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

Form 10-Q

(Mark One)

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

For the quarterly period ended March 31, 2021

OR

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

Commission file number: 001-37918

iRhythm Technologies, Inc.
(Exact Name of Registrant as Specified in its Charter)

Delaware	**20-8149544**
(State or Other Jurisdiction of Incorporation or Organization)	**(I.R.S. Employer Identification No.)**
699 8th Street Suite 600 San Francisco, California	**94103**
(Address of Principal Executive Offices)	**(Zip Code)**

(415) 632-5700
(Registrant's Telephone Number, Including Area Code)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☑ No ☐

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

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

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

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

As of April 30, 2021, the number of outstanding shares of the registrant's common stock, par value $0.001 per share, was 29,303,050.
Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, Par Value $.001 Per Share	IRTC	The Nasdaq Stock Market

IRHYTHM TECHNOLOGIES, INC.

TABLE OF CONTENTS

	Page No
PART I. FINANCIAL INFORMATION	1
Item 1. Financial Statements (Unaudited):	1
Condensed Consolidated Balance Sheets	1
Condensed Consolidated Statements of Operations	2
Condensed Consolidated Statements of Comprehensive Loss	3
Condensed Consolidated Statements of Cash Flows	4
Condensed Consolidated Statements of Stockholders' Equity	5
Notes to Condensed Consolidated Financial Statements	6
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	23
Item 3. Quantitative and Qualitative Disclosures About Market Risk	30
Item 4. Controls and Procedures	30
PART II. OTHER INFORMATION	33
Item 1. Legal Proceedings	30
Item 1A. Risk Factors	30
Item 2. Unregistered Sales of Equity Securities and Use of Proceeds	56
Item 3. Defaults Upon Senior Securities	56
Item 4. Mine Safety Disclosures	56
Item 5. Other Information	56
Item 6. Exhibits	56
Exhibit Index	67
Signatures	69

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements concerning our business, operations and financial performance and condition, as well as our plans, objectives and expectations for our business, operations and financial performance and condition. Any statements contained herein that are not statements of historical facts may be deemed to be forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as “anticipate,” “assume,” “believe,” “contemplate,” “continue,” “could,” “due,” “estimate,” “expect,” “goal,” “intend,” “may,” “objective,” “plan,” “predict,” “potential,” “positioned,” “seek,” “should,” “target,” “will,” “would” and other similar expressions that are predictions of or indicate future events and future trends, or the negative of these terms or other comparable terminology. These forward-looking statements include, but are not limited to, statements about:

- the impact of the COVID-19 pandemic on our operations and financial results;
- plans to conduct further clinical studies;
- our plans to modify our current products, or develop new products, to address additional indications;
- the expected growth of our business and our organization;
- our expectations regarding government and third-party payor coverage and reimbursement;
- our expectations regarding the size of our sales organization and expansion of our sales and marketing efforts in international geographies;
- our expectations regarding revenue, cost of revenue, cost of service per device, operating expenses, including research and development expense, sales and marketing expense and general and administrative expenses;
- our ability to retain and recruit key personnel, including the continued development of a sales and marketing infrastructure;
- our ability to obtain and maintain intellectual property protection for our products;
- our estimates of our expenses, ongoing losses, future revenue, capital requirements and our needs for, or ability to obtain, additional financing;
- our ability to identify and develop new and planned products and acquire new products;
- our ability to remediate our material weaknesses over financial reporting;
- our financial performance; and
- developments and projections relating to our competitors or our industry.

We believe that it is important to communicate our future expectations to our investors. However, there may be events in the future that we are not able to accurately predict or control and that may cause our actual results to differ materially from the expectations we describe in our forward-looking statements. These forward-looking statements are based on management’s current expectations, estimates, forecasts and projections about our business and the industry in which we operate and management’s beliefs and assumptions and are not guarantees of future performance or development and involve known and unknown risks, uncertainties and other factors that are in some cases beyond our control. As a result, any or all of our forward-looking statements in this Quarterly Report on Form 10-Q may turn out to be inaccurate. Factors that may cause actual results to differ materially from current expectations include, among other things, those listed under “Risk Factors” and elsewhere in this Quarterly Report on Form 10-Q. Potential investors are urged to consider these factors carefully in evaluating the forward-looking statements. These forward-looking statements speak only as of the date of this Quarterly Report on Form 10-Q. We assume no obligation to update or revise these forward-looking statements for any reason, even if new information becomes available in the future.

You should not rely upon forward-looking statements as predictions of future events. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee that the future results, levels of activity, performance or events and circumstances reflected in the forward-looking statements will be achieved or occur. We undertake no obligation to update publicly any forward-looking statements for any reason after the date of this Quarterly Report on Form 10-Q to conform these statements to actual results or to changes in our expectations.

You should read this Quarterly Report on Form 10-Q and the documents that we reference in this Quarterly Report on Form 10-Q and have filed with the SEC as exhibits to the Quarterly Report on Form 10-Q with the understanding that our actual future results, levels of activity, performance and events and circumstances may be materially different from what we expect.

PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

IRHYTHM TECHNOLOGIES, INC.
Condensed Consolidated Balance Sheets
(Unaudited)
(In thousands, except share and per share data)

	March 31, 2021	December 31, 2020
Assets		
Current assets:		
Cash and cash equivalents	$ 137,375	$ 88,628
Short-term investments	124,911	246,589
Accounts receivable, net of allowances for doubtful accounts of $12,760 and $12,711 as of March 31, 2021 and December 31, 2020, respectively	59,982	29,932
Inventory	6,863	5,313
Prepaid expenses and other current assets	6,975	7,363
Total current assets	336,106	377,825
Property and equipment, net	37,447	34,247
Operating lease right-of-use assets	89,206	84,714
Goodwill	862	862
Other assets	14,866	14,091
Total assets	$ 478,487	$ 511,739
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	$ 5,152	$ 4,365
Accrued liabilities	36,260	40,532
Deferred revenue	1,425	930
Debt, current portion	11,667	11,667
Operating lease liabilities, current portion	4,878	8,171
Total current liabilities	59,382	65,665
Debt, noncurrent portion	18,427	21,339
Other noncurrent liabilities	1,836	1,830
Operating lease liabilities, noncurrent portion	89,270	81,293
Total liabilities	168,915	170,127
Commitments and contingencies (Note 6)		
Stockholders' equity:		
Preferred stock, $0.001 par value – 5,000,000 shares authorized at March 31, 2021 and December 31, 2020; and none issued and outstanding at March 31, 2021 and December 31, 2020	—	—
Common stock, $0.001 par value – 100,000,000 shares authorized at March 31, 2021 and December 31, 2020; 29,287,749 and 29,019,350 shares issued and outstanding at March 31, 2021 and December 31, 2020, respectively	27	27
Additional paid-in capital	641,996	646,258
Accumulated other comprehensive income	12	11
Accumulated deficit	(332,463)	(304,684)
Total stockholders' equity	309,572	341,612
Total liabilities and stockholders' equity	$ 478,487	$ 511,739

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

IRHYTHM TECHNOLOGIES, INC.
Condensed Consolidated Statements of Operations
(Unaudited)
(In thousands, except share and per share data)

	Three Months Ended March 31,	
	2021	2020
Revenue, net	$ 74,311	$ 63,535
Cost of revenue	23,458	16,063
Gross profit	50,853	47,472
Operating expenses:		
Research and development	8,510	8,415
Selling, general and administrative	69,813	48,230
Total operating expenses	78,323	56,645
Loss from operations	(27,470)	(9,173)
Interest expense	(335)	(380)
Other income, net	124	505
Loss before income taxes	(27,681)	(9,048)
Income tax provision	98	17
Net loss	$ (27,779)	$ (9,065)
Net loss per common share, basic and diluted	$ (0.95)	$ (0.34)
Weighted-average shares, basic and diluted	29,164,430	26,839,870

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

IRHYTHM TECHNOLOGIES, INC.
Condensed Consolidated Statements of Comprehensive Loss
(Unaudited)
(In thousands)

	Three Months Ended March 31,	
	2021	2020
Net loss	$ (27,779)	$ (9,065)
Other comprehensive income:		
Net change in unrealized gains on available-for-sale securities	1	282
Comprehensive loss	$ (27,778)	$ (8,783)

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

IRHYTHM TECHNOLOGIES, INC.
Condensed Consolidated Statements of Cash Flows
(Unaudited)
(In thousands)

	Three Months Ended March 31,	
	2021	**2020**
Cash flows from operating activities		
Net loss	$ (27,779)	$ (9,065)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	2,036	1,551
Stock-based compensation	20,230	305
Accretion of discounts on investments, net and other	498	(167)
Provision for doubtful accounts and contractual allowances	9,768	9,184
Amortization of operating lease right-of-use assets	1,555	1,495
Changes in operating assets and liabilities:		
Accounts receivable	(39,818)	(9,989)
Inventory	(1,608)	(191)
Prepaid expenses and other current assets	387	114
Other assets	(775)	(2,002)
Accounts payable	673	(2,835)
Accrued liabilities	(6,140)	(9,467)
Deferred revenue	495	(136)
Operating lease liabilities	(1,364)	(1,163)
Net cash used in operating activities	(41,842)	(22,366)
Cash flows from investing activities		
Purchases of property and equipment	(4,211)	(3,405)
Purchases of available-for-sale investments	(30,054)	(8,009)
Sales of available-for-sale investments	—	14,525
Maturities of available-for-sale investments	151,300	56,800
Net cash provided by investing activities	117,035	59,911
Cash flows from financing activities		
Payment of long term debt	(2,917)	—
Proceeds from issuance of common stock in connection with employee equity incentive plans	1,576	2,969
Tax withholding upon vesting of restricted stock awards	(25,105)	(4,462)
Net cash used in financing activities	(26,446)	(1,493)
Net increase in cash and cash equivalents	48,747	36,052
Cash and cash equivalents beginning of period	88,628	20,462
Cash and cash equivalents end of period	$ 137,375	$ 56,514
Supplemental disclosures of cash flow information		
Interest paid	$ 331	$ 394
Non-cash investing and financing activities		
Property and equipment costs included in accounts payable and accrued liabilities	$ 115	$ 136
Right-of-use assets obtained in exchange for new operating lease liabilities	$ 5,757	$ 621
Capitalized stock-based compensation	$ 911	$ —

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

IRHYTHM TECHNOLOGIES, INC.
Condensed Consolidated Statement of Stockholders' Equity
(Unaudited)
(In thousands, except share data)

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income	Total Stockholders' Equity
	Shares	Amount				
Balances at December 31, 2019	**26,682,720**	**$ 25**	**$ 395,695**	**$ (260,393)**	**$ 82**	**$ 135,409**
Issuance of common stock in connection with employee equity incentive plans, net	344,255	—	2,969	—	—	2,969
Tax withholding upon vesting of restricted stock awards	—	—	(4,462)	—	—	(4,462)
Stock-based compensation expense	—	—	305	—	—	305
Accounting Standards Codification 326 cumulative effect adjustment upon adoption	—	—	—	(461)	—	(461)
Net loss	—	—	—	(9,065)	—	(9,065)
Net change in unrealized gain on investments	—	—	—	—	282	282
Balances at March 31, 2020	**27,026,975**	**$ 25**	**$ 394,507**	**$ (269,919)**	**$ 364**	**$ 124,977**

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income	Total Stockholders' Equity
	Shares	Amount				
Balances at December 31, 2020	**29,019,350**	**$ 27**	**$ 646,258**	**$ (304,684)**	**$ 11**	**$ 341,612**
Issuance of common stock in connection with employee equity incentive plans, net	268,399	—	1,576	—	—	1,576
Tax withholding upon vesting of restricted stock awards	—	—	(25,105)	—	—	(25,105)
Stock-based compensation expense	—	—	19,267	—	—	19,267
Net loss	—	—	—	(27,779)	—	(27,779)
Net change in unrealized gain on investments	—	—	—	—	1	1
Balances at March 31, 2021	**29,287,749**	**$ 27**	**$ 641,996**	**$ (332,463)**	**$ 12**	**$ 309,572**

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

1. Organization and Description of Business

iRhythm Technologies, Inc. (the "Company") was incorporated in the state of Delaware in September 2006. The Company is a digital healthcare company redefining the way cardiac arrhythmias are clinically diagnosed by combining wearable biosensing technology with cloud-based data analytics and deep-learning capabilities. The Company began commercial operations in the United States in 2009 following clearance by the U.S. Food and Drug Administration.

The Company is headquartered in San Francisco, California, which also serves as a clinical center. The Company has additional clinical centers in Lincolnshire, Illinois and Houston, Texas and a manufacturing facility in Cypress, California. In March 2016, the Company formed a wholly-owned subsidiary in the United Kingdom. The Company manages its operations as a single operating segment. Substantially all of the Company's assets are maintained in the United States. The Company derives substantially all of its revenue from sales to customers in the United States.

On August 21, 2020, the Company issued and sold an aggregate of 1,257,142 shares (the "Shares") of common stock, in a public offering at a price of $175.00 per share. The Shares included the full exercise of the underwriters' option to purchase an additional 163,975 shares of common stock. Total proceeds received from the offering were $206.8 million, after deducting discounts and issuance costs.

2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America, or U.S. GAAP, and applicable rules and regulations of the Securities and Exchange Commission, or SEC, regarding interim financial reporting. As permitted under those rules, certain footnotes or other financial information that are normally required by GAAP have been condensed or omitted, and accordingly the balance sheet as of December 31, 2020, and related disclosures, have been derived from the audited consolidated financial statements at that date but do not include all of the information required by GAAP for complete consolidated financial statements. These unaudited condensed consolidated financial statements have been prepared on the same basis as the Company's annual consolidated financial statements and, in the opinion of management, reflect all adjustments (consisting only of normal recurring adjustments) that are necessary for the fair statement of the Company's condensed consolidated financial information. The results of operations for the three months ended March 31, 2021 are not necessarily indicative of the results to be expected for the year ending December 31, 2021, or for any other interim period or for any other future year.

The accompanying interim unaudited condensed consolidated financial statements and related financial information should be read in conjunction with the audited financial statements and the related notes thereto for the year ended December 31, 2020, included in the Company's annual report on Form 10-K, filed with the SEC on February 26, 2021.

Risks and Uncertainties

COVID-19

As a result of the COVID-19 pandemic, the Company has experienced significant business disruptions, restrictions on its ability to travel, reduction in access to customers due to diverted resources at hospitals, and shortened business hours as governments institute prolonged shelter-in-place and/or self-quarantine mandates.

Governmental mandates related to the COVID-19 pandemic have impacted, and is expected to continue to impact, Company personnel and personnel at third-party manufacturing facilities in the United States and other countries, and the availability or cost of materials, which could disrupt our supply chain and reduce margins. For instance, on or about March 16, 2020, the Health Officers of the counties of San Francisco (where the Company's headquarters is located), Santa Clara, San Mateo, Marin, Contra Costa and Alameda, where many employees are located, issued mandatory shelter-in-place orders and all employees transitioned to a remote work environment. The Company is also subject to orders in Southern California that temporarily shut down its manufacturing and distribution facilities in Cypress, California. For a limited number of employees who continue to support essential operations, including those at our manufacturing facilities, the Company has instituted protective equipment policies and, to the degree practical, social distancing measures to protect the safety of its employees. While the Company has continued to deliver its Zio service by operating with remote employees and essential employees on site, an extended implementation of these governmental mandates could further impact the Company's ability to effectively provide its Zio service, and could impede progress of all ongoing initiatives. Appropriate social distancing techniques and other

measures at the Company's facilities have been implemented for the limited number of employees who have returned to work to support essential operations, and will not return until the risk to employee health has meaningfully diminished.

While hospital systems and healthcare facilities shift their focus and resources to treating COVID-19 patients and combating the spread of the coronavirus, the Company has adapted its service to meet the immediate needs of physicians, customers, and patients and significantly increased the utilization of its home enrollment service which allows patients to receive and wear the single-use Zio device without going to a healthcare facility.

Given the disruption in demand and an uncertain length of time to recovery, the Company adjusted its operating plan in the second quarter of 2020 by taking steps to reduce operating spend. These steps included eliminating or delaying spending on non-essential programs, reducing spend on travel and consulting, implementing a hiring freeze, furloughing approximately 5% of employees, conducting a layoff of approximately 2% of employees and implementing temporary pay reductions for our salaried workforce. From May 2020 to July 2020, the Company's Chief Executive Officer, other named executive officers and other senior executives agreed to temporary base salary reductions and the Board of Directors agreed to a reduction in its fees until business and economic conditions improve. The Company also increased it's bad debt reserve in anticipation of a potential increase in uncollectible co-payments from patients using the Zio Service. In August 2020, the Company reinstated furloughed employees, removed pay reductions for its salaried employees, and resumed hiring for most positions.

During the second half of 2020, the Company saw recovery of patient registrations for the Zio service to pre-COVID levels of the first quarter of 2020 and during the three months ended March 31, 2021, the Company experienced increasing levels in the Zio service patient registrations. However, this may be due, in some part, to the re-opening of certain regions within the United States and may not represent sustainable levels of patient registrations in future time periods.

The Company is continuously reviewing its liquidity and anticipated capital requirements in light of the significant uncertainty created by the COVID-19 pandemic. The Company believes it will have adequate liquidity over the next 12 months to operate its business and to meet its cash requirements. As of March 31, 2021, the Company is in compliance with its financial covenants in its debt agreement.

On March 27, 2020, as a result of the COVID-19 pandemic, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") to support businesses during the COVID-19 pandemic, including deferment of the employer portion of certain payroll taxes, refundable payroll tax credits, and technical amendments to tax depreciation methods for qualified improvement property. The primary provisions of the CARES Act which are potentially applicable to us include:

• certain amendments to the limitations on the deductibility of interest contained in Section 163(j) of the Internal Revenue Code of 1986, as amended, for taxable years beginning in 2019 and 2020; and

• an allowance of net operating loss carrybacks for taxable years beginning in 2018 and before 2021.

The Company did not qualify for the Paycheck Protection Program under the CARES Act due to the number of employees in our organization. The CARES Act did not have material impact on the Company's overall consolidated financial statements.

The ultimate impact of the COVID-19 pandemic is highly uncertain and subject to change. This impact is having a material, adverse impact on liquidity, capital resources, operations and business and those of the third parties on which the Company relies, and could worsen over time. The extent to which the COVID-19 pandemic impacts the Company's results will depend on future developments, which are highly uncertain and cannot be predicted, including new information which may emerge concerning the severity of the COVID-19 pandemic and the actions to contain the COVID-19 pandemic or treat its impact, among others. The full extent of potential delays or impacts on the business, financial condition, cash flows and results of operations remains unknown. Additionally, while the potential economic impact brought by, and the duration of, the COVID-19 pandemic is difficult to assess or predict, the COVID-19 pandemic has resulted in, and may continue to result in, significant disruption of global financial markets, reducing the Company's ability to raise additional capital through equity, equity-linked or debt financings, which could negatively impact short-term and long-term liquidity and the ability to operate on a timely basis, or at all.

Furthermore, capital markets and economies worldwide have been negatively impacted by the COVID-19 pandemic, which may result in a period of regional, national, and global economic slowdown or regional, national, or global recessions that could curtail or delay demand for the Zio service as well as increase the risk of customer defaults or delays in payments. COVID-19

and the current financial, economic, and capital markets environment, and future developments in these and other areas present material uncertainty and risk with respect to the Company's performance, financial condition, volume of business, results of operations, and cash flows.

Reimbursement

Government payors may change their coverage and reimbursement policies, as well as payment amounts, in a way that would prevent or limit reimbursement for the Zio service, which would significantly harm the Company. Government and other third-party payors require the Company to report the service for which it is seeking reimbursement by using a Current Procedural Terminology ("CPT") code-set maintained by the American Medical Association ("AMA"). For Zio XT, the Company had historically utilized temporary CPT codes (or Category III CPT codes) used for newly introduced technologies and specific to our category of diagnostic monitoring. The process to convert Category III CPT codes to Category I CPT codes is governed by the AMA and Centers for Medicare and Medicaid ("CMS"). On October 25, 2019, the AMA's CPT Editorial Panel established two new Category I CPT codes which are applicable to the Zio service and took effect on January 1, 2021. In August 2020, CMS published the Calendar Year 2021 Medicare Physician Fee Schedule Proposed Rule which proposed reimbursement for the Category I CPT codes that were higher than their associated Category III CPT codes. Following a comment period through October 2020, CMS published its Calendar Year 2021 Medicare Physician Fee Schedule Final Rule (the "Final Rule") in December 2020. In the Final Rule, CMS chose not to finalize national pricing for four of the eight Category I CPT codes, 93241, 93243, 93245 and 93247 which include the CPT codes that the Company will primarily use to seek reimbursement for Zio XT.

Determinations of which products or services will be reimbursed under Medicare can be developed at the national level through a national coverage determination ("NCD") by CMS, or at the local level through a local coverage determination ("LCD"), by one or more of the regional Medicare Administrative Contractors ("MACs") who are private contractors that process and pay claims on behalf of CMS for different regions. In the absence of a specific NCD, as is the case with Zio XT historically and for Calendar Year 2021 following the Final Rule, the MAC with jurisdiction over a specific geographic region will have the discretion to make an LCD. The Company is seeking to establish LCD pricing with one or more MACs to establish pricing for 2021 and will be subject to LCD pricing until such time CMS establishes a NCD.

