's sole and absolute discretion. If any information provided to Landlord by Tenant on the Approved Hazardous Materials Exhibit, or otherwise relating to information concerning Hazardous Materials is false, incomplete, or misleading in any material respect, the same shall be deemed a default by Tenant under this Lease. Landlord's prior written consent shall be required for any Hazardous Materials use on the Premises not described on the initial Approved Hazardous Materials Exhibit, such consent to be withheld in Landlord's sole discretion. Any Hazardous Materials Usage by Tenant and Tenant's Agents after the Effective Date on or about the Project shall strictly comply with all applicable Laws, including all Hazardous Materials Laws now or hereinafter enacted. Such foregoing obligation shall include, without limitation, maintaining, and complying with, all required necessary licenses, certifications, permits and approvals appropriate or required for any Hazardous Materials Usage by Tenant on the Premises. Landlord shall have a continuing right, without obligation, to require Tenant to obtain, and to review and inspect any and all such permits, licenses, certifications and approvals, together with copies of any and all Hazardous Materials management plans and programs, any and all Hazardous Materials risk management and pollution prevention programs, and any and all Hazardous Materials emergency response and employee training programs respecting Tenant's Hazardous Materials Usage. Upon request of Landlord, Tenant shall deliver to Landlord a narrative description explaining the nature and scope of Tenant's activities involving Hazardous Materials and demonstrating to Landlord's satisfaction Tenant's compliance with all Hazardous Materials Laws and the terms of this Lease.

7.1.3. Tests and Inspections. Landlord shall have the right, but not the obligation, upon reasonable requests by Landlord (but in no event less than 24 hours' written notice), to (i) enter and inspect the Premises, (ii) conduct tests and investigations periodically and from time to time to determine whether Tenant is in compliance with the provisions of this Section 7.1 or to determine if Hazardous Materials are present in, on or about the Project, and (iii) request lists identifying by type and amount all Hazardous Materials used, stored or otherwise located on, under or about any portion of the Premises and/or the Common Areas. The cost of all such inspections, tests and investigations shall be borne by Landlord, unless as a result thereof Landlord reasonably determines that there has been material non-compliance with the provisions of Section 7.1 or contamination has occurred on the Premises and/or Common Areas and that Tenant or any of Tenant's Agents are directly or indirectly responsible in any manner for the non-compliance or contamination, in which case the cost of such inspections, tests and investigations shall be borne by Tenant. The aforementioned rights granted herein to Landlord and its representatives shall not create (a) a duty on Landlord's part to inspect, test, investigate, monitor or otherwise observe the Premises or the activities of Tenant and Tenant's Agents with respect to Hazardous Materials, including without limitation, Tenant's operation, use and any remediation related thereto, or (b) liability on the part of Landlord and its representatives for Tenant's use, storage, disposal or remediation of Hazardous Materials, it being understood that Tenant shall be solely responsible for all liability in connection therewith.

7.1.4. Notice; Cleanup Obligations; Closure and Decommissioning.

7.1.4.1 Notice. Tenant shall give to Landlord immediate verbal and follow-up written notice of any spills, releases, discharges, disposals, emissions, migrations, removals or transportation of Hazardous Materials on, under or about any portion of the Premises, Common Areas or Project in violation of Hazardous Materials Laws as herein defined. Tenant shall promptly forward to Landlord copies of all requests, orders, notices, permits, applications, and other communications and reports received by Tenant from or submitted by Tenant to any federal, state or local regulatory agency with jurisdiction over Tenant's operations of the Premises in connection with the foregoing. To the

extent of any regulatory, judicial or other enforcement action or proceeding in connection with the foregoing is commenced against Tenant, Tenant shall not enter into any settlement, consent decree or other compromise or resolution without first notifying Landlord of Tenant's intention to do so and affording Landlord the opportunity to join and participate, as a party if Landlord so elects, in such proceedings and in no event shall Tenant enter into any consent decree, consent order or other agreements with terms which are binding on Landlord or the Premises without Landlord's prior written consent. Landlord shall have the right to appear at and participate in, any and all judicial or other administrative proceedings concerning any such foregoing claims. Notwithstanding the foregoing, Tenant shall not be required to provide Landlord with any portion(s) of documents containing information of a proprietary nature which, in and of themselves, do not contain a reference to the foregoing spills, releases, discharges, disposals, emissions, migrations, removals or transportation of Hazardous Materials or hazardous activities.

7.1.4.2 Cleanup Obligations. Tenant, at its sole cost and expense, covenants and warrants to promptly investigate, clean up, remove, restore and otherwise remediate (including, without limitation, preparation of any feasibility studies or reports and the performance of any and all closures) any spill, release, discharge, disposal, emission, migration or transportation, incident or other consequences of its Hazardous Materials Usage of Hazardous Materials arising from the acts or omissions of Tenant or Tenant's Agents such that the affected portions of the Project and any adjacent property are returned to the condition existing prior to such incident or Tenant's commencement of Hazardous Materials Usage. Tenant shall provide a written certification to Landlord indicating that Tenant has complied with all applicable reporting requirements. Any such investigation, clean up, removal, restoration and other remediation shall only be performed after Tenant has obtained Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Further, any such investigation, clean up, removal, restoration and other remediation shall be performed in compliance with applicable Laws, the HMBP Plan and in accordance with this Lease. Notwithstanding the foregoing, Tenant shall be entitled to respond immediately to an emergency without first obtaining Landlord's prior written consent.

7.1.4.3 Closure and Decommissioning. Tenant, at its sole cost and expense, shall conduct and perform, or cause to be conducted and performed, all closures and decommissioning activity as required by any Hazardous Materials Laws or any federal, state or local regulatory agencies or other governmental authorities having jurisdiction over the Premises and Tenant's activities thereon. All such work undertaken by Tenant, as required herein, shall be performed in such a manner so as to enable Landlord to make full economic use of the Premises and the other portions of the Project after the satisfactory completion of such work.

7.1.5. Indemnity. Tenant shall indemnify, hold harmless, and, at Landlord’s option (with such attorneys as Landlord may approve in advance and in writing), defend Landlord and Landlord’s officers, directors, shareholders, partners, members, managers, employees, contractors, property managers, agents and mortgagees ("**Landlord Parties**") and other lien holders, from and against any and all “Losses” (hereinafter defined) arising from or related to: (a) any violation or alleged violation by Tenant or any of Tenant’s Agents of any of the Laws, including, without limitation, the Hazardous Materials Laws; (b) any breach of the provisions of this Section 7.1 or any subsection thereof by Tenant or any of Tenant’s Agents; (c) any Hazardous Materials Usage on, about or from the Premises, the Project or Common Areas of any Hazardous Materials approved by Landlord under this Lease, or (d) Landlord's exercise of the "Landlord Cure Right," as that term is defined in Section 21.1 of this Lease, below. The term "**Losses**" shall mean all claims, demands, expenses, actions, judgments, damages, penalties, fines, liabilities, losses of every kind and nature (including, without limitation, property damage, diminution in value of Landlord’s interest in the Premises or the Project, damages for the loss or restriction on use of any space or amenity within the Building or the Project, damages arising from any adverse impact on marketing space in the Project, sums paid in settlement of claims and any costs and expenses associated with injury, illness or death to or of any person), suits, administrative proceedings, costs and fees, including, but not limited to, attorneys’ and consultants’ fees and expenses, and the costs of cleanup, remediation, removal and restoration. To the actual knowledge of Landlord, except as set forth in reports delivered to Tenant before Tenant’s execution of this Lease, Landlord has no written notices, reports, materials or other written information indicating the presence of Hazardous Materials on the Project or the soil, surface water or groundwater thereof in violation of Hazardous Material Laws. Landlord agrees to indemnify, defend, protect and hold harmless the Tenant from and against any liability, obligation, damage or costs, including without limitation, claims for personal injuries, property damage or regulatory liability arising out of Hazardous Material Laws, and including reasonable attorneys’, consultants and expert’s fees and costs, resulting from any Hazardous Materials which (a) were brought onto the Property or within the Buildings or the Premises by Landlord or a Landlord Party, except to the extent such liability, obligation, damage or costs was a result of an act or omission of Tenant and/or any of Tenant's agents, servants, employees, and independent contractors ("**Tenant Parties**"), or was proportionately caused, exacerbated or permitted by Tenant or a Tenant Party, or (b) existed on or in the Project or the Premises prior to Tenant’s occupancy, (c) which are caused by the negligence or willful misconduct of Landlord or Landlord Party, or (d) which migrate onto the Premises via air, water or soil at no fault of Tenant. Notwithstanding anything to the contrary contained herein, nothing in this Section 7.1.5 shall be construed to make Tenant responsible for any Hazardous Materials present on the

Premises as of the Delivery Date, or which migrate thereto through air, water, or soil through no fault of Tenant, or are introduced by Landlord, other tenant of the Project or any third party not under Tenant's control.

7.1.6. Hazardous Materials. As used herein, the term "**Hazardous Materials**" means any hazardous, radioactive or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government or under any Hazardous Material Laws. The term "Hazardous Materials," includes, without limitation, hazardous radioactive material, radioactive material, mixed waste, petroleum products, asbestos, PCB's, and any material or substance which is (i) now or hereafter listed under Article 9 or defined as hazardous or extremely hazardous pursuant to Article 11 of Title 22 of the California Code of Regulations, Division 4, Chapter 20, (ii) defined as a "hazardous waste" pursuant to Section 1004 of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq. (42 U.S.C. 6903), (iii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq. (42 U.S.C. 9601) or (iv) regulated as a radioactive material under Title 17, Division 1, Chapter 5, Subchapter 4 of the California Code or Regulations and Title 10, Code of Federal Regulations, part 20. As used herein, the term "**Hazardous Material Laws**" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, the California Department of Public Health Radiologic Health Branch and the California Department of Toxic Substances Control) which regulates the use, storage, release or disposal of any Hazardous Material.

7.1.7. Removal. Tenant shall cause all Hazardous Materials used in the manufacture of. but which are not included in, a standard finished product which is delivered to Tenant's customers to be promptly relocated to an appropriate and permitted disposal or management facility in accordance with all applicable Laws.

7.1.8. Tenant's Obligations upon Surrender. At the expiration or earlier termination of the Lease Term, Tenant, at Tenant's sole cost and expense, shall: (i) cause an environmental assessment of the Premises to be conducted in accordance with this Section 7.1.8; (ii) cause all Hazardous Materials to be removed from the Premises and managed or disposed of in accordance with all Hazardous Materials Laws and as necessary to allow the Premises to be used for any purpose; and (iii) cause to be removed all containers installed or used by Tenant or Tenant's Agents to store any Hazardous Materials on the Premises, and cause to be repaired any damage to the Premises caused by such removal. In connection with its surrender of the Premises, Tenant shall submit to Landlord, at least one hundred twenty (120) days prior to the expiration date of this Lease (or in the event of an earlier termination of this Lease, as soon as reasonably possible following such termination), an environmental assessment of the Premises by a competent and experienced environmental engineer or engineering firm reasonably satisfactory to Landlord (pursuant to a contract approved by Landlord and providing that Landlord can rely on the environmental assessment), which (i) evidences that the Premises are in a clean and safe condition and free and clear of any Hazardous Materials; and (ii) includes a review of the Premises by an environmental consultant for asbestos, mold, fungus, spores, and other moisture conditions, on-site chemical use, and lead-based paint. If such environmental assessment reveals that remediation or clean-up is required under any Hazardous Materials Laws, Tenant shall submit a remediation plan prepared by a recognized environmental consultant and shall be responsible for all costs of remediation and clean-up, as provided in this Section 7.1.

7.1.9. Pollution Legal Liability Environmental Insurance. Tenant shall obtain and maintain Pollution Legal Liability Environmental Insurance (i) from an insurance carrier with a rating of no less than A-X in Best's Insurance Guide, and (ii) providing commercially reasonable coverage and deductibles (to the extent available) with respect to (i) known and unknown pre-existing conditions; (ii) unknown and later discovered conditions; (iii) on-site and off-site third-party claims for bodily injury or property damage; and (iv) legal defense expenses. The form of the Pollution Legal Liability Environmental Insurance policy shall be reasonably acceptable to Landlord, and the term of such policy shall be at least equal to the then-current Lease Term plus an additional six (6) months. Further, notwithstanding anything to the contrary set forth in this Lease, as a condition precedent to the effectiveness of Tenant's exercise of its right to extend the Lease Term by the Extension Period pursuant to the terms of Exhibit D attached hereto or otherwise, Tenant shall have obtained the policy described in this Section 7.1.9, in accordance with the terms of this Section 7.1.9, including without limitation, that the term of such policy shall be at least equal to the length of the Extension Period plus an additional six (6) months. Landlord, Landlord's lender and such other parties in interest as Landlord reasonably designates shall be named as an additional named insured on the Pollution Legal Liability Environmental Insurance policy by endorsement, and an endorsement shall be issued to the Pollution Legal Liability Environmental Insurance policy that provides the policy cannot be amended, modified, terminated or cancelled by the insured without the prior written consent of Landlord. Any new Pollution Legal Liability Environmental Insurance policy that Tenant obtains shall provide coverage for pollution conditions and unknown claims arising prior to the date such policy was issued (e.g., pre-existing conditions shall be covered).

ARTICLE 8
SERVICES AND UTILITIES

8.1 In General. From and after the Lease Commencement Date, and continuing throughout the remainder of the Lease Term, Tenant will be responsible, at its sole cost and expense, for the following.

8.1.1. The furnishing of all services and utilities which are separately metered to the Premises, including without limitation, electricity, water, gas and sewer, the costs of which shall be paid directly by Tenant to the applicable utility provider. In the event that any service or utility is not separately metered to the Premises, Tenant shall pay Tenant's equitable share of such service or utility, as reasonably determined by Landlord. In the event that any service or utility is submetered to the Premises, Tenant shall pay the costs thereof to Landlord as Additional Rent (and not as an Operating Expense) within ten (10) business days following demand therefor from Landlord.

8.1.2. Landlord shall not provide janitorial services for the Premises. Tenant shall be solely responsible for performing all janitorial (including all trash and recycling services) services and other cleaning of the Premises, all in compliance with applicable Laws. The janitorial and cleaning of the Premises shall be adequate to maintain the Premises in a manner consistent with Class A Life Sciences Projects.

Tenant shall cooperate fully with Landlord at all times and abide by all rules, regulations and requirements that Landlord may reasonably prescribe for the proper functioning and protection of the Building HVAC, electrical, mechanical and plumbing systems. Landlord shall have no obligation to provide any services or utilities to the Building (including, but not limited to heating, ventilation and air-conditioning, electricity, telephone, janitorial and security services).

8.2 Overstandard Tenant Use. Tenant's use of electricity shall never exceed the capacity of the feeders to the Project or the risers or wiring installation within the Premises. If Landlord reasonably determines that Tenant is using HVAC in excess amounts as to shorten the useful life of the HVAC equipment serving the Premises, as Landlord shall reasonably determine, then Landlord may charge Tenant (which shall be treated as Additional Rent) for such excess HVAC usage the Landlord’s actual out-of-pocket costs, without any profit to Landlord, but which charge may include the excess depreciation and maintenance as reasonably calculated by Landlord's engineer, and a percentage of such cost to compensate Landlord for its overhead.

8.3 Interruption of Use.

8.3.1. In General. Tenant agrees that Landlord shall not be liable for damages, by abatement of Rent (subject to Section 8.3.2 below) or otherwise, for failure to furnish or delay in furnishing any service (including telephone and telecommunication services), or for any diminution in the quality or quantity thereof, when such failure or delay or diminution is occasioned, in whole or in part, by breakage, repairs, replacements, or improvements, by any strike, lockout or other labor trouble, by inability to secure electricity, gas, water, or other fuel at the Building or Project after reasonable effort to do so, by any riot or other dangerous condition, emergency, accident or casualty whatsoever, by act or default of Tenant or other parties, or by any other cause beyond Landlord's reasonable control; and such failures or delays or diminution shall never be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Premises or relieve Tenant from paying Rent or performing any of its obligations under this Lease. Furthermore, Landlord shall not be liable under any circumstances for a loss of, or injury to, property or for injury to, or interference with, Tenant's business, including, without limitation, loss of profits, however occurring, through or in connection with or incidental to a failure to furnish any of the services or utilities as set forth in this Article 8.

8.3.2. **Abatement Event**. If (i) Landlord fails to provide services required of Landlord under Section 8.1 above, and (ii) such failure causes all or a material portion of the Premises to be untenantable by Tenant and Tenant actually ceases to use all or a material portion of the Premises, (iii) such failure is reasonably within Landlord's ability to cure, and (iv) such failure is not the result of the acts and/or omissions of Tenant and/or other Tenant Parties, then in order to be entitled to receive the benefits of this Section 8.3.2, Tenant must give Landlord notice (the "**Abatement Event Notice**"), specifying such failure to perform by Landlord (the "**Abatement Event**"). If Landlord has not commenced to cure such Abatement Event within five (5) business days after the receipt of the Abatement Event Notice and is not otherwise excused from such performance by this Lease, Tenant may, upon written notice to Landlord, immediately abate Base Monthly Rent and Tenant's Share of Project Expenses payable under this Lease for that portion of the Premises rendered untenantable and not actually used by Tenant, for the period beginning on the date five (5) business days after the Abatement Event Notice to the earlier of the date Landlord cures such Abatement Event or the date Tenant recommences the use of such portion of the Premises. Such right to abate Rent shall be Tenant's sole

and exclusive remedy at law or in equity for an Abatement Event. Except as provided in this Section 8.3.2, nothing contained herein shall be interpreted to mean that Tenant is excused from paying Rent due hereunder.

8.4 Existing Generator. Tenant shall have the right to use and control the existing approximately 150 KW diesel engine-driven Cummins generator set and related equipment (all such equipment defined collectively as the "**Emergency Generator**") serving the Premises. The Emergency Generator is being provided in its currently-existing, "as is" condition, and neither Landlord nor any agent of Landlord has made any representation or warranty regarding the condition of the Emergency Generator. Landlord shall not be liable for any damages whatsoever resulting from any failure in operation of the Emergency Generator, or the failure of the Emergency Generator to provide suitable or adequate back-up power, including but not limited to, loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring, or loss to inventory, scientific research, scientific experiments, laboratory animals, products, specimens, samples, and/or scientific, business, accounting and other records of every kind and description kept at the premises and any and all income derived or derivable therefrom. Tenant shall not be charged any additional rental or other costs for the use of the location in which the Emergency Generator is located. Tenant shall maintain and repair the Emergency Generator in good condition and repair, and in compliance with all applicable laws (including the maintenance of all applicable permits), at Tenant's sole cost and expense during the Lease Term. Tenant's obligations with respect to the Premises, including the insurance and indemnification obligations in this Lease, shall apply to Tenant's use of the Emergency Generator and Tenant shall carry industry standard Boiler and Machinery insurance covering the Emergency Generator. In addition, Tenant shall indemnify, defend, protect, and hold harmless Landlord and the Landlord Parties from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from any cause related to or connected with the use, operation, repair and/or removal of the Emergency Generator and/or any acts, omissions or negligence of Tenant or of any person claiming by, through or under Tenant, or of the contractors, agents, servants, employees, invitees, guests or licensees of Tenant or any such person, in connection with the Emergency Generator, or any breach of the terms of this Section 8.4. The Emergency Generator shall be used by Tenant only during (i) testing and regular maintenance, and (ii) the period of any electrical power outage in the Building. Tenant shall be entitled to operate the Emergency Generator for testing and regular maintenance only upon notice to Landlord and at times reasonably approved by Landlord. The rights granted to Tenant under this Section 8.4 shall be personal to the Original Tenant and any Permitted Transferee (and may not be utilized by or assigned to any other assignee, sublessee or transferee). Following the expiration or earlier termination of this Lease, Tenant shall remove the Generator and all related facilities and equipment (including, without limitation, the Generator's pad and enclosure, if any) prior to the expiration or earlier termination of the Lease, and repair all damage to the Building and/or Project resulting from such removal (including, without limitation, all penetrations) and restore all affected areas to their condition existing prior to the installation of the Generator, all at Tenant's sole cost and expense. The terms set forth in this Section 8.4 shall survive the termination or earlier expiration of this Lease.

8.5 Tenant’s Security System. Tenant may, at its own expense, install its own security system (“**Tenant’s Security System**”) in the Premises; provided, however, that Tenant shall coordinate the installation and operation of Tenant’s Security System with Landlord to assure that Tenant’s Security System is compatible with Landlord’s security system and the Building systems and equipment, and to the extent that Tenant’s Security System is not compatible with Landlord’s security system and the Building systems and equipment, Tenant shall not be entitled to install or operate the Tenant’s Security System. Tenant shall be solely responsible, at Tenant’s sole cost and expense, for the installation, monitoring, operation and removal of Tenant’s Security System. Tenant’s Security System shall be installed by Tenant as an Alteration in accordance with the terms of Article 5 of this Lease.

ARTICLE 9
INSURANCE

9.1 Tenant's Insurance. Throughout the Lease Term, Tenant shall maintain the following coverages in the following amounts:

9.1.1. Commercial general liability insurance, which may be satisfied through a combination of primary and excess/umbrella insurance, including property damage, against liability for personal injury, bodily injury, death and damage to property (including loss of use thereof) based upon or arising out of Tenant's operations, occupancy or maintenance of the Project and all appurtenances thereto, and including contractual liability coverage insuring Tenant's performance of its obligations under this Lease, including the indemnity agreements set forth in Section 10.1, below, for limits of liability not less than:

$5,000,000 Each Occurrence

$5,000,000 General Aggregate

$5,000,000 Products/Completed Operations Aggregate

$5,000,000 Personal & Advertising Injury

9.1.2. Fire and property damage insurance in so-called "special form" or "all risk" form, insuring (i) all office furniture, business and trade fixtures, office equipment, free-standing cabinet work, movable partitions, merchandise and all other items of Tenant's property on the Premises installed by, for, or at the expense of Tenant, (ii) the Tenant Improvements and any other improvements which exist in the Premises as of the Lease Commencement Date (excluding the Building Structure) (collectively, the "**Original Improvements**"), and (iii) all other Alterations, improvements and additions to the Premises, for the full replacement cost thereof, without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance and shall include coverage for damage or other loss caused by fire or other peril including, but not limited to, vandalism and malicious mischief, theft, water damage, including sprinkler leakage, bursting or stoppage of pipes, and explosion; and

9.1.3. Insurance for: (a) Business Auto Liability covering owned, non-owned and hired vehicles with a limit of not less than $1,000,000 per accident; (b) Statutory Workers Compensation and Employers Liability with limits of not less than $1,000,000 pursuant to all applicable state and local statutes and regulations; and (c) Business Interruption Insurance for a period of one (1) year. In addition, whenever Tenant shall undertake any Alterations, additions or improvements in, to or about the Premises, the aforesaid insurance protection must extend to and include injuries to persons and damage to property arising in connection with such Work, including liability under any applicable structural work act, and such other insurance as Landlord shall require; and the policies of or certificates evidencing such insurance must be delivered to Landlord prior to the commencement of any such work.

9.1.4. Excess/Umbrella Liability with a limit of not less than $4,000,000 scheduling as primary insurance the Commercial General Liability, Auto Liability and Employers Liability.

9.1.5. Form of Policies. The minimum limits of policies of insurance required of Tenant under this Lease shall in no event limit the liability of Tenant under this Lease. Each policy of insurance required to be carried by Tenant pursuant to this Section 9.1, except for Workers Compensation and Employers Liability, shall: (i) name Landlord and such other parties in interest as Landlord reasonably designates as additional insureds; (ii) be primary insurance as to all claims thereunder and provide that the insurer shall be liable for the full amount of the loss up to and including the total amount of liability set forth in the declarations without the right of contribution from any other insurance coverage of Landlord; (iii) be in form and content reasonably satisfactory to Landlord; (iv) be issued by an insurance company having a rating of not less than A-VIII in Best's Insurance Guide or which is otherwise reasonably acceptable to Landlord and licensed or authorized to do business in the State of California; (v) Intentionally Omitted; (vi) specifically cover the liability assumed by Tenant under this Lease, including, but not limited to, Tenant's obligations under Section 10.1 of this Lease; (vii) shall contain a cross liability endorsement; and (viii) shall contain a severability clause. Tenant shall provide Landlord notice prior to any such insurance being cancelled or if coverage is changed. If Tenant has in full force and effect a blanket policy of liability insurance with the same coverage for the Premises as described above, as well as other coverage of other premises and properties of Tenant, or in which Tenant has some interest, such blanket insurance shall satisfy the requirements of this Section 9.1, provided that the Commercial General Liability insurance under this Section 9.1 contains a per location general aggregate.

9.1.6. Evidence of Insurance. A a certificate of the insurer, certifying that such policy has been issued, providing the coverage required by this Section 9.1, and containing the provisions specified herein, shall be delivered to Landlord prior to the time Tenant or any of Tenant's Agents are first provided access to the Premises, and upon the renewal of such policies. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates, Landlord may, at its option, on five (5) days' notice to Tenant, procure such policies for the account of Tenant, and the cost thereof shall be paid to Landlord within five (5) days after delivery to Tenant of bills therefor.

9.2 Landlord's Insurance. Landlord shall maintain a policy or policies of insurance against loss or damage to the Building on a "special form" or "all risk" type insurance form, with customary exceptions, subject to such deductibles and self-insured retentions as Landlord may determine, in an amount equal to at least the full replacement value of the Building. Landlord may insure the Building separately, or with other property owned by Landlord which Landlord elects to insure together under the same policy or policies. Landlord shall have the right, but not the obligation, in its sole and absolute discretion, to obtain insurance for such additional perils as Landlord deems appropriate, including, without limitation, coverage for damage by earthquake and/or flood. Landlord shall not be

required to maintain insurance with respect to any improvements, alterations or fixtures of Tenant located at the Premises.

9.3 Release and Waiver of Subrogation. Landlord and Tenant intend that their respective property loss risks shall be borne by reasonable insurance carriers to the extent above provided, and Landlord and Tenant hereby agree to look solely to, and seek recovery only from, their respective insurance carriers in the event of a property loss to the extent that such coverage is agreed to be provided hereunder. The parties each hereby waive all rights and claims against each other for such losses, and waive all rights of subrogation of their respective insurers, provided such waiver of subrogation shall not affect the right to the insured to recover thereunder. The parties agree that their respective insurance policies are now, or shall be, endorsed such that the waiver of subrogation shall not affect the right of the insured to recover thereunder, so long as no material additional premium is charged therefor.

9.4 Additional Insurance Obligations. Tenant shall carry and maintain during the entire Lease Term, at Tenant's sole cost and expense, increased amounts of the insurance required to be carried by Tenant pursuant to this Article 9 and such other reasonable types of insurance coverage and in such reasonable amounts covering the Premises and Tenant's operations therein, as may be reasonably requested by Landlord; provided, however, that in no event shall such new or increased amounts or types of insurance exceed that required of comparable tenants by landlords of comparable buildings in San Jose, California.

ARTICLE 10
INDEMNIFICATION AND WAIVER

10.1 Indemnification and Waiver. Tenant hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises from any cause whatsoever and agrees that the Landlord Parties shall not be liable for, and are hereby released from any responsibility for, any damage either to person or property or resulting from the loss of use thereof, which damage is sustained by Tenant or by other persons claiming through Tenant. Tenant shall indemnify, defend, protect, and hold harmless the Landlord Parties from and against any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from: (a) any causes in, on or about the Premises; (b) the use or occupancy of the Premises by Tenant or any person claiming under Tenant; (c) any activity, work, or thing done, or permitted or suffered by Tenant in or about the Premises; (d) any acts, omission, or negligence of Tenant or Tenant's Agents, in, on or about the Project; (e) any breach, violation, or non-performance by Tenant or any person claiming under Tenant or Tenant's Agents of any term, covenant, or provision of this Lease or any law, ordinance, or governmental requirement of any kind; (f) any injury or damage to the person, property, or business of Tenant or Tenant's Agents entering upon the Premises under the express or implied invitation of Tenant; and (g) the placement of any personal property or other items within the Premises. Should Landlord be named as a defendant in any suit brought against Tenant in connection with or arising out of Tenant's occupancy of the Premises, Tenant shall pay to Landlord its costs and expenses incurred in such suit, including without limitation, its actual professional fees such as appraisers', accountants' and attorneys' fees. Further, Tenant's agreement to indemnify Landlord pursuant to this Section 10.1 is not intended and shall not relieve any insurance carrier of its obligations under policies required to be carried by Tenant pursuant to the provisions of this Lease, to the extent such policies cover the matters subject to Tenant's indemnification obligations; nor shall they supersede any inconsistent agreement of the parties set forth in any other provision of this Lease. Landlord shall indemnify, defend, protect, and hold harmless Tenant and the Tenant Parties from any and all loss, cost, damage, expense and liability (including without limitation reasonable attorneys' fees) arising from (a) the gross negligence or willful misconduct of Landlord in, on or about the Project, except to the extent caused by the negligence or willful misconduct of the Tenant Parties and (b) any breach of this Lease by Landlord. The provisions of this Section 10.1 shall survive the expiration or sooner termination of this Lease with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination.

10.2 Landlord Exculpation. The liability of Landlord or the Landlord Parties to Tenant for any default by Landlord under this Lease or arising in connection herewith or with Landlord's operation, management, leasing, repair, renovation, alteration or any other matter relating to the Project or the Premises shall be limited solely and exclusively to an amount which is equal to the lesser of (a) the interest of Landlord in the Building or (b) the equity interest Landlord would have in the Building if the Building were encumbered by third-party debt in an amount equal to eighty percent (80%) of the value of the Building (as such value is determined by an appraisal of the building by an MAI appraiser selected by Landlord), provided that in no event shall such liability extend to any sales or insurance proceeds received by Landlord or the Landlord Parties in connection with the Project, Building or Premises. Neither Landlord, nor any of the Landlord Parties shall have any personal liability therefor, and Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant. The limitations of liability contained in this Section 10.2 shall inure to the benefit of Landlord's and the Landlord Parties' present and

future partners, beneficiaries, officers, directors, trustees, shareholders, agents and employees, and their respective partners, heirs, successors and assigns. Under no circumstances shall any present or future partner of Landlord (if Landlord is a partnership), or trustee or beneficiary (if Landlord or any partner of Landlord is a trust), have any liability for the performance of Landlord's obligations under this Lease. Notwithstanding any contrary provision herein, neither Landlord nor the Landlord Parties shall be liable under any circumstances for any indirect or consequential damages or any injury or damage to, or interference with, Tenant's business, including but not limited to, loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

ARTICLE 11
DAMAGE TO PREMISES

11.1 Landlord's Duty to Restore. Subject to the provisions of Section 11.2, below, if the Premises are damaged by fire or other casualty, Landlord shall promptly and diligently restore the Base Building to substantially the same condition as existed prior to the casualty, except for modifications required by zoning and building codes and other laws, or by the holder of a mortgage on the Building or Project, or any other modifications to the Common Areas deemed desirable by Landlord to the extent the same are consistent with Class A Life Sciences Projects. All insurance proceeds available from the fire and property damage insurance carried by Landlord shall be paid to and become the property of Landlord. If this Lease is terminated pursuant to Section 11.2, below, then all insurance proceeds available from the fire and property damage insurance carried by Tenant and all insurance covering the Original Improvements and any Alterations, but excluding proceeds for trade fixtures, merchandise, signs and other personal property of Tenant, shall be disbursed and paid to Landlord. If this Lease is not terminated pursuant to Section 11.2, below, then Tenant shall forthwith replace or fully repair all Original Improvements and any Alterations made in the Premises by Tenant, and replace its furniture, fixtures and equipment in the Premises.

11.2 Landlord's Right to Terminate. Notwithstanding Section 11.1 above, Landlord shall have the right, upon written notice to Tenant within sixty (60) days following the date of the casualty, to terminate this Lease in the event any of the following occurs:

11.2.1. Damage From Insured Peril. The Building or Project is damaged by fire or other peril, and the cost of repair is covered by insurance and the estimated time for repair and restoration of same exceeds two hundred seventy (270) days after the date of such damage;

11.2.2. Damage From Uninsured Peril. The Building or Project is damaged, and the cost of repair is not covered by insurance (including deductible amounts); provided, however, that any election by Landlord to terminate this Lease pursuant to this Section 11.2.2 shall be null and void if one or more tenants of the Project agree in writing to pay the amount by which the cost to restore the Building or Project, as applicable, exceeds such amount, and such party(ies) subsequently deposit such amount with Landlord within thirty (30) days after Landlord has notified Tenant of its election to terminate this Lease;

11.2.3. Damage Near End of Term. The Premises are damaged by any peril during the last twelve (12) months of the Lease Term and the estimated cost to restore the Premises equals or exceeds an amount equal to six (6) times the then-applicable Base Monthly Rent; provided, however, that any election by Landlord to terminate this Lease pursuant to this Section 11.2.3 shall be null and void if Tenant, at the time of such damage, has a then valid option to extend the Lease Term pursuant to this Lease, and Tenant exercises such option to extend the Lease Term within fifteen (15) days following the date of such damage; or

11.2.4. Restrictions on Restoration. The Building or Project is damaged by any peril and, because of the Laws then in effect and applicable to the Project, the Building or Project, as applicable (i) cannot be restored by Landlord at reasonable cost to substantially the same condition as existed prior to such damage, or (ii) cannot be used for the same use being made thereof prior to such damage if the same is restored as required by this Article 11.

11.3 Tenant's Right to Terminate. If the Premises are damaged by any peril and Landlord does not elect to terminate this Lease, or is not entitled to terminate this Lease pursuant to Section 11.2, above, then as soon as reasonably practicable following the date of such damage, Landlord shall provide Tenant with written notice stating the estimated time for repair or restoration following the issuance of a building permit for such work. Tenant shall have the right, upon written notice to Landlord within seven (7) days following receipt of such written notice from Landlord, to terminate this Lease in the event any of the following occurs:

11.3.1. Major Damage. The Premises are damaged by any peril and the time stated in Landlord's notice for the repair and restoration of the Premises exceeds two hundred-seventy (270) days following the issuance of a building permit; or

11.3.2. Damage Near End of Term. The Premises are damaged by any peril during the last twelve (12) months of the Lease Term and the time stated in Landlord's notice for the repair and restoration of the Premises exceeds ninety (90) days following the issuance of a building permit.

11.4 Abatement of Rent. In the event of damage to the Premises which does not result in the termination of this Lease, the Base Monthly Rent and the Additional Rent payable hereunder shall be temporarily abated during the period of restoration in proportion to the degree to which Tenant's use of the Premises is impaired during such period of restoration; provided, however, the amount of Base Monthly Rent and Additional Rent abated pursuant to this Section 11.4 shall in no event exceed the amount of loss of rental income insurance proceeds actually received by Landlord. Tenant shall not be entitled to any compensation or damages from Landlord for loss of Tenant's business or property, or for any inconvenience or annoyance caused by such damage or restoration.

11.5 Waiver of Statutory Provisions. The provisions of this Lease, including this Article 11, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises, the Building or the Project, and any statute or regulation of the State of California, including, without limitation, Sections 1932(2) and 1933(4) of the California Civil Code, with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any other statute or regulation, now or hereafter in effect, shall have no application to this Lease or any damage or destruction to all or any part of the Premises, the Building or the Project.

ARTICLE 12
CONDEMNATION

12.1 Landlord's Termination Right. If the whole or any part of the Premises, Building or Project shall be taken by power of eminent domain or condemned by any competent authority for any public or quasi-public use or purpose, or if Landlord shall grant a deed or other instrument in lieu of such taking by eminent domain or condemnation, Landlord shall have the right to terminate this Lease effective as of the date possession is required to be surrendered to the condemning authority.

12.2 Tenant's Termination Right. If, as a result of any taking by means of the exercise of the power of eminent domain (including any voluntary sale or transfer by Landlord to any condemnor under threat of condemnation), (i) twenty-five percent (25%) or more of the rentable square feet of the Premises is taken and the part of the Premises that remains cannot be restored within a reasonable period of time following the date possession is required to be surrendered to the authority, and the continued operation of the Tenant's business from the Premises is thereby materially impaired, or (ii) as a result of any taking Tenant's access to the Premises is materially impaired, then Tenant shall have the right to terminate this Lease effective as of the date possession is required to be surrendered to the condemning authority.

12.3 Restoration and Abatement of Rent. If any part of the Premises or the Common Areas is taken by condemnation and this Lease is not terminated, then Landlord shall, to the extent of the condemnation proceeds, restore the remaining portion of the Premises or Common Areas necessary for Tenant to reasonably operate Tenant's business from the Premises. Thereafter, subject to Section 12.4 below, as of the date possession is required to be surrendered to the authority, the Base Monthly Rent and Additional Rent payable hereunder shall be reduced in the same proportion that the number of rentable square feet of the Premises so taken (less any addition thereto by reason of any restoration or reconstruction by Landlord) bears to the original number of rentable square feet in the Premises.

12.4 Temporary Taking. If any portion of the Premises is temporarily taken for a period of one hundred eighty (180) days or less (a "**Temporary Taking**"), this Lease shall remain in effect and the provisions of Sections 12.1 through 12.3, above, shall not apply. If any Temporary Taking extends beyond the natural expiration of the Lease Term, and such taking materially and adversely affects Tenant's ability to use the Premises for the Permitted Use, then Tenant shall have the right to terminate this Lease, effective on the date possession is required to be surrendered to the condemning authority.

12.5 Award. The entire award or compensation made as a result of any condemnation proceeding shall belong to and be the property of Landlord, and Tenant hereby assigns to Landlord all of its right, title and interest in any such award; provided, however, that Tenant shall be entitled to recover from the condemning authority such

compensation as may be separately awarded by the condemning authority to Tenant or recoverable from the condemning authority by Tenant in its own right for the taking of trade fixtures and equipment owned by Tenant and for the expense of removing and relocating its trade fixtures and equipment, so long as the award made to Landlord is not thereby reduced. The rights of Landlord and Tenant regarding any condemnation shall be determined as provided in this Article 12, and each party hereby waives the provisions of California Code of Civil Procedure Section 1265.130 and the provisions of any similar law hereinafter enacted.

ARTICLE 13
DEFAULT AND REMEDIES

13.1 Events of Default. Tenant shall be in default of this Lease if any of the following events occurs (each, an "**Event of Tenant's Default**"):

13.1.1. Any failure by Tenant to pay any installment of Rent or any other charges required to be paid under this Lease when due, and such failure is not cured within three (3) business days after delivery of written notice to Tenant from Landlord specifying such failure to pay; or

13.1.2. Except where a specific time period is otherwise set forth for Tenant's performance in this Lease, in which event the failure to perform by Tenant within such time period shall be an Event of Tenant's Default under this Section 13.1, any failure by Tenant to observe or perform any term, covenant, or condition of this Lease, where such failure continues for more than thirty (30) days after written notice from Landlord to Tenant specifying the nature of such failure; provided that if the nature of such default is such that the same cannot reasonably be cured within a thirty (30) day period, Tenant shall not be deemed to be in default if it diligently commences such cure within such period and thereafter diligently and continuously proceeds to rectify and cure such default; or

13.1.3. Any abandonment of the Premises (pursuant to Section 1951.35 of the California Civil code) by Tenant; or

13.1.4. The failure by Tenant to observe or perform according to the provisions of Articles 4, 7, 14, 17 or 18 of this Lease, or any breach by Tenant of the representations and warranties set forth in Section 21.28 of this Lease, or the failure by Tenant to observe or perform any other provision, covenant or condition of this Lease which failure, because of the character of such provision, covenant or condition, would immediately jeopardize Landlord's interest, where such failure continues for more than two (2) business days after notice from Landlord.

Any written notice of an Event of Tenant's Default sent by Landlord to Tenant shall be in lieu of, and not in addition to, any termination notice required under applicable statutory or regulatory provisions (and no further notice shall be required should Landlord elect to terminate this Lease as set forth below).

13.2 Landlord's Remedies. Upon the occurrence of any Event of Tenant's Default, Landlord shall have, in addition to any other remedies available to Landlord at law or in equity (all of which remedies shall be distinct, separate and cumulative), the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever:

13.2.1. Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor; and Landlord may recover from Tenant the following:

13.2.1.1 The worth at the time of award of any unpaid rent which has been earned at the time of such termination; plus

13.2.1.2 The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

13.2.1.3 The worth at the time of award of the amount by which the unpaid rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

13.2.1.4 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 would be likely to result therefrom; and

13.2.1.5 At Landlord's election, such other reasonable amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

The term "rent" as used in this Section 13.2 shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in Sections 13.2.1.1 and 13.2.1.2, above, the "worth at the time of award" shall be computed by allowing interest at the Agreed Interest Rate, but in no case greater than the maximum amount of such interest permitted by law. As used in Section 13.2.1.3 above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

13.2.2. Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease on account of any Event of Tenant's Default, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all rent as it becomes due.

13.2.3. Landlord shall at all times have the rights and remedies (which shall be cumulative with each other and cumulative and in addition to those rights and remedies available under Sections 13.2.1 and 13.2.2, above, or any law or other provision of this Lease), without prior demand or notice except as required by applicable law, to seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease, or restrain or enjoin a violation or breach of any provision hereof.

13.3 Subleases of Tenant. If Landlord elects to terminate this Lease on account of any Event of Tenant's Default, as set forth in this Article 13, then Landlord shall have the right, at Landlord's option in its sole discretion (i) to terminate any and all assignments, subleases, licenses, concessions or other consensual arrangements for possession entered into by Tenant and affecting the Premises, in which event Landlord shall have the right to repossess such affected portions of the Premises by any lawful means, or (ii) to succeed to Tenant's interest in any or all such assignments, subleases, licenses, concessions or arrangements, in which event Landlord may require any assignees, sublessees, licensees or other parties thereunder to attorn to and recognize Landlord as its assignor, sublessor, licensor, concessionaire or transferor thereunder. In the event of Landlord's election to succeed to Tenant's interest in any such assignments, subleases, licenses, concessions or arrangements, Tenant shall, as of the date of notice by Landlord of such election, have no further right to or interest in the rent or other consideration receivable thereunder.

13.4 Efforts to Relet. No re-entry or repossession, repairs, maintenance, changes, alterations and additions, reletting, appointment of a receiver to protect Landlord's interests hereunder, or any other action or omission by Landlord shall be construed as an election by Landlord to terminate this Lease or Tenant's right to possession, or to accept a surrender of the Premises, nor shall same operate to release Tenant in whole or in part from any of Tenant's obligations hereunder, unless express written notice of such intention is sent by Landlord to Tenant. Tenant hereby irrevocably waives any right otherwise available under any law to redeem or reinstate this Lease.

ARTICLE 14
ASSIGNMENT AND SUBLETTING

14.1 Transfers. Tenant shall not do any of the following (collectively referred to herein as a "**Transfer**", and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "**Transferee**"), whether voluntarily, involuntarily, by operation of law or otherwise without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed: (i) sublet all or any portion of the Premises; (ii) assign or permit any assignment of its interest in this Lease; (iii) mortgage, pledge, hypothecate, encumber or permit any lien to attach to this Lease; (iv) enter into any license or concession agreements or otherwise permit the use or occupancy of the Premises or any part thereof by any persons other than Tenant and its employees or contractors; or (v) materially amend or modify an assignment, sublease or other transfer that has been previously approved by Landlord. Tenant shall reimburse Landlord for all reasonable costs not to exceed $5,000 for a Transfer in the ordinary course of business, including attorneys' fees, incurred by Landlord in connection with the evaluation, processing, and/or documentation of any requested Transfer, whether or not Landlord's consent to such Transfer is granted, within thirty (30) days of receipt of demand therefor. Any Transfer approved by Landlord pursuant to this Article 14 shall not become effective until Tenant has delivered to Landlord a fully-executed version of the document

evidencing such Transfer which document shall: (a) be in a form reasonably approved in advance by Landlord, (b) contain substantially the same terms and conditions as stated in Tenant's request for such Transfer set forth above, and (c) in the case of an assignment of the Lease, contain the agreement of the proposed Transferee to assume all obligations of Tenant under this Lease arising after the effective date of such Transfer, and to remain jointly and severally liable therefor with Tenant. Any attempted Transfer without Landlord's prior consent shall constitute an Event of Tenant's Default and shall, at Landlord's option, be null, void and of no further force or effect. Landlord's consent to any one Transfer shall not constitute a waiver of the provisions of this Section 14.1 as to any subsequent Transfer or a consent to any subsequent Transfer. No Transfer, whether made with or without the consent of Landlord, shall relieve Tenant of its personal and primary obligation to pay the Rent due hereunder, or to perform all of the other obligations to be performed by Tenant hereunder. The acceptance of any payment of Rent by Landlord from any person or entity shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any Transfer.

14.2 Procedure. At least twenty-one (21) days, but not more than one hundred eighty (180) days, before a proposed Transfer is to become effective, Tenant shall give Landlord written notice (a "**Transfer Notice**") of the proposed terms of such Transfer, which Transfer Notice shall include the following information: (i) the proposed effective date of the Transfer; (ii) a description of the portion of the Premises to be transferred (the "**Subject Space**"); (iii) the name and legal composition of the proposed Transferee; (iv) all of the terms of the proposed Transfer and the consideration therefor, including calculation of the Transfer Premium, as that term is defined in Section 14.4 below, in connection with such Transfer; (v) current financial statements of the proposed Transferee certified by an officer, partner or owner thereof, covering the current year and the preceding two (2) years if the same exist, all of which statements are prepared in accordance with generally accepted accounting principles; (vi) the nature of the proposed Transferee's business to be carried on in the Premises; and (vii) an accurately filled out response to Landlord's standard hazardous materials questionnaire. In addition, Tenant shall promptly provide to Landlord such other information regarding the proposed Transfer and/or Transferee as may be reasonably requested by Landlord. Landlord shall respond in writing to a Transfer Notice within twenty-one (21) days following Landlord's receipt of such notice and all required accompanying information and documentation.

14.3 Landlord's Consent. Landlord shall not unreasonably withhold its consent to any proposed Transfer of the Subject Space to the Transferee on the terms specified in the Transfer Notice. Without limitation as to other reasonable grounds for withholding consent, the parties hereby agree that it shall be reasonable under this Lease and under any applicable law for Landlord to withhold consent to any proposed Transfer where one or more of the following apply:

14.3.1. An Event of Tenant's Default has occurred or is then occurring;

14.3.2. The Transferee is of a character or reputation, or is engaged in a business, which is not consistent with the quality of the Building or the Project;

14.3.3. The Transferee intends to use the Subject Space for purposes which are not permitted under this Lease, or for a use that is likely to be subject to compliance with additional laws or other governmental requirements beyond those to which the Permitted Use is subject;

14.3.4. The Transferee is either a governmental agency or instrumentality thereof;

14.3.5. The Transferee is not a party of reasonable financial worth and/or financial stability in light of the responsibilities to be undertaken in connection with the Transfer on the date consent is requested;

14.3.6. The proposed Transfer would cause a violation of another lease for space in the Project, or would give an occupant of the Project a right to cancel its lease; or

14.3.7. The proposed Transferee will use, store or dispose of Hazardous Materials in or about the Premises of a type, nature or quantity not acceptable to Landlord in Landlord's sole discretion.

If Landlord consents to any Transfer pursuant to the terms of this Section 14.3 (and does not exercise any recapture rights Landlord may have under Section 14.5 of this Lease), Tenant may within six (6) months after Landlord's consent, but not later than the expiration of said six (6)-month period, enter into such Transfer of the Premises or portion thereof, upon substantially the same terms and conditions as are set forth in the Transfer Notice furnished by Tenant to Landlord pursuant to Section 14.2 of this Lease, provided that if there are any changes in the terms and conditions from those specified in the Transfer Notice (i) such that Landlord would initially have been

entitled to refuse its consent to such Transfer under this Section 14.3, or (ii) which would cause the proposed Transfer to be more favorable to the Transferee than the terms set forth in Tenant's original Transfer Notice, Tenant shall again submit the Transfer to Landlord for its approval and other action under this Article 14. Notwithstanding anything to the contrary in this Lease, if Tenant or any proposed Transferee claims that Landlord has unreasonably withheld or delayed its consent under Section 14.3 or otherwise has breached or acted unreasonably under this Article 14, their sole remedies shall be a declaratory judgment and an injunction for the relief sought, and Tenant hereby waives the provisions of Section 1995.310 of the California Civil Code, or any successor statute, and all other remedies, including, without limitation, any right at law or equity to terminate this Lease, on its own behalf and, to the extent permitted under all applicable laws, on behalf of the proposed Transferee. Tenant shall indemnify, defend and hold harmless Landlord from any and all liability, losses, claims, damages, costs, expenses, causes of action and proceedings involving any third party or parties (including without limitation Tenant's proposed subtenant or assignee) who claim they were damaged by Landlord's wrongful withholding or conditioning of Landlord's consent.

14.4 Transfer Premium. If Landlord consents to a Transfer, as a condition thereto which the parties hereby agree is reasonable, Tenant shall pay to Landlord fifty percent (50%) of any Transfer Premium received by Tenant from such Transferee. "**Transfer Premium**" shall mean all rent, additional rent or other consideration payable by such Transferee in connection with the Transfer in excess of the Base Monthly Rent and Additional Rent payable by Tenant under this Lease during the term of the Transfer on a per rentable square foot basis if less than all of the Premises is transferred, after deducting the reasonable expenses incurred by Tenant for (i) any changes, alterations and improvements to the Premises in connection with the Transfer, (ii) any free base rent reasonably provided to the Transferee in connection with the Transfer (provided that such free rent shall be deducted only to the extent the same is included in the calculation of total consideration payable by such Transferee), and (iii) any brokerage commissions in connection with the Transfer and (iv) legal fees reasonably incurred in connection with the Transfer (collectively, "**Tenant's Subleasing Costs**"). "Transfer Premium" shall also include, but not be limited to, key money, bonus money or other cash consideration paid by Transferee to Tenant in connection with such Transfer, and any payment in excess of fair market value for services rendered by Tenant to Transferee or for assets, fixtures, inventory, equipment, or furniture transferred by Tenant to Transferee in connection with such Transfer. Landlord shall make a determination of the amount of Landlord's applicable share of the Transfer Premium on a monthly basis as rent or other consideration is paid by Transferee to Tenant under the Transfer. For purposes of calculating the Transfer Premium on a monthly basis, Tenant's Subleasing Costs shall be deemed to be expended by Tenant in equal monthly amounts over the entire term of the Transfer.

14.5 Intentionally Omitted.

14.6 Effect of Transfer. If Landlord consents to a Transfer, then (i) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified; (ii) such consent shall not be deemed consent to any further Transfer by either Tenant or a Transferee; (iii) Tenant shall deliver to Landlord, promptly after execution, an original executed copy of all documentation pertaining to the Transfer in form and content reasonably acceptable to Landlord; (iv) Tenant shall furnish upon Landlord's request a complete statement, certified by an independent certified public accountant, or Tenant's chief financial officer, setting forth in detail the computation of any Transfer Premium Tenant has derived and shall derive from such Transfer; and (v) no Transfer relating to this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve Tenant or any guarantor of the Lease from any liability under this Lease, including, without limitation, in connection with the Subject Space, and, in the event of a Transfer of Tenant's entire interest in this Lease, the liability of Tenant and such Transferee shall be joint and several. Landlord or its authorized representatives shall have the right at all reasonable times to audit the books, records and papers of Tenant relating to any Transfer, and shall have the right to make copies thereof. If the Transfer Premium respecting any Transfer shall be found understated, Tenant shall, within thirty (30) days after demand, pay the deficiency, and if understated by more than five percent (5%), Tenant shall pay Landlord's costs of such audit.

14.7 Occurrence of Default. Any Transfer hereunder shall be subordinate and subject to the provisions of this Lease, and if this Lease shall be terminated during the term of any Transfer, then Landlord shall have all of the rights set forth in Section 13.3 of this Lease with respect to such Transfer. In addition, if Tenant shall be in default under this Lease, then Landlord is hereby irrevocably authorized, as Tenant's agent and attorney-in-fact, to direct any Transferee to make all payments under or in connection with a Transfer directly to Landlord (which payments Landlord shall apply towards Tenant's obligations under this Lease) until such default is cured. Such Transferee shall rely on any representation by Landlord that Tenant is in default hereunder, without any need for confirmation thereof by Tenant. Upon any assignment, the assignee shall assume in writing all obligations and covenants of Tenant thereafter to be performed or observed under this Lease. No collection or acceptance of rent by Landlord from any Transferee shall be deemed a waiver of any provision of this Article 14 or the approval of any Transferee or a release of Tenant from any obligation under this Lease, whether theretofore or thereafter accruing. In no event shall Landlord's enforcement of any provision of this Lease against any Transferee be deemed a waiver of Landlord's right to enforce any term of this Lease

against Tenant or any other person. If Tenant's obligations hereunder have been guaranteed, Landlord's consent to any Transfer shall not be effective unless the guarantor also consents to such Transfer.

14.8 Deemed Transfers. For purposes of this Lease, the term "Transfer" shall also include (i) if Tenant is a partnership, the withdrawal or change, voluntary, involuntary or by operation of law, of fifty percent (50%) or more of the partners, or transfer of fifty percent (50%) or more of partnership interests, within a twelve (12)-month period, or the dissolution of the partnership without immediate reconstitution thereof, and (ii) if Tenant is a closely held corporation (*i.e.*, whose stock is not publicly held and not traded through an exchange or over the counter), (A) the dissolution, merger, consolidation or other reorganization of Tenant or (B) the sale or other transfer of an aggregate of fifty percent (50%) or more of the voting shares of Tenant (other than to immediate family members by reason of gift or death), within a twelve (12)-month period, or (C) the sale, mortgage, hypothecation or pledge of an aggregate of fifty percent (50%) or more of the value of the unencumbered assets of Tenant within a twelve (12)-month period.