On January 29, 2021, Novitas Solutions, the MAC which covers the region where the Company's Independent Diagnostic Testing Facility ("IDTF") in Houston, Texas is located and where almost all Medicare services for Zio XT are processed, published rates for 2021 that were significantly below our historical Medicare rates for Zio XT. The Company believes that the published rates by Novitas on January 29, 2021, are based off of rates from CPT codes 93224 and 93226, which are existing CPT codes for external continuous electrocardiographic recording up to 48 hours, while the Zio service is capable of continuous monitoring for up to 14 days.

On April 10, 2021, Novitas published updated reimbursement rates for codes 93243 and 93247 at $103 and $115, respectively. The updated rates are retroactive to January 1, 2021 and replace rates initially published on January 29, 2021. The Company has accounted for this announcement as a recognized subsequent event and reflected the impact of this announcement in its condensed consolidated financial statements for the three months ended March 31, 2021. While these new rates represent an increase from the rates posted on January 29, 2021, the Company believes these rates do not appropriately reflect the clinical and economic value that long-term continuous ECG monitoring offers patients, their care teams and the Medicare system. Due to the cost of providing the service relative to the updated rates published by Novitas, the Company will not be able to provide the Zio service to the Medicare fee for service segment if these rates remain unchanged. However, the Company believes there are potential paths to more equitable rates which it plans to explore before making any changes to the availability of Zio XT in the Medicare portion of its business. It is the Company's strong preference that continued access to Zio XT is available to all patients.

The Company is currently holding a majority of Zio XT claims due to the CPT code transition. Claims are being held due to a combination of negotiations with payors and administrative delays with payors. The Company expects the level of held claims to remain high through the end of the second quarter of 2021. The high level of held claims has delayed most first quarter 2021 cash flows into the second quarter of 2021 or potentially beyond, and may impact the timing and accounting for various income statement items, particularly revenue recognition and bad debt expense. The Company has adequate balance sheet liquidity to manage through these delays in cash flow timing.

If the published rates by Novitas remain unchanged or are not significantly improved for the CPT codes listed above, thereby allowing the Company to obtain adequate Medicare reimbursement for the Zio service in the future, the Company may be unable to provide the Zio service or would experience a significant loss of revenue, either of which would have a material adverse effect on our cash flows, results of operations and financial condition.

Further, a reduction in coverage by Medicare could cause some commercial third-party payors to implement similar reductions in their coverage or level of reimbursement of the Zio service. Given the evolving nature of the healthcare industry and on-going healthcare cost reforms, the Company will continue to be subject to changes in the level of Medicare coverage for its products, and unfavorable coverage determinations at the national or local level could adversely affect its results of operations. Although a large majority of commercial customers have re-contracted the Zio XT service since the establishment of the Category I codes on January 1, 2021 matching to pre-existing rates, if the Company is unsuccessful in improving the Medicare rates before calendar year 2022, it is prudent to expect that commercial rates may begin to be more negatively impacted next year. If published rates by Novitas are not increased to above the cost of revenue for the Zio service, and the Company is unable to achieve a level of revenues adequate to support its cost structure, this would raise substantial doubts about the Company's ability to continue as a going concern.

Use of Estimates

The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. On an ongoing basis, management evaluates its estimates, including those related to revenue recognition, contractual allowances, allowance for doubtful accounts, the useful lives of property and equipment, the recoverability of long-lived assets including the estimated usage of the printed circuit board assemblies (“PCBAs”), the incremental borrowing rate for operating leases, accounting for income taxes, and various inputs used in estimating stock-based compensation. Certain of these estimates are impacted by uncertainties surrounding COVID-19 such as revenue recognition, contractual allowances for revenue, allowance for doubtful accounts, and stock based compensation. The Company bases these estimates on historical and anticipated results, trends, and various other assumptions that management believes are reasonable under the circumstances, including assumptions as to future events. Actual results may differ from those estimates.

Investments

Short-term investments consist of debt securities classified as available-for-sale and have maturities greater than 90 days, but less than one year as of the balance sheet date. Long-term investments have maturities greater than one year as of the balance sheet date. All investments are carried at fair value based upon quoted market prices.

The Company periodically assesses its portfolio of debt investments for impairment. For debt securities in an unrealized loss position, this assessment first takes into account the intent to sell, or whether it is more likely than not that the Company will be required to sell the security before recovery of its amortized cost basis. If either of these criteria are met, the debt security’s amortized cost basis is written down to fair value through interest and other, net. For debt securities in an unrealized loss position that do not meet the aforementioned criteria, the Company assesses whether the decline in fair value has resulted from credit losses or other factors.

The Company evaluates expected credit losses by considering factors such as historical experience, market data, issuer-specific factors, and current economic conditions. Expected credit losses on available-for-sale debt securities are recognized in other income, net in the condensed consolidated statements of operations, and any remaining unrealized losses, net of taxes, are reported as a component of accumulated other comprehensive loss. The Company did not recognize any credit losses on its available-for-sale securities during the three months ended March 31, 2021 and there were no impairment charges for unrealized losses in the periods presented.

The cost of available-for-sale securities sold is based on the specific-identification method and realized gains and losses are included in earnings. Amortization of premiums and accretion of discounts are reported as a component of other income, net.

Accounts Receivable, Allowance for Doubtful Accounts and Contractual Allowances

Accounts receivable includes amounts due to the Company from healthcare institutions, third-party payors, and government payors and their related patients, as a result of the Company's normal business activities. Accounts receivable is reported on the consolidated balance sheets net of an estimated allowance for doubtful accounts and contractual allowances.

The Company establishes an allowance for doubtful accounts for estimated uncollectible receivables based on its assessment of the collectability of customer accounts and recognizes the provision as a component of selling, general and administrative expenses.

The Company records a provision for contractual allowances based on the estimated differences between contracted amounts and expected collection rates. Such provisions are based on the Company's historical experience and are reported as a reduction of revenue.

The Company regularly reviews the allowances by considering factors such as historical experience, credit quality, the age of the accounts receivable balances, and current economic conditions that may affect a customer's ability to pay.

The following table presents the changes in the allowance for doubtful accounts (in thousands):

	Three Months Ended March 31, 2021	Year Ended December 31, 2020	Three Months Ended March 31, 2020
Balance, beginning of period	$ 12,711	$ 9,049	$ 9,049
Add: provision for doubtful accounts	3,095	10,515	4,592
Add: adoption of ASC 326	—	461	461
Less: write-offs, net of recoveries and other adjustments	(3,046)	(7,314)	(2,262)
Balance, end of period	$ 12,760	$ 12,711	$ 11,840

The following table presents the changes in the contractual allowance (in thousands):

	Three Months Ended March 31, 2021	Year Ended December 31, 2020	Three Months Ended March 31, 2020
Balance, beginning of period	$ 21,281	$ 15,433	$ 15,433
Add: provision for contractual allowances	6,673	20,916	4,592
Less: realized contractual adjustments	(3,185)	(15,068)	(3,477)
Balance, end of period	$ 24,769	$ 21,281	$ 16,548

Concentrations of Risk

Credit Risk

Financial instruments that potentially subject the Company to a concentration of credit risk consist primarily of cash and cash equivalents, investments and accounts receivable. Cash balances are deposited in financial institutions which, at times may be in excess of federally insured limits. Cash equivalents are invested in highly-rated money market funds. The Company invests in a variety of financial instruments, such as, but not limited to, United States Government securities, corporate notes, commercial paper and, by policy, limits the amount of credit exposure with any one financial institution or commercial issuer. The Company has not experienced any material losses on its deposits of cash and cash equivalents or investments.

Concentrations of credit risk with respect to accounts receivable are limited due to the large number of customers comprising the Company's customer base and their dispersion across many geographies. The Company does not require collateral. The Company records an allowance for doubtful accounts based on the assessment of the collectability of customer accounts, considering factors such as historical experience, credit quality, the age of the accounts receivable balances, and current economic conditions that may affect a customer's ability to pay. Centers for Medicare and Medicaid Services ("CMS"), accounted for approximately 14% and 27% of the Company's revenue for the three months ended March 31, 2021, and 2020, respectively. CMS accounted for 14% and 20% of accounts receivable at March 31, 2021 and December 31, 2020, respectively.

Revenue Recognition

The Company's revenue is generated primarily from the provision of its cardiac rhythm monitoring service, the Zio XT service. The Zio XT is a cardiac rhythm monitoring service that has a patient wear period of up to 14 days and is billable when the monitoring reports are delivered to the healthcare provider, which is also when the service is complete and the Company recognizes revenue. The time from when the patient has the Zio XT device applied to the time the report is posted is generally around 20 days. The Company has concluded that the Zio XT service is one performance obligation on the basis that the

customer cannot benefit from each component of the service on its own or together with other resources that are readily available to the customer.

The Zio AT mobile cardiac telemetry monitor, a wearable patch-based biosensor, offers what the Zio XT offers plus the additional capability of transmissions during the wear period to assist physicians in diagnosing and treating the small percentage of the population requiring more timely action. During the wear period, physicians will receive notifications if there are significant events that meet predetermined arrhythmia detection criteria. The Zio AT service revenue is recognized ratably over the prescription period.

The Company recognizes as revenue the amount of consideration to which it expects to be entitled in exchange for performing the service. The consideration the Company is entitled to varies by portfolio, as further defined below, and includes estimates that require significant judgment by management. A unique aspect of healthcare is the involvement of multiple parties to the service transaction. In addition to the patient, often a third-party, for example a commercial or governmental payor or healthcare institution, will pay the Company for some or all of the service on the patient's behalf. Separate contractual arrangements exist between the Company and third-party payors that establish amounts the third-party payor will pay on behalf of a patient for covered services rendered.

A small portion of the Company's transactions are covered by third-party payors with whom there is neither a contractual agreement nor an established amount that the third-party payor will pay. In determining the collectability and transaction price for its service, the Company considers factors such as insurance claims which are adjudicated as allowable under the applicable policy and payment history from both payors and patient out-of-pocket costs, payor coverage, whether there is a contract between the payor or healthcare institution and the Company, historical amount received for the service, and any current developments or changes that could impact reimbursement and healthcare institution payments. Certain of these factors are forms of variable consideration which are only included in the transaction price to the extent it is probable that a significant reversal of cumulative revenue will not occur when the uncertainty associated with the variable consideration is subsequently resolved.

A summary of the payment arrangements with third-party payors and healthcare institutions is as follows:

- Contracted third-party payors – The Company has contracts with negotiated prices for services provided to patients with commercial healthcare insurance coverage.
- CMS – The Company has received independent diagnostic testing facility approval from regional Medicare Administrative Contractors and will receive reimbursement per the relevant CPT code rates for the services rendered to the patient covered by CMS.
- Non-contracted third-party payors – Non-contracted commercial and government payors often reimburse out-of-network rates provided under the relevant CPT codes on a case-by-case basis. The transaction price used for determining revenue recognition is based on factors including an average of the Company's historical collection experience for its non-contracted services. This rate is reviewed at least quarterly.
- Healthcare institutions – Healthcare institutions are typically hospitals or physician practices in which the Company has negotiated amounts for its monitoring services, including certain governmental agencies such as the Veterans Administration and Department of Defense.

The Company is utilizing the portfolio approach practical expedient under ASC 606 for revenue recognition whereby services provided under each of the above payor types form a separate portfolio. The Company accounts for the contracts within each portfolio as a collective group, rather than individual contracts. Based on history with these portfolios and the similar nature and characteristics of the patients within each portfolio, the Company has concluded that the financial statement effects are not materially different than if accounting for revenue on a contract-by-contract basis.

For contracted and CMS portfolios, the Company recognizes revenue, net of contractual allowances, and recognizes an allowance for doubtful accounts for uncollectible patient accounts receivable. The transaction price is determined based on negotiated rates, and the Company has historical experience of collecting substantially all of these contracted rates. These contracts also impose a number of obligations regarding billing and other matters, and the Company's noncompliance with a material term of such contracts may result in a denial of the claim. The Company accounts for denied claims as a form of variable consideration that is included as a reduction to the transaction price recognized as revenue. The Company estimates the denied claims which require management judgment. The estimated denied claims are based on historical information and judgement includes the historical period utilized. The Company monitors the estimated denied claims against the latest available information, and subsequent changes to the estimated denied claims are recorded as an adjustment to revenue in the

periods during which such changes occur. Historical cash collection indicates that it is probable that substantially all of the transaction price, less the estimate of denied claims, will be received. Contracted payors may require that we bill patient co-payments and deductibles and from time to time we may not be able to collect such amounts due to credit risk. The Company provides for estimates of uncollectible patient accounts receivable, based upon historical experience where judgment includes the historical period utilized, at the time revenue is recognized, with such provisions presented as bad debt expense within the selling, general and administrative line item of the consolidated statement of operations. Adjustments to these estimates for actual experience are also recorded as an adjustment to bad debt expense.

For non-contracted portfolios, the Company is providing an implicit price concession due to the lack of a contracted rate with the underlying payor, the result of which requires the Company to estimate the transaction price based on historical cash collections utilizing the expected value method. All subsequent adjustments to the transaction price are recorded as an adjustment to revenue.

For healthcare institutions, the transaction price is determined based on negotiated rates, and the Company has historical experience collecting substantially all of these contracted rates. Historical cash collection indicates that it is probable that substantially all of the transaction price will be received. As such, the Company is not providing an implicit price concession but, rather, has chosen to accept the risk of default, and any subsequent uncollected amounts are recorded as bad debt expense.

Disaggregation of Revenue

The Company disaggregates revenue from contracts with customers by payor type. The Company believes these categories aggregate the payor types by nature, amount, timing and uncertainty of its revenue streams. Disaggregated revenue by payor type and major service line for three months ended March 31, 2021 and March 31, 2020 were as follows (in thousands):

	Three Months Ended March 31,	
	2021	2020
Contracted third-party payors	$ 46,592	$ 31,710
Non-contracted third-party payors	5,278	3,376
Centers for Medicare & Medicaid	10,177	17,316
Healthcare Institutions	12,264	11,133
Total	$ 74,311	$ 63,535

Contract Liabilities

ASC 606 requires an entity to present a revenue contract as a contract liability when the Company has an obligation to transfer goods or services to a customer for which the Company has received consideration from the customer, or an amount of consideration from the customer is due and unconditional (whichever is earlier).

Certain of the Company’s customers pay the Company directly for the Zio XT service upon shipment of devices. Such advance payments are contract liabilities and are recorded as deferred revenue on the Condensed Balance Sheets and revenue is recognized when reports are delivered to the healthcare provider. During the three months ended March 31, 2021, $0.9 million relating to the contract liability balance at the beginning of 2021 was recognized as revenue. Total revenue recognized during the three months ended March 31, 2020 that was included in the contract liability balance at the beginning of 2020 was $1.2 million.

Contract Costs

Under ASC 340, the incremental costs of obtaining a contract with a customer are recognized as an asset. Incremental costs of obtaining a contract are those costs that an entity incurs to obtain a contract with a customer that it would not have incurred if the contract had not been obtained.

The Company’s current commission programs are considered incremental. However, as a practical expedient, ASC 340 permits the Company to immediately expense contract acquisition costs, as the asset that would have resulted from capitalizing these costs will be amortized in one year or less.

Stock-based Compensation

The Company measures its stock-based awards made to employees based on the estimated fair values of the awards as of the grant date. The fair value of market condition awards is determined using the Monte-Carlo option pricing model and the fair value of stock options is determined using the Black-Scholes option pricing model. Stock-based compensation expense is recognized over the requisite service period using the straight-line method and is based on the value of the portion of stock-based payment awards that is ultimately expected to vest. As such, the Company's stock-based compensation is reduced for the estimated forfeitures at the date of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. For restricted stock, the compensation cost for these awards is based on the closing price of the Company's common stock on the date of grant, and recognized as compensation expense on a straight-line basis over the requisite service period.

The Company recognizes compensation expense related to the Employee Stock Purchase Program ("ESPP") based on the estimated fair value of the options on the date of grant, net of estimated forfeitures. The Company estimates the grant date fair value, and the resulting stock-based compensation expense, using the Black-Scholes option pricing model for each purchase period. The grant date fair value is expensed on a straight-line basis over the offering period.

3. Cash Equivalents and Investments

The fair value of cash equivalents and available-for-sale investments at March 31, 2021 and December 31, 2020, were as follows (in thousands):

	March 31, 2021			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Money market funds	$ 111,827	$ —	$ —	$ 111,827
U.S. government securities	70,436	22	—	70,458
Corporate notes	24,498	—	(10)	24,488
Commercial paper	29,965	—	—	29,965
Total cash equivalents and available-for-sale investments	$ 236,726	$ 22	$ (10)	$ 236,738
Classified as:				
Cash equivalents				$ 111,827
Short-term investments				124,911
Total cash equivalents and available-for-sale investments				$ 236,738

	December 31, 2020			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Money market funds	$ 59,823	$ —	$ —	$ 59,823
U.S. government securities	190,663	16	(2)	190,677
Corporate notes	26,426	2	(5)	26,423
Commercial paper	29,489	—	—	29,489
Total cash equivalents and available-for-sale investments	$ 306,401	$ 18	$ (7)	$ 306,412
Classified as:				
Cash equivalents				$ 59,823
Short-term investments				246,589
Total cash equivalents and available-for-sale investments				$ 306,412

The following table summarizes the fair value of the Company's cash equivalents, short-term and long-term marketable securities classified by maturity (in thousands):

	March 31, 2021	December 31, 2020
Due within one year	$ 236,738	$ 306,412
Due after one year through three years	—	—
Total cash equivalents and available-for-sale investments	$ 236,738	$ 306,412

There were no available-for-sale securities that were in an unrealized loss position for more than twelve months as of March 31, 2021. Unrealized losses as of March 31, 2021, and December 31, 2020, were not material. Available-for-sale securities held as of March 31, 2021 had a weighted average maturity of 86 days. At March 31, 2021, six investments were in an unrealized loss position and no investments have been in an unrealized loss position for more than one year.

4. Fair Value Measurements

The Company discloses and recognizes the fair value of its assets and liabilities using a hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability (an exit price) in an orderly transaction between market participants at the reporting date. The hierarchy gives the highest priority to valuations based upon unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to valuations based upon unobservable inputs that are significant to the valuation (Level 3 measurements). The guidance establishes three levels of the fair value hierarchy as follows:

Level 1 - Inputs are unadjusted quoted prices in active markets for identical assets or liabilities at the measurement date.

Level 2 - Inputs (other than quoted market prices included in Level 1) are either directly or indirectly observable for the asset or liability through correlation with market data at the measurement date and for the duration of the instrument's anticipated life.

Level 3 - Inputs reflect management's best estimate of what market participants would use in pricing the asset or liability at the measurement date. Consideration is given to the risk inherent in the valuation technique and the risk inherent in the inputs to the model.

Assets and liabilities measured at fair value are classified in their entirety based on the lowest level of input that is significant to the fair value measurement. The Company's assessment of the significance of a particular input to the fair value measurement in its entirety requires management to make judgments and consider factors specific to the asset or liability. The corporate notes, commercial paper and government securities are classified as Level 2 as they were valued based upon quoted market 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 corroborated by observable market data for substantially the full term of the assets.

The fair value of the Company's outstanding interest-bearing obligations is estimated using the net present value of the future payments, discounted at an interest rate that is consistent with market interest rates, which is a Level 2 input. The carrying amount and the estimated fair value of the Company's outstanding interest-bearing obligations at March 31, 2021 were $30.1 million and $30.8 million, respectively. The carrying amount and the estimated fair value of the Company's outstanding interest-bearing obligations at December 31, 2020 were $33.0 million and $33.9 million, respectively.

The Company had no transfers between levels of the fair value hierarchy of its assets measured at fair value.

The following tables present the fair value of the Company's financial assets determined using the inputs defined above (in thousands).

	March 31, 2021			
	Level 1	Level 2	Level 3	Total
Assets				
Money market funds	$ 111,827	$ —	$ —	$ 111,827
U.S. government securities	—	70,458	—	70,458
Corporate notes	—	24,488	—	24,488
Commercial paper	—	29,965	—	29,965
Total	$ 111,827	$ 124,911	$ —	$ 236,738

	December 31, 2020			
	Level 1	Level 2	Level 3	Total
Assets				
Money market funds	$ 59,823	$ —	$ —	$ 59,823
U.S. government securities	—	190,677	—	190,677
Corporate notes	—	26,423	—	26,423
Commercial paper	—	29,489	—	29,489
Total	$ 59,823	$ 246,589	$ —	$ 306,412

5. Balance Sheet Components

Inventory and Other Assets

Inventory consisted of the following (in thousands):

	March 31, 2021	December 31, 2020
Raw materials	$ 2,579	$ 2,469
Finished goods	4,284	2,844
Total	$ 6,863	$ 5,313

The Company uses PCBAs in each wearable Zio XT and Zio AT monitor as well as in the wireless gateway used in conjunction with the Zio AT monitor. The PCBAs are used numerous times and have useful lives beyond one year. Each time a PCBA is used in a wearable Zio XT monitor or Zio AT monitor, a portion of the cost of the PCBA is recorded as a cost of revenue. Each time a wireless gateway is used with a Zio AT monitor, a portion of the gateway is recorded as a cost of revenue. PCBAs which are recorded as other assets, were $12.9 million and $12.6 million as of March 31, 2021, and December 31, 2020, respectively.