14.9 Permitted Transfers. Notwithstanding anything to the contrary contained in this Lease, an assignment or subletting of all or a portion of the Premises: (a) to a corporation or other business entity ("successor corporation") into or with which Tenant shall be merged, consolidated, reorganized (other than a reorganization as a result of bankruptcy), recapitalized or acquired or to which substantially all of the assets of Tenant may be transferred, and provided that the successor corporation shall assume in writing all of the obligations and liabilities of Tenant under this Lease; or (b) to a corporation or other business entity (herein sometimes referred to as a "related corporation") which shall control, be controlled by or be under common control with Tenant; or (c) as a result of a sale or other transfer of corporate shares of capital stock (or any member interest if Tenant is a limited liability company) in Tenant in connection with either a bona fide financing for the benefit of Tenant or an initial public offering of Tenant’s stock on a nationally-recognized stock exchange, or (d) transfers of shares of stock or membership interests in Tenant which result in a change in control over a period in excess of twelve (12) consecutive months, shall not be deemed a Transfer requiring Landlord's consent under this Article 14 (any such assignee or sublessee described in items (a) through (d) of this Section 14.9 hereinafter referred to as a "**Permitted Transferee**"), provided that (i) Tenant notifies Landlord at least twenty-one (21) days prior to any such assignment or sublease and promptly supplies Landlord with any documents or information reasonably requested by Landlord regarding such transfer or transferee as set forth above, (ii) such assignment or sublease is not a subterfuge by Tenant to avoid its obligations under this Lease, it being understood that such Transferee shall thereafter become liable under this Lease, on a joint and several basis, with Tenant, (iii) any transferee under this Section 14.9 shall be of a character and reputation consistent with the quality of the Building, and (iv) in the case of an assignment, such successor entity or related entity, as applicable, together with the Original Tenant if Original Tenant is a surviving entity and remains liable under this Lease, shall have a tangible net worth (not including goodwill as an asset) computed in accordance with generally accepted accounting principles (excluding goodwill as an asset) ("**Net Worth**"), at least equal to Tenant's Net Worth either immediately before the Transfer or as of the date of this Lease, whichever is greater. An assignee of Tenant's entire interest in this Lease who qualifies as a Permitted Transferee may also be referred to herein as a "**Permitted Transferee Assignee**." "**Control**," as used in this Section 14.9, shall mean the ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of at least fifty-one percent (51%) of the voting interest in, any person or entity.

14.10 Reasonable Restriction. The restrictions on Transfer described in this Lease are acknowledged by Tenant to be reasonable for all purposes, including, without limitation, the provisions of California Civil Code Section 1951.4(b)(2). Tenant expressly waives any rights which it might otherwise be deemed to possess pursuant to applicable law, including, without limitation, California Civil Code Section 1997.040, to limit any remedy of Landlord pursuant to California Civil Code Section 1951.2 or 1951.4 by means of proof that enforcement of a restriction on use of the Premises would be unreasonable.

ARTICLE 15
SURRENDER OF PREMISES; ENVIRONMENTAL ASSESSMENT

15.1 Surrender of Premises. Upon the expiration or sooner termination of this Lease, Tenant shall vacate and surrender the Premises to Landlord in as good condition and repair as existed upon Landlord's delivery of the Premises to Tenant, reasonable wear and tear and repairs which are specifically made the responsibility of Landlord hereunder excepted. Notwithstanding the foregoing, prior to Tenant's surrender of the Premises to Landlord, at the expiration or earlier termination of this Lease, Tenant shall, at its sole cost and expense, cause the following to be done: (i) all interior walls shall be painted or cleaned, as necessary; (ii) all tiled floors shall be cleaned; (iii) all carpets shall be cleaned and shampooed; (iv) all broken, marred, stained or nonconforming acoustical ceiling tiles shall be replaced; (v) all debris, rubbish, such items of furniture, equipment, business and trade fixtures, free-standing cabinet work, movable partitions and other articles of personal property owned by Tenant or installed or placed by Tenant at its

expense in the Premises shall be removed; and (vi) the plumbing and electrical systems and lighting shall be placed in good order and repair (including replacement of any burned out, discolored or broken light bulbs, ballasts, or lenses). In addition, at Landlord's request, Tenant shall, prior to Tenant's surrender of the Premises to Landlord, (i) remove any Alterations which Tenant is required to remove pursuant to Section 5.5 and repair all damage caused by such removal, and (ii) return the Premises or any part thereof to its original configuration existing as of the time the Premises were delivered by Landlord to Tenant, except as provided in this Lease.

15.2 Environmental Assessment. In connection with its surrender of the Premises, Tenant shall submit to Landlord an environmental assessment pursuant to the terms of Section 7.1.8, above. If such environmental assessment reveals that remediation or clean-up is required under any Hazardous Materials Laws, Tenant shall submit a remediation plan prepared by a recognized environmental consultant and shall be responsible for all costs of remediation and clean-up, as provided in Section 7.1, above.

ARTICLE 16
HOLDING OVER

16.1 In General. If Tenant holds over in the Premises or any part thereof after the expiration or earlier termination of this Lease, such tenancy shall not constitute a renewal or extension of the Lease and shall be construed to be a tenancy from month to month on the same terms and conditions contained herein, except that Base Monthly Rent shall be payable at an amount equal to two (2) times the Base Monthly Rent payable during the last full calendar month of the Lease Term. Nothing contained in this Article 16 shall be construed as consent by Landlord to any holding over by Tenant, and Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Article 16 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided under this Lease or at law. If Tenant holds over without Landlord's express written consent, and tenders payment of rent for any period beyond the expiration or earlier termination of the Lease Term by way of check (whether directly to Landlord, its agents, or to a lock box) or wire transfer, Tenant acknowledges and agrees that the cashing of such check or acceptance of such wire shall be considered inadvertent and not be construed as creating a month-to-month tenancy, provided Landlord refunds such payment to Tenant promptly upon learning that such check has been cashed or wire transfer received. Additionally, in the event that upon the expiration or earlier termination of the Lease, Tenant has not fulfilled its obligation with respect to restoration, repairs and cleanup of the Premises or any other Tenant obligations as set forth in this Lease, then Landlord shall have the right to perform any such obligations as it deems necessary at Tenant's sole cost and expense, and any time required by Landlord to complete such obligations shall be considered a period of holding over and the terms of this Article 16 shall apply. Tenant acknowledges that any holding over in the Premises by Tenant without Landlord's express written consent may compromise or otherwise affect Landlord's ability to enter into new leases with prospective tenants regarding the Premises. Therefore, if Tenant fails to vacate and deliver the Premises to Landlord within thirty (30) days following the expiration or earlier termination of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from and against any and all claims and liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant founded upon such failure to vacate and deliver, and any losses suffered by Landlord, including lost profits, resulting therefrom. Tenant agrees that any proceedings necessary to recover possession of the Premises from Tenant, whether before or after the expiration or earlier termination of this Lease, shall be considered an action to enforce the terms of this Lease for purposes of the awarding of any attorneys' fees in connection therewith.

16.2 **Short Term Lease Extension**. Notwithstanding any provision to the contrary in this Article 16, Tenant shall have the right, upon the expiration of the Lease Term, to extend the Lease Expiration Date for the entire Premises then leased by Tenant for a period of up to three (3) months, by giving written notice to Landlord of such election not less than two (2) months prior to the scheduled Lease Expiration Date. Upon such election, the Lease Term for the entire Premises then leased by Tenant shall be extended for the length of time set forth in Tenant's written notice (not to exceed three (3) months) on all the terms and conditions of this Lease (the "**Approved Holdover Period**"), provided that the Base Monthly Rent payable during the Approved Holdover Period shall be equal to 150% of the Base Monthly Rent payable during the last rental period of the Lease Term under this Lease. The terms of the penultimate sentence of Section 16.1 shall apply with respect to any holdover following the expiration of the Approved Holdover Period.

ARTICLE 17
ESTOPPEL CERTIFICATES AND FINANCIAL STATEMENTS

At all times during the Lease Term, Tenant shall, within ten (10) business days following receipt of written request from Landlord, execute and deliver to Landlord an estoppel certificate in the form attached hereto as Exhibit E ("**Estoppel Certificate**"). Tenant's failure to timely deliver an executed Estoppel Certificate within said ten (10) business day period shall constitute an acknowledgement by Tenant that the statements included in the Estoppel Certificate are true and correct without exception. At any time during the Lease Term, but no more than once per calendar year except in connection with a sale, financing or refinancing of the Project or Building, Tenant's request for Landlord consent to an Alteration or a Transfer, or if an Event of Default has occurred, Landlord may require Tenant to provide Landlord with Tenant's current financial statement and the financial statements covering the two (2) year period prior to the date of such current financial statement. Such statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Tenant, shall be audited by an independent certified public accountant. Tenant hereby authorizes Landlord to obtain one or more credit reports on Tenant at any time, and shall execute such further authorizations as Landlord may reasonably require in order to obtain a credit report.

ARTICLE 18
SUBORDINATION

18.1 Subordination. This Lease shall be subject and subordinate to all present and future ground or underlying leases of the Building or Project and to the lien of any mortgage, trust deed or other encumbrances now or hereafter in force against the Building or Project or any part thereof, if any, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or trust deeds (collectively, "**Security Instruments**"), unless the holders of such Security Instruments require in writing that this Lease be superior thereto; provided, however, at Tenant's sole cost and expense, Landlord shall use commercially reasonable efforts to provide Tenant a subordination non-disturbance and attornment agreement in commercially reasonable form provided by any future lienholder of such Security Instruments (the "**Superior Holders**"), which requires such Superior Holder to accept this lease, and not to disturb tenant's possession, so long as a default has not occurred and is not then continuing (a "**SNDA**") executed by Landlord and the appropriate Superior Holder. This clause shall be self-operative and no further instrument of subordination need be required by any owner or holder of any Security Instrument; provided, however, that at Landlord's request, Tenant shall promptly execute any appropriate certificate or instrument that Landlord may request in confirmation thereof, and Tenant hereby constitutes and appoints Landlord as Tenant's attorney-in-fact to execute any such certificate or instrument for and on behalf of Tenant. In the event any proceedings are brought for the foreclosure of any such Security Instrument, Tenant covenants and agrees to attorn, without any deductions or set-offs whatsoever, to the lienholder or purchaser or any successors thereto upon any such foreclosure sale or deed in lieu thereof (or to the ground lessor), if so requested to do so by such purchaser or lienholder or ground lessor, and to recognize such purchaser or lienholder or ground lessor as the lessor under this Lease, provided such lienholder or purchaser or ground lessor shall agree to accept this Lease and not disturb Tenant's occupancy, so long as Tenant timely pays the rent and observes and performs the terms, covenants and conditions of this Lease to be observed and performed by Tenant. Landlord's interest herein may be assigned as security at any time to any lienholder. Tenant shall, within ten (10) business days of receipt of Landlord's written request, execute such further instruments or assurances as Landlord may reasonably deem necessary to evidence or confirm the subordination or superiority of this Lease to any such Security Instrument. Tenant waives the provisions of any current or future statute, rule or law which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect this Lease and the obligations of the Tenant hereunder in the event of any foreclosure proceeding or sale. This Lease is further subject to and subordinate to all matters of record.

18.2 Notice to Lienholder or Ground Lessor. Notwithstanding anything to the contrary in this Lease, upon receipt by Tenant of written notice from any holder of a Security Instrument in force against the Building or the Project or any part thereof which includes the Premises or any lessor under a ground lease or underlying lease of the Building or the Project, or from Landlord, which notice sets forth the address of such lienholder or ground lessor, no notice from Tenant to Landlord shall be effective unless and until a copy of the same is given to such lienholder or ground lessor at the appropriate address therefor (as specified in the above-described notice or at such other places as may be designated from time to time in a notice to Tenant), and the curing of any of Landlord's defaults by such lienholder or ground lessor within a reasonable period of time after such notice from Tenant (including a reasonable period of time to obtain possession of the Building or the Project, as the case may be, if such lienholder or ground lessor elects to do so) shall be treated as performance by Landlord.

ARTICLE 19
PARKING

During the Lease Term, Tenant shall have the right to use the number of unreserved parking passes and dedicated electric charging stations set forth in Section H of the Summary in the parking facility for the Project without payment of a separate parking fee or a parking charge (other than amounts included in Tenant's Share of Project Expenses). Notwithstanding anything set forth in this Article 19 to the contrary, Tenant shall be responsible for the full amount of any taxes imposed by any governmental authority in connection with the use of the parking facility by Tenant. Tenant shall not at any time park or permit the parking of its vehicles overnight or in any portion of the Project not designated by Landlord for non-exclusive parking. Tenant shall not have the exclusive right to park in any particular area of the parking facility for the Project, and if Landlord grants to any other tenant the exclusive right to park in any particular area of the parking facility for the Project, Tenant shall not park in such area; provided, however, this sentence shall not limit or reduce the amount of parking passes dedicated to Tenant and Tenant shall not be prohibited from temporarily parking customary passenger vehicles overnight in parking spaces exclusively reserved for Tenant. Tenant's continued right to use the parking passes allocated to it pursuant to this Lease is conditioned upon Tenant abiding by all rules and regulations which are prescribed from time to time for the orderly operation and use of the parking facility, including any sticker or other identification system established by Landlord, Tenant's cooperation in seeing that Tenant's employees and visitors also comply with such rules and regulations, and Tenant not being in default under this Lease beyond applicable notice and cure periods. Tenant's use of the Project parking facility shall be at Tenant's sole risk and Tenant acknowledges and agrees that Landlord shall have no liability whatsoever for damage to the vehicles of Tenant, its employees and/or visitors, or for other personal injury or property damage or theft relating to or connected with the parking rights granted herein or any of Tenant's, its employees' and/or visitors' use of the parking facilities. Landlord specifically reserves the right to change the size, configuration, design, layout and all other aspects of the Project parking facility at any time and Tenant acknowledges and agrees that Landlord may, without incurring any liability to Tenant and without any abatement of Rent under this Lease, from time to time, close-off or restrict access to the Project parking facility for purposes of permitting or facilitating any such construction, alteration or improvements, provided that, in connection therewith, Landlord shall perform such closures, alterations, additions or changes in a commercially reasonable manner and, in connection therewith, shall use commercially reasonable efforts to minimize any material interference with Tenant's use of and access to the parking facility for the Project.

ARTICLE 20
SIGNS

20.1 In General. Tenant shall not place on any portion of the Premises or the Building any sign, placard, lettering in or on windows, banner, displays or other advertising or communicative material which is visible from the exterior of the Building without the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. All such approved signs shall strictly conform to all Laws, Private Restrictions, and Landlord's commercially reasonable sign criteria then in effect and shall be installed at the expense of Tenant. Tenant shall maintain such signs in good condition and repair. On or prior to the expiration or earlier termination of the Lease Term, Tenant shall remove any and all signs installed by Tenant and to repair any damage to the Premises and Building caused by such removal and return any affected portion of the Premises and Building to the condition existing prior to the installation of such signs. If Tenant fails to complete the removal of any signs, then Rent shall continue to accrue under this Lease in accordance with Article 16, above, after the end of the Lease Term until such work shall be completed, and Landlord shall have the right, but not the obligation, to perform such work and to charge the cost thereof to Tenant.

20.2 Tenant's Signage. Provided that Original Tenant or a Permitted Transferee Assignee then leases the entire Premises and occupies at least seventy-five percent (75%) of the Premises (for purposes of this Section 20.2, Tenant shall be deemed to occupy any space then occupied by any individual or entity pursuant to Sections 14.9 or 14.10, above), then Tenant shall have the right, at its sole cost and expense, to install (i) one or more signs on the exterior of the Building (provided Tenant's exterior signage on the Building may not exceed the exterior signage legally allowed on the Building), and (ii) a signage strip on any existing monument sign associated with the Building ("**Tenant Signage**"), the exact location or locations of which shall be mutually and reasonably agreed upon between Tenant and Landlord, and shall be subject to all applicable Laws and Landlord's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed. The name set forth on the Tenant Signage shall in no event be an "Objectionable Name" (as that term is defined below). Except as otherwise set forth herein, Tenant shall have no obligation to pay a fee in connection with the Tenant Signage during the Lease Term or any renewal or extensions thereof. Tenant shall be responsible for all costs incurred in connection with the design, construction and installation of the Tenant Signage. Notwithstanding anything contained herein to the contrary, the graphics, materials, color, design, lettering, size, quality and specifications of the Tenant Signage shall be subject to the prior written approval of Landlord, which shall not be unreasonably withheld, conditioned or delayed and shall also comply with and be subject

to all applicable Laws, and all covenants, conditions or restrictions of record, including, but not limited to, all requirements of the City of San Jose (or other applicable governmental authorities); provided, however, that in no event shall the approval by the City of San Jose (or other applicable governmental authority) of Tenant Signage be deemed a condition precedent to the effectiveness of this Lease. Tenant shall be responsible, at its sole cost and expense, for the maintenance and repair and compliance with the requirements of the Tenant Signage. Upon the expiration or earlier termination of this Lease (or upon any earlier termination of Tenant's rights hereunder), Tenant shall be responsible, at Tenant's sole cost and expense, for the removal of all of the Tenant Signage and the repair of any damage resulting therefrom to the reasonable satisfaction of Landlord, including, without limitation, repairing and/or replacing any landscaping harmed by such removal. The rights contained in this Section 20.2 shall be exercised only by Original Tenant or a Permitted Transferee Assignee. The term "**Objectionable Name**" shall mean any name or logo which relates to an entity which is of a character or reputation, or is associated with a political orientation or faction, which is inconsistent with the quality of the Building, or which would otherwise reasonably offend a landlord of comparable buildings in the vicinity of the Building.

ARTICLE 21
GENERAL PROVISIONS

21.1 Landlord's Right to Cure Default; Payments by Tenant. All covenants and agreements to be kept or performed by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any reduction of Rent, except to the extent, if any, otherwise expressly provided herein. If Tenant shall fail to perform any obligation under this Lease, and such failure shall continue in excess of the time allowed under Section 13.1.2, above, unless a specific time period is otherwise stated in this Lease, Landlord may, but shall not be obligated to, make any such payment or perform any such act on Tenant's part without waiving its rights based upon any default of Tenant and without releasing Tenant from any obligations hereunder. If Tenant fails to comply with the terms of Section 7.1, above, including, without limitation, failure to carry out any required closure or decommissioning, or to promptly investigate, clean up, remove, restore, provide closure or otherwise remediate the Premises as required by Hazardous Materials Laws, Landlord may, but without obligation to do so, take any and all steps necessary to rectify the same and Tenant shall promptly reimburse Landlord, within ten (10) business days of demand, for all costs and expenses to Landlord of performing investigation, clean up, removal, restoration, closure and remediation work (the "**Landlord Cure Right**"). Except as may be specifically provided to the contrary in this Lease, Tenant shall pay to Landlord the following sums (which sums shall bear interest at the Agreed Interest Rate from the date accrued by Landlord until paid by Tenant, but in no case greater than the maximum amount of such interest permitted by law), upon delivery by Landlord to Tenant of statements therefor: (i) sums equal to expenditures reasonably made and obligations incurred by Landlord in connection with the remedying by Landlord of Tenant's defaults pursuant to the provisions of this Section 21.1; (ii) sums equal to all losses, costs, liabilities, damages and expenses referred to in Article 10 of this Lease; and (iii) sums equal to all expenditures made and obligations incurred by Landlord in collecting or attempting to collect the Rent or in enforcing or attempting to enforce any rights of Landlord under this Lease or pursuant to law, including, without limitation, all legal fees and other amounts so expended. Tenant's obligations under this Section 21.1 shall survive the expiration or sooner termination of this Lease.

21.2 Landlord's Right to Enter. In addition to Landlord's right to enter the Premises pursuant to Section 6.2 of this Lease, Landlord and its agents reserve the right to enter the Premises at all reasonable times upon at least 24 hours' prior notice to Tenant (which notice, notwithstanding anything to the contrary contained in Section 21.5 of this Lease, may be oral, and which notice shall not be required in the case of an actual or apparent emergency) for the purpose of: (i) inspecting the same; (ii) posting notices of non-responsibility; (iii) supplying any service to be provided by Landlord to Tenant; (iv) showing the Premises to prospective purchasers or tenants (provided that Landlord shall only show to prospective tenants in the last twelve (12) months of the Lease Term), or current or prospective mortgagees, ground or underlying lessors or insurers; (v) performing services required of Landlord; (vi) performing Tenant's obligations when Tenant has failed to do so after written notice from Landlord; (vii) placing upon the Premises ordinary "for lease" signs or "for sale" signs (provided that Landlord shall only post “for lease” signs in the last twelve (12) months of the Lease Term); (viii) taking possession of the Premises due to any breach of this Lease in the manner provided herein; and (ix) responding to an emergency. Landlord shall have the right to use any and all means Landlord may deem necessary and proper to enter the Premises in an emergency. Any entry into the Premises obtained by Landlord in accordance with this Section 21.2 shall not be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises, and Tenant hereby waives any claims for damages or for any injuries or inconvenience to or interference with Tenant's business, lost profits, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby.

21.3 Notices. Any notice, demand, designation, approval or other communications (collectively, "**Notices**") given or required to be given by either party to the other hereunder or by law shall be in writing and shall be (A) sent by United States certified or registered mail, postage prepaid, return receipt requested ("**Mail**"),

(B) transmitted by telecopy, if such telecopy is promptly followed by a Notice sent by Mail, (C) delivered by a nationally recognized overnight courier, or (D) delivered personally to the addresses specified in Section Q or Section R of the Summary (as applicable). Any Notice will be deemed given (i) three (3) days after the date it is posted if sent by Mail, (ii) the date the telecopy is transmitted, (iii) the date the overnight courier delivery is made, or (iv) the date personal delivery is made. Any Notice given by an attorney on behalf of Landlord or by Landlord's managing agent shall be considered as given by Landlord and shall be fully effective. Either party may change its address for Notices by giving Notice of the same in accordance with this Section 21.3.

21.4 Covenant of Quiet Enjoyment. Landlord covenants that Tenant, on paying the Rent and on keeping, observing and performing all the other terms, covenants, conditions, provisions and agreements herein contained on the part of Tenant to be kept, observed and performed, shall, during the Lease Term, peaceably and quietly have, hold and enjoy the Premises subject to the terms, covenants, conditions, provisions and agreements hereof without interference by any persons lawfully claiming by or through Landlord.

21.5 Terms; Captions. The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. The necessary grammatical changes required to make the provisions hereof apply either to corporations or partnerships or individuals, men or women, as the case may require, shall in all cases be assumed as though in each case fully expressed. The terms "shall", "will" and "agree" are mandatory. The term "may" is permissive. The captions of Articles and Sections are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Sections.

21.6 Binding Effect. Subject to all other provisions of this Lease, each of the covenants, conditions and provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of Landlord and of Tenant, but also of their respective heirs, personal representatives, successors or assigns, provided this clause shall not permit any assignment by Tenant contrary to the provisions of Article 14 of this Lease.

21.7 No Light, Air or View Rights. No rights to any view or to light or air over any property, whether belonging to Landlord or any other person, are granted to Tenant by this Lease. Under no circumstances whatsoever at any time during the Lease Term shall any temporary darkening of any windows of the Premises or any temporary obstruction of the light or view therefrom by reason of any repairs, improvements, maintenance or cleaning in or about the Project, or any diminution, impairment or obstruction (whether partial or total) of light, air or view by any structure which may be erected on any land comprising a part of, or located adjacent to or otherwise in the path of light, air or view to, the Project, in any way impose any liability upon Landlord or in any way reduce or diminish Tenant's obligations under this Lease.

21.8 Modification of Lease. Should any current or prospective mortgagee or ground lessor for the Building or Project require a modification of this Lease, which modification will not cause an increased cost or expense to Tenant or in any other way materially and adversely change the rights and obligations of Tenant hereunder, then and in such event, Tenant agrees that this Lease may be so modified and agrees to execute whatever documents are reasonably required therefor and to deliver the same to Landlord within ten (10) days following a request therefor. At the request of Landlord or any mortgagee or ground lessor, Tenant agrees to execute a short form of Lease and deliver the same to Landlord within ten (10) days following the request therefor.

21.9 Transfer of Landlord's Interest. Tenant acknowledges that Landlord has the right to transfer all or any portion of its interest in the Project or Building and in this Lease, and Tenant agrees that in the event of any such transfer, Landlord shall automatically be released from all liability under this Lease and Tenant agrees to look solely to such transferee for the performance of Landlord's obligations hereunder after the date of transfer and such transferee shall be deemed to have fully assumed and be liable for all obligations of this Lease to be performed by Landlord, including the return of any Security Deposit, and Tenant shall attorn to such transferee.

21.10 Prohibition Against Recording. Except as provided in Section 21.8 of this Lease, neither this Lease, nor any memorandum, affidavit or other writing with respect thereto, shall be recorded by Tenant or by anyone acting through, under or on behalf of Tenant.

21.11 Application of Payments. Landlord shall have the right to apply payments received from Tenant pursuant to this Lease, regardless of Tenant's designation of such payments, to satisfy any obligations of Tenant hereunder, in such order and amounts as Landlord, in its sole discretion, may elect.

21.12 Time of Essence. Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor, including, without limitation, the giving of any Notice required to be

given under this Lease or by law, the time periods for giving any such Notice and the taking of any action with respect to any such Notice.

21.13 Partial Invalidity. If any term, provision or condition contained in this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Lease shall be valid and enforceable to the fullest extent possible permitted by law.

21.14 Right to Lease. Landlord reserves the absolute right to effect such other tenancies in the Project as Landlord in the exercise of its sole business judgment shall determine to best promote the interests of the Building or Project. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or type or number of tenants shall, during the Lease Term, occupy any space in the Building or Project.

21.15 Attorneys' Fees. In the event that either Landlord or Tenant should bring any action or legal proceeding for an alleged breach of any provision of this Lease, to recover any sum due under this Lease, for possession of the Premises, to terminate this Lease or otherwise to enforce, protect or establish any term or covenant of this Lease, the prevailing party shall be entitled to recover as a part of such action or proceeding, or in a separate action brought for that purpose, all costs and expenses incurred by such prevailing party, including, without limitation, reasonable attorneys' fees, court costs, and experts' fees as may be fixed by the court.

21.16 Authority. If Tenant is a corporation, limited liability company, partnership or other entity, each individual executing this Lease on behalf of Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in California, and that Tenant has full right and authority to execute and deliver this Lease and that each person signing on behalf of Tenant is authorized to do so. In such event, Tenant shall, within ten (10) days after execution of this Lease, deliver to Landlord satisfactory evidence of such authority and, if a corporation, upon demand by Landlord, also deliver to Landlord satisfactory evidence of (i) good standing in Tenant's state of incorporation, and (ii) qualification to do business in California.

21.17 Governing Law; WAIVER OF TRIAL BY JURY. This Lease shall be construed and enforced in accordance with the laws of the State of California. IN ANY ACTION OR PROCEEDING ARISING HEREFROM, LANDLORD AND TENANT HEREBY CONSENT TO (I) THE JURISDICTION OF ANY COMPETENT COURT WITHIN THE STATE OF CALIFORNIA, (II) SERVICE OF PROCESS BY ANY MEANS AUTHORIZED BY CALIFORNIA LAW, AND (III) IN THE INTEREST OF SAVING TIME AND EXPENSE, TRIAL WITHOUT A JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR THEIR SUCCESSORS IN RESPECT OF ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. IN THE EVENT LANDLORD COMMENCES ANY SUMMARY PROCEEDINGS OR ACTION FOR NONPAYMENT OF BASE MONTHLY RENT OR ADDITIONAL RENT, TENANT SHALL NOT INTERPOSE ANY COUNTERCLAIM OF ANY NATURE OR DESCRIPTION (UNLESS SUCH COUNTERCLAIM SHALL BE MANDATORY) IN ANY SUCH PROCEEDING OR ACTION, BUT SHALL BE RELEGATED TO AN INDEPENDENT ACTION AT LAW.

21.18 Project or Building Name and Signage. Landlord shall have the right at any time to change the name of the Project or Building and to install, affix and maintain any and all signs on the exterior and on the interior of the Project or Building as Landlord may, in Landlord's sole discretion, desire; provided, however, that any Landlord signage shall not interfere with Tenant's then existing signage. Tenant shall not use the name of the Project or Building or use pictures or illustrations of the Project or Building in advertising or other publicity or for any purpose other than as the address of the business to be conducted by Tenant in the Premises, without the prior written consent of Landlord.

21.19 Counterparts. This Lease may be executed in counterparts with the same effect as if both parties hereto had executed the same document. Both counterparts shall be construed together and shall constitute a single lease. Further, the parties hereto consent and agree that this Lease may be signed and/or transmitted by e-mail of a .pdf document or using electronic signature technology (e.g., via DocuSign or similar electronic signature technology), and that such signed electronic record shall be valid and as effective to bind the party so signing as a paper copy bearing such party's handwritten signature. The parties further consent and agree that (1) to the extent a party signs this Lease using electronic signature technology, by clicking "SIGN", such party is signing this Lease electronically, and (2) the electronic signatures appearing on this Lease shall be treated, for purposes of validity, enforceability and admissibility, the same as handwritten signatures.

21.20 Intentionally Omitted.

21.21 Building Renovations. It is specifically understood and agreed that Landlord has no obligation and has made no promises to alter, remodel, improve, renovate, repair or decorate the Premises, Building, or any part thereof and that no representations respecting the condition of the Premises or the Building have been made by Landlord to Tenant except as specifically set forth herein or in the Tenant Work Letter. However, Tenant hereby acknowledges that Landlord is currently renovating or may during the Lease Term renovate, improve, alter, or modify (collectively, the "**Renovations**") the Project, the Building and/or the Premises. Tenant hereby agrees that such Renovations shall in no way constitute a constructive eviction of Tenant nor entitle Tenant to any abatement of Rent. Landlord shall have no responsibility and shall not be liable to Tenant for any injury to or interference with Tenant's business arising from the Renovations, nor shall Tenant be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises or of Tenant's personal property or improvements resulting from the Renovations, or for any inconvenience or annoyance occasioned by such Renovations.

21.22 Development of the Project.

21.22.1. Subdivision. Landlord reserves the right to further subdivide all or a portion of the Project. Tenant agrees to execute and deliver, within five (5) business days following demand by Landlord and in the form requested by Landlord, any additional documents needed to conform this Lease to the circumstances resulting from such subdivision.

21.22.2. The Other Improvements. If portions of the Project or property adjacent to the Project (collectively, the "**Other Improvements**") are owned by an entity other than Landlord, Landlord, at its option, may enter into an agreement with the owner or owners of any or all of the Other Improvements to provide (i) for reciprocal rights of access and/or use of the Project and the Other Improvements, (ii) for the common management, operation, maintenance, improvement and/or repair of all or any portion of the Project and the Other Improvements, (iii) for the allocation of a portion of the Project Expenses to the Other Improvements and the operating expenses and taxes for the Other Improvements to the Project, and (iv) for the use or improvement of the Other Improvements and/or the Project in connection with the improvement, construction, and/or excavation of the Other Improvements and/or the Project. Nothing contained herein shall be deemed or construed to limit or otherwise affect Landlord's right to convey all or any portion of the Project or any other of Landlord's rights described in this Lease.

21.22.3. Construction of Project and Other Improvements. Tenant acknowledges that portions of the Project and/or the Other Improvements may be under construction following Tenant's occupancy of the Premises, and that such construction may result in levels of noise, dust, odor, obstruction of access, etc. which are in excess of that present in a fully constructed project. Tenant hereby waives any and all rent offsets or claims of constructive eviction which may arise in connection with such construction. Notwithstanding the foregoing, Landlord shall use commercially reasonable efforts to minimize interference to Tenant’s use and occupancy of the Premises.

21.23 No Discrimination. There shall be no discrimination against, or segregation of, any person or persons on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the Transfer of the Premises, or any portion thereof, nor shall the Tenant itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Premises, or any portion thereof.

21.24 Joint and Several. If there is more than one Tenant, the obligations imposed upon Tenant under this Lease shall be joint and several.

21.25 Real Estate Brokers. Landlord and Tenant each represents and warrants to the other party that it has not authorized, retained or employed, or acted by implication to authorize, retain or employ, any real estate broker or salesman to act for it or on its behalf in connection with this Lease so as to cause the other party to be responsible for the payment of a brokerage commission, except for the Brokers identified in Section S of the Summary to this Lease (the "**Brokers**"). Landlord and Tenant shall each indemnify, defend and hold the other party harmless from and against any and all claims by any real estate broker or salesman (other than the Brokers) whom the indemnifying party authorized, retained or employed, or acted by implication to authorize, retain or employ, to act for the indemnifying party in connection with this Lease. Landlord agrees to pay Brokers a leasing commission in connection with this transaction in accordance with the provisions of a separate written agreement.

21.26 Force Majeure. Any prevention, delay or stoppage due to strikes, lock-outs, inclement weather, labor disputes, inability to obtain labor, materials, fuels or reasonable substitutes therefor, governmental restrictions,

regulations, controls, action or inaction, civil commotion, fire or other acts of God, actual or threatened public health emergency (including, without limitation, epidemic, pandemic, famine, disease, plague, quarantine, and other significant public health risk) and other causes beyond the reasonable control of the party obligated to perform (except with respect to the obligations imposed with regard to Rent and other charges to be paid by Tenant pursuant to this Lease) (collectively, a "**Force Majeure**"), notwithstanding anything to the contrary contained in this Lease, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure.

21.27 Entire Agreement. This Lease constitutes the entire agreement between the parties, and there are no binding agreements or representations between the parties except as expressed herein. Tenant acknowledges that neither Landlord nor Landlord's employees or agents have made any legally binding representation or warranty as to any matter except those expressly set forth herein, including any warranty as to (i) whether the Premises may be used for Tenant's intended use under existing applicable laws, (ii) the suitability of the Premises or the Project for the conduct of Tenant's business, (iii) the condition of any improvements, (iv) the amount of any item comprising Additional Rent or the amount of the Additional Rent in the aggregate, or that Landlord is furnishing the same services to other tenants, at all, on the same level or on the same basis. There are no oral agreements between Landlord and Tenant affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between Landlord and Tenant or displayed by Landlord to Tenant with respect to the subject matter of this Lease. This instrument shall not be legally binding until it is executed by both Landlord and Tenant. No subsequent change or addition to this Lease shall be binding unless in writing and signed by Landlord and Tenant.

21.28 Patriot Act; OFAC Compliance. As an inducement to Landlord to enter into this Lease, Tenant hereby represents and warrants that: (i) Tenant is not, nor is it owned or controlled directly or indirectly by, any person, group, entity or nation named on any list issued by the Office of Foreign Assets Control of the United States Department of the Treasury ("**OFAC**") pursuant to Executive Order 13224 or any similar list or any law, order, rule or regulation or any Executive Order of the President of the United States as a terrorist, "Specially Designated National and Blocked Person" or other banned or blocked person (any such person, group, entity or nation being hereinafter referred to as a "**Prohibited Person**"); (ii) Tenant is not (nor is it owned or controlled, directly or indirectly, by any person, group, entity or nation which is) acting directly or indirectly for or on behalf of any Prohibited Person; and (iii) neither Tenant (nor any person, group, entity or nation which owns or controls Tenant, directly or indirectly) has conducted or will conduct business or has engaged or will engage in any transaction or dealing with any Prohibited Person, including without limitation any assignment of this Lease or any subletting of all or any portion of the Premises or the making or receiving of any contribution of funds, goods or services to or for the benefit of a Prohibited Person. In connection with the foregoing, it is expressly understood and agreed that (x) any breach by Tenant of the foregoing representations and warranties shall be deemed a default by Tenant under Section 13.1.6 of this Lease and shall be covered by the indemnity provisions of Section 10.1 above, and (y) the representations and warranties contained in this subsection shall be continuing in nature and shall survive the expiration or earlier termination of this Lease.

21.29 Intentionally Omitted.

21.30 Utility Billing Information. In the event that the Tenant is permitted to contract directly for the provision of electricity, gas and/or water services to the Premises with the third-party provider thereof (all in Landlord's sole and absolute but reasonable discretion), Tenant shall within ten (10) business days following its receipt of written request from Landlord, provide Landlord with a copy of each requested invoice from the applicable utility provider. Tenant acknowledges that pursuant to California Public Resources Code Section 25402.10 and the regulations adopted pursuant thereto (collectively the "**Energy Disclosure Requirements**"), Landlord may be required to disclose information concerning Tenant’s energy usage at the Building to certain third parties, including, without limitation, prospective purchasers, lenders and tenants of the Building (the "**Tenant Energy Use Disclosure**"). Tenant hereby (A) consents to all such Tenant Energy Use Disclosures, and (B) acknowledges that Landlord shall not be required to notify Tenant of any Tenant Energy Use Disclosure. Further, Tenant hereby releases Landlord from any and all losses, costs, damages, expenses and liabilities relating to, arising out of and/or resulting from any Tenant Energy Use Disclosure. The terms of this Section 21.30 shall survive the expiration or earlier termination of this Lease.

21.31 Governmental Incentives. Tenant may receive certain economic incentives (collectively, the "**Incentives**") from applicable governmental entities in connection with the location of Tenant's business within the City and State in which the Premises is located, provided that there shall be no material economic harm or unreasonable impact to Landlord by virtue of any such Incentives. Landlord, at Tenant's sole expense, will use commercially reasonable efforts to assist Tenant in acquiring the Incentives and will cooperate to the extent Tenant reasonably requests in order to complete any documentation in connection with Tenant's receipt of the benefit of the Incentives,

including supplying any necessary information, executing required forms, and other similar ministerial actions. In addition, if Landlord receives the benefit of any Incentives applied for and intended to be provided to Tenant, Landlord shall reasonably cooperate with Tenant, at Tenant's sole expense, to pass the benefit of such Incentives to Tenant.

ARTICLE 22
LETTER OF CREDIT

22.1 **Delivery of Letter of Credit**. Tenant shall deliver to Landlord, within ten (10) business days after Tenant's execution of this Lease, as protection for the full and faithful performance by Tenant of all of its obligations under this Lease and for all losses and damages Landlord may suffer (or which Landlord reasonably estimates that it may suffer) as a result of any breach or default by Tenant under this Lease, an unconditional, clean, irrevocable negotiable standby letter of credit (the "**L-C**") in the amount set forth in Section O of the Summary (the "**L-C Amount**"), in the form attached hereto as **Exhibit F**, payable in the City of San Francisco, California, running in favor of Landlord, drawn on a bank (the "**Bank**") reasonably approved by Landlord and at a minimum having a long term issuer credit rating from Standard and Poor's Professional Rating Service of A or a rating from Moody's Professional Rating Service of A-3 or better (the "**Credit Rating Threshold**"), and otherwise conforming in all respects to the requirements of this Article 22, including, without limitation, all of the requirements of Section 22.2 below, all as set forth more particularly hereinbelow. Tenant shall pay all expenses, points and/or fees incurred by Tenant in obtaining and maintaining the L/C. In the event of an assignment by Tenant of its interest in the Lease (and irrespective of whether Landlord's consent is required for such assignment), the acceptance of any replacement or substitute letter of credit by Landlord from the assignee shall be subject to Landlord's prior written approval, in Landlord's reasonable discretion, and the attorney's fees incurred by Landlord in connection with such determination shall be payable by Tenant to Landlord within thirty (30) days of billing.

22.2 **In General**. The L-C shall be "callable" at sight, permit partial draws and multiple presentations and drawings, and be otherwise subject to the Uniform Customs and Practices for Documentary Credits (1993-Rev), International Chamber of Commerce Publication #500, or the International Standby Practices-ISP 98, International Chamber of Commerce Publication #590. Tenant further covenants and warrants as follows:

22.2.1. **Landlord Right to Transfer**. The L-C shall provide that Landlord, its successors and assigns, may, at any time and after notice to Tenant but without first obtaining Tenant's consent thereto, transfer (one or more times) all or any portion of its interest in and to the L-C to another party, person or entity, regardless of whether or not such transfer is separate from or as a part of the assignment by Landlord of its rights and interests in and to this Lease. In the event of a transfer of Landlord's interest in the Building, Landlord shall transfer the L-C, in whole or in part, to the transferee and thereupon Landlord shall, without any further agreement between the parties, be released by Tenant from all liability therefor, and it is agreed that the provisions hereof shall apply to every transfer or assignment of the whole or any portion of said L-C to a new landlord. In connection with any such transfer of the L-C by Landlord, Tenant shall, at Tenant's sole cost and expense, execute and submit to the Bank such applications, documents and instruments as may be necessary to effectuate such transfer, and Tenant shall be responsible for paying the Bank's transfer and processing fees in connection therewith.

22.2.2. **No Assignment by Tenant**. Tenant shall neither assign nor encumber the L-C or any part thereof. Neither Landlord nor its successors or assigns will be bound by any assignment, encumbrance, attempted assignment or attempted encumbrance by Tenant in violation of this Section.

22.2.3. **Replenishment**. If, as a result of any drawing by Landlord on the L-C pursuant to its rights set forth in Section 22.3 below, the amount of the L-C shall be less than the L-C Amount, Tenant shall, within five (5) business days thereafter, provide Landlord with (i) an amendment to the L-C restoring such L-C to the L-C Amount or (ii) additional L-Cs in an amount equal to the deficiency, which additional L-Cs shall comply with all of the provisions of this Article 22, and if Tenant fails to comply with the foregoing, notwithstanding anything to the contrary contained in Section 13.1 above, the same shall constitute an incurable default by Tenant under this Lease (without the need for any additional notice and/or cure period).

22.2.4. **Renewal; Replacement**. If the L-C expires earlier than the date (the "**LC Expiration Date**") that is ninety (90) days after the expiration of the Lease Term, Tenant shall deliver a new L-C or certificate of renewal or extension to Landlord at least sixty (60) days prior to the expiration of the L-C then held by Landlord, without any action whatsoever on the part of Landlord, which new L-C shall be irrevocable and automatically renewable through the LC Expiration Date upon the same terms as the expiring L-C or such other terms as may be acceptable to Landlord in its sole discretion. In furtherance of the foregoing, Landlord and Tenant agree that the L-C shall contain a so-called "evergreen provision," whereby the L-C will automatically be renewed unless at least sixty (60) days' prior written

notice of non-renewal is provided by the issuer to Landlord; provided, however, that the final expiration date identified in the L-C, beyond which the L-C shall not automatically renew, shall not be earlier than the LC Expiration Date.

22.2.5. **Bank's Financial Condition**. If, at any time during the Lease Term, the Bank's long term credit rating is reduced below the Credit Rating Threshold, or the financial condition of the Bank changes in any other materially adverse way (either, a "**Bank Credit Threat**"), then Landlord shall have the right to require that Tenant obtain from a different issuer a substitute L-C that complies in all respects with the requirements of this Article 22, and Tenant's failure to obtain such substitute L-C within ten (10) days following Landlord's written demand therefor (with no other notice or cure or grace period being applicable thereto, notwithstanding anything in this Lease to the contrary) shall entitle Landlord, or Landlord's then managing agent, to immediately draw upon the then existing L-C in whole or in part, without notice to Tenant, as more specifically described in Section 22.3 below. Tenant shall be responsible for the payment of any and all costs incurred with the review of any replacement L-C (including without limitation Landlord's reasonable attorneys' fees), which replacement is required pursuant to this Section or is otherwise requested by Tenant.

22.3 **Application of Letter of Credit**. Tenant hereby acknowledges and agrees that Landlord is entering into this Lease in material reliance upon the ability of Landlord to draw upon the L-C as protection for the full and faithful performance by Tenant of all of its obligations under this Lease and for all losses and damages Landlord may suffer (or which Landlord reasonably estimates that it may suffer) as a result of any breach or default by Tenant under this Lease. Landlord, or its then managing agent, shall have the right to draw down an amount up to the face amount of the L-C if any of the following shall have occurred or be applicable: (A) such amount is due to Landlord under the terms and conditions of this Lease, or (B) Tenant has filed a voluntary petition under the U. S. Bankruptcy Code or any state bankruptcy code (collectively, "**Bankruptcy Code**"), or (C) an involuntary petition has been filed against Tenant under the Bankruptcy Code, or (D) the Bank has notified Landlord that the L-C will not be renewed or extended through the LC Expiration Date and Tenant has not provided a replacement L-C that satisfies the requirements of this Article 22 on or before the date that is thirty (30) days prior to the expiration thereof, or (E) a Bank Credit Threat or Receivership (as such term is defined in Section 22.6.1 below) has occurred and Tenant has failed to comply with the requirements of either Section 22.2.5 above or 22.6 below, as applicable. If Tenant shall breach any provision of this Lease or otherwise be in default hereunder, or if any of the foregoing events identified in Sections 22.3(B) through (E) shall have occurred, Landlord may, but without obligation to do so, and without notice to Tenant, draw upon the L-C, in part or in whole, and the proceeds may be applied by Landlord (i) to cure any breach or default of Tenant and/or to compensate Landlord for any and all damages of any kind or nature sustained or which Landlord reasonably estimates that it will sustain resulting from Tenant's breach or default, (ii) against any Rent payable by Tenant under this Lease that is not paid when due and/or (iii) to pay for all losses and damages that Landlord has suffered or that Landlord reasonably estimates that it will suffer as a result of any breach or default by Tenant under this Lease. The use, application or retention of the L-C, or any portion thereof, by Landlord shall not prevent Landlord from exercising any other right or remedy provided by this Lease or by any applicable law, it being intended that Landlord shall not first be required to proceed against the L-C, and shall not operate as a limitation on any recovery to which Landlord may otherwise be entitled. Tenant agrees not to interfere in any way with payment to Landlord of the proceeds of the L-C, either prior to or following a "draw" by Landlord of any portion of the L-C, regardless of whether any dispute exists between Tenant and Landlord as to Landlord's right to draw upon the L-C. No condition or term of this Lease shall be deemed to render the L-C conditional to justify the issuer of the L-C in failing to honor a drawing upon such L-C in a timely manner. Tenant agrees and acknowledges that (i) the L-C constitutes a separate and independent contract between Landlord and the Bank, (ii) Tenant is not a third party beneficiary of such contract, (iii) Tenant has no property interest whatsoever in the L-C or the proceeds thereof, and (iv) in the event Tenant becomes a debtor under any chapter of the Bankruptcy Code, neither Tenant, any trustee, nor Tenant's bankruptcy estate shall have any right to restrict or limit Landlord's claim and/or rights to the L-C and/or the proceeds thereof by application of Section 502(b)(6) of the U. S. Bankruptcy Code or otherwise.

22.4 **Letter of Credit not a Security Deposit**. Landlord and Tenant acknowledge and agree that in no event or circumstance shall the L-C or any renewal thereof or any proceeds thereof be (i) deemed to be or treated as a "security deposit" within the meaning of California Civil Code Section 1950.7, (ii) subject to the terms of such Section 1950.7, or (iii) intended to serve as a "security deposit" within the meaning of such Section 1950.7. The parties hereto (A) recite that the L-C is not intended to serve as a security deposit and such Section 1950.7 and any and all other laws, rules and regulations applicable to security deposits in the commercial context ("**Security Deposit Laws**") shall have no applicability or relevancy thereto and (B) waive any and all rights, duties and obligations either party may now or, in the future, will have relating to or arising from the Security Deposit Laws.

22.5 **Proceeds of Draw**. In the event Landlord draws down on the L-C pursuant to Section 22.3(D) or (E) above, the proceeds of the L-C may be held by Landlord and applied by Landlord against any Rent payable by Tenant under this Lease that is not paid when due and/or to pay for all losses and damages that Landlord has suffered or that

Landlord reasonably estimates that it will suffer as a result of any breach or default by Tenant under this Lease. Any unused proceeds shall constitute the property of Landlord and need not be segregated from Landlord's other assets. Tenant hereby (i) agrees that (A) Tenant has no property interest whatsoever in the proceeds from any such draw, and (B) such proceeds shall not be deemed to be or treated as a "security deposit" under the Security Deposit Law, and (ii) waives all rights, duties and obligations either party may now or, in the future, will have relating to or arising from the Security Deposit Laws. Landlord agrees that the amount of any proceeds of the L-C received by Landlord, and not (a) applied against any Rent payable by Tenant under this Lease that was not paid when due or (b) used to pay for any losses and/or damages suffered by Landlord (or reasonably estimated by Landlord that it will suffer) as a result of any breach or default by Tenant under this Lease (the "**Unused L-C Proceeds**"), shall be paid by Landlord to Tenant (x) upon receipt by Landlord of a replacement L-C in the full L-C Amount, which replacement L-C shall comply in all respects with the requirements of this Article 22, or (y) within thirty (30) days after the LC Expiration Date; provided, however, that if prior to the LC Expiration Date a voluntary petition is filed by Tenant, or an involuntary petition is filed against Tenant by any of Tenant's creditors, under the Bankruptcy Code, then Landlord shall not be obligated to make such payment in the amount of the Unused L-C Proceeds until either all preference issues relating to payments under this Lease have been resolved in such bankruptcy or reorganization case or such bankruptcy or reorganization case has been dismissed.

22.6 **Bank Placed Into Receivership**.

22.6.1. **Bank Placed Into Receivership**. In the event the Bank is placed into receivership or conservatorship (any such event, a "**Receivership**") by the Federal Deposit Insurance Corporation or any successor or similar entity (the "**FDIC**"), then, effective as of the date such Receivership occurs, the L-C shall be deemed to not meet the requirements of this Article 22, and, within ten (10) days following Landlord's notice to Tenant of such Receivership (the "**LC Replacement Notice**"), Tenant shall (i) replace the L-C with a substitute L-C from a different issuer reasonably acceptable to Landlord and that complies in all respects with the requirements of this Article 22 or (ii), in the event Tenant demonstrates to Landlord that Tenant is reasonably unable to obtain a substitute L-C from a different issuer reasonably acceptable to Landlord and that complies in all respects with the requirements of this Article 22 within the foregoing ten (10) day period, deposit with Landlord cash in the L-C Amount (the "**Interim Cash Deposit**"); provided, however, that, in the case of the foregoing sub-clause (ii), Tenant shall, within sixty (60) days after the LC Replacement Notice, replace the L-C with a substitute L-C from a different issuer reasonably acceptable to Landlord and that complies in all respects with the requirements of this Article 22, and upon Landlord's receipt and acceptance of such replacement L-C, Landlord shall return to Tenant the Interim Cash Deposit, with no obligation on the part of Landlord to pay any interest thereon. If Tenant fails to comply in any respect with the requirements of this Section 22.6.1, then, notwithstanding anything in this Lease to the contrary, Landlord shall have the right to (a) declare Tenant in default of this Lease for which there shall be no notice or grace or cure periods being applicable thereto other than the aforesaid ten (10) day and sixty (60) day periods, (b) if applicable, retain such Interim Cash Deposit until such time as such default is cured by Tenant, which retention shall not constitute a waiver of any right or remedy available to Landlord under the terms of this Lease or at law, and (c) pursue any and all remedies available to it under this Lease and at law, including, without limitation, if Tenant has failed to provide the Interim Cash Deposit, treating any Receivership as a Bank Credit Threat and exercising Landlord's remedies herein, to the extent possible pursuant to then existing FDIC policy. Tenant shall be responsible for the payment of any and all costs incurred with the review of any replacement L-C (including without limitation Landlord's reasonable attorneys' fees), which replacement is required pursuant to this Section or is otherwise requested by Tenant.

22.6.2. **Interim Cash Deposit**. During any period that Landlord remains in possession of the Interim Cash Deposit (any such period, a "**Deposit Period**"), it is understood by the parties that such Interim Cash Deposit shall be held by Landlord as security for the full and faithful performance of Tenant's covenants and obligations under this Lease. The Interim Cash Deposit shall not constitute an advance of any Rent, an advance payment of any other kind, nor a measure of Landlord's damages in case of Tenant's default. If, during any such Deposit Period, Tenant defaults with respect to any provisions of this Lease, including, but not limited to, the provisions relating to the payment of Rent, the removal of property and the repair of resultant damage, then Landlord may but shall not be required to, from time to time, without notice to Tenant and without waiving any other remedy available to Landlord, use the Interim Cash Deposit, or any portion of it, to the extent necessary to cure or remedy such default or failure or to compensate Landlord for all damages sustained by Landlord or which Landlord reasonably estimates that it will sustain resulting from Tenant's default or failure to comply fully and timely with its obligations pursuant to this Lease. Tenant shall immediately pay to Landlord on demand any amount so applied in order to restore the Interim Cash Deposit to its original amount, and Tenant's failure to immediately do so shall constitute a default under this Lease. In the event Landlord is in possession of the Interim Cash Deposit at the expiration or earlier termination of this Lease, and Tenant is in compliance with the covenants and obligations set forth in this Lease at the time of such expiration or termination, then Landlord shall return to Tenant the Interim Cash Deposit, less any amounts deducted by Landlord to reimburse Landlord for any sums to which Landlord is entitled under the terms of this Lease, within sixty (60) days following

both such expiration or termination and Tenant's vacation and surrender of the Premises. Landlord's obligations with respect to the Interim Cash Deposit are those of a debtor and not a trustee. Landlord shall not be required to maintain the Interim Cash Deposit separate and apart from Landlord's general or other funds, and Landlord may commingle the Interim Cash Deposit with any of Landlord's general or other funds. Tenant shall not at any time be entitled to interest on the Interim Cash Deposit. In the event of a transfer of Landlord's interest in the Building, Landlord shall transfer the Interim Cash Deposit, in whole or in part, to the transferee and thereupon Landlord shall, without any further agreement between the parties, be released by Tenant from all liability therefor, and it is agreed that the provisions hereof shall apply to every transfer or assignment of the whole or any portion of said Interim Cash Deposit to a new landlord. Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code, or any successor statute.

22.7 **Reduction of L-C Amount**. Provided that on or promptly following the "Reduction Date," as that term is defined below, Tenant tenders to Landlord (a) a copy of Tenant's most recent year-end financial statements prepared and certified by an independent certified public accountant or certified by an officer of Tenant, demonstrating that Tenant satisfies the "L-C Reduction Conditions," as that term is defined below, and (b) a new L-C conforming in all respects to the requirements of this Article 22 in the amount of the reduced L-C Amount as of such Reduction Date, or a certificate of amendment to the existing L-C, conforming in all respects to the requirements of this Article 21, in the amount of the reduced L-C Amount as of such Reduction Date, the L-C Amount shall be reduced pursuant to the following: Provided Tenant satisfies the L-C Reduction Conditions, the L-C Amount shall be reduced by an amount equal to thirty-three percent (33%) of the initial L-C Amount.

If Tenant is allowed to reduce the L-C Amount pursuant to the terms of this Section 22.7, then Landlord shall reasonably cooperate with Tenant in order to effectuate such reduction. For purposes of this Section 22 7, the "**L-C Reduction Conditions**" shall mean that (i) Tenant is not then in default under this Lease and has not been in monetary default under this Lease, beyond any applicable notice and cure period expressly set forth in this Lease, at any time during the Lease Term, and (ii) Tenant has achieved positive earnings before interest, taxes, depreciation and amortization ("**EBITDA**"), as determined in accordance with generally accepted accounting practices ("**GAAP**") plus stock compensation, for the trailing four (4) consecutive quarters. As used herein, the "**Reduction Date**" shall mean the date that Tenant satisfies the L-C Reduction Conditions.

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IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease with the intent to be legally bound thereby, to be effective as of the Effective Date.