Property and Equipment, Net

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

	March 31, 2021	December 31, 2020
Laboratory and manufacturing equipment	$ 4,915	$ 4,667
Computer equipment and software	2,005	2,005
Furniture and fixtures	3,793	3,794
Leasehold improvements	10,001	9,215
Internal-use software	32,619	28,416
Total property and equipment, gross	53,333	48,097
Less: accumulated depreciation and amortization	(15,886)	(13,850)
Total property and equipment, net	$ 37,447	$ 34,247

Depreciation and amortization expense was $2.0 million and $1.6 million for the three months ended March 31, 2021, and 2020, respectively.

Accrued Liabilities

Accrued liabilities consisted of the following (in thousands):

	March 31, 2021	December 31, 2020
Accrued vacation	$ 6,959	$ 6,007
Accrued payroll and related expenses	16,579	19,709
Accrued ESPP contribution	2,455	851
Accrued professional services fees	1,386	1,709
Accrued interest	110	121
Claims payable	3,559	4,757
Other	5,212	7,378
Total accrued liabilities	$ 36,260	$ 40,532

6. Commitments and Contingencies

Legal Proceedings

From time to time, the Company is involved in claims and legal proceedings or investigations, that arise in the ordinary course of business. Such matters could have an adverse impact on its reputation, business and the financial condition and divert the attention of its management from the operation of its business. These matters are subject to many uncertainties and outcomes that are not predictable.

On February 1, 2021, a putative class action lawsuit was filed in the United States District Court for the Northern District of California alleging that the Company and its former Chief Executive Officer violated Sections 10(b) and 20(a) of the Exchange Act and SEC Rule 10b-5 promulgated thereunder. The purported class includes all persons who purchased or acquired the Company's securities between August 4, 2020 and January 28, 2021. The complaint seeks unspecified damages purportedly sustained by the class. The Company believes the complaint to be without merit and plans to vigorously defend itself.

Development Agreement

On September 3, 2019, the Company entered into a Development Collaboration Agreement (the “Development Agreement”) with Verily Life Sciences LLC (“Verily”). The Development Agreement, which is over a 24 month term, involves joint development and production of intellectual property between the Company and Verily. Each participant has primary responsibility for certain aspects of development and approval, with all processes to be performed at each respective party’s own cost. Costs incurred by the Company in connection with the Development Agreement will be expensed as research and development expense in accordance with ASC 730, Research and Development.

The Company and Verily will develop certain next-generation atrial fibrillation ("AF") screening, detection, or monitoring products pursuant to the Development Agreement, which products will involve combining Verily and the Company's technology platforms and capabilities. Under the terms of the Development Agreement, the Company paid Verily an upfront fee of $5.0 million in 2019. In addition, the Company has agreed to make additional payments to Verily up to an aggregate of $12.75 million in milestone payments upon achievement of various development and regulatory milestones over the 24 months of the Development Agreement, which payments will be made in cash to Verily. During the year ended December 31, 2020, the Company recognized $7.0 million of research and development expense related to Verily milestones, of which $4.0 million is was paid during the three months ended March 31, 2021. No milestones were achieved during the three months ended March 31, 2021. The Company expects to incur additional expense of $3.0 million for the year ended December 31, 2021.

The Development Agreement provides each party with licenses to use certain intellectual property of the other party for development activities in the field of AF screening, detection, or monitoring. Ownership of developed intellectual property will be allocated to the Company or Verily depending on the subject matter of the underlying developed intellectual property, and, for certain subject matter, shall be jointly owned.

Indemnifications

In the ordinary course of business, the Company enters into agreements pursuant to which it agrees to indemnify customers, vendors, lessors, business partners, and other parties with respect to certain matters, including losses arising out of the breach of such agreements, services to be provided by us, or from intellectual property infringement claims made by third parties. Pursuant to such agreements, the Company may indemnify, hold harmless and defend an indemnified party for losses suffered or incurred by the indemnified party. Some of the provisions will limit losses to those arising from third-party actions. In some cases, the indemnification will continue after the termination of the agreement. The maximum potential amount of future payments the Company could be required to make under these provisions is not determinable. The Company has also entered into indemnification agreements with its directors and officers that may require the Company to indemnify its directors and officers against liabilities that may arise by reason of their status or service as directors or officers to the fullest extent permitted by applicable law. The Company currently has directors' and officers' insurance. The Company has never incurred material costs to defend lawsuits or settle claims related to these indemnification provisions, and believes that the estimated fair value of these indemnification obligations is not material and it has not accrued any amounts for these obligations.

7. Debt

Bank Debt

In December 2015, the Company entered into a Second Amended and Restated Loan and Security Agreement ("Loan Agreement") with Silicon Valley Bank ("SVB"). Under the SVB Loan Agreement, the Company could borrow, repay and reborrow under a revolving credit line, but not in excess of the maximum loan amount of $15.0 million, until December 4, 2018, when all outstanding principal and accrued interest became due and payable. Any principal amount outstanding under the SVB Loan Agreement shall bear interest at a floating rate per annum equal to the rate published by The Wall Street Journal as the "Prime Rate" plus 0.25%. The Company could borrow up to 80% of its eligible accounts receivable, up to the maximum of $15.0 million.

In October 2018, the Company entered into the Third Amended and Restated Loan and Security Agreement with SVB ("Third Amended and Restated SVB Loan Agreement"). This Agreement amends and restates the Second Amended and Restated Loan and Security Agreement between the Company and SVB dated December 4, 2015, as amended by the First Loan Modification Agreement between the Company and SVB dated August 22, 2016.

Pursuant to the Third Amended and Restated SVB Loan Agreement, the Company obtained a term loan ("SVB Term Loan") for $35.0 million. Total proceeds from the SVB Term Loan were used to pay off the loan agreement with Biopharma Secured Investments III Holdings Cayman LP ("Pharmakon"), totaling $35.8 million. The Company made interest-only payments through October 31, 2020. Beginning in November 2020, the Company began monthly payments of principal plus interest, which will continue through October 31, 2024. Interest charged on the SVB Term Loan will be the greater of (a) a floating rate based on the "Prime Rate" published by The Wall Street Journal minus 0.75%, or (b) 4.25%.

Under the Third Amended and Restated SVB Loan Agreement, the Company may borrow, repay, and reborrow under a revolving credit line, but not in excess of the maximum loan amount of $25.0 million, which includes an $11.0 million standby letter of credit sublimit availability. In October 2018, a $6.9 million standby letter of credit was obtained in connection with a lease for the Company's San Francisco headquarters. Any principal amount outstanding under the Third Amended and Restated SVB Loan Agreement revolving credit line shall bear interest at an amount that is the greater of (a) a floating rate per annum equal to the rate published by The Wall Street Journal as the "Prime Rate" or (b) 5.00%. The Company may borrow up to 75% of eligible accounts receivable, up to the maximum of $25.0 million.

The Third Amended and Restated Loan Agreement requires the Company to maintain a minimum consolidated liquidity ratio or minimum adjusted Earnings Before Interest, Tax, Depreciation, and Amortization during the term of the loan facility. In addition, the SVB Loan Agreement contains customary affirmative and negative covenants and events of default. The Company was in compliance with loan covenants as of March 31, 2021. The obligations under the Third Amended and Restated Loan Agreement are collateralized by substantially all assets of the Company.

8. Income Taxes

The Company recorded a tax provision related to its U.S. state taxes and the U.K. subsidiary during the three months ended March 31, 2021 and March 31, 2020. Due to the uncertainties surrounding the realization of the U.S. deferred tax assets through future taxable income, the Company has provided a full valuation allowance and, therefore, no benefit has been recognized for the U.S. net operating loss carryforwards and other deferred tax assets.

9. Stockholders' Equity

Common stock

The Company's amended and restated certificate of incorporation dated October 25, 2016, as amended, authorizes the Company to issue 100,000,000 shares of common stock with a par value of $0.001 per share and 5,000,000 shares of preferred stock with a par value of $0.001 per share. The holders of common stock are entitled to receive dividends whenever funds and assets are legally available and when declared by the board of directors, subject to the prior rights of holders of all series of convertible preferred stock outstanding. No dividends were declared through March 31, 2021.

The Company had reserved shares of common stock for issuance as follows:

	March 31, 2021	December 31, 2020
Options issued and outstanding	553,064	609,881
Unvested restricted stock units	1,212,423	1,114,159
Shares available for grant under future stock plans	7,718,950	8,016,517
Shares available for future issuance	9,484,437	9,740,557

10. Equity Incentive Plans

Equity Incentive Plan Activity

A summary of share-based awards available for grant under the 2016 Equity Incentive Plan is as follows:

	Awards Available for Grant
Balance at December 31, 2019	**5,528,132**
Additional awards authorized	1,333,928
Awards granted	(595,915)
Awards forfeited	156,623
Awards withheld for tax purposes	82,622
Balance at December 31, 2020	**6,505,390**
Awards granted	(470,959)
Awards forfeited	44,394
Awards withheld for tax purposes	128,998
Balance at March 31, 2021	**6,207,823**

During the three months ended March 31, 2021, 304,225 restricted stock units ("RSUs") were granted, 202,336 RSUs vested, and 7,751 RSUs were forfeited.

The following table summarizes stock option activity under the 2006 and 2016 Equity Incentive Plans:

		Options Outstanding		
	Options Outstanding	Weighted-Average Exercise Price Per Share	Weighted-Average Remaining Contractual Life (years)	Aggregate Intrinsic Value (in thousands)
Balance at December 31, 2019	**1,503,247**	$ 27.40	6.43	$ 62,401
Options exercised	(868,614)	$ 17.31		
Options forfeited	(24,752)	$ 66.89		
Balance at December 31, 2020	**609,881**	$ 40.18	6.24	$ 120,163
Options exercised	(56,111)	$ 28.09		
Options forfeited	(706)	$ 78.89		
Balances at March 31, 2021	**553,064**	$ 41.36	6.05	$ 53,923
Options exercisable – March 31, 2021	469,148	$ 36.51	5.88	$ 48,016
Options vested and expected to vest – March 31, 2021	550,842	$ 41.24	6.05	$ 53,774

The aggregate intrinsic values of options outstanding, exercisable, vested and expected to vest were calculated as the difference between the exercise price of the options and the closing price of the Company's common stock.

The Company did not grant any options during the three months ended March 31, 2021, and 2020.

11. Stock-Based Compensation

Market-based RSU Valuation

The fair value of market based RSUs was estimated at the date of grant using the Monte-Carlo option pricing model with the assumptions below. Additional details on the Company's market based RSUs are included below.

	Three Months Ended March 31,
	2021
Expected term (in years)	0.74
Expected volatility	63.0 %
Risk-free interest rate	0.17 %
Dividend yield	— %

Stock-Based Compensation

The following table summarizes the total stock-based compensation expense included in the statements of operations and comprehensive loss for all periods presented (in thousands):

	Three Months Ended, March 31,	
	2021	2020
Cost of revenue	$ 423	$ —
Research and development	1,659	741
Selling, general and administrative	18,148	(436)
Total stock-based compensation expense	$ 20,230	$ 305

As of March 31, 2021, there was total unamortized compensation costs of $2.9 million, net of estimated forfeitures, related to unvested stock options which the Company expects to recognize over a period of approximately 1 year, $114.5 million, net of estimated forfeitures, related to unrecognized RSU expense, which the Company expects to recognize over a period of 2.7 years, and $1.0 million unrecognized ESPP expense, which the Company will recognize over 0.7 years.

Performance-based RSUs ("PRSU") and Market-based RSUs

The Company grants PRSUs to key executives of the Company. PRSUs can be earned in accordance with the performance equity program for each respective grant.

2019 Awards

In February 2019, the company granted PRSU's ("2019 awards") to be earned based on the compound annual growth rate ("CAGR") of fiscal year 2020's revenue compared to fiscal year 2018's revenue.

Due to the impact of the COVID-19 pandemic, management determined that the Company's achievement of its performance targets described above, was not probable in the first quarter of fiscal year 2020. PRSU expense of $4.8 million recognized in fiscal year 2019 related to the 2019 awards was reversed in the first quarter of fiscal year 2020.

On June 19, 2020, the Company modified the terms of the 2019 awards to vest based on the Company's average stock price for the 60 days preceding January 1, 2021. The modification impacted all active recipients of the 2019 awards, a total of ten recipients. The total incremental compensation cost resulting from the modification of $13.6 million was recognized ratably through March of 2021. The Company recognized $2.2 million of compensation cost for the three months ended March 31, 2021 in connection with the 2019 awards.

February 2020 Awards

In February 2020, the company granted PRSU's ("February 2020 awards") for fiscal year 2022's annual unit volume CAGR compared to fiscal year 2019's annual unit volume CAGR, measuring a minimum performance threshold of 19.7% to earn 50% of target, and a maximum threshold of 29% achieved to earn 200% of target. A total of 133,834 PRSU shares were granted with grant date fair value of $11.0 million. The 2020 awards also include a service-based component.

Compensation cost in connection with the probable number of shares that will vest will be recognized ratably through March 31, 2023. During the three months ended March 31, 2021 the Company recognized $1.4 million of compensation cost in connection with the February 2020 awards.

January 2021 Awards

In January 2021, the Company granted PRSU's ("January 2021 awards") for fiscal year 2021's annual consolidated revenue compared to fiscal year 2020's annual consolidated revenue, measuring a performance threshold of 10.0% to earn 100% of target. A total of 53,862 PRSU shares were granted with a grant date fair value of $13.9 million. The January 2021 awards also include a service-based component.

Compensation cost in connection with the probable number of shares that will vest will be recognized ratably through March 31, 2022. During the three months ended March 31, 2021, the Company determined that it was probable that the January 2021 Awards would vest and recognized $2.2 million of compensation cost in connection with the January 2021 awards.

February 2021 Awards

In February 2021, the Company granted PRSU's ("February 2021 awards") for fiscal year 2023's annual unit volume CAGR compared to fiscal year 2020's annual unit volume CAGR, measuring a minimum performance threshold of 19.7% to earn 50% of target, and a maximum threshold of 29% achieved to earn 200% of target. A total of 112,872 PRSU shares were granted with grant date fair value of $17.3 million. The February 2021 awards also include a service-based component.

Compensation cost in connection with the probable number of shares that will vest will be recognized ratably through March 31, 2024. During the three months ended March 31, 2021, the Company determined that it was probable that the February 2021 Awards would vest and recognized $0.4 million of compensation cost in connection with the February 2021 awards.

Non employee Stock-Based Compensation

On July 3, 2020, the Company's Chief Financial Officer ("CFO") resigned and entered into a Consulting and Professional Services Agreement ("CPSA") with the Company to provide consulting services through July 2, 2021. Pursuant to the original terms of the awards, the CFO will continue to vest in outstanding awards as long as services are provided to the Company under the CPSA as a non-employee consultant. In accordance with ASC 718, the Company recognized expense related to all awards expected to vest over the duration of the CPSA in the current period as an equity- based severance cost as the consulting services are not substantive.

On January 12, 2021, the Company's Chief Executive Officer ("CEO") resigned and entered into a CPSA with the Company. Pursuant to the original terms of the awards, the CEO will continue to vest in outstanding awards as long as services are provided to the Company under the CPSA as a non-employee consultant or a member of the Company's Board of Directors. In accordance with ASC 718, the Company recognized expense related to all awards expected to vest over the duration of the CPSA in the current period as an equity- based severance cost as the consulting services are not substantive.

Total expense related to non-employee stock-based compensation recognized for the three months ended March 31, 2021 was $5.0 million.

12. Net Loss Per Common Share

As the Company has net losses for the three months ended March 31, 2021, and 2020, all potential common shares were deemed to be anti-dilutive. The following table sets forth the computation of the basic and diluted net loss per share (in thousands, except share and per share data):

	Three Months Ended March 31,	
	2021	2020
Numerator:		
Net loss	$ (27,779)	$ (9,065)
Denominator:		
Weighted-average shares used to compute net loss per common share, basic and diluted	29,164,430	26,839,870
Net loss per common share, basic and diluted	$ (0.95)	$ (0.34)

The following outstanding shares of potentially dilutive securities have been excluded from diluted net loss per common share for the three months ended March 31, 2021 and 2020, because their inclusion would be anti-dilutive:

	Three Months Ended March 31,	
	2021	2020
Options to purchase common stock	553,064	1,221,621
PRSUs and RSUs unvested	1,212,423	947,101
Total	1,765,487	2,168,722

13. Subsequent Events

On April 10, 2021, Medicare Administrative Contractor (“MAC”) Novitas published updated reimbursement rates which affect reimbursement for the Company’s Zio XT service. Rates for codes 93243 and 93247 were announced at $103 and $115, respectively. The updated rates are retroactive to January 1, 2021 and replace rates initially published on January 29, 2021. As the publication of the updated rates represents a resolution to uncertainties that existed as of the balance sheet date, the Company has accounted for this announcement as a recognized subsequent event and reflected the impact of this announcement in its condensed consolidated financial statements for the three months ended March 31, 2021.

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

You should read the following discussion and analysis of our financial condition and results of operations together with the unaudited financial statements and related notes included elsewhere in this Quarterly Report on Form 10-Q. This discussion and other parts of this Quarterly Report on Form 10-Q contain forward-looking statements that involve risks and uncertainties, such as statements of our plans, objectives, expectations and intentions. Our actual results could differ materially from those discussed in these forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in the section of this Quarterly Report on Form 10-Q entitled "Risk Factors".

Overview

We are a digital healthcare company redefining the way cardiac arrhythmias are clinically diagnosed by combining our wearable biosensing technology with cloud-based data analytics and deep-learning capabilities. Our goal is to be the leading provider of ambulatory electrocardiogram ("ECG") monitoring for patients at risk for arrhythmias. We have created a full portfolio of ambulatory cardiac monitoring services on a unique platform, called the Zio service, which combines an easy-to-wear and unobtrusive biosensor that can be worn for up to 14 consecutive days with powerful proprietary algorithms that distill data from millions of heartbeats into clinically actionable information. The Zio service consists of:

- wearable patch-based biosensors, Zio XT and Zio AT monitors, which continuously record and store ECG data from every patient heartbeat for up to 14 consecutive days; Zio AT offers the option of timely transmission of data during the prescribed wear period;
- cloud-based analysis of the recorded cardiac rhythms using our proprietary, deep-learned algorithms;
- a final quality assessment review of the data by our certified cardiographic technicians; and
- an easy-to-read Zio report, a curated summary of findings that includes high quality and clinically-actionable information which is sent directly to a patient's physician through ZioSuite and can be integrated into a patient's electronic health record.

We receive revenue for the Zio service primarily from third-party payors, which include commercial payors and government agencies, such as CMS, Veterans Administration, and the military. In addition, a small percentage of institutions, which are typically hospitals or private physician practices, purchase the Zio service from us directly. Our revenue in the third-party commercial payor category is primarily contracted, which means we have entered into pricing contracts with these payors. Third-party contracted payors accounted for approximately 63% and 50% of our revenue for the three months ended March 31, 2021 and 2020, respectively. Approximately, 14% and 27% of our total revenue for the three months ended March 31, 2021 and 2020, respectively, is received from Centers for Medicare and Medicaid Services ("CMS"), which is under established reimbursement codes. Healthcare institutions, which are typically hospitals or private physician practices accounted for approximately 17% and 18% of our revenue for the three months ended March 31, 2021 and 2020, respectively. Non-contracted third party payors and self-pay accounted for 7% and 5% of our total revenue for the three months ended March 31, 2021 and March 31, 2020, respectively. We rely on a third-party billing partner, XIFIN, Inc., to submit patient claims and collect from commercial payors, certain government agencies, and patients.

Since our Zio service was cleared by the U.S. Food and Drug Administration ("FDA"), we have provided the Zio service to over three million patients and have collected over 750 million hours of curated heartbeat data. We believe the Zio service is well-positioned to disrupt an already-established $1.8 billion U.S. ambulatory cardiac monitoring market by offering a user-friendly device to patients, actionable information to physicians and value to payors.

We market our ambulatory cardiac monitoring solution in the United States through a direct sales organization comprised of sales management, field billing specialists, quota-carrying sales representatives, and a customer service team. Our sales representatives focus on initial introduction into new customers, penetration across a sales region, driving adoption within existing accounts and conveying our message of clinical and economic value to service line managers and hospital administrators and other clinical departments. In addition, we will continue exploring sales and marketing expansion opportunities in international geographies.

COVID-19 Impact

We cannot currently predict the extent or duration of the ongoing impact to our financial results and have suspended forward-looking guidance. Although we cannot currently predict the extent or duration of the COVID-19 related impact to our financial results, we expect the impact of COVID-19 to be more significant in the near-term.

Beginning in mid-March 2020, we experienced decreasing levels in the Zio service patient registrations which impacted our revenues during the year ended December 31, 2020. This decrease in revenue is due to a variety of challenges associated with the COVID-19 pandemic in the United States, including, among others:

- reduction in physician prescriptions for our Zio service due to:
- cancellation and reduction of physician attendance at professional medical society meetings and trade shows and our decision not to attend them;
- travel restrictions and changing hospital policies that have limited access of our sales professionals to hospitals where the Zio services are prescribed and where patients have historically been enrolled;
- delays in receiving Zio XT back from patients with some patients not returning the device at all; and
- patients who have lost jobs, been furloughed, have reduced work hours or are worried about the continuation of medical insurance being unable to afford the Zio service.

During the second half of 2020, we saw recovery of patient registrations for the Zio service to pre-COVID levels of the first quarter of 2020 and during the three months ended March 31, 2021 we experienced increasing levels in the Zio service patient registrations. However, this may be due, in some part, to the re-opening of certain regions within the United States and may not represent sustainable levels of patient registrations in future time periods.

We are taking a variety of measures to promote the safety and security of our employees and customers. Our response to COVID-19 is focused on:

- ***Protecting and supporting the health and well-being of our employees, our communities and our customers by limiting the transmission of COVID-19.*** Following recommendations from federal and local government and healthcare agencies, we transitioned employees to a remote work environment beginning in early March 2020. For a small number of our employees who continue to support essential operations at our facilities, we have instituted social distancing and other measures to ensure the safety of our employees. We rapidly implemented business continuity protocols and have been able to transition to a remote operating environment while continuing to deliver our Zio service. We will continue to follow local and national guidelines to determine the appropriate time to resume in-office functions.
- ***Delivering uninterrupted patient care for both Zio XT and Zio AT and supporting efforts to monitor COVID-19 patients.*** While hospital systems and healthcare facilities shift their focus and resources to treating COVID-19 patients and combating the spread of COVID-19, we have adapted our service to meet the immediate needs of our physician customers and patients. Our digital service platform enables physician ordering, results reporting, data curation and patient support independent of location, across virtual or in-office care models. As an example, we have significantly increased the utilization of our “Home Enrollment” service. This service allows patients to receive and wear the single-use Zio monitor without going to a healthcare facility. Physicians can prescribe the Zio service for their patients, either in-office or through a virtual care setting, and we ship the Zio monitor directly to the patient’s residence. We pay for the costs of shipping the Zio monitor, which represents additional expense for us. We also guide patients through the patch application process and inform them of instructions for wear. Home enrollment also eliminates clinical staff exposure to patients, as well as application, cleaning or reusing traditional Holter and event monitors that may have been exposed to viruses or other pathogens. In addition, health systems with acute needs to facilitate a reduction in healthcare provider contact or for additional monitoring capacity can deploy Zio AT for in-patient monitoring. The FDA informed us that Zio AT usage for this application is consistent with the FDA COVID-19 Remote Monitoring guidance.
- ***Adjusting our operating plan as appropriate to ensure continued financial strength.*** We continue to maintain a strong cash position and have taken initiatives to adjust our operating plan to ensure we maintain appropriate liquidity

during these uncertain times. We have proactively taken steps to reduce spend, including eliminating or delaying project spend for non-essential programs, and reducing spend on travel and consulting. In addition, we raised $206.8 million in proceeds from a follow-on public offering in August 2020 to fund growth initiatives and for working capital and other general corporate purposes

Components of Results of Operations

Revenue

Substantially all of our revenue is derived from sales of our Zio service in the United States. We earn revenue from the provision of our Zio service primarily from contracted third-party payors, CMS, and healthcare institutions. In addition, a small percentage of institutions, which are typically hospitals or private physician practices, purchase the Zio service from us directly, and a very small percentage of commercial non-contracted payors.

We recognize revenue on an accrual basis based on estimates of the amount that will ultimately be realized, which is the difference between the amount submitted for payment and the amount received. These estimates require significant judgment by management. In determining the amount to accrue for a delivered report, and Zio service provided, we consider factors such as claim payment history from both payors and patient out-of-pocket costs, payor coverage, whether there is a contract between the payor or healthcare institution and the Company, historical amount received for the service, and any current developments or changes that could impact reimbursement and healthcare institution payments.

We are subject to seasonality similar to other companies in our field, as vacations by physicians and patients tend to affect enrollment in the Zio service more during the summer months and during the end of calendar year holidays compared to other times of the year.

Cost of Revenue and Gross Margin

Cost of revenue includes direct labor, material costs, equipment and infrastructure expenses, amortization of internal-use software, allocated overhead, and shipping and handling. Direct labor includes payroll and personnel-related costs including stock-based compensation involved in manufacturing, data analysis, and customer service. Material costs include both the disposable materials costs of the Zio monitors and amortization of the re-usable printed circuit board assemblies (“PCBAs”). Each Zio XT monitor includes a PCBA, and each Zio AT monitor includes a PCBA and gateway board, the cost of which is amortized over the anticipated number of uses of the board. We expect cost of revenue to increase in absolute dollars to the extent our revenue grows.

We calculate gross margin as gross profit divided by revenue. Our gross margin has been and will continue to be affected by a variety of factors, including increased contracting with third-party payors and institutional providers. We have in the past been able to increase our pricing as third-party payors become more familiar with the benefits of the Zio service and move to contracted pricing arrangements. We expect to continue to decrease the cost of service per device by obtaining volume purchase discounts for our material costs and implementing scan-time algorithm improvements and software-driven and other workflow enhancements to reduce labor costs.

Gross margin for the three months ended March 31, 2021 was negatively impacted due to the Novitas Medicare price decrease with limited impact of higher Zio AT volumes and COVID-related labor costs offset by volume benefits.

Although a large majority of our commercial customers have re-contracted the Zio XT service since the establishment of the Category I codes on January 1, 2021 matching to pre-existing rates, if we are unsuccessful in improving the Medicare rates before calendar year 2022, we believe it is prudent to expect that commercial rates may begin to be more negatively impacted next year which would have a negative impact on margins.

Research and Development Expenses

We expense research and development costs as they are incurred. Research and development expenses include payroll and personnel-related costs, including stock-based compensation, consulting services, clinical studies, laboratory supplies and allocated facility overhead costs. We expect our research and development costs to increase in absolute dollars as we hire additional personnel to develop new product and service offerings and product enhancements.

Selling, General and Administrative Expenses

Our sales and marketing expenses consist of payroll and personnel-related costs, including stock-based compensation, sales commissions, travel expenses, consulting, public relations costs, direct marketing, tradeshow and promotional expenses and allocated facility overhead costs.

Our general and administrative expenses consist primarily of payroll and personnel-related costs for executive, finance, legal and administrative personnel, including stock-based compensation. Other significant expenses include professional fees for legal and accounting services, consulting fees, recruiting fees, bad debt expense, third-party patient claims processing fees and travel expenses.

Interest Expense

Interest expense is attributable to borrowings under our loan agreements. Refer to *Note 7. Debt*, for further information on our loan agreements.

Other Income, Net

Other income, net consists primarily of interest income which consists of interest received on our cash, cash equivalents and investments balances.

Results of Operations

Comparison of the Three Months Ended March 31, 2021 and 2020

	Three Months Ended March 31,			
	2021	2020	$ Change	% Change
Revenue	$ 74,311	$ 63,535	$ 10,776	17 %
Cost of revenue	23,458	16,063	7,395	46 %
Gross profit	50,853	47,472	3,381	7 %
Gross margin	68 %	75 %		
Operating expenses:				
Research and development	8,510	8,415	95	1 %
Selling, general and administrative	69,813	48,230	21,583	45 %
Total operating expenses	78,323	56,645	21,678	38 %
Loss from operations	(27,470)	(9,173)	(18,297)	199 %
Interest expense	(335)	(380)	45	(12)%
Other income, net	124	505	(381)	(75)%
Loss before income taxes	(27,681)	(9,048)	(18,633)	206 %
Income tax provision	98	17	81	476 %
Net loss	$ (27,779)	$ (9,065)	$ (18,714)	206 %

Revenue

Revenue increased $10.8 million, or 17%, to $74.3 million during the three months ended March 31, 2021 from $63.5 million during the three months ended March 31, 2020. The increase in revenue was primarily attributable to the increase in volume of the Zio services as a result of increased demand from our customers, partially offset by a decrease in revenue recognized from CMS, based on the updated 2021 published rates.

Cost of Revenue and Gross Margin

Cost of revenue increased $7.4 million, or 46%, to $23.5 million during the three months ended March 31, 2021 from $16.1 million during the three months ended March 31, 2020. The increase in cost of revenue was primarily due to increased Zio service volume as well as costs incurred to support a larger cost structure in 2021.

Gross margin for the three months ended March 31, 2021 was 68%, compared to 75% for the three months ended March 31, 2020. The decrease in gross margin is primarily due to the updated reimbursement rates announced by Novitas in April 2021.

Research and Development Expenses

Research and development expenses increased $0.1 million, or 1%, to $8.5 million during the three months ended March 31, 2021 from $8.4 million during the three months ended March 31, 2020. The increase was primarily attributable to a $2.3 million increase in bonus and stock-based compensation, and a $1.8 million reduction of expense due to an increase in costs capitalized to internal use software, as well as a $0.2 million decrease in employee travel expense.

Selling, General and Administrative Expenses

Selling, general and administrative expenses increased $21.6 million, or 45%, to $69.8 million during the three months ended March 31, 2021 from $48.2 million during the three months ended March 31, 2020. The increase was due to $18.6 million increase in stock-based compensation primarily due to increased headcount and a reversal of PRSU expense recorded during the three months ended March 31, 2020, $8.4 million increase in payroll as a result of increased headcount, and $0.9 million increase in facility expenses, partially offset by a $2.8 million reduction in employee travel expense, and a $2.3 million reduction in temporary consultants.

Interest Expense

Interest expense was $0.3 million for the three months ended March 31, 2021, compared to $0.4 million for the three months ended March 31, 2020. There were no significant changes in interest expense during the three months ended March 31, 2021 compared with the three months ended March 31, 2020.

Other Income, Net

Other income, net was $0.1 million for the three months ended March 31, 2021, compared to $0.5 million for the three months ended March 31, 2020. There were no significant changes in other income, net during the three months ended March 31, 2021 compared with the three months ended March 31, 2020.

Liquidity and Capital Expenditures

Overview

We are continuously reviewing our liquidity and anticipated capital requirements in light of the significant uncertainty created by the COVID-19 global pandemic. We believe we will have adequate liquidity over the next twelve months to operate our business and to meet our cash requirements.

As of March 31, 2021, we had cash and cash equivalents of $137.4 million, short-term investments of $124.9 million, and an accumulated deficit of $332.5 million.

Our expected future capital requirements may depend on many factors including expanding our customer base, the expansion of our salesforce, and the timing and extent of spending on the development of our technology to increase our product offerings.

If we raise additional funds by issuing equity securities, our stockholders may experience dilution. Any future debt financing into which we enter may impose upon us additional covenants that restrict our operations, including limitations on our ability to incur liens or additional debt, pay dividends, repurchase our common stock, make certain investments and engage in certain merger, consolidation or asset sale transactions. Any debt financing or additional equity that we raise may contain terms that are not favorable to us or our stockholders.

Cash Flows

The following table summarizes our cash flows for the periods indicated (in thousands):

	Three Months Ended March 31,	
	2021	2020
Net cash (used in) provided by:		
Operating activities	$ (41,842)	$ (22,366)
Investing activities	117,035	59,911
Financing activities	(26,446)	(1,493)
Net increase in cash and cash equivalents	$ 48,747	$ 36,052

Cash Used in Operating Activities

During the three months ended March 31, 2021, cash used in operating activities was $41.8 million, which consisted of a net loss of $27.8 million, adjusted by non-cash charges of $34.1 million and a net change of $48.2 million in our net operating assets and liabilities. The non-cash charges were primarily comprised of a change in stock-based compensation of $20.2 million, allowance for doubtful accounts and contractual allowances of $9.8 million, depreciation and amortization of $2.0 million and amortization of right of use assets of $1.6 million. The change in our net operating assets and liabilities was primarily due to an increase of $39.8 million in accounts receivable, a decrease of $6.1 million in accrued liabilities, a decrease of $0.7 million in accounts payable and a decrease of $1.4 million in operating lease liability.

We are currently holding a majority of Zio XT claims due to the CPT code transition. Claims are being held due to a combination of negotiations with payors and administrative delays with payors. We expect the level of held claims to remain high through the end of the second quarter of 2021 and potentially beyond. The high level of held claims will delay some second quarter 2021 cash flows into the second half of 2021 or potentially beyond. We expect cash inflows from accounts receivable to improve in the second quarter of 2021 as we make progress on Zio XT claims processing and collections that have been delayed.

During the three months ended March 31, 2020, cash used in operating activities was $22.4 million, which consisted of a net loss of $9.1 million, adjusted by non-cash charges of $12.4 million and a net change of $25.7 million in our net operating assets and liabilities. The non-cash charges were primarily comprised of a change in the allowance for doubtful accounts and contractual allowances of $9.2 million and depreciation and amortization of $1.6 million. The change in our net operating assets and liabilities was primarily due to an increase of $10.0 million in accounts receivable as a result of increased revenues and an increase of $9.5 million in accrued liabilities.

Cash Provided by Investing Activities

Cash provided by investing activities during the three months ended March 31, 2021 was $117.0 million, which consisted of $30.1 million in purchases of available for sale investments and $4.2 million of capital expenditures, partially offset by cash received from the maturities of available for sale investments of $151.3 million.

Cash provided by investing activities during the three months ended March 31, 2020 was $59.9 million, which consisted of cash received from the maturities of available for sale investments of $56.8 million and sales of available for sale investments of $14.5 million. This was partially offset by $8.0 million in purchases of available for sale investments and $3.4 million of capital expenditures associated with leasehold improvements and internal use software.

Cash Used in Financing Activities

During the three months ended March 31, 2021, cash used in financing activities was $26.4 million, primarily due to $25.1 million in tax withholding upon the vesting of RSUs. This practice will be updated to require employees to sell shares to cover tax liabilities and will not be a company use of cash beginning in June 2021. In addition, cash used in financing activities was due to repayment of debt of $2.9 million, partially offset by $1.6 million in proceeds from the issuance of common stock in connection with employee options exercises and our Employee Stock Purchase Program.

During the three months ended March 31, 2020, cash used in financing activities was $1.5 million, primarily due to $4.5 million in tax withholding upon the vesting of RSUs, partially offset by $3.0 million in proceeds from the issuance of common stock in connection with employee options exercises and our Employee Stock Purchase Plan.

Bank Debt

In December 2015, we entered into a Second Amended and Restated Loan and Security Agreement with SVB, (the “SVB Loan Agreement”). Under the SVB Loan Agreement, we could borrow, repay and reborrow under a revolving credit line, but not in excess of the maximum loan amount of $15.0 million, until December 4, 2018, when all outstanding principal and accrued interest became due and payable. Any principal amount outstanding under the SVB Loan Agreement shall bear interest at a floating rate per annum equal to the rate published by The Wall Street Journal as the “Prime Rate” plus 0.25%. We could borrow up to 80% of our eligible accounts receivable, up to the maximum of $15.0 million.

In October 2018, we entered into the Third Amended and Restated Loan and Security Agreement with SVB (“Third Amended and Restated SVB Loan Agreement”). This Agreement amends and restates the Second Amended and Restated Loan and Security Agreement between the Company and SVB dated December 4, 2015, as amended by the First Loan Modification Agreement between the Company and SVB dated August 22, 2016.

Pursuant to the Third Amended and Restated SVB Loan Agreement, we obtained a term loan (“SVB Term Loan”) for $35.0 million. Total proceeds from the SVB Term Loan were used to pay off the loan agreement with Biopharma Secured Investments III Holdings Cayman LP (“Pharmakon”), totaling $35.8 million. We will make interest-only payments through October 31, 2020, followed by 36 monthly payments of principal plus interest on the SVB Term Loan. Interest charged on the SVB Term Loan will be the greater of (a) a floating rate based on the “Prime Rate” published by The Wall Street Journal minus 0.75%, or (b) 4.25%.

Under the Third Amended and Restated SVB Loan Agreement, we may borrow, repay, and reborrow under a revolving credit line, but not in excess of the maximum loan amount of $25.0 million, which includes an $11.0 million standby letter of credit sublimit availability. In October 2018, a $6.9 million standby letter of credit was obtained in connection with a lease for our San Francisco headquarters. Any principal amount outstanding under the Third Amended and Restated SVB Loan Agreement revolving credit line shall bear interest at an amount that is the greater of (a) a floating rate per annum equal to the rate published by The Wall Street Journal as the “Prime Rate” or (b) 5.00%. We may borrow up to 75% of eligible accounts receivable, up to the maximum of $25.0 million. As of March 31, 2021 no amount was outstanding under the revolving credit line.

The Third Amended and Restated Loan Agreement requires us to maintain a minimum consolidated liquidity ratio or minimum adjusted Earnings Before Interest, Tax, Depreciation, and Amortization during the term of the loan facility. In addition, the SVB Loan Agreement contains customary affirmative and negative covenants and events of default. We were in compliance with loan covenants as of March 31, 2021. The obligations under the Third Amended and Restated Loan Agreement are collateralized by substantially all of our assets.

Off-Balance Sheet Arrangements

We have not entered into any off-balance sheet arrangements and do not have any holdings in variable interest entities.

Contractual Obligations

Our contractual obligations as of December 31, 2020 are presented in our Form 10-K filed with the SEC on February 26, 2021. There have been no material changes.

Critical Accounting Policies and Estimates

For a complete description of what we believe to be the critical accounting policies and estimates used in the preparation of our Unaudited Condensed Consolidated Financial Statements, refer to our Annual Report on Form 10-K for the year ended December 31, 2020 ("Annual Report"). Refer to Note 2. *Summary of Significant Accounting Policies*, in the Notes to Unaudited Condensed Consolidated Financial Statements in Item 1 of Part I of this Quarterly Report on Form 10-Q, for all significant accounting policies. With the exception of the accounting policy described below, there have been no significant changes to our critical accounting policies as described in our Annual Report.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to market risks in the ordinary course of our business. These risks primarily include risk related to interest rate sensitivities and foreign currency exchange rate sensitivity.

Interest Rate Sensitivity

We had cash, cash equivalents and investments of $262.3 million as of March 31, 2021, which consisted of bank deposits, money market funds, U.S. government securities, corporate notes, and commercial paper. Such interest-earning instruments carry a degree of interest rate risk; however, historical fluctuations in interest income have not been significant.

We do not enter into investments for trading or speculative purposes and have not used any derivative financial instruments to manage our interest rate risk exposure. We have not been exposed nor do we anticipate being exposed to material risks due to changes in interest rates. A hypothetical 10% change in interest rates during any of the periods presented would not have had a material impact on our condensed consolidated financial statements.

We had total outstanding debt of $30.1 million, which is net of debt discount and debt issuance costs, as of March 31, 2021. The Third Amended and Restated SVB Loan Agreement Note carries a variable interest rate based on the “Prime Rate” published by The Wall Street Journal. A hypothetical 10% change in interest rates during any of the periods presented would not have had a material impact on our consolidated financial statements.

Foreign Currency Exchange Rate Sensitivity

We face foreign exchange risk as a result of entering into transactions denominated in currencies other than U.S. dollars, particularly in British Pound Sterling. As of March 31, 2021 we do not consider this risk to be material. We do not utilize any forward foreign exchange contracts. All foreign transactions settle on the applicable spot exchange basis at the time such payments are made.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to provide reasonable assurance that information required to be disclosed by us in reports that we file or submit under the Securities Exchange Act of 1934, as amended (the “Exchange Act”) is recorded, processed, summarized and reported, within the time periods specified in the SEC’s rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer (“CEO”) (principal executive officer) and Chief Financial Officer (“CFO”) (principal financial officer), as appropriate to allow for timely decisions regarding required disclosure. In designing and evaluating the 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, and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

As required by Rule 13a-15(b) under the Exchange Act, our management, including our CEO and CFO, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act) as of the end of the period covered by this report. Based on that evaluation, our CEO and our CFO have concluded that as of the end of the period covered by this quarterly report, our disclosure controls and procedures were not effective as of March 31, 2021, at the reasonable assurance level because of the material weakness in internal controls which was disclosed in the Company's Annual Report on Form 10-K for the year ended December 31, 2020, and continues to exist as of March 31, 2021. Notwithstanding the material weakness, our management, including our CEO and CFO, has concluded that our consolidated financial statements, included in the Annual Report on Form 10-K for the year ended December 31, 2020, and in the Form 10-Q for the three months ending March 31, 2021, fairly present, in all material respects, our financial condition, results of operations and cash flows for the periods presented in conformity with generally accepted accounting principles.

Material Weakness Related to the Control Environment

We did not design or maintain an effective control environment commensurate with our financial reporting requirements. Given the rapid growth in the size and complexity of the business, we failed to maintain a sufficient number of professionals with an appropriate level of accounting and internal control knowledge, training and experience to appropriately analyze, record and disclose accounting matters timely and accurately. This material weakness contributed to the misstatement of our revenues, revenue reserves, bad debt expense, property and equipment, research and development expense and related financial disclosures, and in the revision of the Company's consolidated financial statements for the years ended December 31, 2017, December 31, 2018, and each interim period therein as well as the quarters ended March 31, 2019, June 30, 2019, and September 30, 2019. Additionally, this material weakness could result in a misstatement of account balances or disclosures that would result in a material misstatement to the annual or interim consolidated financial statements that would not be prevented or detected. Based on this assessment and because of this material weakness, we concluded that the Company's internal control over financial reporting was not effective as of March 31, 2021.

Remediation Plan Activities

As previously disclosed in Part II, Item 9A of the Company's Annual Report on Form 10-K for the years ended December 31, 2018, December 31, 2019 and December 31, 2020, we commenced a remediation plan with the goal of remediating the material weakness as soon as possible. In carrying out our remediation plan, management performed the following actions related to the material weakness noted above:

- Increased the depth and experience of our Finance organization by increasing the number of management and staff members, expanding our technical experience in accounting, auditing and reporting matters, and performing internal controls training for management and staff members.
- Hired two Internal Audit Directors (one with broad finance experience and one with relevant control experience over information technology environments). These individuals are focused on the development, maintenance and monitoring of our overall control environment and system of key internal controls over financial reporting.