LANDLORD:

150-180 BAYTECH DRIVE CA OWNER LLC,
a Delaware limited liability company

By: Divco West Real Estate Services, Inc.,
a Delaware corporation
Its Agent

By: /s/ Gregg Walker
Name: Gregg Walker
Its: Senior Managing Director

TENANT:

PROCEPT BIOROBOTICS CORPORATION,
a Delaware corporation

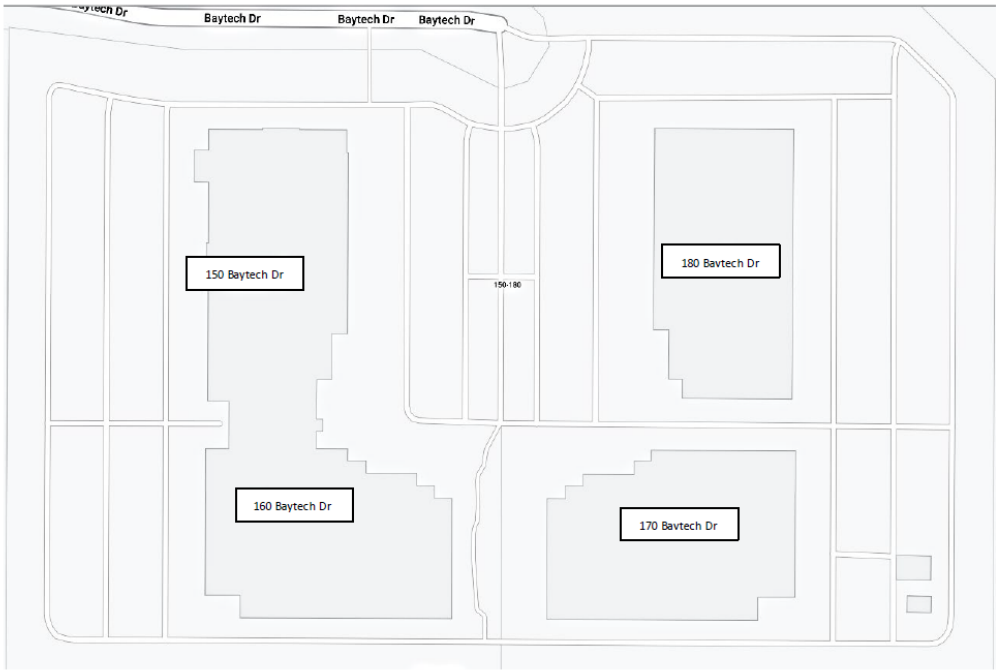
By: /s/ Kevin Waters
Name: Kevin Waters
Its: Chief Financial Officer

If Tenant is a corporation incorporated in a state other than California, then Tenant shall deliver to Landlord evidence in a form reasonably acceptable to Landlord that the signatory(ies) is (are) authorized to execute this Lease.

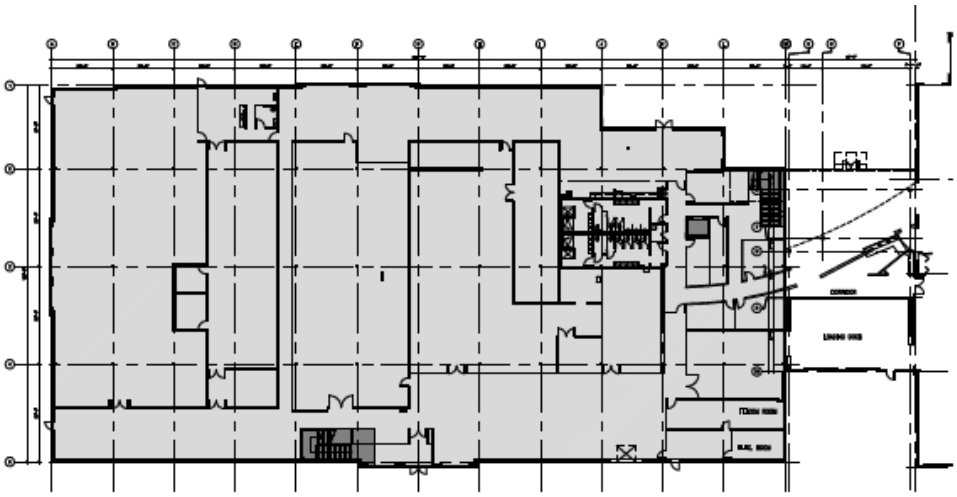
EXHIBIT A
PROJECT SITE PLAN AND OUTLINE OF THE PREMISES

This Exhibit is intended only to show the approximate location of the Premises in the Building, and is not meant to constitute an agreement, representation or warranty as to the construction of the Premises, the precise area thereof or the specific location of the Common Areas, or the elements thereof, or of the access ways to the Premises or the Project. The depiction of any interior windows, cubicles, modules, furniture and equipment in this Exhibit, if shown, is for illustrative purposes only, but does not mean that such items exist in the Premises or the Building, or that Landlord shall be obligated to provide, install or construct any such items. This Exhibit shall not be scaled; any measurements or distances shown should be taken as approximate. The inclusion of any elevators, stairways, electrical and mechanical closets, and other similar facilities for the benefit of occupants of the Building, if any, does not mean that such items are part of the Premises or the Building.

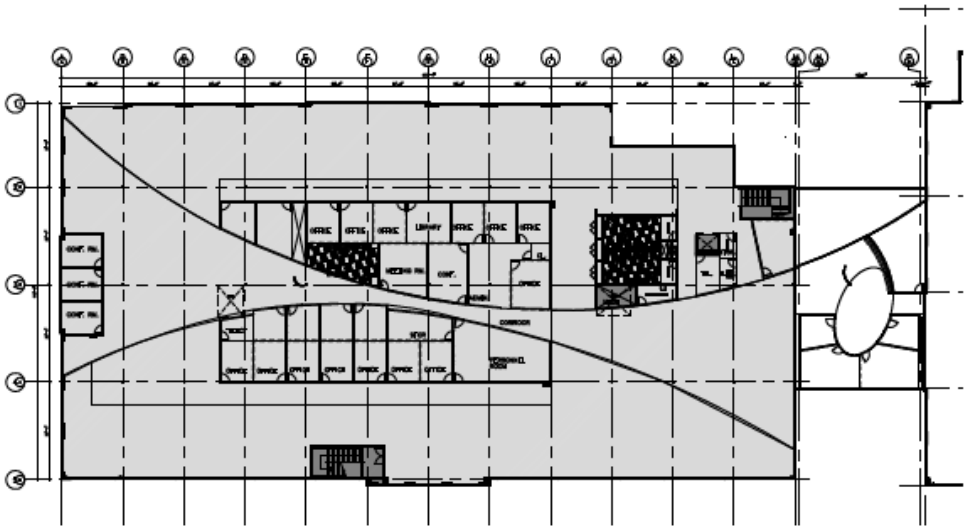
PROJECT SITE PLAN



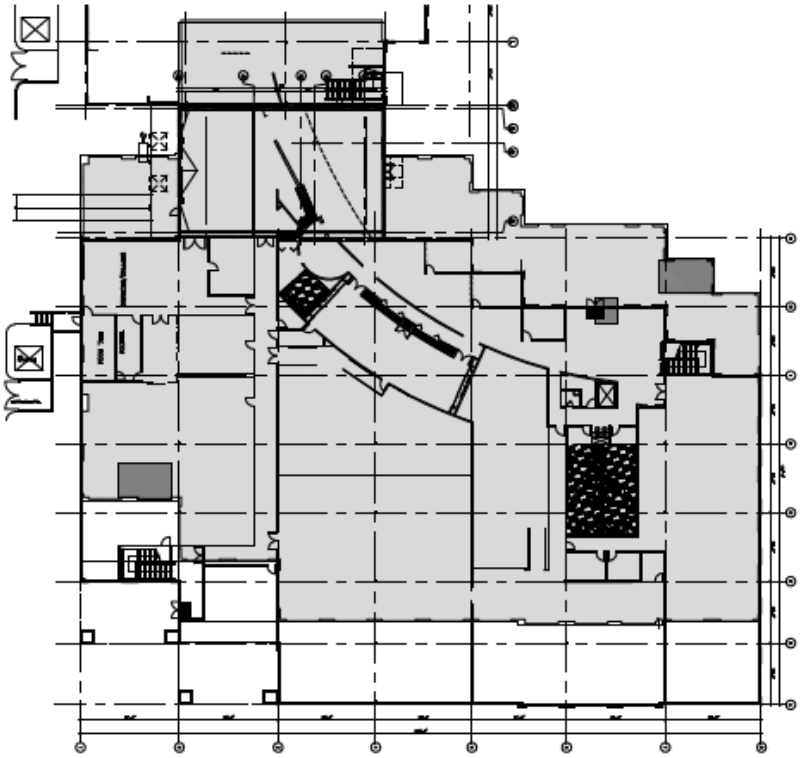
OUTLINE OF PREMISES



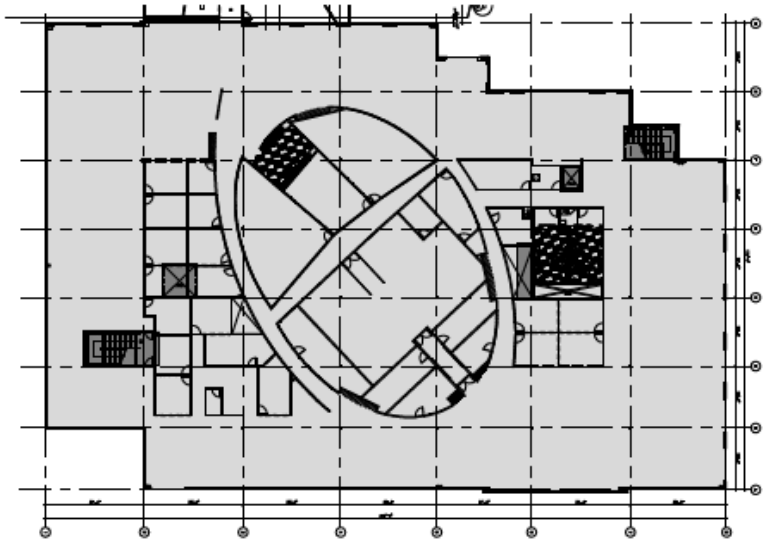
150 BAYTECH - FIRST FLOOR



150 BAYTECH - SECOND FLOOR



160 BAYTECH - FIRST FLOOR



160 BAYTECH - SECOND FLOOR

EXHIBIT B

TENANT WORK LETTER

This Tenant Work Letter shall set forth the terms and conditions relating to the construction of the Premises. This Tenant Work Letter is essentially organized chronologically and addresses the issues of the construction of the Premises, in sequence, as such issues will arise during the actual construction of the Premises. All references in this Tenant Work Letter to Articles or Sections of "this Lease" shall mean the relevant portions of Articles 1 through 22 of the Lease to which this Tenant Work Letter is attached as **Exhibit B**, and all references in this Tenant Work Letter to Sections of "this Tenant Work Letter" shall mean the relevant portions of Sections 1 through 5 of this Tenant Work Letter.

SECTION 1

DELIVERY OF THE PREMISES AND BASE BUILDING

Upon the Delivery Date, Landlord shall deliver the Premises to Tenant, and Tenant shall accept the Premises from Landlord, in its presently existing, "AS-IS" condition as of the date of this Lease.

SECTION 2

TENANT IMPROVEMENTS

2.1 Tenant Improvement Allowance. Tenant shall be entitled to a tenant improvement allowance (the "**Tenant Improvement Allowance**"), in the amount set forth in Section U of the Summary of Basic Lease Terms, for the costs relating to the design and construction of Tenant's improvements which are permanently affixed to the Premises (the "**Tenant Improvements**"). In no event shall Landlord be obligated to make disbursements pursuant to this Tenant Work Letter in a total amount which exceeds the Tenant Improvement Allowance. The Tenant Improvement Allowance shall expire two (2) years after the Delivery Date and any unused amount of the Tenant Improvement Allowance remaining on such date shall revert to Landlord. Any Tenant Improvements that require the use of Building risers, raceways, shafts and/or conduits, shall be subject to Landlord's reasonable rules, regulations, and restrictions, including the requirement that any cabling vender must be selected from a list provided by Landlord, and that the amount and location of any such cabling must be approved by Landlord, such approvals not to be unreasonably withheld, conditioned or delayed. All Tenant Improvements for which the Tenant Improvement Allowance has been made available shall be deemed Landlord's property under the terms of the Lease; provided, however, Landlord may, by written notice to Tenant prior to the end of the Lease Term, or given following any earlier termination of this Lease, require Tenant, at Tenant's expense, to remove any Tenant Improvements and to repair any damage to the Premises and Building caused by such removal and return the affected portion of the Premises to their condition existing prior to the installment of such Tenant Improvements; provided, however, that, notwithstanding the foregoing, upon written request by Tenant at the time of Tenant's request for Landlord's approval of the "Final Space Plan" and/or the "Final Working Drawings" (as those terms are defined in Section 3.2 and Section 3.3 of this Tenant Work Letter), Landlord shall notify Tenant in writing whether any item of the Tenant Improvements reflected in the Final Space Plan and/or the Final Working Drawings will be required to be removed pursuant to the terms of this Section 2.1.

2.2 Disbursement of the Tenant Improvement Allowance.

2.2.1 Tenant Improvement Allowance Items. Except as otherwise set forth in this Tenant Work Letter, the Tenant Improvement Allowance shall be disbursed by Landlord only for the following items and costs (collectively the "**Tenant Improvement Allowance Items**"):

2.2.1.1 Payment of the fees of the "Architect" and the "Engineers," as those terms are defined in Section 3.1 of this Tenant Work Letter, and Tenant’s construction manager fee, which fees shall, notwithstanding anything to the contrary contained in this Tenant Work Letter, not exceed an aggregate amount equal to $5.00 per rentable square foot of the Premises, and payment of the fees incurred by Landlord in connection with the preparation and review of the "Construction Drawings," as that term is defined in Section 3.1 of this Tenant Work Letter and in connection with the construction of the Tenant Improvements;

2.2.1.2 The payment of plan check, permit and license fees relating to construction of the Tenant Improvements;

2.2.1.3 The cost of construction of the Tenant Improvements, including, without limitation, testing and inspection costs, freight elevator usage, hoisting and trash removal costs, and contractors' fees and general conditions;

2.2.1.4 The cost of any changes in the base Building structure when such changes are required by the Construction Drawings (including if such changes are due to the fact that such work is prepared on an unoccupied basis), such cost to include all direct architectural and/or engineering fees and expenses incurred in connection therewith;

2.2.1.5 The cost of any changes to the Construction Drawings or Tenant Improvements required by all applicable building codes (the "**Code**");

2.2.1.6 The cost of connection of the Premises to the Building's energy management systems;

2.2.1.7 Sales and use taxes and Title 24 fees; and

2.2.1.8 All other actual and reasonable costs incurred by Landlord in connection with the construction of the Tenant Improvements.

2.2.2 Disbursement of Tenant Improvement Allowance. Subject to the provisions of this Tenant Work Letter, a check for the lesser of (a) the amount actually spent by Tenant for Tenant Improvement Allowance Items, and (b) the amount of the Tenant Improvement Allowance, shall be delivered by Landlord to Tenant within thirty (30) days following the completion of construction of the Premises, provided that (i) Tenant provide invoices marked paid, or other evidence of amounts expended by Tenant, (ii) Tenant delivers to Landlord properly executed mechanics lien releases in compliance with both California Civil Code Section 8134 and either Section 8136 or Section 8138, (iii) Landlord has determined that no substandard work exists which adversely affects the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the Building, the curtain wall of the Building, the structure or exterior appearance of the Building, and Landlord does not dispute any request for payment based on non-compliance of any work with the "Approved Working Drawings," as that term is defined in Section 3.4 below, and (iv) Architect delivers to Landlord a certificate, in a form reasonably acceptable to Landlord, certifying that the construction of the Tenant Improvements in the Premises has been substantially completed.

2.2.3 Other Terms. Landlord shall only be obligated to make disbursements from the Tenant Improvement Allowance to the extent costs are incurred by Tenant for Tenant Improvement Allowance Items. All Tenant Improvement Allowance Items for which the Tenant Improvement Allowance has been made available shall be deemed Landlord's property under the terms of this Lease.

2.3 Standard Tenant Improvement Package. The quality of Tenant Improvements shall be equal to or of greater quality than the quality of Building standard components customary in buildings in comparable properties located in San Jose, California, provided that the Tenant Improvements shall comply with any specifications reasonably designated by Landlord and communicated to Tenant prior to the design and construction of the Tenant Improvements.

2.4 Preliminary Space Plan Allowance. In addition to the Tenant Improvement Allowance, Landlord shall pay an amount up to Fifteen Cents ($0.15) per rentable square foot of the Premises (the "**Space Plan Allowance**") for the preparation by Tenant's Architect of a preliminary space plan for the Premises (the "**Space Plan**"). In no event shall Landlord make disbursements from the Space Plan Allowance for costs which are either (i) unrelated to the Space Plan, or (ii) with respect to the Space Plan, in a total amount which exceeds the Space Plan Allowance. The procedure for disbursement of the Space Plan Allowance shall be the same as the procedure to disburse the Tenant Improvement Allowance.

SECTION 3

CONSTRUCTION DRAWINGS

3.1 Selection of Architect/Construction Drawings. Tenant shall retain the architect/space planner selected by Tenant and reasonably approved by Landlord (the "**Architect**") to prepare the "Construction Drawings," as that term is defined in this Section 3.1. Tenant shall retain the engineering consultants selected by Tenant and reasonably approved by Landlord (the "**Engineers**") to prepare all plans and engineering working drawings relating to the structural, mechanical, electrical, plumbing, HVAC, lifesafety, and sprinkler work in the Premises, which work is not part of the Base Building. The plans and drawings to be prepared by Architect and the Engineers hereunder shall be known collectively as the "**Construction Drawings**." Tenant shall be required to include in its contracts with the Architect and the Engineers a provision which requires ownership of all Construction Drawings to be transferred to Tenant upon the Substantial Completion of the Tenant Improvements and Tenant hereby grants to Landlord a non-exclusive right to use such Construction Drawings for any purpose related to the Project, including, without limitation, a right to make copies thereof. All Construction Drawings shall comply with the drawing format and specifications determined by Landlord, and shall be subject to Landlord's approval. Tenant and Architect shall verify, in the field, the dimensions and conditions as shown on the relevant portions of the base building plans, and Tenant and Architect shall be solely responsible for the same, and Landlord shall have no responsibility in connection therewith. Landlord's review of the Construction Drawings as set forth in this Section 3, shall be for its sole purpose and shall not imply Landlord's review of the same, or obligate Landlord to review the same, for quality, design, Code compliance or other like matters. Accordingly, notwithstanding that any Construction Drawings are reviewed by Landlord or its space planner, architect, engineers and consultants, and notwithstanding any advice or assistance which may be rendered to Tenant by Landlord or Landlord's space planner, architect, engineers, and consultants, Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in the Construction Drawings, and Tenant's waiver and indemnity set forth in this Lease shall specifically apply to the Construction Drawings.

3.2 Final Space Plan. Tenant shall supply Landlord with one (1) electronic copy of its final space plan for the Premises and no more than two (2) hard copies signed by the Tenant upon request by Landlord, before any architectural working drawings or engineering drawings have been commenced. The final space plan (the "**Final Space Plan**") shall include a layout and designation of all offices, rooms and other partitioning, their intended use, and equipment to be contained therein. Landlord may request clarification or more specific drawings for special use items not included in the Final Space Plan. Landlord shall advise Tenant within five (5) business days after Landlord's receipt of the Final Space Plan for the Premises if the same is unsatisfactory or incomplete in any respect. If Tenant is so advised, Tenant shall promptly cause the Final Space Plan to be revised to correct any deficiencies or other matters Landlord may reasonably require.

3.3 Final Working Drawings. Tenant shall supply the Engineers with a complete listing of standard and non-standard equipment and specifications, including, without limitation, B.T.U. calculations, electrical requirements and special electrical receptacle requirements for the Premises, to enable the Engineers and the Architect to complete the "Final Working Drawings" (as that term is defined below) in the manner as set forth below. Upon the approval of the Final Space Plan by Landlord and Tenant, Tenant shall promptly cause the Architect and the Engineers to complete the architectural and engineering drawings for the Premises, and Architect shall compile a fully coordinated set of architectural, structural, mechanical, electrical and plumbing working drawings in a form which is complete to allow subcontractors to bid on the work and to obtain all applicable permits (collectively, the "**Final Working Drawings**") and shall submit the same to Landlord for Landlord's approval. Tenant shall supply Landlord with one (1) electronic copy and, upon Landlord's request, no more than two (2) hard copies of such Final Working Drawings. Landlord shall advise Tenant within ten (10) business days after Landlord's receipt of the Final Working Drawings for the Premises if the same is unsatisfactory or incomplete in any respect. If Tenant is so advised, Tenant shall immediately revise the Final Working Drawings in accordance with such review and any disapproval of Landlord in connection therewith.

3.4 Approved Working Drawings. The Final Working Drawings shall be approved by Landlord (the "**Approved Working Drawings**") prior to the commencement of construction of the Premises by Tenant. After approval by Landlord of the Final Working Drawings, Tenant may submit the same to the appropriate municipal authorities for all applicable building permits (the "Permits"). Tenant hereby agrees that neither Landlord nor Landlord's consultants shall be responsible for obtaining any building permit or certificate of occupancy for the Premises and that obtaining the same shall be Tenant's responsibility; provided, however, that Landlord shall cooperate with Tenant in executing permit applications and performing other ministerial

acts reasonably necessary to enable Tenant to obtain any such permit or certificate of occupancy. No changes, modifications or alterations in the Approved Working Drawings may be made without the prior written consent of Landlord, which consent may not be unreasonably withheld, conditioned or delayed.

3.5 Timing of Landlord Review. Landlord shall review Tenant's initial submittals of the Space Plan and Final Working Drawings within the time periods set forth above, and shall review all submittals after the initial submittal of each such item within five (5) business days of Landlord's receipt thereof. If Landlord fails to respond within such day periods, as applicable, then Tenant may send Landlord a reminder notice, which reminder notice shall include a copy of the complete Space Plan or Final Working Drawings, as applicable setting forth such failure containing the following sentence at the top of such notice in bold, capitalized font at least twelve points in size: "**LANDLORD'S FAILURE TO RESPOND TO THIS NOTICE WITHIN FIVE (5) BUSINESS DAYS SHALL RESULT IN A LANDLORD DELAY** (the "**Plans Reminder Notice**"). If Landlord fails to respond within five (5) business days after receipt of a Plans Reminder Notice, then such failure shall be deemed a "Landlord Delay" (as such term is defined in Section 5.6, below).

SECTION 4

CONSTRUCTION OF THE TENANT IMPROVEMENTS

4.1 Tenant's Selection of Contractors.

4.1.1 The Contractor. A general contractor shall be retained by Tenant to construct the Tenant Improvements. Such general contractor ("**Contractor**") shall be selected by Tenant and reasonably approved by Landlord.

4.1.2 Tenant's Agents. All subcontractors, laborers, materialmen, and suppliers used by Tenant (such subcontractors, laborers, materialmen, and suppliers, and the Contractor to be known collectively as "**Tenant's Agents**") shall be selected by Tenant and reasonably approved by Landlord. Landlord will approve or disapprove Tenant's Agents within ten (10) business days following Tenant's written request. If Landlord fails to respond within such ten (10) business day period, Tenant shall deliver Landlord an additional notice requesting approval and if Landlord thereafter fails to respond within three (3) business days of receipt of such additional notice, any period following such three (3) business day period until Landlord approves Tenant's Agents shall be deemed a Landlord Delay Notwithstanding the foregoing, Tenant shall use Landlord designated subcontractors for the following trades: Fire protection systems and life safety systems.

4.2 Construction of Tenant Improvements by Tenant's Agents.

4.2.1 Construction Contract; Cost Budget. Prior to Tenant's execution of the construction contract and general conditions with Contractor (the "**Contract**"), Tenant shall submit the Contract to Landlord for its approval, which approval shall not be unreasonably withheld, conditioned or delayed. Prior to the commencement of the construction of the Tenant Improvements, and after Tenant has accepted all bids for the Tenant Improvements, Tenant shall provide Landlord with a detailed breakdown, by trade, of the final costs to be incurred or which have been incurred, as set forth more particularly in Sections 2.2.1.1 through 2.2.1.8, above, in connection with the design and construction of the Tenant Improvements to be performed by or at the direction of Tenant or the Contractor, which costs form a basis for the amount of the Contract (the "**Final Costs**"). Prior to the commencement of construction of the Tenant Improvements, Tenant shall supply Landlord with cash in an amount (the "**Over-Allowance Amount**") equal to the difference between the amount of the Final Costs and the amount of the Tenant Improvement Allowance (less any portion thereof already disbursed by Landlord, or in the process of being disbursed by Landlord, on or before the commencement of construction of the Tenant Improvements). The Over-Allowance Amount shall be disbursed by Landlord prior to the disbursement of any of the then remaining portion of the Tenant Improvement Allowance, and such disbursement shall be pursuant to the same procedure as the Tenant Improvement Allowance. In the event that, after the Final Costs have been delivered by Tenant to Landlord, the costs relating to the design and construction of the Tenant Improvements shall change, any additional costs necessary to such design and construction in excess of the Final Costs, shall be paid by Tenant to Landlord immediately as an addition to the Over-Allowance Amount or at Landlord's option, Tenant shall make payments for such additional costs out of its own funds, but Tenant shall continue to provide Landlord with the documents described in Sections 2.2.2.1 (i), (ii), (iii) and (iv) of this Tenant Work Letter, above, for Landlord's approval, prior to Tenant paying such costs. If after the completion of the Tenant Improvements, it is

determined that Tenant has overpaid the Over-Allowance Amount, Landlord shall at Tenant's option, credit such overpayment to Tenant within ten (10) business days of such determination or apply such overpayment to Tenant's first (and subsequent if needed) Base Monthly Rent. Notwithstanding anything set forth in this Tenant Work Letter to the contrary, construction of the Tenant Improvements shall not commence until (a) Landlord has approved the Contract, (b) Tenant has procured and delivered to Landlord a copy of all Permits, and (c) Tenant has delivered to Landlord the Over-Allowance Amount.

4.2.2 Tenant's Agents.

4.2.2.1 Landlord's General Conditions for Tenant's Agents and Tenant Improvement Work. Tenant's and Tenant's Agent's construction of the Tenant Improvements shall comply with the following: (i) the Tenant Improvements shall be constructed in strict accordance with the Approved Working Drawings; (ii) Landlord's rules and regulations for the construction of improvements in the Building, (iii) Tenant's Agents shall submit schedules of all work relating to the Tenant's Improvements to Contractor and Contractor shall, within five (5) business days of receipt thereof, inform Tenant's Agents of any changes which are necessary thereto, and Tenant's Agents shall adhere to such corrected schedule; and (iv) Tenant shall abide by all rules made by Landlord's Building manager with respect to the use of freight, loading dock and service elevators, storage of materials, coordination of work with the contractors of other tenants, and any other matter in connection with this Tenant Work Letter, including, without limitation, the construction of the Tenant Improvements. In the event of a conflict between the Approved Working Drawings and Landlord's construction rules and regulations, Landlord, in its reasonable discretion, shall determine which shall prevail.

4.2.2.2 Indemnity. Tenant's indemnity of Landlord as set forth in this Lease shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to any act or omission of Tenant or Tenant's Agents, or anyone directly or indirectly employed by any of them, or in connection with Tenant's non-payment of any amount arising out of the Tenant Improvements and/or Tenant's disapproval of all or any portion of any request for payment. Such indemnity by Tenant, as set forth in this Lease, shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to Landlord's performance of any ministerial acts reasonably necessary (i) to permit Tenant to complete the Tenant Improvements, and (ii) to enable Tenant to obtain any building permit or certificate of occupancy for the Premises. The foregoing indemnity shall not apply to claims caused by the gross negligence or willful misconduct of Landlord or its or their members, partners, shareholders, officers, directors, agents, employees and/or contractors, or the failure of Landlord to disburse the Tenant Improvement Allowance as and when required hereunder.