We remain committed to the continued hiring and on-boarding of additional members of the organization supporting the internal control over financial reporting. As of March 31, 2021, we have filled key positions within the Finance organization and will continue to add skilled talent as complexities grow and needs arise.

These investments in resources have significantly improved the stability of our accounting organization. While significant progress has been made in response to the material weakness in the control environment, key remediation plan activities include additional training programs and hiring of additional resources in support of certain control activities. Additionally, time is needed to demonstrate sustainability as it relates to our internal control over financial reporting and improvements made to our complement of resources, including demonstrating sustained operating effectiveness of our internal controls.

Changes in Internal Control Over Financial Reporting

There have been no changes in internal control over financial reporting during the quarter ended March 31, 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Effectiveness of Controls

Internal control over financial reporting has inherent limitations. Internal control over financial reporting is a process that involves human diligence and compliance and is subject to lapses in judgment and breakdowns resulting from human failures. Internal control over financial reporting can also be circumvented by collusion or improper management override of the controls. Projections of any evaluation of controls effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or deterioration in the degree of compliance with policies or procedures.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

Legal Proceedings

From time to time, we are involved in claims and legal proceedings or investigations, that arise in the ordinary course of business. Such matters 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. These matters are subject to many uncertainties and outcomes that are not predictable.

On February 1, 2021, a putative class action lawsuit was filed in the United States District Court for the Northern District of California alleging that the Company and our former Chief Executive Officer violated Sections 10(b) and 20(a) of the Exchange Act and SEC Rule 10b-5 promulgated thereunder. The purported class includes all persons who purchased or acquired our securities between August 4, 2020 and January 28, 2021. The complaint seeks unspecified damages purportedly sustained by the class. The Company believes the complaint to be without merit and plans to vigorously defend itself.

ITEM 1A. RISK FACTORS

Investing in our common stock involves a high degree of risk. You should carefully consider the risks and uncertainties described below, together with all of the other information contained in this Quarterly Report on Form 10-Q, including our financial statements and the related notes thereto, before making a decision to invest in our common stock. The realization of any of the following risks could materially and adversely affect our business, financial condition, operating results and prospects. In that event, the price of our common stock could decline, and you could lose part or all of your investment

Summary of Risk Factor

Our business is subject to numerous risks and uncertainties that you should consider before investing in our company, as more fully described below. The principal factors and uncertainties that make investing in our company risky include, among others:

- changes in public health insurance coverage and CMS reimbursement rates for the Zio service could affect the adoption and profitability of our Zio service;
- if third-party commercial payors do not provide any or adequate reimbursement, rescind or modify their reimbursement policies or delay payments for our products, including as a result of the Novitas Solutions reimbursement rates for our Zio XT service, or if we are unable to successfully negotiate reimbursement contracts, our commercial success could be compromised;
- the COVID-19 pandemic and efforts to reduce its spread have adversely impacted, and is expected to continue to materially and adversely impact, our business and operations;
- we have a history of net losses, which we expect to continue, and we may not be able to achieve or sustain profitability in the future;
- our business is dependent upon physicians adopting our Zio service and if we fail to obtain broad adoption, our business would be adversely affected;
- we plan to introduce new products and services and our business will be harmed if we are not successful in selling these new products and services to our existing customers and new customers;
- the market for ambulatory cardiac monitoring solutions is highly competitive. If our competitors are able to develop or market monitoring products and services that are more effective, or gain greater acceptance in the marketplace, than any products and services we develop, our commercial opportunities will be reduced or eliminated;

- we may become a party to intellectual property litigation or administrative proceedings that could be costly and could interfere with our ability to provide the Zio service; and

- changes in the regulatory environment may constrain or require us to restructure our operations, which may harm our revenue and operating results.

Risks Related to Our Business

The COVID-19 pandemic and efforts to reduce its spread have adversely impacted, and is expected to continue to materially and adversely impact, our business and operations.

The COVID-19 pandemic has had, and is expected to continue to have, an adverse impact on our operations, particularly as a result of preventive and precautionary measures that we, other businesses, and governments are taking. The spread of COVID-19 in the United States has resulted in travel restrictions impacting our sales representatives and customer service team. Many hospitals have also limited access for non-patients, including our sales professionals, which has negatively impacted our access to physicians and their patients. New hospital sanitization and social distancing protocols, as well as increased competition for resources within hospitals that have dedicated certain resources to COVID patients, have impacted and may continue to impact our business and operations. Additionally, we anticipate that an increase in the unemployment rate due to the impact of COVID-19 will decrease the number of potential patients with access to health insurance, which may result in fewer diagnostic procedures. As hospitals cancel and defer diagnostic and elective procedures, it reduces their revenue and impacts their financial results, which could result in pricing pressure on our services as they seek cost savings. Prolonged restrictions relating to COVID-19 could adversely affect our revenue, results of operations, cash flows, and financial position.

Although we saw recovery of patient registrations for the Zio service in the second half of 2020, we expect these challenges of the COVID-19 pandemic to continue to impact the volume of Zio services provided for the duration of the pandemic, but its extent cannot be quantified at this time. Our customers' patients are also experiencing the economic impact of the current pandemic. Even an important diagnostic procedure like the Zio service may be less of a priority than other items for those patients who have lost their jobs, are furloughed, have reduced work hours or are worried about the continuation of their medical insurance. Such economic effects on patients may delay or disrupt our ability to both provision our service and collect co-payments or out-of-pocket costs, which would have an adverse effect on our revenue and cash flow. Patients may also be reluctant to visit their physicians or hospitals due to fear of contracting COVID-19. Physicians are not performing as many diagnostic tests for their patients and the facilities where these tests are performed may not be open, adequately staffed or open the entire day. Even where physicians continue to treat symptomatic patients, treatment of asymptomatic patients is being deferred in many cases. The reduction in diagnostic testing and physician visits, the increase in deferred treatment, and changes in patient behaviors are translating into fewer Zio services being prescribed.

Governmental mandates related to the COVID-19 pandemic have impacted, and are expected to continue to impact, our personnel and personnel at third-party manufacturing facilities in the United States and other countries, and the availability or cost of materials, which could disrupt our supply chain and reduce margins. For the employees who continue to support essential operations, including those at its manufacturing facilities, we have instituted protective equipment policies and, to the degree practical, social distancing measures to protect the safety of our employees. While we have continued to deliver our Zio service by operating with remote employees and essential employees on site, an extended implementation of these governmental mandates could further impact our ability to effectively provide our Zio service, and could impede progress of all ongoing initiatives. Appropriate social distancing techniques and other measures at our facilities have been implemented for the limited number of employees who have returned to work to support essential operations, and will not return until the risk to employee health has meaningfully diminished.

Our ongoing operations may be impacted as a result of employees assuming additional roles and responsibilities within our organization and we would have fewer resources available to run our operations, which could negatively impact our business operations and revenue as a result. We may also encounter voluntary departures of key employees due to any of the foregoing actions that we undertake. If key personnel or large groups of our employees contract the virus, that may also impact our business and operations. For example, an outbreak in our manufacturing facility could cause us to have to shut down our manufacturing operations, which would in turn present risk to the ongoing supply of devices required to continue our business operations. In the meantime, we have taken steps to support our employees, including providing the ability for the majority of employees to work remotely and implementing policies to enhance employee safety, including appropriate social distancing techniques, for those employees required to work in our facilities. We are also assessing our business continuity plans in the context of this pandemic.

Additionally, due to COVID-19, we have experienced delays in receiving Zio XT monitors back from patients, with some patients not returning the device at all. As a result, the increased prevalence of COVID-19 could result in negative changes to historical expectations around device return timelines and loss rates, both of which would negatively impact our finances. Finally, we anticipate that the COVID-19 pandemic may impact clinical and regulatory matters. While we do not have any clinical trials currently in process, COVID-19 is delaying enrollment in new clinical trials across the medical device industry and may affect any new trials we decide to pursue.

Any of these occurrences may significantly harm our business, financial condition, cash flows and prospects. The ultimate impact of the COVID-19 pandemic is highly uncertain and subject to change. This impact is having a material, adverse impact on our liquidity, capital resources, operations and business and those of the third parties on which we rely, and could worsen over time. The extent to which the COVID-19 pandemic impacts our results will depend on future developments, which are highly uncertain and cannot be predicted, including new information which may emerge concerning the severity of COVID-19 and the actions to contain COVID-19 or treat its impact, among others. We do not yet know the full extent of potential delays or impacts on our business, financial condition, cash flows and results of operations. Additionally, while the potential economic impact brought by, and the duration of, the COVID-19 pandemic is difficult to assess or predict, the COVID-19 pandemic has resulted in, and may continue to result in, significant disruption of global financial markets, reducing our ability to raise additional capital, which could negatively impact our short-term and long-term liquidity and our ability to operate on a timely basis, or at all.

Unfavorable global economic conditions could adversely affect our business, financial condition or results of operations.

Our results of operations could be adversely affected by general conditions in the global economy and in the global financial markets. The COVID-19 pandemic has caused extreme volatility and disruptions in the global capital and credit markets. A severe or prolonged economic downturn, could result in a variety of risks to our business, including driving hospitals to tighten budgets and curtail spending, which would negatively impact our sales and business. In addition, higher unemployment or reductions in employer-provided benefits plans could result in fewer commercially insured patients, which could negatively impact our revenue and business as a result. A weak or declining economy could also strain our third party manufacturers or suppliers, possibly resulting in supply disruptions, or cause our customers to delay making payments for our Zio service. Any of the foregoing could harm our business and we cannot anticipate all of the ways in which the economic climate and financial market conditions could adversely affect our business.

We have a history of net losses, which we expect to continue, and we may not be able to achieve or sustain profitability in the future.

We have incurred net losses since our inception in September 2006. For the three months ended March 31, 2021, and 2020, we had net losses of $27.8 million and $9.1 million, respectively, and expect to continue to incur additional losses. As of March 31, 2021, we had an accumulated deficit of $332.5 million. The losses and accumulated deficit were primarily due to the substantial investments we made to develop and improve our technology and products and improve our business and the Zio service through research and development efforts and infrastructure improvements. Over the next several years, we expect to continue to devote substantially all of our resources to increase adoption of and reimbursement for our Zio service, which includes Zio XT and Zio AT, and to develop additional arrhythmia detection and management products and services. These efforts may prove more expensive than we currently anticipate and we may not succeed in increasing our revenue sufficiently to offset these higher expenses or at all. Accordingly, 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 could cause the market price of our common stock to decline.

Our business is dependent upon physicians adopting our Zio service and if we fail to obtain broad adoption, our business would be adversely affected.

Our success will depend on our ability to bring awareness to the Zio brand and educate physicians regarding the benefits of our Zio service over existing products and services, such as Holter monitors and event monitors, and to persuade them to prescribe the Zio service as the diagnostic product for their patients. We do not know if the Zio service will be successful over the long term and market acceptance may be hindered if physicians are not presented with compelling data demonstrating the efficacy of our service compared to alternative technologies. Any studies we, or third parties which we sponsor, may conduct comparing our Zio service with alternative technologies will be expensive, time consuming and may not yield positive results. Additionally, adoption will be directly influenced by a number of financial factors, including the ability of providers to obtain sufficient reimbursement from third-party commercial payors, and the Centers for Medicare & Medicaid Services (“CMS”), for the professional services they provide in applying the Zio monitor and analyzing the Zio report. The efficacy, safety, performance and cost-effectiveness of our Zio service, on a stand-alone basis and relative to competing services, will determine

the availability and level of reimbursement received by us and providers. Some payors do not have pricing contracts with us setting forth the Zio service reimbursement rates for us and providers. Physicians may be reluctant to prescribe the Zio service to patients covered by such non-contracted insurance policies because of the uncertainty surrounding reimbursement rates and the administrative burden of interfacing with patients to answer their questions and support their efforts to obtain adequate reimbursement for the Zio service. If physicians do not adopt and prescribe our Zio service, our revenue will not increase and our financial condition will suffer as a result.

Our revenue relies substantially on our Zio service, which is currently our only product offering. If the Zio service or future product offerings fail to gain, or lose, market acceptance, our business will suffer.

Our current revenue is dependent on prescriptions of the Zio service, and we expect that sales of the Zio service will account for substantially all of our revenue for the foreseeable future. We are in various stages of research and development for other diagnostic solutions and new indications for our technology and the Zio service; however, there can be no assurance that we will be able to successfully develop and commercialize any new products or services. Any new products may not be accepted by physicians or may merely replace revenue generated by our Zio service and not generate additional revenue. If we have difficulty launching new products, our reputation may be harmed and our financial results adversely affected. In order to substantially increase our revenue, we will need to target physicians other than cardiologists, such as emergency room doctors, primary care physicians and other physicians with whom we have had little contact and may require a different type of selling effort. If we are unable to increase prescriptions of the Zio service, expand reimbursement for the Zio service, or successfully develop and commercialize new products and services, our revenue and our ability to achieve and sustain profitability would be impaired.

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

Our quarterly and annual results of operations, including our revenue, profitability and cash flow, may vary significantly in the future and period-to-period comparisons of our operating results may not be meaningful. Accordingly, the results of any one quarter or period should not be relied upon as an indication of future performance. Our quarterly and annual financial results may fluctuate as a result of a variety of factors, many of which are outside our control and, as a result, may not fully reflect the underlying performance of our business. Fluctuation in quarterly and annual results may decrease the value of our common stock. Factors that may cause fluctuations in our quarterly and annual results include, without limitation:

- market awareness and acceptance of the Zio service;
- our ability to get payors under contract at acceptable reimbursement rates;
- the availability of reimbursement for the Zio service at acceptable rates through government programs;
- our ability to attract new customers and improve our business with existing customers;
- results of our clinical trials and publication of studies by us, competitors or third parties;
- the timing and success of new product introductions by us or our competitors or any other change in the competitive dynamics of our industry, including consolidation among competitors, customers or strategic partners;
- the amount and timing of costs and expenses related to the maintenance and expansion of our business and operations;
- changes in our pricing policies or those of our competitors;
- general economic, industry and market conditions;
- the impact of the COVID-19 outbreak on our operations and financial results;
- the regulatory environment;
- expenses associated with unforeseen product quality issues;
- timing of physician prescriptions and demand for our Zio service;
- seasonality factors, such as patient and physician vacation schedules, severe weather conditions and insurance deductibles, that hamper or otherwise restrict when a patient seeking diagnostic services such as the Zio service visits the prescribing physician;
- the hiring, training and retention of key employees, including our ability to expand our sales team;

- litigation or other claims against us for intellectual property infringement or otherwise;
- our ability to obtain additional financing as necessary; and
- advances and trends in new technologies and industry standards.

Because our quarterly results may fluctuate, period-to-period comparisons may not be the best indication of the underlying results of our business and should only be relied upon as one factor in determining how our business is performing.

We have noticed seasonality in the use of our Zio service which, along with other factors such as severe weather, may cause quarterly fluctuations in our revenue.

During the summer months and the holiday season, we have observed that the use of our Zio service decreases, which reduces our revenue during those periods. We believe that the decrease in demand may result from physicians or their patients taking vacations. Severe weather conditions or natural disasters also may hamper or otherwise restrict when patients seeking diagnostic services, such as the Zio service, visit prescribing physicians. Similarly, we generally experience some effects of seasonality due to the renewal of insurance deductibles at the beginning of the calendar year. These factors may cause our results of operations to vary from quarter to quarter.

Reimbursement by CMS is highly regulated and subject to change; our failure to comply with applicable regulations could result in decreased revenue and may subject us to penalties or have an adverse impact on our business.

For the three months ended March 31, 2021, we received approximately 14% of our revenue from reimbursement for our Zio service by CMS. Under CMS guidelines for participation in the Medicare program CMS designates us as an independent diagnostic treatment facility ("IDTF"). CMS imposes extensive and detailed requirements on IDTFs, including but not limited to, rules that govern how we structure our relationships with physicians, how and when we submit reimbursement claims, how we operate our monitoring facilities and how and where we provide our monitoring solutions. Our failure to comply with applicable CMS rules could result in a discontinuation of our reimbursement under the CMS payment programs, our being required to return funds already paid to us, civil monetary penalties, criminal penalties and/or exclusion from the CMS programs.

Changes in public health insurance coverage and CMS reimbursement rates for the Zio service could affect the adoption and profitability of our Zio service.

Government payors may change their coverage and reimbursement policies, as well as payment amounts, in a way that would prevent or limit reimbursement for our Zio service, which would significantly harm our business. Government and other third-party payors require us to report the service for which we are seeking reimbursement by using a Current Procedural Terminology ("CPT") code-set maintained by the American Medical Association ("AMA"). For Zio XT, we had historically utilized temporary CPT codes (or Category III CPT codes), used for newly introduced technologies specific to our category of diagnostic monitoring. The process to convert Category III CPT codes to Category I CPT codes is governed by the AMA and CMS. On October 25, 2019, the AMA's CPT Editorial Panel established two new Category I CPT codes which are applicable to the Zio service and took effect on January 1, 2021.

In August 2020, CMS published the Calendar Year 2021 Medicare Physician Fee Schedule Proposed Rule which proposed reimbursement for the Category I CPT codes that were higher than their associated Category III CPT codes. Following a comment period through October 2020, CMS published its Calendar Year 2021 Medicare Physician Fee Schedule Final Rule (the "Final Rule") in December 2020. In the Final Rule, CMS chose not to finalize national pricing for four of the eight Category I CPT codes (93241, 93243, 93245 and 93247) which include the CPT codes that we will primarily use to seek reimbursement for Zio XT. These codes were designated by CMS for contractor pricing in calendar 2021, which means that prices will be determined regionally by each Medicare Administrative Contractor ("MAC" or "MACs").

On April 10, 2021, Novitas Solutions, the MAC which covers the region where our Independent Diagnostic Testing Facility ("IDTF") in Houston, Texas is located and where almost all of our Medicare services for Zio XT are processed, published rates for 2021 that were retroactive to January 1, 2021, and replaced the rates published on January 29, 2021. These rates were higher than the rates posted on January 29, 2021, but continue to be significantly below our historical Medicare rates for our Zio XT service. We are continuing to negotiate with Novitas to establish higher pricing for the Category I CPT Codes but can offer no assurances as to the timing or outcome of those discussions. As a result of our ongoing negotiations to improve reimbursement rates we are holding some Zio XT claims from being processed and this may result in less revenue being recognized in the second quarter of 2021. If the published rates by Novitas remain unchanged or are not significantly improved for the CPT codes listed above, thereby allowing us to obtain adequate Medicare reimbursement for the Zio service in the future, we may be unable to provide the Zio XT service or would experience a significant loss of revenue, either of which would have a material adverse effect on our cash flows, results of operations, and financial condition.

Determinations of which products or services will be reimbursed under Medicare can be developed at the national level through a national coverage determination (“NCD”) by CMS, or at the local level through a local coverage determination (“LCD”), by one or more of the regional MAC who are private contractors who establish and write LCD policies, process and pay claims on behalf of CMS for different regions. In the absence of a specific NCD, the MAC with jurisdiction over a specific geographic region will have the discretion to make an LCD. If Novitas Solutions were to change, limit or cease to cover the Zio service by altering the existing LCD, such a change could negatively impact our revenue from CMS.

Given the evolving nature of the healthcare industry and on-going healthcare cost reforms, we are and will continue to be subject to changes in the level of Medicare coverage for our products, and unfavorable coverage determinations at the national or local level could adversely affect our business and results of operations. A reduction in coverage by Medicare could cause some commercial third-party payors to implement similar reductions in their coverage or level of reimbursement of the Zio XT service. If published rates by Novitas are not increased to above the cost of revenue for the Zio service, and we are unable to achieve a level of revenues adequate to support our cost structure, this would raise substantial doubts about our ability to continue as a going concern.

We are currently holding a majority of Zio XT claims due to the CPT code transition. Claims are being held due to a combination of negotiations with payors and administrative delays with payors. We expect the level of held claims to remain high through the end of the second quarter of 2021 and potentially beyond. The high level of held claims will delay some second quarter 2021 cash flows into the second half of 2021 or potentially beyond, and may impact the timing and accounting for various income statement items, particularly revenue recognition and bad debt expense. We believe we have adequate balance sheet liquidity to manage through these delays in cash flow timing.

Controls imposed by CMS and commercial third-party payors designed to reduce costs, commonly referred to as “utilization review”, may affect our operations. Federal law contains numerous provisions designed to ensure that services rendered to CMS patients meet professionally recognized standards and are medically necessary, appropriate for the specific patient and cost-effective. These provisions include a requirement that a sampling of CMS patients must be reviewed by quality improvement organizations, which review the appropriateness of product prescriptions, the quality of care provided, and the appropriateness of reimbursement costs. Quality improvement organizations may deny payment for services or assess fines and also have the authority to recommend to the U.S. Department of Health and Human Services, that a provider which is in substantial noncompliance with the standards of the quality improvement organization be excluded from participation in the Medicare program. The Patient Protection and Affordable Care Act, as amended by the Health Care and Education Affordability Reconciliation Act (the “Affordable Care Act”), potentially expands the use of prepayment review by Medicare contractors by eliminating statutory restrictions on their use, and, as a result, efforts to impose more stringent cost controls are expected to continue. Utilization review is also a requirement of most non-governmental managed care organizations and other third-party payors. To date these controls have not had a significant effect on our operations, but significant limits on the scope of services reimbursed and on reimbursement rates and fees could have a material, adverse effect on our business, financial position and results of operations in the future.

Each state’s Medicaid program has its own coverage determinations related to our services, and some state Medicaid programs do not provide their recipients with coverage for our Zio XT service. Even if our Zio service is covered by a state Medicaid program, we must be recognized as a Medicaid provider by the state in which the Medicaid recipient receiving the services resides in order for us to be reimbursed by a state’s Medicaid program. Even if we are recognized as a provider in a state, Medicare’s rate for our Zio service may be low, and the Medicaid reimbursement amounts are sometimes as low, or lower, than the Medicare reimbursement rate. In addition, and as noted above, each state’s Medicaid program has its own coverage determinations related to our Zio service, and many state Medicaid programs do not provide their recipients with coverage for our Zio service. As a result of all of these factors, our Zio service is not reimbursed or only reimbursed at a very low dollar amount by many state Medicaid programs. In some cases, a state Medicaid program’s reimbursement rate for our Zio service

might be zero dollars. Additionally, certain states may require Medicaid recipients to pay for part of the Zio Service, and since the recipients of Medicaid are low income individuals, we are often unable to collect any amounts directly from individual recipients of the Zio service covered by Medicaid. Low or zero dollar Medicaid reimbursement rates for our Zio service would have an adverse effect on our business, gross margins and revenues. Most of the Zio services we provide are reimbursed through Medicare or private third party payors and not Medicaid, but if that were to change in the future, or the percentage of Zio services provided to Medicaid recipients were to increase, our gross margins would be adversely affected as a result.

Also, healthcare reform legislation or regulation may be proposed or enacted in the future that may adversely affect such policies and amounts. Changes in the healthcare industry directed at controlling healthcare costs or perceived over-utilization of ambulatory cardiac monitoring products and services could reduce the volume of Zio services prescribed by physicians. If more healthcare cost controls are broadly instituted throughout the healthcare industry, the volume of cardiac monitoring solutions prescribed could decrease, resulting in pricing pressure and declining demand for our Zio service. We cannot predict whether and to what extent existing coverage and reimbursement will continue to be available. If physicians, hospitals and clinics are unable to obtain adequate coverage and government reimbursement of the Zio service, they are significantly less likely to use the Zio service and our business and operating results would be harmed.

In addition, any changes to, or repeal of, the Affordable Care Act or its implementing regulations may have a material adverse effect on our results of operations. We cannot predict what other healthcare programs and regulations will ultimately be implemented at the federal or state level or the effect of any future legislation or regulation in the United States may have on our business.

If third-party commercial payors do not provide any or adequate reimbursement, including as a result of the Novitas Solutions reimbursement rates for our Zio XT service, rescind or modify their reimbursement policies or delay payments for our products, including the Zio service, or if we are unable to successfully negotiate reimbursement contracts, our commercial success could be compromised.

We receive a substantial portion of our revenue from third-party private commercial payors, such as medical insurance companies. These commercial payors may reimburse our products, including the Zio service, at inadequate rates, suspend or discontinue reimbursement at any time, impose requirements that may result in a greater number of denied claims, or require or increase co-payments from patients. The recent actions taken by Novitas Solutions to reduce the reimbursement rates for use of the Zio XT service by Medicare patients could influence the price that commercial payors are willing to pay for our Zio service. Contracts with commercial payors, which set forth the Zio XT service reimbursement rates for us and physicians could be terminated or payors could seek to renegotiate them at any time to try to obtain pricing at reduced amounts at or near the Novitas Solutions reimbursement rates. Some payors do not have contracts with us and others that in are already in the process of negotiating contracts may look to renegotiate lower reimbursement rates for the Zio XT service in response to actions taken by Novitas Solutions immediately. Any such actions could have a significant and adverse effect on our revenue and the revenue of physicians who prescribe our Zio service. Physicians may not prescribe our Zio service unless payors reimburse a substantial portion of the submitted costs, including the physician's, hospital's or clinic's charges related to the application of certain products, including the Zio monitor and the interpretation of results which may inform a diagnosis. Additionally, certain payors may require that physicians prescribe another arrhythmia diagnostic monitoring option prior to prescribing the Zio service. There is significant uncertainty concerning third-party reimbursement of any new product or service until a contracted rate is established. Reimbursement by a commercial payor may depend on a number of factors, including, but not limited to, a payor's determination that the prescribed service is:

- not experimental or investigational;
- appropriate for the specific patient;
- cost effective;
- supported by peer-reviewed publications; and
- accepted and used by physicians within their provider network.

Since each payor makes its own decision as to whether to establish a policy concerning reimbursement or enter into a contract with us to set the price of reimbursement, seeking reimbursement on a payor-by-payor basis is a time consuming and costly process to which we dedicate substantial resources. If we do not dedicate sufficient resources to establishing contracts with third-party commercial payors, or continue to validate the clinical value of Zio services through studies and physician adoption, the amount that we are reimbursed for our products may decline, our revenue may become less predictable, and we will need to expend more efforts on a claim-by-claim basis to obtain reimbursement for our products.

A substantial portion of our revenue is derived from third-party commercial payors who have pricing contracts with us, which means that the payor has agreed to a defined reimbursement rate for our services. These contracts provide a high degree of certainty to us, physicians, clinics and hospitals with respect to the rate at which our services will be reimbursed. These contracts also impose a number of obligations regarding billing and other matters, and our noncompliance with a material term of such contracts may result in termination of the contract and loss of any associated revenue. We expect to continue to dedicate resources to maintaining compliance with these contracted payors, to ensure payors acknowledge and are aware of the clinical and economic value of our services and the interest on the part of physicians, clinics and hospitals who use our services and participate in their provider networks; however, we can provide no assurance that we will retain any given contractual payor relationship. A loss of these pricing contracts can increase the uncertainty of reimbursement of claims from third-party payors.

A portion of our revenue is derived from third-party commercial payors without such contracts in place. Without a contracted rate, reimbursement claims for our products are often denied upon submission, and we or our billing partner, XIFIN, Inc. ("XIFIN"), must appeal the denial. The appeals process is time-consuming and expensive, and may not result in full or any payment. In cases where there is no contracted rate for reimbursement it may be more difficult for us to acquire new accounts with physicians, clinics and hospitals. In addition, in the absence of a contracted rate, there is typically a greater out-of-network, co-insurance or co-payment requirement which may result in payment delays or decreased likelihood of full collection. In some cases involving non-contracted insurance companies, we may not be able to collect any amount or only a portion of the invoiced amount for our services.

We expect to continue to dedicate resources to establishing pricing contracts with non-contracted insurance companies; however, we can provide no assurance that we will be successful in obtaining such pricing contracts or that such pricing contracts will contain reimbursement for our services at rates that are favorable to us. If we fail to establish these contracts, we will be able to recognize revenue only based on an estimated average collection rate per historical cash collections. In addition, XIFIN may need to expend significant resources obtaining reimbursement on a claim-by-claim basis and in adjudicating claims which are denied altogether or not reimbursed at acceptable rates. We currently pay XIFIN a percentage of the amounts it collects on our behalf and this percentage may increase in the future if it needs to expend more resources in adjudicating such claims. We sometimes informally engage physicians, hospitals and clinics to help establish contracts with third-party payors who insure their patients. We cannot provide any assurance that such physicians, hospitals and clinics will continue to help us establish contracts in the future. If we fail to establish contracts with more third-party payors it may adversely affect our ability to increase our revenue. In addition, a failure to enter into contracts could affect a physician's willingness to prescribe our services because of the administrative work involved in interacting with patients to answer their questions and help them obtain reimbursement for our services. If physicians are unwilling to prescribe our services due to the lack of certainty and administrative work involved with patients covered by non-contracted insurance companies, or patients covered by non-contracted insurance companies are unwilling to risk that their insurance may charge additional out-of-pocket fees, our revenue could decline or fail to increase.

Our continued rapid growth could strain our personnel resources and infrastructure, and if we are unable to manage the anticipated growth of our business, our future revenue and operating results may be harmed.

We have experienced rapid growth in our headcount and in our operations. Any growth that we experience in the future will provide challenges to our organization, requiring us to expand our sales personnel, manufacturing, clinical, customer care and billing operations and general and administrative infrastructure. In addition to the need to scale our operational and service capacity, future growth will impose significant added responsibilities on management, including the need to identify, recruit, train and integrate additional employees. Rapid expansion in personnel could mean that less experienced people manufacture our Zio monitors, market, sell and support our Zio service, and analyze the data to produce Zio reports, which could result in inefficiencies and unanticipated costs, reduced quality in either our Zio reports or manufactured devices, and disruptions to our service operations. As we seek to gain greater efficiency, we may expand the automated portion of our Zio service and require productivity improvements from our certified cardiographic technicians. Such improvements could compromise the quality of our Zio reports. In addition, rapid and significant growth may strain our administrative and operational infrastructure. Our ability to manage our business and growth will require us to continue to improve our operational, financial and management controls, reporting systems and procedures. If we are unable to manage our growth effectively, it may be difficult for us to execute our business strategy and our business could be harmed.

If we are unable to support demand for the Zio service or any of our future products or services, our business could suffer.

As demand for the Zio service or any of our future products or services increases, we will need to continue to scale our manufacturing capacity and algorithm processing technology, expand customer service, billing and systems processes and enhance our internal quality assurance program. We will also need additional certified cardiographic technicians and other

personnel to process higher volumes of data. We cannot assure you that, with any increases in scale, required improvements will be successfully implemented, quality assurance will be maintained, or that appropriate personnel will be available to facilitate growth of our business. Failure to implement necessary procedures, transition to new processes or hire the necessary personnel could result in higher costs of processing data or inability to meet increased demand. There can be no assurance that we will be able to perform our data analysis on a timely basis at a level consistent with demand, quality standards and physician expectations. If we encounter difficulty meeting market demand, quality standards or physician expectations, our reputation could be harmed and our future prospects and business could suffer.

We plan to introduce new products and services and our business will be harmed if we are not successful in selling these new products and services to our existing customers and new customers

We most recently received FDA clearance for our Zio AT ECG Monitoring System, ("Zio AT"), which is designed to provide timely transmission of data during the wear period. We do not yet know whether Zio AT or any other new products and services will be well received and broadly adopted by physicians and their patients or whether sales will be sufficient for us to offset the costs of development, implementation, support, operation, sales and marketing. Although we have performed extensive testing of our new products and services, their broad-based implementation may require more support than we anticipate, which would further increase our expenses. Additionally, new products and services may subject us to additional risks of product performance, customer complaints and litigation. If sales of our new products and services are lower than we expect, or if we expend additional resources to fix unforeseen problems and develop modifications, our operating margins are likely to decrease.

If we are unable to keep up with demand for the Zio service, our revenue could be impaired, market acceptance for the Zio service could be harmed and physicians may instead prescribe our competitors' products and services.

As demand for the Zio service increases, we may encounter production or service delays or shortfalls. Such production or service delays or shortfalls may be caused by many factors, including the following:

- we intend to continue to expand our manufacturing capacity, and our production processes may have to change to accommodate this growth, potentially involving significant capital expenditures;
- key components of the Zio monitors are provided by a single supplier or limited number of suppliers, and we do not maintain large inventory levels of these components; if we experience a shortage or quality issues in any of these components, we would need to identify and qualify new supply sources, which could increase our expenses and result in manufacturing delays;
- global demand and supply factors concerning commodity components common to all electronic circuits, including Zio monitors, could result in shortages that manifest as extended lead times for circuit boards, which could limit our ability to sustain and/or grow our business;
- shelter-in-place orders in effect in California and elsewhere due to the COVID-19 outbreak;
- we may experience a delay in completing validation and verification testing for new production processes and/or equipment at our manufacturing facilities;
- we are subject to state, federal and international regulations, including the FDA's Quality System Regulation ("QSR"), the EU's Medical Device Directive ("MDD") and, as of May 2021, the EU's Medical Device Regulation ("MDR") for both the manufacture of the Zio monitor and the provision of the Zio service, noncompliance with which could cause an interruption in our manufacturing and services; and
- to increase our manufacturing output significantly and scale our services, we will have to attract and retain qualified employees for our operations.

Our inability to successfully manufacture our Zio monitors in sufficient quantities, or provide the Zio service in a timely manner, would materially harm our business.

Our manufacturing facilities and processes and those of our third-party suppliers are subject to unannounced FDA, state and Notified Body regulatory inspections for compliance with the QSR, MDD and, in the near future, MDR requirements. Developing and maintaining a compliant quality system is time consuming and investment intensive. Failure to maintain compliance with, or not fully complying with the requirements of the FDA and state regulators could result in enforcement actions against us or our third-party suppliers, which could include the issuance of warning letters, adverse publicity, seizures, prohibitions on product sales, recalls and civil and criminal penalties, any one of which could significantly impact our manufacturing supply and provision of services and impair our financial results.

We depend on third-party vendors to manufacture some of our components, which could make us vulnerable to supply shortages and price fluctuations that could harm our business.

We rely on third-party vendors for components and sub-assemblies used in our Zio monitors. Our reliance on third-party vendors subjects us to a number of risks, including:

- inability to obtain adequate supply in a timely manner or on commercially reasonable terms;
- interruption of supply resulting from modifications to, or discontinuation of, a supplier's operations, including those caused by pandemics such as COVID-19;
- production delays related to the evaluation and testing of products from alternative suppliers and corresponding regulatory qualifications;
- inability of the manufacturer or supplier to comply with the QSR and state regulatory authorities;
- miscommunication of design specifications due to errors/omissions by either the vendor or our company, resulting delayed delivery of acceptable product;
- delays in product shipments resulting from uncorrected defects, reliability issues, or a supplier's failure to consistently produce quality components;
- an outbreak of disease or similar public health threat, such as the existing threat of coronavirus, particularly as it may impact our supply chain;
- price fluctuations due to a lack of long-term supply arrangements with our suppliers for key components;
- inability to control the quality of products manufactured by third parties; and
- delays in delivery by our suppliers due to changes in demand from us or their other customers.

Any significant delay or interruption in the supply of components or sub-assemblies, or our inability to obtain substitute components, sub-assemblies or materials from alternate sources at acceptable prices and in a timely manner could impair our ability to meet the demand for our Zio service and harm our business.

We rely on single suppliers for some of the materials used in our products, and if any of those suppliers are unable or unwilling to produce these materials or supply them in the quantities that we need at the quality we require, we may not be able to find replacements or transition to alternative suppliers before our business is materially impacted.

We rely on single suppliers for the supply of our adhesive sub-assembly, disposable plastic housings, instruments and other materials that we use to manufacture and label our Zio monitors. These components and materials are critical and, in some cases, there are relatively few alternative sources of supply. We have not qualified additional suppliers for some of these components and materials and we do not carry a significant inventory of these items. While we believe that alternative sources of supply may be available, we cannot be certain whether they will be available if and when we need them and that any alternative suppliers would be able to provide the quantity and quality of components and materials that we would need to manufacture our Zio monitors if our existing suppliers were unable to satisfy our supply requirements. To utilize other supply sources, we would need to identify and qualify new suppliers to our quality standards, which could result in manufacturing delays and increase our expenses. Any supply interruption could limit our ability to manufacture our products and could therefore harm our business, financial condition and results of operations. If our current suppliers and any alternative suppliers do not provide us with the materials we need to manufacture our products or perform our services, if the materials do not meet our quality specifications, or if we cannot obtain acceptable substitute materials, an interruption in our Zio service could occur. Any such interruption may significantly affect our future revenue and harm our relations and reputation with physicians, hospitals, clinics and patients.

If our manufacturing facility becomes damaged or inoperable, or if we are required to vacate the facility, we may be unable to manufacture and ship our Zio monitors, or we may experience delays in production or an increase in costs which could adversely affect our results of operations.

We currently manufacture and assemble the Zio monitors in only one location. Our products are comprised of components sourced from a variety of contract manufacturers, with final assembly completed at our facility in Cypress, California. Our facility and equipment, or those of our suppliers, could be harmed or rendered inoperable by natural or man-made disasters, including fire, earthquake, terrorism, pandemic outbreaks, flooding and power outages. Any of these may render it difficult or impossible for us to manufacture new products, ship assembled products, and/or receive returned units for some period of time. If our Cypress facility is inoperable for even a short period of time, the inability to manufacture, ship and receive our Zio

monitors, and the interruption in research and development of any future products, may result in harm to our reputation, increased costs, the loss of orders and lower revenue. Furthermore, it could be costly and time consuming to repair or replace our facilities and the equipment we use to perform our research and development work and manufacture our products.

If we fail to increase our sales and marketing capabilities and develop broad brand awareness in a cost effective manner, our growth will be impeded and our business may suffer.

We plan to continue to expand and optimize our sales and marketing infrastructure in order to increase our prescribing physician base and our business. Identifying and recruiting qualified personnel and training them in the application of the Zio service, on applicable federal and state laws and regulations and on our internal policies and procedures requires significant time, expense and attention. It often takes several months or more before a sales representative is fully trained and productive. Our business may be harmed if our efforts to expand and train our sales force do not generate a corresponding increase in revenue. In particular, if we are unable to hire, develop and retain talented sales personnel or if new sales personnel are unable to achieve desired productivity levels in a reasonable period of time, we may not be able to realize the expected benefits of this investment or increase our revenue.

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 marketing efforts. We plan to dedicate significant resources to our marketing programs. Our business may be harmed if our marketing efforts and expenditures do not generate a corresponding increase in revenue.

In addition, we believe that developing and maintaining broad awareness of our brand in a cost effective manner is critical to achieving broad acceptance of the Zio service and penetrating new accounts. Brand promotion activities may not generate patient or physician awareness or increase revenue, and even if they do, any increase in revenue may not offset the costs and expenses we incur in building our brand. If we fail to successfully promote, maintain and protect our brand, we may fail to attract or retain the physician acceptance necessary to realize a sufficient return on our brand building efforts, or to achieve the level of brand awareness that is critical for broad adoption of the Zio service.

Billing for our Zio service is complex, and we must dedicate substantial time and resources to the billing process.

Billing for IDTF services is complex, time consuming and expensive. Depending on the billing arrangement and applicable law, we bill several types of payors, including CMS, third-party commercial payors, institutions and patients, which may have different billing requirements procedures or expectations. We also must bill patient co-payments, co-insurance and deductibles. We face risk in our collection efforts, including potential write-offs of doubtful accounts and long collection cycles, which could adversely affect our business, financial condition and results of operations.

Several factors make the billing and collection process uncertain, including:

- differences between the submitted price for our Zio service and the reimbursement rates of payors;
- compliance with complex federal and state regulations related to billing CMS;
- differences in coverage among payors and the effect of patient co-payments, co-insurance and deductibles;
- differences in information and billing requirements among payors; and
- incorrect or missing patient history, indications or billing information.

Additionally, our billing activities require us to implement compliance procedures and oversight, train and monitor our employees and undertake internal review procedures to evaluate compliance with applicable laws, regulations and internal policies. Payors also conduct audits to evaluate claims, which may add further cost and uncertainty to the billing process. These billing complexities, and the related uncertainty in obtaining payment for our Zio service, could negatively affect our revenue and cash flow, our ability to achieve profitability, and the consistency and comparability of our results of operations.

The operation of our call centers and monitoring facilities is subject to rules and regulations governing IDTFs; failure to comply with these rules could prevent us from receiving reimbursement from CMS and some commercial payors.

In order to be a participating provider in the Medicare program, and to be reimbursed by CMS under the program, we established an independent diagnostic treatment facility (or “IDTF”). An IDTF is a “provider-type” designation under Medicare, defined by CMS as an entity(ies) independent of a hospital or physician’s office in which diagnostic tests are performed by licensed or certified nonphysician personnel under appropriate physician supervision. Our IDTFs are staffed by certified cardiographic technicians, who are overseen by a medical director who reviews the accuracy of the data we curate and

from which we prepare reports. The existence of an IDTF allows us to bill a government payor for the Zio service through one or more MACs, such as Novitas Solutions, Noridian Healthcare Solutions and Palmetto GBA. MACs are companies that operate on behalf of the federal government to process Medicare claims for reimbursement and allow us to obtain reimbursement for our Zio service at CMS defined rates. Certification as an IDTF requires that we follow strict regulations governing how the center operates, such as requirements regarding the experience and certifications of the certified cardiographic technicians. In addition, many commercial payors require our IDTFs to maintain accreditation and certification with the Joint Commission of American Hospitals. To do so we must demonstrate a specified quality standard and are subject to routine inspection and audits. These rules and regulations vary from location to location and are subject to change. If they change, we may have to change the operating procedures at our IDTFs, which could increase our costs significantly. If we fail to obtain and maintain IDTF certification, our Zio service may no longer be reimbursed by CMS and some commercial payors, which would have a material adverse impact on our business.

During the first quarter of 2021, we recognized approximately seven percent of our revenue from non-contracted third-party payors, and as a result, our quarterly operating results are difficult to predict.

We have limited visibility as to when we will receive payment for our Zio service with non-contracted payors and we or XIFIN must appeal any negative payment decisions, which often delay collections further. Additionally, a portion of the revenue from non-contracted payors is received from patient co-pays, which we may not receive for several months following delivery of service or at all. For revenue related to non-contracted payors, we estimate an average collection rate based on factors including historical cash collections. Subsequent adjustments, if applicable, are recorded as an adjustment to revenue. Fluctuations in revenue may make it difficult for us, research analysts and investors to accurately forecast our revenue and operating results or to assess our actual performance. If our revenue or operating results fall below expectations, the price of our common stock would likely decline.