4.2.2.3 Requirements of Tenant's Agents. Each of Tenant's Agents shall guarantee to Tenant and for the benefit of Landlord that the portion of the Tenant Improvements for which it is responsible shall be free from any defects in workmanship and materials for a period of not less than one (1) year from the date of completion thereof. Each of Tenant's Agents shall be responsible for the replacement or repair, without additional charge, of all work done or furnished in accordance with its contract that shall become defective within one (1) year after the later to occur of (i) completion of the work performed by such contractor or subcontractors and (ii) the Lease Commencement Date. The correction of such work shall include, without additional charge, all additional expenses and damages incurred in connection with such removal or replacement of all or any part of the Tenant Improvements, and/or the Building and/or common areas that may be damaged or disturbed thereby. All such warranties or guarantees as to materials or workmanship of or with respect to the Tenant Improvements shall be contained in the Contract or subcontract and shall be written such that such guarantees or warranties shall inure to the benefit of both Landlord and Tenant, as their respective interests may appear, and can be directly enforced by either. Tenant covenants to give to Landlord any assignment or other assurances which may be necessary to effect such right of direct enforcement.

4.2.2.4 Insurance Requirements.

4.2.2.4.1 General Coverages. All of Tenant's Agents shall carry worker's compensation insurance covering all of their respective employees, and shall also carry public liability insurance, including property damage, all with limits, in form and with companies as are required to be carried by Tenant as set forth in this Lease.

4.2.2.4.2 Special Coverages. Tenant shall carry "Builder's All Risk" insurance in an amount approved by Landlord covering the construction of the Tenant Improvements, and such

other reasonable insurance as Landlord may require, it being understood and agreed that the Tenant Improvements shall be insured by Tenant pursuant to this Lease immediately upon completion thereof. Such insurance shall be in amounts and shall include such extended coverage endorsements as may be reasonably required by Landlord including, but not limited to, the requirement that all of Tenant's Agents shall carry excess liability and Products and Completed Operation Coverage insurance, each in amounts not less than $500,000 per incident, $1,000,000 in aggregate, and in form and with companies as are required to be carried by Tenant as set forth in this Lease.

4.2.2.4.3 General Terms. Certificates for all insurance carried pursuant to this Section 4.2.2.4 shall be delivered to Landlord before the commencement of construction of the Tenant Improvements and before the Contractor's equipment is moved onto the site. All such policies of insurance must contain a provision that the company writing said policy will give Landlord thirty (30) days prior written notice of any cancellation or lapse of the effective date or any reduction in the amounts of such insurance. In the event that the Tenant Improvements are damaged by any cause during the course of the construction thereof, Tenant shall immediately repair the same at Tenant's sole cost and expense. Tenant's Agents shall maintain all of the foregoing insurance coverage in force until the Tenant Improvements are fully completed and accepted by Landlord, except for any Products and Completed Operation Coverage insurance required by Landlord, which is to be maintained for ten (10) years following completion of the work and acceptance by Landlord and Tenant. All policies carried under this Section 4.2.2.4 shall insure Landlord and Tenant, as their interests may appear, as well as Contractor and Tenant's Agents. All insurance, except Workers' Compensation, maintained by Tenant's Agents shall preclude subrogation claims by the insurer against anyone insured thereunder. Such insurance shall provide that it is primary insurance as respects the owner and that any other insurance maintained by owner is excess and noncontributing with the insurance required hereunder. The requirements for the foregoing insurance shall not derogate from the provisions for indemnification of Landlord by Tenant under Section 4.2.2.2 of this Tenant Work Letter. Landlord may, in its discretion, require Tenant to obtain a lien and completion bond or some alternate form of security satisfactory to Landlord in an amount sufficient to ensure the lien-free completion of the Tenant Improvements and naming Landlord as a co-obligee.

4.2.3 Governmental Compliance. The Tenant Improvements shall comply in all respects with the following: (i) the Code and other state, federal, city or quasi-governmental laws, codes, ordinances and regulations, as each may apply according to the rulings of the controlling public official, agent or other person; (ii) applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters) and the National Electrical Code; and (iii) building material manufacturer's specifications.

4.2.4 Inspection by Landlord. Tenant shall provide Landlord with reasonable prior notice of any inspection to be performed by a governmental entity in connection with the construction of the Tenant Improvements in order to allow Landlord to be present during such inspection. Landlord shall have the right to inspect the Tenant Improvements at all times, provided however, that Landlord's failure to inspect the Tenant Improvements shall in no event constitute a waiver of any of Landlord's rights hereunder nor shall Landlord's inspection of the Tenant Improvements constitute Landlord's approval of the same. Should Landlord disapprove any portion of the Tenant Improvements, Landlord shall notify Tenant in writing of such disapproval and shall specify the items disapproved. Any defects or deviations in, and/or disapproval by Landlord of, the Tenant Improvements shall be rectified by Tenant at no expense to Landlord, provided however, that in the event Landlord determines that a defect or deviation exists or disapproves of any matter in connection with any portion of the Tenant Improvements and such defect, deviation or matter might adversely affect the mechanical, electrical, plumbing, heating, ventilating and air conditioning or life-safety systems of the Building, the structure or exterior appearance of the Building or any other tenant's use of such other tenant's leased premises, Landlord may, take such action as Landlord deems necessary, at Tenant's expense and without incurring any liability on Landlord's part, to correct any such defect, deviation and/or matter, including, without limitation, causing the cessation of performance of the construction of the Tenant Improvements until such time as the defect, deviation and/or matter is corrected to Landlord's satisfaction.

4.2.5 Meetings. Commencing upon the execution of this Lease, Tenant shall hold weekly meetings at a reasonable time, with the Architect and the Contractor regarding the progress of the preparation of Construction Drawings and the construction of the Tenant Improvements, which meetings shall be held at a location designated by Landlord, and Landlord and/or its agents shall receive prior notice of, and shall have the right to attend, all such meetings, and, upon Landlord's request, certain of Tenant's Agents shall attend such meetings. In addition, minutes shall be taken at all such meetings, a copy of which minutes shall be promptly delivered to Landlord. One such meeting each month shall include the review of Contractor's current request for payment.

4.3 Notice of Completion; Copy of Record Set of Plans. Within ten (10) days after completion of construction of the Tenant Improvements, Tenant shall cause a Notice of Completion to be recorded in the office of the Recorder of the county in which the Building is located in accordance with Section 8182 of the Civil Code of the State of California or any successor statute, and shall furnish a copy thereof to Landlord upon such recordation. If Tenant fails to do so, Landlord may execute and file the same on behalf of Tenant as Tenant's agent for such purpose, at Tenant's sole cost and expense. At the conclusion of construction, (i) Tenant shall cause the Architect and Contractor (A) to update the Approved Working Drawings as necessary to reflect all changes made to the Approved Working Drawings during the course of construction, (B) to certify to the best of their knowledge that the "record-set" of as-built drawings are true and correct, which certification shall survive the expiration or termination of this Lease, and (C) to deliver to Landlord four (4) sets of copies of such record set of drawings within ninety (90) days following issuance of a certificate of occupancy for the Premises, and (ii) Tenant shall deliver to Landlord a copy of all warranties, guaranties, and operating manuals and information relating to the improvements, equipment, and systems in the Premises.

SECTION 5

MISCELLANEOUS

5.1 Tenant's Representative. Tenant has designated Bob Pope (b.pope@procept-biorobotics.com; (408) 499-7673) as its sole representative with respect to the matters set forth in this Tenant Work Letter, who shall have full authority and responsibility to act on behalf of the Tenant as required in this Tenant Work Letter.

5.2 Landlord's Representative. Landlord has designated Michael Pelletier as its sole representative with respect to the matters set forth in this Tenant Work Letter, who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of the Landlord as required in this Tenant Work Letter.

5.3 Time of the Essence in This Tenant Work Letter. Unless otherwise indicated, all references herein to a "number of days" shall mean and refer to calendar days. If any item requiring approval is timely disapproved by Landlord, the procedure for preparation of the document and approval thereof shall be repeated until the document is approved by Landlord.

5.4 Tenant's Lease Default. Notwithstanding any provision to the contrary contained in this Lease, if an Event of Default as described in the Lease or this Tenant Work Letter has occurred at any time on or before the Substantial Completion of the Premises, then (i) in addition to all other rights and remedies granted to Landlord pursuant to this Lease, Landlord shall have the right to withhold payment of all or any portion of the Tenant Improvement Allowance and/or Landlord may cause Contractor to cease the construction of the Premises (in which case, Tenant shall be responsible for any delay in the substantial completion of the Premises caused by such work stoppage), and (ii) all other obligations of Landlord under the terms of this Tenant Work Letter shall be forgiven until such time as such default is cured pursuant to the terms of this Lease (in which case, Tenant shall be responsible for any delay in the substantial completion of the Premises caused by such inaction by Landlord).

5.5 Utilities & Loading Dock. Landlord shall provide to Tenant and Tenant's agents, at no cost to Tenant, but subject to availability, normal Building power, water, restrooms and loading dock service in connection with initial construction of the Tenant Improvements, furnishing and moving into the Premises; provided, however, with respect to Tenant's use of the loading dock after Building Hours, if so requested by Tenant, Tenant shall be required to pay for the reasonable out-of-pocket costs incurred by Landlord for after-hours access control personnel.

5.6 Landlord Delay. The Lease Commencement Date shall occur as provided in Section J of the Summary, provided that the time period set forth in Section J(ii) of the Summary shall be extended by the number of days of delay of the "Substantial Completion of the Tenant Improvements," as that term is defined below, in the Premises to the extent caused by a "Landlord Delay," as that term is defined, below. As used herein, the term "**Landlord Delay**" shall mean actual delays to the extent resulting from the acts or omissions of Landlord including, but not limited to (i) material and unreasonable interference by Landlord, its agents or Landlord Parties (except as otherwise allowed under this Tenant Work Letter) with the Substantial Completion of the Tenant Improvements which objectively precludes or delays the construction of tenant improvements in the Building by any person, which interference relates to access

by Tenant, or Tenant's Agents to the Building or any Building facilities or service during normal construction hours, or the use thereof during normal construction hours; and (ii) delays due to the acts or failures to act of Landlord with respect to payment of the Tenant Improvement Allowance (except as otherwise allowed under this Tenant Work Letter).

5.6.1 Determination of Landlord Delay. If Tenant contends that a Landlord Delay has occurred, Tenant shall notify Landlord in writing (the "**Delay Notice**") of the event which constitutes such Landlord Caused Date Delay. If such actions, inaction or circumstance described in the Delay Notice are not cured by Landlord within one (1) business day of Landlord's receipt of the Delay Notice and if such action, inaction or circumstance otherwise qualify as a Landlord Delay, then a Landlord Delay shall be deemed to have occurred commencing as of the date of Landlord's receipt of the Delay Notice and ending as of the date such delay ends.

5.6.2 Definition of Substantial Completion of the Tenant Improvements. For purposes of this Section 5, "**Substantial Completion of the Tenant Improvements**" shall mean completion of construction of the Tenant Improvements in the Premises pursuant to the Approved Construction Drawings, with the exception of any punch list items.

EXHIBIT C
ACCEPTANCE AGREEMENT

This Acceptance Agreement is made as of _____, by and between the parties hereto with regard to that certain Lease dated _____, by and between 150-180 Baytech Drive CA Owner LLC, a Delaware limited liability company, as Landlord ("**Landlord**"), and _____, a _____, as Tenant ("**Tenant**"), affecting those premises located at _____, California. The parties hereto agree as follows:

1. Landlord delivered possession of the Premises to Tenant on _____, with all improvements and work, if any, required of completed in a good and workmanlike manner and otherwise in the condition required under the Lease and Tenant accepted possession of the Premises.

2. The Lease Commencement Date of the Lease Term for the Premises is _____, and the Expiration Date of Lease Term for the Premises is _____, unless sooner terminated according to the terms of the Lease.

3. Each party represents and warrants to the other that it is duly authorized to enter into this document and perform its obligations without the consent or approval of any other party and that the person signing on its behalf is duly authorized to sign on behalf of such party.

LANDLORD:

150-180 BAYTECH DRIVE CA OWNER LLC,
a Delaware limited liability company

By: Divco West Real Estate Services, Inc.,
a Delaware corporation
Its Agent

By: __
Name: __
Its: __

Dated: __

TENANT:

__
a __

By: __
Name: __
Its: __

Dated: __

EXHIBIT D
APPROVED HAZARDOUS MATERIALS EXHIBIT

[to be inserted upon completion by Tenant]

ENVIRONMENTAL QUESTIONNAIRE
FOR COMMERCIAL AND INDUSTRIAL PROPERTIES

_____**Tenant Name:**

_____**Lease Address:**

_____**Lease Type (check correct box – *right click to properties*): ☐ Primary Lease/Lessee**
☐ Sublease from:

Instructions: The following questionnaire is to be completed by the Lessee representative with knowledge of the planned operations for the specified building/location. Please print clearly and attach additional sheets as necessary.

1.0 PROCESS INFORMATION

Describe planned site use, including a brief description of manufacturing processes and/or pilot plants planned for this site, if any.

_____

_____

_____

2.0 HAZARDOUS MATERIALS – OTHER THAN WASTE

Will (or are) non-waste hazardous materials be/being used or stored at this site? If so, continue with the next question. If not, go to Section 3.0.

2.1 Are any of the following materials handled on the Property? ☐ Yes ☐ No

[*A material is handled if it is used, generated, processed, produced, packaged, treated, stored, emitted, discharged, or disposed.]* If YES, check *(right click to properties)* the applicable correct Fire Code hazard categories below.

☐	Combustible dusts/fibers	☐	Explosives	☐	Flammable liquids
☐	Combustible liquids (e.g., oils)	☐	Compressed gas - inert	☐	Flammable solids/pyrophorics
☐	Cryogenic liquids - inert	☐	Compressed gas - flammable/pyrophoric	☐	Organic peroxides
☐	Cryogenic liquids - flammable	☐	Compressed gas - oxidizing	☐	Oxidizers - solid or liquid
☐	Cryogenic liquids - oxidizing	☐	Compressed gas - toxic	☐	Reactives - unstable or water reactive
☐	Corrosives - solid or liquid	☐	Compressed gas - corrosive	☐	Toxics - solid or liquid

2-2. For all materials checked in Section 2.1 above, please list the specific material(s), use(s), and quantities of each used or stored on the site in the table below; or attach a separate inventory. *NOTE: If proprietary, the constituents need not be named but the hazard information and volumes are required.*

Material/ Chemical	Physical State (Solid, Liquid, or Gas)	Container Size	Number of Containers Used & Stored	Total Quantity	Units (pounds for solids, gallons or liters for liquids, & cubic feet for gases)

2-3. Describe the planned storage area location(s) for the materials in Section 2-2 above. Include site maps and drawings as appropriate.

2-4. Other hazardous materials. Check below (*right click to properties)* if applicable. *NOTE: If either of the latter two are checked (BSL-3 and/or radioisotope/radiation), be advised that not all lease locations/cities or lease agreements allow these hazards; and if either of these hazards are planned, additional information will be required with copies of oversight agency authorizations/licenses as they become available.*

☐	Risk Group 2/Biosafety Level-2 Biohazards	☐	Risk Group 3/Biosafety Level-3 Biohazards	☐	Radioisotopes/Radiation

3.0 HAZARDOUS WASTE (i.e., REGULATED CHEMICAL WASTE)

Are (or will) hazardous wastes (be) generated? ☐ Yes ☐ No

If YES, continue with the next question. If not, skip this section and go to section 4.0.

3.1 Are or will any of the following hazardous (CHEMICAL) wastes generated, handled, or disposed of (where applicable and allowed) on the property?

☐	Liquids	☐	Process sludges	☐	PCBs
☐	Solids	☐	Metals	☐	wastewater

3-2. List and estimate the quantities of hazardous waste identified in Question 3-1 above.

HAZRDOUS (CHEMICAL) WASTE GENERATED	SOURCE	WASTE TYPE		APPROX. MONTHLY QUANTITY with units	DISPOSITION [e.g., off-site landfill, incineration, fuel blending scrap metal; wastewater neutralization (onsite or off-site)]
		RCRA listed (federal)	Non-RCRA (Calif-ornia ONLY or recycle)		
		FORMCHECKBOX	FORMCHECKBOX		
		FORMCHECKBOX	FORMCHECKBOX		
		FORMCHECKBOX	FORMCHECKBOX		
		FORMCHECKBOX	FORMCHECKBOX		
		FORMCHECKBOX	FORMCHECKBOX		

3-3. Waste characterization by: Process knowledge ☐ EPA lab analysis ☐ Both ☐

3-4. Please include name, location, and permit number (e.g. EPA ID No.) for transporter and disposal facility if applicable. Attach separate pages as necessary. *If not yet known, write "TBD."*

Hazardous Waste Transporter/Disposal Facility Name	Facility Location	Transporter (T) or Disposal (D) Facility	Permit Number

3-5. Are pollution controls or monitoring employed in the process to prevent or minimize the release of wastes into the environment? *NOTE: This does NOT mean fume hoods; examples include air scrubbers, cyclones, carbon or HEPA filters at building exhaust fans, sedimentation tanks, pH neutralization systems for wastewater, etc.*

☐ Yes ☐ No

_____If YES, please list/describe:

_____

_____

4.0 OTHER REGULATED WASTE (i.e., REGULATED BIOLOGICAL WASTE, referred to as "Medical Waste" in California)

4-1. Will (or do) you generate medical waste? ☐ Yes ☐ No If NO, skip to Section 5.0.

4-2. Check the types of waste that will be generated, all of which fall under the California Medical Waste Act:

☐	Contaminated sharps (i.e., if contaminated with ≥ Risk Group 2 materials)	☐	Animal carcasses	☐	Pathology waste known or suspected to be contaminated with ≥ Risk Group 2 pathogens)
☐	Red bag biohazardous waste (i.e., with ≥ Risk Group 2 materials) for autoclaving	☐	Human or non-human primate blood, tissues, etc. (e.g., clinical specimens)	☐	Trace Chemotherapeutic Waste and/or Pharmaceutical waste NOT otherwise regulated as RCRA chemical waste

4-3. What vendor will be used for off-site autoclaving and/or incineration?

_____

4-5. Do you have a Medical Waste Permit for this site? ☐ Yes ☐ No, not required.
☐ No, but an application will be submitted.

5.0 UNDERGROUND STORAGE TANKS (USTS) & ABOVEGROUND STORAGE TANKS (ASTS)

5-1. Are underground storage tanks (USTs), aboveground storage tanks (ASTs), or associated pipelines used for the storage of petroleum products, chemicals, or liquid wastes present on site (lease renewals) or required for planned operations (new tenants)? ☐ Yes ☐ No

NOTE: If you will have your own diesel emergency power generator, then you will have at least one AST! [NOTE: If a backup generator services multiple tenants, then the landlord usually handles the permits.]

If NO, skip to section 6.0. If YES, please describe capacity, contents, age, type of the USTs or ASTs, as well any associated leak detection/spill prevention measures. Please attach additional pages if necessary.

UST or AST	Capacity (gallons)	Contents	Year Installed	Type (Steel, Fiberglass, etc.)	Associated Leak Detection / Spill Prevention Measures*

*NOTE: The following are examples of leak detection / spill prevention measures: integrity testing, inventory reconciliation, leak detection system, overfill spill protection, secondary containment, cathodic protection.

5-2. Please provide copies of written tank integrity test results and/or monitoring documentation, if available.

5-3. Is the UST/AST registered and permitted with the appropriate regulatory agencies? ☐ Yes ☐ No, not yet

If YES, please attach a copy of the required permit(s). *See Section 7-1 for the oversight agencies that issue permits, with the exception of those for diesel emergency power generators which are permitted by the local Air Quality District (Bay Area Air Quality Management District = BAAQMD; or San Diego Air Pollution Control District = San Diego APCD).*

5-4. If this Questionnaire is being completed for a lease renewal, and if any of the USTs/ASTs have leaked, please state the substance released, the media(s) impacted (e.g., soil, water, asphalt, etc.), the actions taken, and all remedial responses to the incident.

5-5. If this Questionnaire is being completed for a lease renewal, have USTs/ASTs been removed from the Property?
☐ Yes ☐ No

If YES, please provide any official closure letters or reports and supporting documentation (e.g., analytical test results, remediation report results, etc.).

5-6. For Lease renewals, are there any above or below ground pipelines on site used to transfer chemicals or wastes?
☐ Yes ☐ No

For new tenants, are installations of this type required for the planned operations? ☐ Yes ☐ No

If YES to either question in this section 5-6, please describe.

6.0 ASBESTOS CONTAINING BUILDING MATERIALS

Please be advised that an asbestos survey may have been performed at the Property. If provided, please review the information that identifies the locations of known asbestos containing material or presumed asbestos containing material. All personnel and appropriate subcontractors should be notified of the presence of these materials, and informed not to disturb these materials. Any activity that involves the disturbance or removal of these materials must be done by an appropriately trained individual/contractor.

7.0 OTHER REGULATORY PERMITS/REQUIREMENTS

7-1. Does the operation have or require an industrial wastewater permit to discharge into the local National Pollutant Discharge Elimination System (NPDES)? *[Example: This applies when wastewater from equipment cleaning is routed through a pH neutralization system prior to discharge into the sanitary or lab sewer for certain pharmaceutical manufacturing wastewater; etc.]* Permits are obtained from the regional sanitation district that is treating wastewater.

☐ Yes ☐ No ☐ No, but one will be prepared and submitted to the Landlord property management company.

If so, please attach a copy of this permit or provide it later when it has been prepared.

7-2. Has a Hazardous Materials Business Plan (HMBP) been developed for the site and submitted via the State of California Electronic Reporting System (CERS)? *[NOTE: The trigger limits for having to do*

this are ≥ 200 cubic feet if any one type of compressed gas(except for carbon dioxide and inert simple asphyxiant gases, which have a higher trigger limit of ≥ 1,000 cubic feet); ≥ 55 gallons if any one type of hazardous chemical liquid; and ≥500 pounds of any one type of hazardous chemical solid. So a full-sixe gas cylinder and a 260-liter of liquid nitrogen are triggers! Don't forget the diesel fuel in a backup emergency generator if the diesel tank size is ≥ 55 gallons and it is permitted under the tenant (rather than under the landlord).] NOTE: Each local Certified Unified Program Agency (CUPA) in California governs the HMBP process so start there.

☐ Yes ☐ No, not required. ☐ No, but one will be prepared and submitted, and a copy will be provided to the landlord property management company.

If one has been completed, please attach a copy. Continue to provide updated versions as they are completed. This is a legal requirement in that State law requires that the owner/operator of a business located on leased or rented real property shall notify, in writing, the owner of the property that the business is subject to and is in compliance with the Hazardous Materials Business Plan requirements (Health and Safety Code Chapter 6.95 Section 25505.1).

7-3. NOTE: Please be advised that if you are involved in any tenant improvements that require a construction permit, you will be asked to provide the local city with a Hazardous Materials Inventory Statement (HMIS) to ensure that your hazardous chemicals fall within the applicable Fire Code fire control area limits for the applicable construction occupancy of the particular building. The HMIS will include much of the information listed in Section 2-2. Neither the landlord nor the landlord's property management company expressly warrants that the inventory provided in Section 2-2 will necessarily meet the applicable California Fire Code fire control area limits for building occupancy, especially in shared tenant occupancy situations. It is the responsibility of the tenant to ensure that a facility and site can legally handle the intended operations and hazardous materials desired/ needed for its operations, but the landlord is happy to assist in this determination when possible.

CERTIFICATION

I am familiar with the real property described in this questionnaire. By signing below, I represent and warrant that the answers to the above questions are complete and accurate to the best of my knowledge. I also understand that Lessor will rely on the completeness and accuracy of my answers in assessing any environmental liability risks associated with the property.

_____

Signature:

_____Name:

_____Title:

_____Date:

_____

Telephone:

HAZARDOUS MATERIALS BUSINESS PLAN

Insured: _____

Date: _____

1. Address, City, State, Country

_____

_____

2. Building Usage

_____

3. Building Status

_____ Leased
_____ Owned

4. Who Insures Building

_____ We do
_____ Landlord

5. Other Type of Occupants of Building (if Any) _____

6. Total Building Square Footage _____

_____ Percent Occupied by Insured

7. Type of Construction _____

_____

8. Year Built _____

9. No. of Stories _____

10. Protective Devices

	Yes	**No**
Is Building Sprinklered?	_____	_____
Fire Alarms?	_____	_____
Smoke Alarms?	_____	_____
Burglar Alarms?	_____	_____
24-hour Guards	_____	_____
Are protective devices central station?	_____	_____

11. Values (Replacement Cost except Finished Goods at Sales Price):

_____ Clean Room (Class?_____ square footage?_____)
_____ Leasehold Improvements
_____ Furniture, Fixtures, Equipment
_____ Electronic Data Processing Hardware (Computers, printers, etc, EXCLUDING Software)
_____ Inventory
_____ Lab Equipment
_____ Vivarium (Square footage? _____)
_____ Perishable Property

EXHIBIT E
FORM OF TENANT ESTOPPEL

The undersigned, as Tenant under that certain Lease (the "**Lease**") made and entered into as of _____, 20___ by and between 150-180 BAYTECH DRIVE CA OWNER LLC, as Landlord, and the undersigned, as Tenant, for Premises located at _____, certifies as follows:

1. Attached hereto as Schedule 1 is a true and correct copy of the Lease and all amendments and modifications thereto. The documents contained in Schedule 1 represent the entire agreement between the parties as to the Premises.

2. The undersigned currently occupies the Premises described in the Lease, the Lease Term commenced on _____, and the Lease Term expires on _____, and the undersigned has no option to terminate or cancel the Lease or to purchase all or any part of the Premises, the Building and/or the Project.

3. Base Monthly Rent became payable on _____.

4. The Lease is in full force and effect and has not been modified, supplemented or amended in any way except as provided in Schedule 1.

5. Tenant has not transferred, assigned, or sublet any portion of the Premises, nor entered into any license or concession agreements with respect thereto except as follows:__.

6. Tenant shall not modify the documents contained in Schedule 1 without the prior written consent of Landlord's mortgagee.

7. All monthly installments of Base Monthly Rent, all Additional Rent and all monthly installments of estimated Additional Rent have been paid when due through _____. Base Monthly Rent is currently payable at the rate of $_____.

8. All conditions of the Lease to be performed by Landlord necessary to the enforceability of the Lease have been satisfied and Landlord is not in default thereunder. In addition, the undersigned has not delivered any notice to Landlord regarding a default by Landlord thereunder.

9. No rental has been paid more than thirty (30) days in advance and no security has been deposited with Landlord except the Security Deposit in the amount of $_____, as provided in the Lease.

10. As of the date hereof, there are no existing defenses or offsets, or, to the undersigned's actual knowledge, claims or any basis for a claim, that the undersigned has against Landlord.

11. If Tenant is a corporation, limited liability company, partnership or limited liability partnership, each individual executing this Estoppel Certificate on behalf of Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in California and that Tenant has full right and authority to execute and deliver this Estoppel Certificate and that each person signing on behalf of Tenant is authorized to do so.

12. There are no actions pending against the undersigned under the bankruptcy or similar laws of the United States or any state.

13. Other than in compliance with all applicable laws and incidental to the ordinary course of the use of the Premises, the undersigned has not used or stored any hazardous substances in the Premises.

14. All tenant improvement work to be performed by Landlord under the Lease has been completed in accordance with the Lease and has been accepted by the undersigned and all reimbursements and allowances due to the undersigned under the Lease in connection with any tenant improvement work have been paid in full.

15. Tenant has not been granted an early termination right or option under the Lease.

16. Tenant has not been granted a purchase option with respect to the Premises, the Building and/or the Project under the Lease.

17. Tenant has not been granted a right of first refusal and/or a right of first offer on other space contained in the Building and/or the Project under the Lease.

The undersigned acknowledges that this Estoppel Certificate may be delivered to Landlord or to a prospective mortgagee or prospective purchaser, and acknowledges that said prospective mortgagee or prospective purchaser will be relying upon the statements contained herein in making the loan or acquiring the property of which the Premises are a part and that receipt by it of this certificate is a condition of making such loan or acquiring such property.

Executed at _____ on the ____ day of _____, 20__.

"Tenant":

__,
a __

_____
By: __
Its: __

_____
By: __
Its: __

SCHEDULE 1 TO EXHIBIT E
LEASE DOCUMENTS

[to be attached]

EXHIBIT F
OPTION TERM(S)

1. Option Right. Landlord hereby grants to the originally named Tenant herein (the "**Original Tenant**") and any Permitted Transferee Assignee two (2) option(s) to extend the Lease Term each for a period of five (5) years (each an "**Option Term**" and, together, the "**Option Terms**"). Such option shall be irrevocably exercised only by written notice delivered by Tenant to Landlord no earlier than fifteen (15) months and no later than twelve (12) months prior to the expiration of the Lease Term (or initial Option Term, as applicable), provided that the following conditions (the "**Option Conditions**") are satisfied: (i) as of the date of delivery of such notice, Tenant is not then in default under this Lease; (ii) as of the end of the Lease Term (or initial Option Term, as applicable), Tenant is not then in default under this Lease; (iii) Tenant has not previously been in default under this Lease beyond any applicable notice and cure period; and (iv) the Lease then remains in full force and effect and Original Tenant occupies the entire Premises at the time the option to extend is exercised and as of the commencement of the Option Term. Landlord may, at Landlord's option, exercised in Landlord's sole and absolute discretion, waive any of the Option Conditions in which case the option, if otherwise properly exercised by Tenant, shall remain in full force and effect. Upon the proper exercise of such option to extend, and provided that Tenant satisfies all of the Option Conditions (except those, if any, which are waived by Landlord), the Lease Term, as it applies to the Premises, shall be extended for a period of five (5) years. The rights contained in this Section 1 shall be personal to Original Tenant and may be exercised by Original Tenant only (and not by any assignee, sublessee or other Transferee, of Tenant's interest in this Lease).

2. Option Rent. The annual Rent payable by Tenant during the Option Term (the "**Option Rent**") shall be equal to the Fair Market Rent Rate, as that term is defined below, for the Premises as of the commencement date of the Option Term. The "**Fair Market Rent Rate**," as used in this Lease, shall be equal to the annual rental rate per rentable square foot projected as of the start of the Option Term (including additional rent and considering any "base year" or "expense stop" applicable thereto), including all escalations, at which tenants (pursuant to recently consummated leases projected to the first day of the Option Term), are leasing non-sublease, non-encumbered, non-equity space comparable in size, location and quality to the Premises, for a term of five (5) years, in an arm's length transaction, which comparable space is located in Comparable Buildings, as that term is defined in this Section 2, below (transactions satisfying the foregoing criteria shall be known as the "**Comparable Transactions**"), taking into consideration the following concessions (the "**Concessions**"): (a) rental abatement concessions, if any, being granted such tenants in connection with such comparable space; (b) tenant improvements or allowances provided or to be provided for such comparable space, and taking into account the value, if any, of the existing improvements in the subject space, such value to be based upon the age, condition, design, quality of finishes and layout of the improvements; and (c) other reasonable monetary concessions being granted such tenants in connection with such comparable space; provided, however, that in calculating the Fair Market Rent Rate, no consideration shall be given to any period of rental abatement, if any, granted to tenants in Comparable Transactions in connection with the design, permitting and construction of tenant improvements in such comparable spaces. The Fair Market Rent Rate shall additionally include a determination as to whether, and if so to what extent, Tenant must provide Landlord with financial security, such as a letter of credit or guaranty, for Tenant's Rent obligations in connection with Tenant's lease of the Premises during the Option Term. Such determination shall be made by reviewing the extent of financial security then generally being imposed in Comparable Transactions from tenants of comparable financial condition and credit history to the then existing financial condition and credit history of Tenant (with appropriate adjustments to account for differences in the then-existing financial condition of Tenant and such other tenants). The Concessions (A) shall be reflected in the effective rental rate (which effective rental rate shall take into consideration the total dollar value of such Concessions as amortized on a straight-line basis over the applicable term of the Comparable Transaction (in which case such Concessions evidenced in the effective rental rate shall not be granted to Tenant)) payable by Tenant, or (B) at Landlord’s election, all such Concessions shall be granted to Tenant in kind. For purposes of this Lease, the term "**Comparable Buildings**" shall mean the Building and those certain other comparable institutionally-owned research and development and/or life science buildings of similar size, age, location, quality of appearance and services to the Building, and located in the San Jose, California area.

3 Determination of Option Rent. In the event Tenant timely and appropriately exercises its option to extend the Lease Term pursuant to Section 1, above, Landlord shall deliver written notice (the "**Landlord Response Notice**") to Tenant on or before the date which is thirty (30) days after Landlord's receipt of the Exercise Notice of Landlord's determination of the Option Rent. Within ten (10) days following its receipt of the Landlord Response Notice, Tenant shall notify Landlord in writing whether it accepts or objects to the Option Rent set forth in Landlord's Response Notice. In the event that Tenant in good faith objects to Landlord's determination of the Option Rent, then Landlord and Tenant shall meet and attempt to agree upon the Option Rent using their best good-faith efforts. If Landlord and Tenant fail to reach agreement on or before the date that is ninety (90) days prior to the expiration of the initial Lease Term (or initial Option Term, as applicable) (the "**Outside Agreement Date**"), then the Option Rent

shall be determined by arbitration pursuant to the terms of this Section 3. Each party shall make a separate determination of the Option Rent, within five (5) days following the Outside Agreement Date, and such determinations shall be submitted to arbitration in accordance with Section 3.1 through Section 3.4, below. The determination of the arbitrators shall be made by taking into consideration all Comparable Transactions as calculated by calculating the net rent, which net rent shall then be adjusted on an effective basis, which net effective rent shall then be present valued and reduced by all upfront concessions and, thereafter, shall be future valued into an average annual constant rental rate figure (collectively, the "**Constant Rate Equivalent Approach**").

3.1 Landlord and Tenant shall each appoint one arbitrator who shall by profession be a MAI appraiser, real estate broker, or real estate lawyer who shall have been active over the five (5) year period ending on the date of such appointment in the appraising and/or leasing of institutionally-owned properties in the vicinity of the Building. The determination of the arbitrators shall be limited solely to the issue area of whether Landlord's or Tenant's submitted Option Rent is the closest to the actual Option Rent as determined by the arbitrators, taking into account the requirements of Section 2, above. Each such arbitrator shall be appointed within fifteen (15) days after the Outside Agreement Date. Landlord and Tenant may consult with their selected arbitrators prior to appointment and may select an arbitrator who is favorable to their respective positions (including an arbitrator who has previously represented Landlord and/or Tenant, as applicable). The arbitrators so selected by Landlord and Tenant shall be deemed "**Advocate Arbitrators**."

3.2 The two Advocate Arbitrators so appointed shall be specifically required pursuant to an engagement letter within ten (10) days of the appointment of the last appointed Advocate Arbitrator to agree upon and appoint a third arbitrator ("**Neutral Arbitrator**") who shall be qualified under the same criteria set forth hereinabove for qualification of the two Advocate Arbitrators except that (i) neither the Landlord or Tenant or either parties' Advocate Arbitrator may, directly, or indirectly, consult with the Neutral Arbitrator prior or subsequent to his or her appearance, and (ii) the Neutral Arbitrator cannot be someone who has represented Landlord and/or Tenant during the five (5) year period prior to such appointment. The Neutral Arbitrator shall be retained via an engagement letter jointly prepared by Landlord's counsel and Tenant's counsel.

3.3 Within ten (10) days following the appointment of the Arbitrator, Landlord and Tenant shall enter into an arbitration agreement (the "**Arbitration Agreement**") which shall set forth the following:

3.3.1 Each of Landlord's and Tenant's best and final and binding determination of the Option Rent exchanged by the parties pursuant to Section 3, above;

3.3.2 An agreement to be signed by the Neutral Arbitrator, the form of which agreement shall be attached as an exhibit to the Arbitration Agreement, whereby the Neutral Arbitrator shall agree to undertake the arbitration and render a decision in accordance with the terms of this Lease, as modified by the Arbitration Agreement, and shall require the Neutral Arbitrator to demonstrate to the reasonable satisfaction of the parties that the Neutral Arbitrator has no conflicts of interest with either Landlord or Tenant;

3.3.3 Instructions to be followed by the Neutral Arbitrator when conducting such arbitration;

3.3.4 That Landlord and Tenant shall each have the right to submit to the Neutral Arbitrator (with a copy to the other party), on or before the date that occurs fifteen (15) days following the appointment of the Neutral Arbitrator, an advocate statement (and any other information such party deems relevant) prepared by or on behalf of Landlord or Tenant, as the case may be, in support of Landlord's or Tenant's respective determination of Option Rent (the "**Briefs**");

3.3.5 That within five (5) business days following the exchange of Briefs, Landlord and Tenant shall each have the right to provide the Neutral Arbitrator (with a copy to the other party) with a written rebuttal to the other party's Brief (the "**Rebuttals**"); provided, however, such First Rebuttals shall be limited to the facts and arguments raised in the other party's Brief and shall identify clearly which argument or fact of the other party's Brief is intended to be rebutted;

3.3.6 The date, time and location of the arbitration, which shall be mutually and reasonably agreed upon by Landlord and Tenant, taking into consideration the schedules of the Neutral Arbitrator, the Advocate Arbitrators, Landlord and Tenant, and each party's applicable consultants, which date shall in any event be within forty-five (45) days following the appointment of the Neutral Arbitrator;

3.3.7 That no discovery shall take place in connection with the arbitration, other than to verify the factual information that is presented by Landlord or Tenant;

3.3.8 That the Neutral Arbitrator shall not be allowed to undertake an independent investigation or consider any factual information other than presented by Landlord or Tenant, except that the Neutral Arbitrator shall be permitted to visit the Project and the buildings containing the Comparable Transactions;

3.3.9 The specific persons that shall be allowed to attend the arbitration;

3.10 Tenant shall have the right to present oral arguments to the Neutral Arbitrator at the arbitration for a period of time not to exceed two (2) hours ("**Tenant's Initial Statement**");

3.3.11 Following Tenant's Initial Statement, Landlord shall have the right to present oral arguments to the Neutral Arbitrator at the arbitration for a period of time not to exceed two (2) hours ("**Landlord's Initial Statement**");

3.3.12 Following Landlord's Initial Statement, Tenant shall have one (1) additional hour to present additional arguments and/or to rebut the arguments of Landlord ("**Tenant's Rebuttal Statement**");

3.3.13 Following Tenant's Rebuttal Statement, Landlord shall have one (1) additional hour to present additional arguments and/or to rebut the arguments of Tenant;

3.3.14 That, not later than ten (10) days after the date of the arbitration, the Neutral Arbitrator shall render a decision (the "**Ruling**") indicating whether Landlord's or Tenant's submitted Option Rent is closer to the Option Rent;

3.3.15 That following notification of the Ruling, Landlord's or Tenant's submitted Option Rent determination, whichever is selected by the Neutral Arbitrator as being closer to the Option Rent shall become the then applicable Option Rent;

3.3.16 That the decision of the Neutral Arbitrator shall be binding on Landlord and Tenant; and

3.3.17 If a date by which an event described in Section 3.3, above, is to occur falls on a weekend or a holiday, the date shall be deemed to be the next business day.

3.4 In the event that the Option Rent shall not have been determined pursuant to the terms hereof prior to the commencement of the Option Term, Tenant shall be required to pay the average of the Option Rent submitted by Landlord to the arbitration and the Option Rent submitted by Tenant to the arbitration, and upon the final determination of the Option Rent, the payments made by Tenant shall be reconciled with the actual amounts due, and the appropriate party shall make any corresponding payment to the other party.

EXHIBIT G
PRIOR TENANT'S FF&E

[ATTACHED]

150/160 Baytech - Furniture, Fixtures and Equipment Inventory List - December 10, 2021				
Room Name	**Room Number**	**FFE Description**	**Quantity**	**Disposition Comments**
		150 Baytech First Floor		
CE Manufacturing	B51.A.22.010	72" x 30" Lab Benches	30	Adjustable Height
		ESD Lab Stools	30	Black with Casters
IDF Room	B51.N.X4.002	Cambridge QT600 Sound Masking System Controller	1	
Finish Goods VLM	B51.A.12.030	KardexRemstar Element Vertical Lift Module	1	
Security Operations Center	B51.N.S6.001	Video Displays 43" Samsung	6	
		Video Display 55" LG with direct TV	1	
		Adjustable Height tables 48"x29"	1	
		Desk Chairs	4	
		Adjustable Height Tables 70"x29"	2	
		Metal File Cabinet with 4 drawers	2	
		Cushion seating single drawer lateral file	1	
		Small side desk (double drawers)	2	
		Storage Cabinets	1	
Security Office	B51.N.S6.002	Adjustable Height Table 70"x29"	1	
		Desk Chair	1	
		Guest Chairs	2	
		Side table with locker 48"W x 24"D x 28"H	1	
		Small side desk (double drawers)	1	
B150 East Vestibule	B51.N.W4.003	Single Lobby Chairs	2	Brown
		Side table stool	1	Wood
		Lockers (4 doors) 24"W x 18"D x 30"H	2	Grey
		Video Display - 55" Samsung	1	Mounted in Recessed Opening
Huddle Room A	B51.N.M1.001	Huddle Chair (single sofa seat)	4	Tan
		Small Side Tables - 14"w x 18"d x 26"h	3	White
		Audio Visual Display	1	
B150 MDF	B51.N.X4.001	Stem Corporation Battery Storage System (Leased)	1	
Pair 39 Conference Room	B51.N.M2.001	Conference Table - 108"Wx60"x27"	1	White
		Conference Chairs	5	Gray
		Side Bench - 70"w x17"H x22"D	1	Gray
		Glass Marker Board - 72"W x 48"H	1	
		Audio Visual Display - 75" Samsung	1	
Huddle Room B	B51.N.M1.002	Conference Table 72"W x 34"D x 29"H	1	White
		Glass Marker Board - 48"W x 36"H	1	
		Huddle Room Chairs	4	Blue
		Audio Visual Display - 55" Samsung	1	
Flex Office 1	B51.A.33.001	30" x 72" Adjustable Height Table	1	White
		Side table 72"W x 24"D x 29"H	1	White
		Side Table with Locker 48"W x 24"D x 28"H	1	White
		Guest Chairs	2	Dark Blue
		Desk Chair	1	Gray
Flex Office 2	B51.A.33.002	30" x 72" Adjustable Height Table	1	White
		Side table 72"W x 24"D x 29"H	1	White
		Side Table with Locker 48"W x 24"D x 28"H	1	White
		Guest Chairs	2	Dark Blue
		Desk Chair	1	Gray
Flex Office 3	B51.A.33.003	30" x 72" Adjustable Height Table	1	White
		Side Table 72"W x 24"D x 29"H	1	White
		Glass Marker Board - 48"W x 36"H	1	
		Lateral File - 36"w x 15"d x 15"h	1	White with Orange Top
		Desk Chair	1	Gray
		Metal Storage Cabinet with 2 Drawers	1	White
		Guest Chairs	2	Dark Blue
Copy/Print Room	B51.A.33.004	Table - 36"w x 24"d x 28"h	1	White
		Table 72"W x 24"D x 29"H	1	White
		Small Side Table - 24" x 36"	1	White

Room Name	Room Number	FFE Description	Quantity	Disposition Comments
Flex Office 4	B51.A.33.005	Metal Cabinet with 2 Drawers	1	White
		Guest Chairs	2	Blue
		Desk Chair	1	Gray
Huddle Room C	B51.N.M1.003	Conference Table 72"W x 34"D x 42"H	1	White
		Glass Marker Board - 48"W x 36"H	1	
		Huddle Room Bar Height Chairs	4	Blue
		Audio Visual Display - 55" Samsung	1	
Phone Room	B51.N.M5.001	Seated Cushion Chair	1	Blue
		Ottoman Seating	1	White with Orange Top
		Table Small - 30" x 30"	1	White
Phone Room	B51.N.M5.002	Working Desk 72"W x 30"D x 28"H	1	White
		Conference Chair	1	Gray
	B51.A.33.006	Adjustable Height Working Desk 72"W x 30"D x 28"H	1	White
		Storage Unit - 24" x 24"	1	White
		Table - 24" D x 48"w x 28"h	1	White
		Under Table Storage Units	2	White
		Desk Chair	1	Gray
		Guest Chairs	2	Blue
Huddle Room D	B51.N.M1.004	Conference Table	1	White
		Huddle Room Chairs	4	
		Audio Visual Display - 55" Samsung (Replace with 65" From IT Inventory)	1	
Flex Office 6	B51.A.33.007	Table	1	White
		Desk Chair	1	Gray
Fisherman's Wharf Conference Room	B51.N.M2.002	Conference Table - 108"x60"x37"	1	White
		Conference Chairs	7	Gray
		Glass Marker Board - 72"W x 48"H	1	
		Audio Visual Display - 75" Samsung	1	
Golden Gate Conference Room	B51.N.M5.001	Conference Table - 192"x60"x48"	1	White
		Glass Marker Board - 96"x48H	1	
		Side Bench - 70"w x17"H x12"D	4	Gray
		Credenza - 72"W x36"H x24D	1	Wood Plastic Laminate
		Conference Room Chairs	13	Gray
		Audio Visual Display - 85" Samsung	1	
Town Square	B51.N.C5.001	Bench Seating double side	2	Blue
		Bench Seating single side	2	Blue
		Break Room Tables 36x36 x 29"H	5	White
		Break Room Table 30" Diameter	1	White
		Break Room Tables 48"Wx30"D x 29"H	3	White
		Break Room Stools	3	White
		Break Room Chairs	14	Wood
		Video Display - 55" LG For Direct TV	1	
North Vestibule	B51.N.W4.012	Bicycle Repair Rack	1	Black
		Video Display - 55" Samsung	1	
Town Square Prep Room	B51.N.C5.002	Refrigerators	3	Black
		Microwave Overs	7	
Manufacturing Engineering Lab	B51.A.24.010	Lab Benches	6	White
		Lab Stools	7	4 Gray, 3 Blue
Accessories Manufacturing Lab	B51.A.24.020	Lab Benches - Adjustable Height	2	White
		Lab Stools	3	Black
DI Water Room	B51.N.X5.005	Water Softener System	1	
		DI Water System	1	Does not include leased exchangeable resin tanks
Lockers	B51.A.22.060	Personnel Lockers (64 individual lockers)	1	
		Covering Lockers (96 individual lockers)	1	
West Vestibule	B51.N.W4.011	Audio Visual Display - 55" Samsung	1	
Finished Goods Release	B51.A.12.010	Warehouse Pallet Racking - 144"H x 148"W x 42"D (6 Racks Wide)	6	
		Metal Storage Racks (4 shelves) 84"H x60"W x 24"D	5	
		Warehouse Pallet Racking - 144"H x 448"W x 42"D (6 Racks Wide)	1	
		Warehouse Pallet Racking - 144"H x 304"W x 42"D (4 Racks Wide)	4	

Room Name	Room Number	FFE Description	Quantity	Disposition Comments
Finished Goods Distribution Center	B51.A.12.020	30" x 72" Adjustable Height Table	5	White
		Working desk 96"W x 36"D x 32"H	1	White
		Desk Chairs	6	Gray
Shipping	B51.A.14.010	Warehouse Pallet Racking - 120"H x 198"W x 48"D (4 Racks Wide)	4	
		Warehouse Pallet Racking - 120"H x 102"W x 48"D (2 Racks Wide)	2	
Lobby	B51.N.W1.001	Sofa: 82" x 90"(L-Shape)	1	Gray
		Video Display - 85" Samsung	1	
		Small Table	1	Marble Top
		Desk Chair	2	Gray
		Reception Desk	1	
		Small 42" Diameter Table	1	Marble Top
Finished Goods VLM	B51.A.12.020	KardexRemstar "Element" Series Vertical Lift Module (27 feet high)	1	
160 Baytech First Floor				
Receiving	B61.A.12.010	Warehouse Pallet Racking - 112"H x 298"W x 48"D (4 Racks Wide)	2	
		Warehouse Pallet Racking - 144"H x 200"W x 48"D (4 Racks Wide)	1	
		Warehouse Pallet Racking - 144"H x 100"W x 48"D (4 Racks Wide)	1	
		Storage Shelves - 184"H x 48"W x 23"D	2	
		Display Samsung 70"	1	
		Small Table 36"w x 24"d x 28"h	1	White
		Adjustable Height desk 70"x29"	3	White
		Desk Chair	3	Grey
		Under table double drawers	4	White
Incoming Quality Assurance	B61.A.25.010	Lab Benches	9	White Top, Blue Frame
		Lab Chairs	4	
		Desk Chair	8	Black
Decontamination Lab	B61.A.15.010	Lab Benches	4	White
		lab Chairs	3	Black
Stockroom	B61.A.11.010	Warehouse Pallet Racking - 120"H x 300"W x 48"D (2 Racks Wide)	1	
		Warehouse Pallet Racking - 120"H x 198"W x 48"D (4 Racks Wide)	3	
		Warehouse Pallet Racking - 120"H x 400"W x 48"D (8 Racks Wide)	1	
		Industrial Shelving - 96"H x 60"W x 36"D	9	
		Industrial Shelving - 132"H x 48"W x 24"D	3	
		Industrial Shelving - 82"Hx 48"W x 24"D	4	
		Adjustable Desk 58"x29"	4	White
		Adjustable Desk 70"x29"	2	White
		Under Table small double Shelves drawers	7	White
		Display Samsung 70"	1	
		Lab Chairs	7	
Stock Room VLM	B61.A.11.020	KardexRemstar "Element" Series Vertical Lift Module (27 feet high)	2	
West Vestibule	B63.N.W1.001	Video Display - 55" Samsung	1	
B160 MEP	B63.N.X4.001	Stem Corporation Battery Storage System (Leased)	1	Need to Transfer Ownership
Facilities Shop	B61.N.35.001	Lab Benches	7	
		High Density Storage System Shelves - 8 Shelf Rows	1	
		Lab Chairs	5	
Repair Operations	B61.A.23.010	Lab Benches	27	
		Lab Chairs	27	
		Display Samsung 75"	1	
Phone Room	B61.N.M5.001	Small Table 25"w x 25"d x 15"h	1	White
		Chair	2	
Phone Room	B61.N.M5.002	Small Table 25"w x 25"d x 15"h	1	White
		Chair	2	
Innovation Center	B61.N.C3.010	Undercounter Refrigerators	2	Stainless Steel
		Break Room Tables - 42" x 42"	5	Green
		Break Room Chairs	18	Wood
		Break Room Tables - 96" x 36"	5	White
		Break Room Bar Height Table	3	Black
		Break Room Bar Height Stools	3	Wood
		56" LG Audio Visual Display (for Direct TV)	1	

Room Name	Room Number	FFE Description	Quantity	Disposition Comments
Abele Conference Room	B61.N.M3.001	Conference Table - 16'-0" x 4'-0"	1	White
		Credenza 6'-0" x 2'-0"	1	Brown
		Credenza 6'-0" x 2'-0"	1	Brown
		Glass Marker Board - 8'-0" x 4'-0"	1	
		Conference Room Chairs	10	
		Audio Visual System	1	
		85" Samsung Audio Visual Display	2	
Training Room #1	B61.N.M4.001	Conference Tables 6'-0" x 2'-0"	8	Wood, Folding with Casters
		Blue Conference Chairs	16	Blue
		Projection Screen 126"w x 81"h	1	
		Ricoh Projector	1	
		Glass Marker Board 8'-0" x 4'-0"	1	
		85" Audio Visual Display (Direct TV) (replace with 75" Samsung From IT Inventory)	1	
Training Rooom #1 Storage	B61.N.M4.002	Blue Conference Chairs	20	
Lobby	B61.N.W4.007	Lockers (4-doors) 24"W x 18"D x 35"H	2	Gray
Cafe Servery	B61.N.C2.002	U.S. Range Grille and Oven	1	
		Garland Cook Top and Oven	1	
		Imperial Fryer	1	
		Tornado Toaster Oven	1	
		Ecolab Prep Table	2	
		True Double Wide Refrigerator	1	
		Turbo Air Freezer	1	
		NEC Video Display - 44"	3	
Cafe Dining Area	B61.N.C2.001	Turbo Air Open Shelf Refrigerator Unit	2	
		Refrigerator	1	Stainless Steel
Cafe Preparation Area	B61.N.C2.003	Duners Double Door Refrigerator	1	
		CresCor Heated Cabinet	1	
		Hoshizaki Ice Maker - Large	1	
		Hoshizaki Ice Maker - Small	1	
		Traulsen Double Door Freezer	1	
		Traulsen Double Door Refrigerator	1	
IDF Room	B61.N.X4.002	Cambridge CT100 Sound Masking System Controller	1	
Training Room #2	B61.N.M4.004	AV System - Ricoh Projector	1	Located in AV Closet B61.N.M4.006
		Audio Visual Displays - 85" Samsung	1	
		Recessed Projection Screen 9'x12'	1	
		AV System - Ricoh Projector	1	
Training Room #2 Storage Room	B61.N.M4.005	Blue Town Hall Chairs	88	
		Wood Break Room Stools	19	
		Wood Break Room Chairs	7	
		Conference Room Folding Tables 72" x 24"	10	
Training Room #3	B61.N.M4.007	Chairs (small blue)	10	
		Chairs (tall wooden)	8	Bar Stool Height
		Breakroom table 36"x36"x29"H	1	White Top
		Breakroom table 42"x42"x29"H	6	Green Top
		Breakroom table 25"x25"x43"H (tall)	2	Black Top
		Breakroom table 24"x24"x29"H (Small)	1	White Top
		Long Tables 72"Wx24"Dx28"H(folding with Casters)	28	Training Room Tables
		Audio Visual Display - 85" Samsung	1	
		AV System - Ricoh Projector	1	
		Recessed Projection Screen 9'x12'	1	
Training Room #3 Storage Room	B61.N.M4.008	Blue Town Hall Chairs	40	
Men's Locker Room	B61.N.C1.006	Lockers (2-20 locker units installed back to back)	40	
		Round Stools - 18" D x27"H	6	
		Bench 48"H x 20"D x 19"W	1	
		Wardrobe Compartment - 77"H x 18"D x 48"W	1	
		Now Towel Shelf - 44"H x 40"W	1	
		Dirty Towel Dispenser - 34"H x 23"D x 40"W	1	
		Lockers (2-20 locker units installed back to back)	40	