We rely on a third-party billing company, XIFIN, to transmit and pursue claims with payors. A delay in transmitting or pursuing claims could have an adverse effect on our revenue.

While we manage the overall processing of claims, we rely on XIFIN to transmit substantially all of our claims to payors, and pursue most claim denials. If claims for our Zio service are not submitted to payors on a timely basis, not properly adjudicated upon a denial, or if we are required to switch to a different claims processor, we may experience delays in our ability to process receipt of payments from payors, which would have an adverse effect on our revenue and our business.

The market for ambulatory cardiac monitoring solutions is highly competitive. If our competitors are able to develop or market monitoring products and services that are more effective, or gain greater acceptance in the marketplace, than any products and services we develop, our commercial opportunities will be reduced or eliminated.

The market for ambulatory cardiac monitoring products and services is evolving rapidly and becoming increasingly competitive. Our Zio service competes with a variety of products and services that provide alternatives for ambulatory cardiac monitoring, including Holter monitors and mobile cardiac telemetry monitors. Our industry is highly fragmented and characterized by a small number of large manufacturers and a large number of smaller regional service providers. These third parties compete with us in marketing to payors and prescribing physicians, recruiting and retaining qualified personnel, acquiring technology and developing products and services that compete with the Zio service. Our ability to compete effectively depends on our ability to distinguish our company and the Zio service from our competitors and their products, and includes such factors as:

- safety and efficacy;
- acute and long term outcomes;
- ease of use;
- price;
- physician, hospital and clinic acceptance; and
- third-party reimbursement.

Our industry is subject to rapid change and significantly affected by new product introductions, results of clinical research, corporate combinations and other factors. Large competitors in the ambulatory cardiac market include companies that sell standard Holter monitors including GE Healthcare, Philips Healthcare, Mortara Instrument, Inc., Spacelabs Healthcare Inc. and Welch Allyn Holdings, Inc., which was recently acquired by Hill-Rom Holdings, Inc. Additional competitors, such as BioTelemetry, Inc. recently acquired by Royal Philips, Preventice Solutions, Inc., recently acquired by Boston Scientific, Inc.

and Bardy Diagnostics, Inc. offer ambulatory cardiac monitoring services and also function as service providers. These companies have also developed other patch-based cardiac monitors that have received FDA and foreign regulatory clearances. There are also several small start-up companies trying to compete in the patch-based cardiac monitoring space. We are also aware of some small start-up companies entering the patch-based cardiac monitoring market. Large medical device companies may continue to acquire or form alliances with these smaller companies in order to diversify their product offering and participate in the digital health space.

We have seen a trend in the market for large medical device companies to acquire, invest in or form alliances with these smaller companies in order to diversify their product offerings and participate in the digital health space. Future competition could come from makers of wearable fitness products or large information technology companies focused on improving healthcare. For example, Apple Inc. has added capabilities on its watch platform to measure non-continuous ECG and to alert users to the potential presence of irregular heartbeats suggestive of asymptomatic AF. These competitors and potential competitors may introduce new products and services that more directly compete with our Zio service. Recently, there has been increased acquisition activity and consolidation in our industry. Many of our competitors and potential competitors have significantly greater financial and other resources than we do and have well-established reputations, broader product offerings, and worldwide distribution channels that are significantly larger and more effective than ours. If our competitors and potential competitors are better able to develop new ambulatory cardiac monitoring solutions than us, or develop more effective or less expensive cardiac monitoring solutions, they may render our current Zio service obsolete or non-competitive. Competitors may also be able to deploy larger or more effective sales and marketing resources than we currently have. Competition with these companies could result in price cutting, reduced profit margins and loss of market share, any of which would harm our business, financial condition and results of operations.

Our ability to compete depends on our ability to innovate successfully.

The market for medical devices, including the ambulatory cardiac monitoring segment, is competitive, dynamic, and marked by rapid and substantial technological development and product innovation. There are few barriers that would prevent new entrants or existing competitors from developing products that compete directly with ours. Demand for the Zio service and future related products or services could be diminished by equivalent or superior products and technologies offered by competitors. If we are unable to innovate successfully, our products and services could become obsolete and our revenue would decline as our customers purchase our competitors' products and services.

In order to remain competitive, we must continue to develop new product offerings and enhancements to the Zio service. We can provide no assurance that we will be successful in monetizing our electrocardiogram ("ECG") database, expanding the indications for our Zio service, developing new products or commercializing them in ways that achieve market acceptance. In addition, if we develop new products, sales of those products may reduce revenue generated from our existing products. Maintaining adequate research and development personnel and resources to meet the demands of the market is essential. If we are unable to develop new products, applications or features or improve our algorithms due to constraints, such as insufficient cash resources, high employee turnover, inability to hire personnel with sufficient technical skills or a lack of other research and development resources, we may not be able to maintain our competitive position compared to other companies. Furthermore, many of our competitors devote a considerably greater amount of funds to their research and development programs than we do, and those that do not may be acquired by larger companies that would allocate greater resources to research and development programs. Our failure or inability to devote adequate research and development resources or compete effectively with the research and development programs of our competitors could harm our business.

We have entered into a development agreement with a third party that may not result in the development of commercially viable products or the generation of significant future revenues.

We have entered into a development agreement with Verily Life Sciences LLC (an Alphabet Company, referred to as "Verily") to develop certain next-generation AF screening, detection, or monitoring products, which involve combining Verily and our technology platforms and capabilities (the "Development Agreement"). As part of the Development Agreement, we paid Verily an up-front fee of $5.0 million in cash, and $4.0 million in milestone payments during the year ended December 31, 2020 with an additional $4.0 million in milestone payments made in January of 2021. We have agreed to make additional payments over the term of the Development Agreement up to an aggregate of $12.75 million, subject to the achievement of certain development and regulatory milestones. The success of our collaboration with Verily is highly dependent on the efforts provided to the collaboration by Verily and us and the skill sets of our respective employees. Support of these development efforts requires significant resources, including research and development, manufacturing, quality assurance, and clinical and regulatory personnel. Even if our development and clinical trial efforts succeed, the FDA may not clear the developed products or may require additional product testing and clinical trials before approving the developed products, which would result in product launch delays and additional expense. If cleared by the FDA, the developed products may not be accepted in the

marketplace, and there is no assurance that adequate reimbursement will be available.

After the initial term of the Development Agreement, in order to commercialize any developed products with Verily, we will need to enter into a commercialization agreement. There is no guarantee that we will be able to enter into such an agreement on commercially reasonable terms or at all. If we are unable to reach agreement with Verily on terms, the up-front fee and regulatory and development milestone payments and our internal development costs would not be recovered and the licenses to use Verily's technology will expire.

This collaboration may not result in the development of products that achieve commercial success and could be terminated prior to developing any products. In the event of any termination or expiration of the Development Agreement, we may be required to devote additional resources to product development and we may face increased competition, including from Verily. Verily may use the experience and insights it develops in the course of the collaboration with us to initiate or accelerate their development of products that compete with our products, which may create competitive disadvantages for us. Accordingly, we cannot provide assurance that our collaboration with Verily or any other third party will result in the successful development of commercially viable products or result in significant additional future revenues for our company.

The continuing clinical acceptance of the Zio service depends upon maintaining strong working relationships with physicians.

The development, marketing, and sale of the Zio service depends upon our ability to maintain strong working relationships with physicians and other key opinion leaders. We rely on these professionals' knowledge and experience for the development, marketing and sale of our products. Among other things, physicians assist us in clinical trials and product development matters and provide public presentations at trade conferences regarding the Zio service. If we cannot maintain our strong working relationships with these professionals and continue to receive their advice and input, the development and marketing of the Zio service could suffer, which could harm our business, financial condition and results of operations.

The medical device industry's relationship with physicians is under increasing scrutiny by the Health and Human Services Office of the Inspector General, ("OIG"), the Department of Justice ("DOJ"), state attorneys general, and other foreign and domestic government agencies. Our failure to comply with laws, rules and regulations governing our relationships with physicians, or an investigation into our compliance by the OIG, DOJ, state attorneys general or other government agencies, could significantly harm our business.

We have a significant amount of debt, which may affect our ability to operate our business and secure additional financing in the future.

As of March 31, 2021, we had $30.1 million outstanding under our term loan provided by of our loan agreement with Silicon Valley Bank ("SVB"). We must make significant annual debt payments under the loan agreement which will divert resources from other activities. Our debt with SVB is collateralized by substantially all of our assets and contains customary financial and operating covenants limiting our ability to, among other things, dispose of assets, undergo a change in control, merge or consolidate, enter into certain transactions with affiliates, make acquisitions, incur debt, incur liens, pay dividends, repurchase stock and make investments, in each case subject to certain exceptions. The covenants in the loan agreement, as well as in any future financing agreements into which we may enter, may restrict our ability to finance our operations and engage in, expand or otherwise pursue our business activities and strategies. Our ability to comply with these covenants may be affected by events beyond our control and future breaches of any of these covenants could result in a default under the loan agreement. If not waived, future defaults could cause all of the outstanding indebtedness under the loan agreement to become immediately due and payable and terminate commitments to extend further credit. If we do not have or are unable to generate sufficient cash available to repay our debt obligations when they become due and payable, either upon maturity or in the event of a default, we may not be able to obtain additional debt or equity financing on favorable terms, if at all, which may negatively impact our ability to operate and continue our business as a going concern.

We have recently experienced management turnover, which creates uncertainties and could harm our business.

We have experienced significant changes in our executive leadership in the past twelve months. In December 2020, our Chief Executive Officer, Kevin M. King, announced his retirement as our Chief Executive Officer, but will continue to serve on our Board of Directors. In June 2020, our Chief Financial Officer, Matthew C. Garrett, announced that he was resigning for personal reasons and in March 2020, our Chief Operating Officer, Karim Kart, resigned. Our current Chief Executive Officer, Michael Coyle, and Chief Financial Officer, Douglas J. Devine, were both external hires.

Changes to strategic or operating goals, which can often times occur with the appointment of new executives, can create uncertainty, may negatively impact our ability to execute quickly and effectively, and may ultimately be unsuccessful. In addition, executive leadership transition periods are often difficult as the new executives gain detailed knowledge of our operations, and friction can result from changes in strategy and management style. Management turnover inherently causes some loss of institutional knowledge, which can negatively affect strategy and execution. If we do not integrate new executives successfully, we may be unable to manage and grow our business, and our financial condition and profitability may suffer as a result. In addition, to the extent we experience additional management turnover, competition for top management is high and it may take months to find a candidate that meets our requirements. If we are unable to attract and retain qualified management personnel, our business could suffer.

We depend on our senior management team and the loss of one or more key employees or an inability to attract and retain highly skilled employees could harm our business.

Our success depends largely on the continued services of key members of our executive management team and others in key management positions. For example, the services of Michael J. Coyle, our Chief Executive Officer, and Douglas J. Devine, our Chief Financial Officer, are essential to formulating and executing on corporate strategy and to ensuring the continued operations and integrity of financial reporting within our company. In addition, the services provided by David A. Vort, our Executive Vice President of Sales, are critical to the growth that we have experienced in the sales of our Zio service. Our employees may terminate their employment with us at any time. If we lose one or more key employees, we may experience difficulties in competing effectively, developing our technologies and implementing our business strategy. We do not currently maintain key person life insurance policies on these or any of our employees.

In addition, our research and development programs and clinical operations depend on our ability to attract and retain highly skilled engineers and certified cardiographic technicians. We may not be able to attract or retain qualified engineers and certified cardiographic technicians in the future due to the competition for qualified personnel. We have from time to time experienced, and we expect to continue to experience, difficulty in hiring and retaining employees with appropriate qualifications. Many of the companies with which we compete for experienced personnel have greater resources than us. If we hire employees from competitors or other companies, their former employers may attempt to assert that these employees or we have breached legal obligations, resulting in a diversion of our time and resources and, potentially, damages. In addition, job candidates and existing employees, particularly in the San Francisco Bay Area, often consider the value of the stock awards they receive in connection with their employment. If the perceived value of our stock awards declines, it may harm our ability to recruit and retain highly skilled employees. If we fail to attract new personnel or fail to retain and motivate our current personnel, our business and future growth prospects would be harmed.

International expansion of our business exposes us to market, regulatory, political, operational, financial and economic risks associated with doing business outside of the United States.

Our business strategy includes international expansion. Doing business internationally involves a number of risks, including:

- multiple, conflicting and changing laws and regulations such as tax laws, privacy laws, export and import restrictions, employment laws, regulatory requirements and other governmental approvals, permits and licenses;
- obtaining and sustaining regulatory approvals where required for the sale of our products and services in various countries;
- requirements to maintain data and the processing of that data on servers located within such countries;
- complexities associated with managing multiple payor reimbursement regimes, government payors or patient self-pay systems;
- logistics and regulations associated with shipping and returning our Zio monitors following use;
- limits on our ability to penetrate international markets if we are required to process the Zio service locally;
- financial risks, such as longer payment cycles, difficulty collecting accounts receivable, the effect of local and regional financial pressures on demand and payment for our products and services and exposure to foreign currency exchange rate fluctuations;
- natural disasters, political and economic instability, including wars, terrorism, political unrest, outbreak of disease, boycotts, curtailment of trade and other market restrictions;

- regulatory and compliance risks that relate to maintaining accurate information and control over activities subject to regulation under the United States Foreign Corrupt Practices Act of 1977 ("FCPA"), U.K. Bribery Act of 2010 and comparable laws and regulations in other countries; and
- compliance risks associated with General Data Protection Regulation ("GDPR") enacted to protect the privacy of all individuals in the European Union and addresses export of the data outside of the European Union.

Any of these factors could significantly harm our future international expansion and operations and, consequently, our revenue and results of operations.

Our relationships with business partners in new international markets may subject us to an increased risk of litigation.

As we expand our business internationally, if we cannot successfully manage the unique challenges presented by international markets and our relationships with new business partners within those markets, our expansion activities may be adversely affected and we may become subject to an increased risk of litigation.

We may become involved in disputes relating to our products, contracts and business relationships. Such disputes include litigation against persons whom we believe have infringed on our intellectual property, infringement litigation filed against us, litigation against a competitor or litigation filed against us by distributors or service providers resulting from a breach of contract or other claim. Any of these disputes may result in substantial costs to us, judgments, settlements and diversion of our management's attention, which could adversely affect our business, financial condition or operating results. There is also a risk of adverse judgments, as the outcome of litigation in foreign jurisdictions can be inherently uncertain.

We could be adversely affected by violations of the FCPA, and similar worldwide anti-bribery laws and the ongoing investigation, and outcome of the investigation, by government agencies of possible violations by us of the FCPA could have a material adverse effect on our business.

The FCPA and similar worldwide anti-bribery laws generally prohibit companies and their intermediaries from corruptly providing any benefits to government officials for the purpose of obtaining or retaining business. We are in the process of designing and implementing policies and procedures intended to help ensure compliance with these laws. In the future, we may operate in parts of the world that have experienced governmental corruption to some degree. We cannot assure you that our internal control policies and procedures will protect us from improper acts committed by our employees or agents. Violations of these laws, or allegations of such violations, could disrupt our business and have a material adverse effect on our business and operations.

In addition, the DOJ or other governmental agencies could impose a broad range of civil and criminal sanctions under the FCPA and other laws and regulations including, but not limited to, injunctive relief, disgorgement, fines, penalties, modifications to business practices including the termination or modification of existing business relationships, the imposition of compliance programs and the retention of a monitor to oversee compliance with the FCPA. The imposition of any of these sanctions or remedial measures could have a material adverse effect on our business and results of operations.

Our proprietary data analytics engine may not operate properly, which could damage our reputation, give rise to claims against us or divert application of our resources from other purposes, any of which could harm our business and operating results.

The ECG data that is gathered through our Zio monitors is curated by algorithms that are part of our Zio service and a Zio report is delivered to the prescribing physician for diagnosis. The continuous development, maintenance and operation of our deep-learned backend data analytics engine is expensive and complex, and may involve unforeseen difficulties including material performance problems, undetected defects or errors. We may encounter technical obstacles, and it is possible that we may discover additional problems that prevent our proprietary algorithms from operating properly. We may also attempt to develop new capabilities and incorporate new technologies, including artificial intelligence, which could impact our data analytics platform's performance. If our data analytics platform does not function reliably or fails to meet physician or payor expectations in terms of performance, physicians may stop prescribing the Zio service and payors could attempt to cancel their contracts with us.

Any unforeseen difficulties we encounter in our existing or new software, cloud-based applications, telecommunication service providers, and analytics services, and any failure by us to identify and address them could result in loss of revenue or market share, diversion of development resources, injury to our reputation and increased service and maintenance costs. Correction of

defects or errors could prove to be impossible or impracticable. The costs incurred in correcting any defects or errors may be substantial and could adversely affect our operating results.

Provision of the Zio service is dependent upon third-party vendors who are subject to disruptions, which could directly or indirectly harm our business and operating results.

The analysis we perform to create the diagnostic report for the Zio service is dependent upon a recording made by each device, which requires the physical return of the Zio monitor to one of our clinical centers. We predominantly rely on the U.S. Postal Service ("USPS") to perform this delivery service. Delivery of the Zio monitor to one of our clinical centers may be subject to disruption by natural disasters such as earthquake or flooding, labor disagreements or errors on behalf of USPS staff, operational and funding reductions negatively impacting USPS service capabilities, structural issues timely processing in some geographies, or other disruption to the USPS delivery infrastructure. Further, for the Zio AT monitor, we rely on the provision of cellular communication services for the timely transmission of patient information and reportable events. Once received, all data from both Zio XT and AT monitors is processed, curated and reported on through cloud-computing resources. The reliability of these communication and cloud services is also subject to natural disasters, labor disruptions, human error, and infrastructure failure.

Any of these disruptions may render it difficult or temporarily impossible for us to provide some or all of the Zio service, adversely affecting our operating results, causing significant distraction for management, and negatively impacting our business reputation.

Security breaches, loss of data and other disruptions could compromise sensitive information related to our business or patients, or prevent us from accessing critical information and expose us to liability, which could adversely affect our business and our reputation.

In the ordinary course of our business, we and our third-party billing and collections provider, XIFIN, collect, process, and store sensitive data, including legally-protected personally identifiable health information about patients in the United States and in the United Kingdom. This personally identifiable information may include, among other information, names, addresses, phone numbers, email addresses, payment account information, age, gender, and heart rate data. We also process and store, and use additional third parties to process and store, sensitive intellectual property and other proprietary business information, including that of our customers, payors and collaborative partners. Our patient information is encrypted but not de-identified. We manage and maintain our applications and data utilizing a combination of on-site systems, managed data center systems and cloud-based computing center systems. These applications and data encompass a wide variety of business critical information, including research and development information, commercial information and business and financial information.

We are highly dependent on information technology networks and systems, including the internet and services hosted by Amazon Web Services and other third party service providers, to securely process, transmit and store this critical information. Security breaches of this infrastructure, including physical or electronic break-ins, computer viruses, attacks by hackers and similar breaches, can create system disruptions, shutdowns, or unauthorized disclosure or modifications of confidential information involving patient health information to become publicly available. The secure processing, storage, maintenance and transmission of this critical information are vital to our operations and business strategy, and we devote significant resources to protecting such information, including executing Business Associates Agreements with applicable vendors. Although we take measures to protect sensitive information from unauthorized access or disclosure, cyber-attacks are becoming more sophisticated and frequent, and our information technology and infrastructure, and that of XIFIN and other third parties we utilize to process or store data, may be vulnerable to viruses and worms, phishing attacks, denial-of-service attacks, physical or electronic break-ins, attacks by hackers, breaches due to employee error, malfeasance, or misuse, or similar disruptions from unauthorized tampering. We have in the past been subject to cyber-attacks and data breaches and expect that we will be subject to additional cyber-attacks in the future and may experience future data breaches. While we have implemented data privacy and security measures that we believe are compliant with applicable privacy laws and regulations, some confidential and protected health information, is transmitted to us by third parties, who may not implement adequate security and privacy measures. Further, if third party service providers that process or store data on our behalf experience security breaches or violate applicable laws, agreements, or our policies, such events may also put our information at risk and could in turn have an adverse effect on our business.

A security breach or privacy violation that leads to disclosure or modification of, or prevents access to, patient information, including protected health information, could harm our reputation, compel us to comply with disparate state breach notification laws, require us to verify the correctness of database contents and otherwise subject us to liability under laws that protect personal data, resulting in increased costs or loss of revenue. If we are unable to prevent such security breaches or privacy violations or implement satisfactory remedial measures in a timely manner, the market perception of the effectiveness of our

security measures could be harmed, our operations could be disrupted, our brand could be adversely affected, demand for our products and services may decrease, we may be unable to provide the Zio service, we may lose sales and customers, and we may suffer loss of reputation, financial loss and other regulatory penalties because of lost or misappropriated information, including sensitive patient data. We may be required to expend significant capital and financial resources to invest in security measures, protect against such threats or to alleviate problems caused by breaches in security. In addition, these breaches and other inappropriate access can be difficult to detect, and any delay in identifying them may lead to increased harm. Although we have invested in our systems and the protection of our data to reduce the risk of an intrusion or interruption, and we monitor our systems on an ongoing basis for any current or potential threats, we can give no assurances that these measures and efforts will prevent all intrusions, interruptions, or breakdowns.

Because techniques used to obtain unauthorized access or to sabotage systems change frequently and generally are not recognized until launched, we may be unable to anticipate these techniques or to implement adequate preventive measures.

In the event that patients or physicians authorize or enable third parties to access their data on our systems, we cannot ensure the complete integrity or security of such data in our systems as we would not control that access. Third parties may also attempt to fraudulently induce our employees, or patients or physicians who use our technology, into disclosing sensitive information such as user names, passwords or other information. Third parties may also otherwise compromise our security measures in order to gain unauthorized access to the information we store. This could result in significant legal and financial exposure, a loss in confidence in the security of our service, interruptions or malfunctions in our service, and, ultimately, harm to our future business prospects and revenue.

Any such breach or interruption of our systems, or those of XIFIN or any of our third party information technology partners, could compromise our networks or data security processes and sensitive information could be inaccessible or could be accessed by unauthorized parties, publicly disclosed, lost or stolen. Any such interruption in access, improper access, disclosure or other loss of information could result in legal claims or proceedings, liability under laws that protect the privacy of patient information, such as the federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, the General Data Protection Regulation, and the European Union Data Protection Directive, and regulatory penalties. Regardless of the merits of any such claim or proceeding, defending it could be costly and divert management’s attention from leading our business. Unauthorized access, loss or dissemination could also disrupt our operations, including our ability to perform our services, bill payors or patients, process claims and appeals, provide customer assistance services, conduct research and development activities, collect, process and prepare company financial information, provide information about our current and future solutions and engage in other patient and clinician education and outreach efforts. Any such breach could also result in the compromise of our trade secrets and other proprietary information, which could adversely affect our business and competitive position.

Depending on the nature of the information compromised, in the event of a data breach or other unauthorized access to or acquisition of our user data, we may also have obligations to notify users about the incident and we may need to provide some form of remedy for the individuals affected by the incident. A growing number of legislative and regulatory bodies have adopted consumer notification requirements in the event of unauthorized access to or acquisition of certain types of personal data. Such breach notification laws continue to evolve and may be inconsistent from one jurisdiction to another. Complying with these obligations could cause us to incur substantial costs and could increase negative publicity surrounding any incident that compromises user data. In addition, the interpretation and application of consumer, health-related and data protection laws, rules and regulations in the United States, Europe and elsewhere are often uncertain, contradictory and in flux. It is possible that these laws, rules and regulations may be interpreted and applied in a manner that is inconsistent with our practices or those of our distributors and partners. If we or these third parties are found to have violated such laws, rules or regulations, it could result in government-imposed fines, orders requiring that we or these third parties change our or their practices, or criminal charges, which could adversely affect our business. Complying with these various laws could cause us to incur substantial costs or require us to change our business practices, systems and compliance procedures in a manner adverse to our business. In addition, California recently enacted the California Consumer Privacy Act, or CCPA which became effective on January 1, 2020, and will, among other things, require new disclosures to California consumers and afford such consumers new abilities to opt out of certain sales of personal information. It remains unclear how various provisions of the CCPA will be interpreted and enforced. The effects of the CCPA are potentially significant and may require us to modify our data processing practices and policies and to incur substantial costs and expenses in an effort to comply with this legislation.

The use, misuse or off-label use of the Zio service may result in injuries that lead to product liability suits, which could be costly to our business.

The use, misuse or off-label use of the Zio service may in the future result in outcomes and complications potentially leading to product liability claims. For example, we are aware that physicians have prescribed the Zio service off-label for pediatric patients. We have also received and may in the future receive product liability or other claims with respect to the Zio service, including claims related to skin irritation and alleged burns. In addition, if the Zio monitor is defectively designed, manufactured or labeled, contains defective components or is misused, we may become subject to costly litigation initiated by physicians, or the hospitals and clinics where physicians prescribing our Zio service work, or their patients. Product liability claims are especially prevalent in the medical device industry and could harm our reputation, divert management's attention from our core business, be expensive to defend and may result in sizable damage awards against us.

Although we maintain product liability insurance, we may not have sufficient insurance coverage for future product liability claims. We may not be able to obtain insurance in amounts or scope sufficient to provide us with adequate coverage against all potential liabilities. 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, significantly increase our expenses, and reduce product sales. Product liability claims in excess of our insurance coverage would be paid out of cash reserves, harming our financial condition and operating results.

Our forecasts of market growth may prove to be inaccurate, and even if the markets in which we compete achieve the forecasted growth, our business may not increase at similar rates, if at all.

Growth forecasts are subject to significant uncertainty and are based on assumptions and estimates that may not prove to be accurate. Our forecasts relating to, among other things, the expected growth in the ambulatory cardiac monitoring solutions market may prove to be inaccurate.

Our growth is subject to many factors, including whether the market for first-line ambulatory cardiac monitoring solutions continues to improve, the rate of market acceptance of the Zio service as compared to the products of our competitors and our success in implementing our business strategies, each of which is subject to many risks and uncertainties. If our Zio service works as anticipated to provide a correct first-line diagnosis, it may lead to a decrease in the amount of ambulatory cardiac monitoring prescriptions each year in the United States. This outcome would result if our Zio service is proven to produce the right diagnosis the first time, thereby reducing the need for additional testing. Accordingly, our forecasts of market opportunity should not be taken as indicative of our future growth.

We may acquire other companies or technologies, or enter into joint ventures or other strategic alliances, which could divert our management's attention, result in additional dilution to our stockholders and otherwise disrupt our operations and harm our operating results.

We may in the future seek to acquire or invest in businesses, applications or technologies that we believe could complement or expand our ambulatory cardiac monitoring solutions portfolio, enhance our technical capabilities or otherwise offer growth opportunities. The pursuit of potential acquisitions may divert the attention of management and cause us to incur various costs and expenses in identifying, investigating and pursuing suitable acquisitions, whether or not they are consummated. We may not be able to identify desirable acquisition targets or be successful in entering into an agreement with any particular target or obtain the expected benefits of any acquisition or investment. In addition, any of these transactions could be material to our financial condition and operating results and expose us to many risks, including:

- disruption in our relationships with existing strategic partners or suppliers as a result of such a transaction;
- unanticipated liabilities related to acquired companies;
- difficulties integrating acquired personnel, technologies and operations into our existing business;
- retention of key employees;
- diversion of management time and focus from operating our business to management of strategic alliances or joint ventures or acquisition integration challenges;
- increases in our expenses and reductions in our cash available for operations and other uses; and
- possible write-offs or impairment charges relating to acquired businesses.

To date, the growth of our operations has been largely organic, and we have limited experience in acquiring other businesses or technologies or entering into joint ventures or strategic alliances. Acquisitions, joint ventures or strategic alliances could also result in dilutive issuances of equity securities, the use of our available cash, or the incurrence of debt, which could harm our

operating results. In addition, if an acquired business, joint venture or strategic alliance fails to materialize or fails to meet our expectations, our operating results, business and financial condition may suffer.

Consolidation of commercial payors could result in payors eliminating coverage or reducing reimbursement rates for our Zio service.

When payors combine their operations, the combined company may elect to reimburse our Zio service at the lowest rate paid by any of the participants in the consolidation or use its increased size to negotiate reduced rates. If one of the payors participating in the consolidation does not reimburse for the Zio service at all, the combined company may elect not to reimburse for the Zio service, which would adversely impact our operating results. While attempts by Aetna Inc. to acquire Humana Inc. and Anthem Inc. to acquire Cigna Corp. have been largely abandoned due to antitrust challenges by the DOJ, it is possible that these or other payor consolidations may occur in the future.

Our ability to utilize our net operating loss carryovers may be limited.

As of December 31, 2020, we had federal and state net operating loss carryforwards ("NOLs") of $368.2 million and $218.7 million, respectively, which if not utilized will begin to expire in 2027 for federal purposes and have begun expiring for state purposes. We may use these NOLs to offset against taxable income for U.S. federal and state income tax purposes. However, Section 382 of the Internal Revenue Code, as amended, may limit the NOLs we may use in any year for U.S. federal income tax purposes in the event of certain changes in ownership of our company. A Section 382 "ownership change" generally occurs if one or more stockholders or groups of stockholders who own at least 5% of a company's stock increase their ownership by more than 50 percentage points (by value) over their lowest ownership percentage within a rolling three year period. Similar rules may apply under state tax laws. Future issuances or sales of our stock, including certain transactions involving our stock that are outside of our control, could cause an "ownership change." If an "ownership change" has occurred in the past or occurs in the future, Section 382 would impose an annual limit on the amount of pre-ownership change NOLs and other tax attributes we can use to reduce our taxable income, potentially increasing and accelerating our liability for income taxes, and also potentially causing those tax attributes to expire unused. As of March 31, 2021, a Section 382 study is in the process of being performed. Any limitation on using NOLs could, depending on the extent of such limitation and the NOLs previously used, result in our retaining less cash after payment of U.S. federal and state income taxes during any year in which we have taxable income, rather than losses, than we would be entitled to retain if such NOLs were available as an offset against such income for U.S. federal and state income tax reporting purposes, which could adversely impact our operating results.

We have identified a material weakness in our internal control over financial reporting which could, if not remediated, result in material misstatements in our financial statements.

We are responsible for establishing and maintaining adequate internal control over our financial reporting, as defined in Rule 13a-15(f) under the Securities Exchange Act. As disclosed in Item 9A of our Annual Reports on Form 10-K for the year ended December 31, 2020, filed with the SEC on February 26, 2021, we identified a material weakness in our internal control over financial reporting. A material weakness is defined as a deficiency, or 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. As a result of this material weakness, we concluded that our internal control over financial reporting was not effective based on criteria set forth by the Committee of Sponsoring Organization of the Treadway Commission in Internal Control-An Integrated Framework (2013).

To implement remedial measures as disclosed in Item 9A of our Annual Reports on Form 10-K for the years ended December 31, 2020, filed with the SEC on February 26, 2021, respectively, we committed additional resources, hired additional staff, and provided additional management oversight. If our remedial measures are insufficient to address the material weaknesses, or if additional material weaknesses or significant deficiencies in our internal control over financial reporting are discovered or occur in the future, our consolidated financial statements may contain material misstatements, and we could be required to restate our financial results. In addition, if we are unable to successfully remediate the material weakness that continues to exist and if we are unable to produce accurate and timely financial statements, our stock price may be adversely affected.

Risks Related to Our Intellectual Property

We may become a party to intellectual property litigation or administrative proceedings that could be costly and could interfere with our ability to provide the Zio service.

The medical device industry has been characterized by extensive litigation regarding patents, trademarks, trade secrets, and other intellectual property rights, and companies in the industry have used intellectual property litigation to gain a competitive advantage. It is possible that U.S. and foreign patents and pending patent applications or trademarks controlled by third parties, especially those held by our competitors, may be alleged to cover our products or services, or that we may be accused of misappropriating third parties' trade secrets. Additionally, our products include hardware and software components that we purchase from vendors, and may include design components that are outside of our direct control. Our competitors, many of which have substantially greater resources and have made substantial investments in patent portfolios, trade secrets, 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 and services or to use product names. Moreover, in recent years, individuals and groups that are non-practicing entities, commonly referred to as "patent trolls," have purchased patents or otherwise obtained rights to other intellectual property assets for the purpose of making claims of infringement in order to extract settlements. From time to time, we may receive threatening letters, notices or "invitations to license," or may be the subject of claims that our products and business operations infringe or violate the intellectual property rights of others. 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 to satisfy judgments or settle claims. Vendors from which we purchase hardware or software may not indemnify or defend 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 secrets.

Further, if such patents, trademarks, or trade secrets are successfully asserted against us, this may harm our business and result in injunctions preventing us from selling our products, license fees, damages and the payment of attorney's fees and court costs. In addition, if we are found to have willfully infringed third-party patents or trademarks or to have misappropriated trade secrets, we could be required to pay treble damages in addition to other penalties. Although patent, trademark, trade secret, and other intellectual property disputes in the medical device and services area have often been settled through licensing or similar arrangements, costs associated with such arrangements may be substantial and could include ongoing royalties. We may be unable to obtain necessary licenses on satisfactory terms, if at all. If we do not obtain necessary licenses, we may not be able to redesign our Zio monitors or our Zio service to avoid infringement and our product development efforts may be negatively affected as a result.

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

Additionally, we may need to commence proceedings against others to enforce our patents or trademarks, to protect our trade secrets or know how, or to determine the enforceability, scope and validity of the proprietary rights of others. These proceedings would result in substantial expense to us and significant diversion of effort by our technical and management personnel. We may not prevail in any lawsuits that we initiate, a scenario that could also result in the invalidation of our asserted patents, and the damages or other remedies awarded, if any, may not be commercially meaningful. We may not be able to stop a competitor from marketing and selling products that are the same or similar to our products and services or from using product or service names that are the same or similar to ours, and our business may be harmed as a result.

We use certain open source software in the infrastructure supporting the Zio service. Licensees of open source software may be required to make public and use certain source code, to license proprietary software for free or to make certain derivative works available to others. As a result, we may face claims from companies that incorporate open source software into their products or from open source licensors, claiming ownership of, or demanding release of, the source code, the open source software or derivative works that were developed using such software, or otherwise seeking to enforce the terms of the applicable open source license. These claims could result in litigation and could require us to cease offering the Zio service unless and until we can re-engineer it to avoid infringement. This re-engineering process could require significant additional research and development resources, and we may not be able to complete it successfully. While we monitor and control the use of open source software in the Zio service and in any third party software that is incorporated into the Zio service, and we try to ensure that no open source software is used in such a way as to require us to disclose the source code underlying the Zio service, there

can be no guarantee that such use could not inadvertently occur. These risks could be difficult to eliminate or manage, and, if not addressed, could harm our business, intellectual property protection, financial condition and operating results.

Intellectual property rights may not provide adequate protection, which may permit third parties to compete against us more effectively.

In order to remain competitive, we must develop and maintain protection of the proprietary aspects of our technologies. We rely on a combination of patents, copyrights, trademarks, trade secret laws and confidentiality and invention assignment agreements with employees and third parties to protect our intellectual property rights. As of December 31, 2020, we owned, or retained exclusive license to, twenty issued U.S. patents, the earliest of which will expire in 2028. As of December 31, 2020, we also owned, or retained an exclusive license to, seven issued patents from the Japanese Patent Office, two issued patents from the Australian Patent Office, four issued patents from the Canadian Patent Office, four issued patents from the European Patent Office, and two issued patents from the Korean Patent Office. The earliest expiration date of these international patents is 2027. As of December 31, 2020, we had nineteen pending patent applications globally, including eight in the United States, four in the European Patent Office, three in Japan, and one in each of Australia, Korea, China and India. Our patents and patent applications are directed to covering key aspects of the design, manufacture and use of the Zio monitor and the Zio service.

We rely, in part, on our ability to obtain and maintain patent protection for our proprietary products and processes. The process of applying for and obtaining a patent is expensive, time-consuming and complex, and we may not be able to file, prosecute, maintain, enforce or license all necessary or desirable patent applications at a reasonable cost, in a timely manner, or in all jurisdictions where protection may be commercially advantageous, or we may not be able to protect our proprietary rights at all. Despite our efforts to protect our proprietary rights, unauthorized parties may be able to obtain and use information that we regard as proprietary. In addition, the issuance of a patent does not ensure that it is valid or enforceable, so even if we obtain patents, they may not be valid or enforceable against third parties. Our patent applications may not result in issued patents and our patents may not be sufficiently broad to protect our technology. Issued international patents may carry a requirement to “work” a patent in the applicable geography; failure to do so could lead to loss of the patent or the requirement to accept licensing terms, both of which would be favorable to our competitors. 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 marketing our own products and practicing our own technology. Alternatively, third parties may seek approval to market their own products similar to or otherwise competitive with our products. In these circumstances, we may need to defend and/or assert our patents, including by filing lawsuits alleging patent infringement. In any of these types of proceedings, a court or agency with jurisdiction may find our patents invalid or unenforceable; competitors may then be able to market products and use manufacturing and analytical processes that are substantially similar to ours. Even if we have valid and enforceable patents, these patents still may not provide protection against competing products or processes sufficient to achieve our business objectives. Litigation is time-consuming and expensive and would divert our resources.

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

We rely heavily on trade secrets as well as invention assignment and confidentiality provisions that we have in contracts with our employees, consultants, collaborators and others to protect our algorithms and other aspects of our Zio service. We may not be able to prevent the unauthorized disclosure or use of our technical knowledge or other trade secrets by consultants, vendors or former or current employees, despite the existence generally of these confidentiality agreements and other contractual restrictions. These agreements may not provide meaningful protection for our trade secrets, know-how, or other proprietary information in the event of any unauthorized use, misappropriation, or disclosure of such trade secrets, know-how, or other proprietary information. There can be no assurance that employees, consultants, vendors and clients have executed such agreements or have not breached or will not breach their agreements with us, that we will have adequate remedies for any breach, or that our trade secrets will not otherwise become known or independently developed by competitors. Despite the protections we do place on our intellectual property, monitoring unauthorized use and disclosure of our intellectual property is difficult, and we do not know whether the steps we have taken to protect our intellectual property will be adequate. In addition, the laws of many foreign countries will not protect our intellectual property rights to the same extent as the laws of the United States. Consequently, we may be unable to prevent our proprietary technology from being exploited abroad, which could affect our ability to expand to international markets or require costly efforts to protect our technology.

We may also employ individuals who were previously or are concurrently employed at research institutions or other medical device companies, including our competitors or potential competitors. We may be subject to claims that these employees, or we, have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former or concurrent employers, or that patents and applications we have filed to protect inventions of these employees, even those

related to one or more of our products, are rightfully owned by their former or concurrent employer. Litigation may be necessary to defend against these claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to management.

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

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

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 trademarks, service marks, trade names and brand names, such as our registered trademark “ZIO,” to distinguish our products from the products of our competitors, and have registered or applied to register these trademarks. We cannot assure you that our trademark applications will be approved. 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 in proceedings before comparable agencies in many foreign jurisdictions, third parties are given an opportunity to oppose pending trademark applications and to seek to cancel registered trademarks. Opposition or cancellation proceedings may be filed against our trademarks, and our trademarks may not survive such proceedings. In the event that our trademarks are successfully challenged, we could be forced to rebrand our products, which could result in loss of brand recognition and could require us to devote resources towards advertising and marketing new brands. Further, we cannot assure you that competitors will not infringe our trademarks or that we will have adequate resources to enforce our trademarks. Additionally, we are aware of at least one third party that has registered the “IRHYTHM” mark in the European Union in connection with computer software for controlling and managing patient medical information, heart rate monitors, and heart rate monitors to be worn during moderate exercise, among other uses. We and the third party are involved in adversary proceedings before the Trademark Office in the European Union, and those proceedings could impact our ability to obtain a European Union trade mark registration for the “IRHYTHM” mark, although we already own many national registrations for IRHYTHM in Europe.

Changes in patent law could diminish the value of patents in general, thereby impairing our ability to protect our existing and future products.

Recent patent reform legislation could increase the uncertainties and costs surrounding the prosecution of patent applications and the enforcement or defense of issued patents. In 2011, the Leahy-Smith America Invents Act ("Leahy-Smith Act") was signed into law. The Leahy-Smith Act includes a number of significant changes to U.S. patent law. These include provisions that affect the way patent applications are prosecuted and also may affect patent litigation. These also include provisions that switched the United States from a "first-to-invent" system to a "first-to-file" system, allow third-party submission of prior art to the USPTO during patent prosecution and set forth additional procedures to attack the validity of a patent by the USPTO, administered post grant proceedings. Under a first-to-file system, assuming the other requirements for patentability are met, the first inventor to file a patent application generally will be entitled to the patent on an invention regardless of whether another inventor had made the invention earlier. Under the new post grant provisions of the Leahy-Smith Act, the USPTO introduced procedures that provide additional administrative pathways for third parties to challenge issued patents. Inter partes review ("IPR") is one of these procedures. The number of IPR challenges filed is increasing, and in many cases, the USPTO is canceling or significantly narrowing issued patent claims. Accordingly, even if a patent is granted by the USPTO, there is risk that it may not withstand an IPR challenge. Accordingly, it is not clear what, if any, impact the Leahy-Smith Act will have on the operation of our business. The Leahy-Smith Act and its implementation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents, all of which could have a material adverse effect on our business, financial condition, results of operations and prospects.

In addition, 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. Recent case law has increased uncertainty regarding the availability of patent protection for certain technologies and the costs associated with obtaining patent protection for those technologies. For example, the U.S. Supreme Court has ruled on several patent cases in recent years, either narrowing the scope of patent protection available in certain circumstances or weakening the rights of patent owners in certain situations. In particular, the 2014 decision by the U.S. Supreme Court in *Alice Corp. v. CLS Bank International* has increased the difficulty of obtaining new software patents and enforcing existing software patents. 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.

Risks Related to Government Regulation

Changes in the regulatory environment may constrain or require us to restructure our operations, which may harm our revenue and operating results.

Healthcare laws and regulations change frequently and may change significantly in the future. We may not be able to adapt our operations to address every new regulation, and new regulations may adversely affect our business. We cannot assure you that a review of our business by courts or regulatory authorities would not result in a determination that adversely affects our revenue and operating results, or that the healthcare regulatory environment will not change in a way that restricts our operations. In addition, there is risk that the U.S. Congress may implement changes in laws and regulations governing healthcare service providers, including measures to control costs, or reductions in reimbursement levels, which may adversely affect our business and results of operations.

Government payors, such as CMS, as well