Room Name	Room Number	FFE Description	Quantity	Disposition Comments
Women's Locker Room	B61.N.C1.004	Round Stools - 18"D x17"H	6	
		Bench 48"H x 20"D x 19"W	1	
		Wardrobe Compartment - 77"H x 18"D x 48"W	1	
		Now Towel Shelf - 44"H x 40"W	1	
		Dirty Towel Dispenser - 34"H x 23"D x 40"W	1	
Fitness Center	B61.N.C1.002	Used Towel Bin 28"w x 24"d x 34"h	1	
		Reception Tables - 72"x30"x28"h & 36"x24"x28"h	1	
		Adjustable Height Tables 72"w x 29"d	2	
		New Towel Shelf 24"w x 12"d x 34"h	1	
		Matrix Chi Climbmill	1	
		Matrix R7xi Recumbent Bicycle	1	
		Sci Fit Pro 4700, Upper Body Ergonomics	1	
		Matrix A7xi Ascent Trainer, Elliptical	3	
		Matrix T7xi Treadmill	3	
		Concept 2 Rower	1	
		FreeMotion - FS03-16.1 Genesis DS, Chest/Shoulder	1	
		FreeMotion - FS05-16.1 Genesis DS, Dorsiad	1	
		FreeMotion - FS01 16.1 Genesis DS, Abi/Bicep	1	
		FreeMotion - FS02-16.1 Genesis DS, Lat Pull/High Row	1	
		FreeMotion - FS04-16.1 Genesis DS, Quad/Hamstring	1	
		Life Fitness, Dual Adjust Pulley	1	
		Life Fitness Hammer, 0-80 Degree Bench with Dumbell/Power Rack	2	
		Life Fitness Hammer, Adjustable Decline Bench	1	
		Keiser M3i Spin Bike with Computer	6	
		55" LG Direct TV Display	1	
		75" Audio Visual Display	1	
150 Baytech Second Floor				
Huddle Room A	B52.N.M1.001	14"d x 66"w x 28"h Small Table	1	White Top
		Huddle Room Chairs with Attached Writing Table	5	2 Dark Blue, 1 Light Blue
		Audio Visual Display - 55" Samsung	1	
Work Area	B52.N.V1.001	Chairs with Attached Side Writing Table	4	Brown
		Sofa 92"W x 40"D (three people) Relocate to 2nd Floor	1	Grey
		Low Table - 39"w x 32"d x 13"h	1	Black Metal Top
		Lockers (4 doors) 24"W x 18"D x 35"H	2	Gray
Flex Office 1	B52.N.S5.001	30" x 72" Adjustable Height Table	1	White
		Desk Chair	1	Grey
		Guest Chairs	2	Blue
Flex Office 2	B52.N.V2.001	30" x 72" Adjustable Height Table	1	White
		Desk Chair	1	Grey
		Guest Chairs	2	Blue
Flex Office 3	B52.N.V2.002	30" x 72" Adjustable Height Table	1	White
		Desk Chair	1	Grey
		Guest Chairs	2	Blue
Copy/Print Room	B52.N.S2.001	Table - 96"w x 24"d x 28"h	1	White
Storage Room	B52.N.V2.003	Table - 72"w x 30"d x 28"h	1	White
		File Cabinet - 42"w x 18"d x 68"h, 3 Drawers with Shelf	2	White
		Storage Cabinet - 36" w x 18"d x 72"h, 2 Doors	1	Gray
Huddle Room B	B52.N.M1.002	"D" Shaped Conference Table - 70"W x30"H x 36"D	1	White
		Conference Room Chairs	4	Light Blue
		48"w x 38"h Glass Marker Board - Size	1	
		Audio Visual Display - 55" Samsung	1	
Phone Room	B52.N.M5.001	Cushion Chair	1	Blue Pattern
Phone Room	B52.N.M5.002	Chair with Casters	1	Brown
Bull Pen Open Office Area - East Side	B52.N.30.001	Adjustable Height Tables	32	Wood Plastic Laminate
		Bench Seating (2) and Table - 48"w x 30"d x 28"h	2	Blue Seating with White Table
		Desk Chairs	32	Gray
Office	B52.A.01.002	30" x 72" Adjustable Height Table	1	White
		Desk Chair	1	Gray

Room Name	Room Number	FFE Description	Quantity	Disposition Comments
		Guest Chairs	2	Blue
Half Dome Conference Room	B52.N.MS.001	Conference Table - 108"x59"x37"	1	White
		Conference Room Chairs	6	Grey
		Glass Marker Board - 72"x48"	1	
		Audio Visual Display - 75" Samsung	1	
IDF Room	B52.N.X4.002	Cambridge QT600 Sound Masking System Controller	1	
		Schneider Electric Struxureware Building Management System Computer	1	Needed to Adjust and Control HVAC Systems
		Lutron Lighting Control System Computer	1	Needed to Adjust Lighting
Flex Office 4	B52.N.V2.004	30" x 72" Adjustable Height Table	1	White
		Desk Chair	1	Gray
		Guest Chairs	2	Blue
Glacier Point Conference Room	B52.N.M2.003	Conference Table - 108"x59"x37"	1	White
		Glass Marker Board - 72"x48"	1	
		Conference Room Chairs	7	Gray
		Audio Visual Display - 75" Samsung	1	
Breakroom	B52.N.C3.004	Tables 36"Wx36"D	4	White
		Chairs (breakroom small chair white color)	8	White
		Refrigerators 65"h x 30"w x 30"d	3	White
El Capitan Conference Room	B52.N.M2.004	Conference Table - 108"x59"x37"	1	White
		Glass Marker Board - 96"Hx48"W	1	
		Audio Visual Display 53" Samsung	1	
		Conference Room Chairs	6	Gray
Bridal Veil Fall Conference Room	B52.N.M1.005	Conference Table - 108"x59"x37"	1	White
		Glass Marker Board - 72"wx48"h	1	
		Conference Room Chairs	7	Gray
		Audio Visual Display - 75" Samsung	1	
Mariposa Grove Conference Room	B52.N.M2.006	Conference Table - 108"x59"x37"	1	White
		Glass Marker Board - 72"W x48"H	1	
		Conference Room Chairs	7	Gray
		Audio Visual Display - 75" Samsung	1	
Lake Tahoe Conference Room	B52.N.MS.004	Conference Table - 192"x60"x48"	1	White
		Glass Marker Board - 96"x48H	1	
		Side Bench - 70"w x17"H x22"D	2	Gray
		Credenza - 72" W x96"H x24D	1	Wood Plastic Laminate
		Conference Room Chairs	11	Gray
		Audio Visual Display - 85" Samsung	1	
Yosemite Conference Room	B52.N.MS.003	Conference Table - 192"x60"x48"	1	White
		Glass Marker Board - 96"x48H	1	
		Side Bench - 70"w x17"H x22"D	2	Gray
		Credenza - 72" W x96"H x24D	1	
		Conference Room Chairs	11	Gray
		Audio Visual Display - 85" Samsung	1	
Kings Canyon Conference Room	B52.N.MS.002	Conference Table - 192"x60"x48"	1	White
		Glass Marker Board - 96"x48H	1	
		Side Bench - 70"w x17"H x22"D	2	Gray
		Credenza - 72" W x96"H x24D	1	Wood Plastic Laminate
		Conference Room Chairs	10	Gray
		Audio Visual Display - 85" Samsung	1	
Mt. Whitney Conference Room	B52.N.MS.001	Conference Table - 60"W x29"H x24"D	6	White
		Glass Marker Board - 96"x48H	1	
		Side Bench - 70"W x17"H x22"D	2	Gray
		Credenza - 72" W x 89"H x24"D	1	White
		Conference Room Chairs	10	Gray
		Audio Visual Display - 85" Samsung	2	
Huddle Area F	B52.N.M1.006	Round 30" Diameter Table	1	White
		Cushion Seating 25" Diameter	2	Orange
		Bar Stools	4	Blue
		Small Bar Height Tables - 30"w x 30"d x 41"h	2	White

Room Name	Room Number	FFE Description	Quantity	Disposition Comments
		Chair	4	Blue
		Small Laptop Stand	2	White
		Star Shaped Seating	1	Blue
Tuolumne Meadows Conference Room	B52.N.M1.002	Conference Table - 108"x59"x30"	1	White
		Glass Marker Board - 72"W x48"H	1	
		Side Bench - 70"W x 17"H x22"D	1	Gray
		Conference Room Chairs	6	Gray
		Audio Visual Display - 75" Samsung	1	
Phone Room	B52.N.M5.003	Small Table	1	White
		Chair	1	Blue
Phone Room	B52.N.M5.004	Adjustable Height Table - 29"d x 58"w	1	White
		Chair	1	Gray
Huddle Room C	B52.N.M1.003	Conference Table - 72"W x42"H x 34"D	1	White
		Conference Room Bar Height Chairs	3	Blue
		4'w x 3'h Glass Marker Board - Size	1	
		Audio Visual Display - 65" Samsung	1	
Flex Office 5	B52.N.V2.005	30" x 72" Table	1	White
		Desk Chair	1	Gray
		Guest Chairs	2	Gray
Flex Office 6	B52.N.V2.006	30" x 72" Table	1	White
		Desk Chair	1	Gray
		Guest Chairs	2	Gray
Flex Office 7	B52.N.V2.007	30" x 72" Table	1	White
		Desk Chair	1	Gray
		Guest Chairs	2	Gray
Huddle Room D	B52.N.M1.004	14"d x 66"w x 23"h Small Table	1	White
		Huddle Room Chairs with Attached Writing Table	3	2 Dark Blue, 1 Light Blue
		4'w x 3'h Glass Marker Board - Size	1	
		Audio Visual Display - 90"Samsung	1	
Flex Office 8	B52.N.V2.008	30" x 72" Table	1	White
		Desk Chair	1	Gray
		Guest Chairs	2	Blue
Flex Office 9	B52.N.V2.009	30" x 72" Table	1	White
		Desk Chair	1	Gray
		Guest Chairs	2	Gray
Flex Office 10	B52.N.V2.010	30" x 72" Table	1	White
		Desk Chair	1	Gray
		Guest Chairs	2	Blue
Copy Room	B52.N.S2.008	24"d x 48"w Table	1	White
Flex Office 11	B52.N.V2.011	30" x 72" Adjustable Height Table	1	White
		Desk Chair	1	Gray
		Guest Chairs	2	Blue
Office	B52.A.35.001	30" x 72" Adjustable Height Table	1	White
		24"d x 72"w Table	1	White
		24"d x 48"w Table	1	White
		Storage Unit - 24" x 24"	1	White
		Desk Chair	1	Gray
		Guest Chairs	2	Blue
Office	B52.A.35.002	30" x 72" Adjustable Height Table	1	White
		24"d x 72"w Table	1	White
		24"d x 48"w Table	1	White
		Desk Chair	1	Blue
		File Drawer Units	2	White
		LED Display - Samsung 55"	1	
		Guest Chairs	2	Blue
Huddle Room E	B52.N.M1.005	Small chairs	2	Gray
		Conference Table - 72"W x 34"D x 30"H	1	White
		Conference Room Chairs	3	Blue

Room Name	Room Number	FFE Description	Quantity	Disposition Comments
		4'w x 5'h Glass Marker Board - Size	1	
		Audio Visual Display - 50" Samsung	1	
Sequoia Conference Room	B52.N.M2.006	Video Table 66"W x 23"H x 34"D	2	White
		Cushion Chair Seating - 33"w x 33"d	2	Green
		Cushion Chair Seating - 65"w x 33"d	1	Blue
		Ottoman - 18" Diameter	2	Orange
		Round Seat Cushion - 24" Diameter	2	Blue
		Glass Marker Board - 96"W x67"H	1	
Media Room	B52.N.C4.001	Sofa 3'-3" x 6'-0"	2	
		50" Samsung TV	1	
		TV Stand - 86"w x 18"d x 33"h	1	White
Game Room	B52.N.C3.003	Ping Pong Table	1	White
		Chairs	2	Light Blue
		Frenselli Table	1	
		Glass Marker Boards - 4'-0" x 3'-0"	2	
Phone Room	B52.N.M5.005	Small Table - 26"d x 26"w x 15"h	1	White
		Ottoman	1	Orange and White
		Cushion Chair	1	Blue
Breakroom/ Collaboration Area	B52.N.C3.001	Huddle Bench Seating (2) with Table 48"w x 30"d x 28"h	4	Brown Seating with White Tables
		Market Booths	4	White
		Couch - Size 92"x40"	1	Tan
		Break Room Tables - 36" x 36"	2	White
		Refrigerators	2	Stainless Steel
		Blue Plastic Break Room Chairs	8	
Collaboration Area	B52N.C3.002	"L" Shaped Seating Area with High Back Panels	1	Green and Blue
		Video Displays (0.55" with Direct TV	1	
		Video Display 75" Samsung	1	
		Collaboration Bar Stools	9	White
		360 Baytech Second Floor		
Galileo Conference Room	B62.N.M4.001	Conference Tables - 60"x24	5	Brown
		Glass Marker Board - 96"W x48"H	1	
		Credenza 72"W x 24"H x 16"D	1	Light Brown
		Conference Room Chairs	9	Gray
		Audio Visual Display 75" Samsung	1	
Curie Conference Room	B62.N.M4.002	Conference Table - 192"x60"x48"	1	White
		Glass Marker Board - 96"x48H	1	
		Side Bench - 70"w x17"H x27"D	1	
		Credenza - 72" W x36"H x24D	1	Light Wood Color
		Audio Visual Display - 86" Samsung	1	
		Conference Room Chairs	11	Gray
Edison Conference Room	B62.N.M4.003	Glass Marker Board - 96"x48H	1	
		Side Bench - 70"w x17"H x27"D	1	
		Credenza - 72" W x36"H x24D	1	Light Colored Wood
		Audio Visual Display - 85" Samsung	1	
		Conference Room Chairs	11	
Patrice Bath Conference Room	B62.N.M5.001	Conference Table - 108"W x 29"D X 37"D	1	White
		Glass Marker Board - 72"W x48"H	1	
		Conference Room Chairs	6	Gray
		Audio Visual Display 75" Samsung	1	
Office	B62.A.33.001	30" x 72" Adjustable Height Table	1	White
		Table 24" x 72"	1	White
		Side Table 24" x 36"	1	White
		File Drawer Units	2	White
		Desk Chair	1	Gray
		Guest Chairs	2	Blue
Copy Room	B62.N.S2.001	24"d x 48"w Table	1	White
[illegible] Room E	[illegible]	Conference Room Bar Height Chairs	4	Blue
		Conference Table - 72"W x 330 x 42H	1	White

Room Name	Room Number	FFE Description	Quantity	Disposition Comments
[illegible]	[illegible]	4'w x 3'h Glass Marker Board	1	
		Audio Visual Display - 55" Samsung	1	
Flex Office 1	B62.N.V2.001	30" x 72" Table	1	White
		Desk Chair	1	Gray
		Guest Chairs	2	Gray
Huddle Room G	B62.N.M1.003	Conference Room Chairs	4	Blue
		Conference Table - 72"W x 330 x 42H	1	White
		4'w x 3'h Glass Marker Board - Size	1	
		Audio Visual Display - 55" Samsung	1	
Huddle Room D	B62.N.M1.004	14'd x 66"w x 28'h Small Table	1	White
		Huddle Room Chairs with Attached Writing Table	3	1 Light Blue, 2 Dark Blue
		Audio Visual Display - 55" Samsung	1	
		4'w x 3'h Glass Marker Board	1	
Huddle Room E	B62.N.M1.005	14'd x 66"w x 28'h Small Table	1	White
		Huddle Room Chairs with Attached Writing Table	3	
		Audio Visual Display - 55" Samsung	1	
		4'w x 3'h Glass Marker Board - Size	1	
Stringo Audit Room	B62.N.MS.004	Tables - Size 72"W x 24"D x 28"H	8	Wood Top
		Glass Marker Board - 48"W x36"H	3	
		Small Table 36" x24"	1	White
		Conference Room Chairs	8	Gray
		Audio Visual Display 85" Samsung	6	
Data Center	B62.N.X4.001	Schneider Electric Uninterrupted Power Supply (UPS)	1	
		Metal Cabinets 72"H x 36"W	2	
		Telecommunications Racks	4	
		APC Server Cabinets	5	
Help Desk	B62.N.S4.001	Video Display 60" LG	1	
		Small Table 36" x24"	1	White
		Service Counter	1	
Flex Office 5	B62.A.33.015	30" x 72" Table	1	White
		Desk Chair	1	
		Guest Chair	1	
Facility Storage Room	B62.A.02.001	Spare Steelcase Parts for Workstations	1	Miscellaneous Workstation Components
		Industrial Shelving	6	Particle Board Shelves
Einstein Conference Room	B62.N.MS.002	Conference Table - 168"W x 60"D 48"D x 29"H	1	White
		Glass Marker Board - 48"W x36"H	1	
		Conference Room Chairs	7	Gray
		Audio Visual Display 75" Samsung	1	
Office	B62.A.33.002	30" x 72" Adjustable Height Table	1	White
		Side Table 24" x 48"	1	White
		Table 24" x 72"	1	White
		Desk Chair	1	Gray
		Guest Chairs	1	Blue
Flex Office 2	B62.N.V2.002	30" x 72" Adjustable Height Table	1	White
		Desk Chair	1	Gray
		Guest Chairs	2	Blue
Flex Office 3	B62.N.V2.003	30" x 72" Table	1	White
		Desk Chair	1	Gray
		Guest Chairs	2	Blue
Huddle Room C	B62.N.M1.006	Conference Room Chairs	4	Blue
		Conference Table - 72"W x 330 x 42H	1	White
		4'w x 3'h Glass Marker Board - Size	1	
		Audio Visual Display - 55" Samsung	1	
Geer Conference Room	B62.N.MS.003	Conference Table - 108"W x 60"D36"D x 30"H	1	White
		Glass Marker Board - 72"W x48"H	1	
		Conference Room Chairs	6	Gray
		Audio Visual Display 75" Samsung	1	
		30" x 72" Table	1	White

Room Name	Room Number	FFE Description	Quantity	Disposition Comments
Office	B62.A.33.003	Guest Chairs	2	Blue
		Side Table 72"W x 240" x 28"H	1	White
		Desk Chair	1	Gray
Office	B62.A.33.004	30" x 72" Table	1	White
		24" x 72" Table	1	White
		Glass Marker Board - 48"W x96"H	1	
		Desk Chair	1	Gray
Cai Lun Conference Room	B62.N.M2.004	Conference Table - 72"W x 33D x 30H	1	White
		Conference Room Chairs	8	Gray
		Audio Visual Display - 75" Samsung	1	
		Glass Marker Board - 48"W x96"H	1	
Fox Office 4	B62.N.V2.004	30" x 72" Adjustable Height Table	1	White
		24" x 72" Table		White
		Desk Chair	1	Gray
		Glass Marker Board - 48"w x 96"h	1	
		Guest Chairs	2	Blue
Shirley Ann Jackson Conference Room	B62.N.MS.005	Conference Table - 108"W x 60"D36"D x 30"H	1	White
		Glass Marker Board - 72"W x48"H	1	
		Conference Room Chairs	7	Gray
		Audio Visual Display 75" Samsung	1	
Huddle Room B	B62.N.M1.007	Conference Room Bar Height Chairs	5	Blue
		Conference Table - 72"W x 33D x 42H	1	White
		4'w x 3'h Glass Marker Board - Size	1	
		Audio Visual Display - 55" Samsung	1	
Office	B62.A.33.004	30" x 72" Adjustable Height Table	1	White
		Side Table 72"W x 240" x 28"H	1	White
		Side Table with attched cabinet 84"W x 240" x 28"H	1	White
		Desk Chair	1	Gray
		Glass Marker Board - 48"W x96"H	1	
		Guest Chairs	2	Blue
Office	B62.A.33.005	30" x 72" Adjustable Height Table	1	White
		Side Table 72"W x 240" x 28"H	1	White
		Side Table with attched cabinet 84"W x 240" x 28"H	1	White
		Desk Chair	1	Gray
		Glass Marker Board - 48"W x96"H	1	
		Guest Chairs	2	Blue
Office	B62.A.33.006	30" x 72" Adjustable Height Table	1	White
		Side Table 24" x 36"	1	White
		Desk Chair	1	Gray
		Guest Chairs	2	Blue
Huddle Room A	B62.N.M1.001	14'd x 66"w x 28"h Small Table	1	White
		4'w x 3'h Glass Marker Board - Size	1	
		Audio Visual Display - 55" Samsung	1	
IDF Room	B62.N.X4.002	Cambridge QT600 Sound Masking System Controller	1	
Hopper Conference Room	B62.N.M2.006	Conference Table - 96"W x 60"D36"D x 30"H	1	White
		Glass Marker Board - 48"W x96"H	1	
		Side Bench - 70"W x17"H x22"D	1	Gray
		Conference Room Chairs	6	Gray
		Audio Visual Display 75" Samsung	1	
Miscellaneous				
Various	Various	Cintas First Aid Cabinets	4	Mounted on Walls at Various Locations
Various	Various	AED	4	Mounted on Walls at Various Locations
Various	Various	Fire Extinguishers	10	Mounted in Recessed Cabinets Around the Facility
Exterior				
Cardboard Baler Enclosure	B63.N.XS.006	Cardboard Baler	1	
Cargo Container (Connected to Alarm)	West Parking lot	10'-0" x 32'-0"x 8'-6"h Cargo Container w/ Roll-Up Door & Roll-Up Side Window	1	
Cargo Container	West Parking lot	10'-0" x 20'-0"x 8'-6"h Cargo Container w/ Roll-Up Door & Roll-Up Side Window	2	
Cargo Container	West Parking lot	10'-0" x 20'-0"x 8'-6"h Cargo Container	1	

Room Name	Room Number	FFE Description	Quantity	Disposition Comments
West 150 Baytech West Parking Lot	BS3.N.XS.007	Back Up Generator	1	
West 160 Baytech West Parking Lot	West Parking Lot	Chargepoint Electric Vehicle Charging Stations (9 x CT4000 Dual Stations)	18	Need To Transfer Ownership Through Chargepoint
West 160 Baytech West Parking Lot	West Parking Lot	Dual Compartment Bike Lockers	2	
Compressor Pad	BS3.N.XS.006	Atlas Copco Compressed Dry Air System (Compressor, Dryer, Reciever)	1	

Offices and Conference Rooms			
Description	Size	Occupancy Capacity	Quantity
Office - First Floor	10'-0" x 12'-0"	3	7
Office - First Floor	8'-10" x 11'-9"	3	7
Office - Second Floor	10'-4" x 11'-4"	3	5
Office - Second Floor	10'-0" x 12'-0"	3	14
Office - Second Floor	10'-0" x 13'-0"	3	7
Office - Second Floor	10'-0" x 13'-8"	3	1
Offices - First Floor	10'-0"x12'-0"	3	5
Offices - First Floor	10'-0"x12'-3"	3	1
Offices - First Floor	10'-0"x12'-8"	3	1
Huddle - First Floor 150	10'-0"x12'-8"	3	1
Huddle - First Floor 150	10'-0"x12'-0"	3	2
Huddle - First Floor 150	9'-8"x15'-0"	3	1
Huddle - Second Floor 150	9'-9.5"x12'-0"	3	1
Huddle - Second Floor 150	9'-8.5"x11'-5"	3	1
Huddle - Second Floor 150	11'-0"x10'-0"	3	1
Huddle - Second Floor 150	10'-0"x13'-0"	3	2
Huddle - Second Floor 160	158 SF	3	1
Huddle - Second Floor 160	10'-0"x12'-0"	3	3
Huddle - Second Floor 160	9'-0"x12'-5"	3	2
Huddle - Second Floor 160	12'-2"x10'-0"	3	1
Phone Rooms - First Floor 150	5'-9" x 9'-6"	1	2
Phone Rooms - Second Floor 150	10'-9"x7'-0"	1	2
Phone Rooms - Second Floor 150	5'-8"x7'-8"	1	2
Phone Rooms - Second Floor 150	5'-10"x8'-6"	1	2
Phone Rooms - First Floor 160	7'-2"x8'-7.5"	1	2
150-1 Pier 39 Conf Room	186 SF	13	1
150-1 Fisherman's Wharf Conf Room	193 SF	14	1
150-1 Golden Gate Conf Room	401 SF	28	1
150-2 Mt Whitney Conf Room	452 SF	30	1
150-2 Kings Canyon Conf Room	427 SF	28	1
150-2 Yosemite Conf Room	427 SF	28	1
150-2 Lake Tahoe Conf Room	427 SF	28	1
150-2 Mariposa Grove Conf Room	194 SF	13	1
150-2 Bridal Veil Fall Conf Room	193 SF	13	1
150-2 El Capital Conf Room	194 SF	13	1
150-2 Glacier Point Conf Room	225 SF	15	1
150-2 Tuolumne Meadows Conf Room	219 SF	15	1
150-2 Sequoia Team Room	269 SF	18	1
150-2 Half Dome Team Room	217 SF	14	1
Innovation Center - First Floor	1635 SF	77	1
Training Room #1 - First Floor	1,079 SF	47	1
Training Room #2 - First Floor	1,796 SF	90	1
Training Room #3 - First Floor	1,587 SF	79	1
Collaboration - Second Floor	872 SF	27	1

160-1 Abele Conf Room	468 SF	33	1
160-2 Curie Conf Room	433 SF	29	1
160-2 Edison Conf Room	432 SF	29	1
160-2 Galileo Conf Room	491 SF	33	1
160-2 Shingo Conf Room	580 SF	N/A	1
160-2 Einstein Team Room	238 SF	16	1
160-2 Bath Conf Room	188 SF	13	1
160-2 Hopper Team Room	212 SF	15	1
160-2 Jackson Team Room	168 SF	13	1
160-2 Lun Team Room	161 SF	12	1
160-2 Geer Team Room	174 SF	13	1
Open Copy Center Area	45'-0" x 12'-9"	2	1
Open Bull Pen Area	58'-5" x 24'-5"	32	1
Agile Workstations	6'-0" x 4'-0"	1	2
150 Baytech First Floor Workstations*	6'-0" x 8'-0"	1	77
150 Baytech Second Floor Workstations*	6'-0" x 8'-0"	1	190
160 Baytech Second Floor Workstations*	6'-0" x 8'-0"	1	160

* Contents of workstations vary with the following mixture components:
-72"w x 29"d adjustable height desk
-36"w x 24"d x 28" fixed height side table
-15"w x 22"d x 22"h cushioned 2 drawer unit with casters
-24"w x 24"d x 54"h shelf/2-drawer/wardrobe unit
-18" diameter x 18"h ottoman
-Desk Chair
-36"w x 18"d x 17"h lateral file with cushion top
-36"w x 18"d x 28"h 2-drawer lateral file cabinet
-36"w x 18"d x 29" 2-drawer lateral file cabinet with cushion top
-66"w x 24"d x 28"h fixed height table
-36"w x 18"d 16"h open shelf unit
-No Components

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Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 (No. 333-259586) of PROCEPT BioRobotics Corporation of our report dated March 22, 2022 relating to the financial statements, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP
San Jose, California
March 22, 2022

Exhibit 31.1

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Reza Zadno, Ph.D., certify that:

1. I have reviewed this Annual Report on Form 10-K of PROCEPT BioRobotics Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) [omitted];

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 22, 2022

By: /s/ Reza Zadno

Reza Zadno, Ph.D.

Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Kevin Waters, certify that:

1. I have reviewed this Annual Report on Form 10-K of PROCEPT BioRobotics Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) [omitted];

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 22, 2022

By: /s/ Kevin Waters

Kevin Waters

Chief Financial Officer
(Principal Financial Officer and
Principal Accounting Officer)

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of PROCEPT BioRobotics Corporation (the "Company") on Form 10-K for the period ending December 31, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Date: March 22, 2022

By: /s/ Reza Zadno

Reza Zadno, Ph.D.

Chief Executive Officer
(Principal Executive Officer)

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. § 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

Exhibit 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of PROCEPT BioRobotics Corporation (the "Company") on Form 10-K for the period ending December 31, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Date: March 22, 2022

By: /s/ Kevin Waters

Kevin Waters

Chief Financial Officer
(Principal Financial Officer and
Principal Accounting Officer)

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. § 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing.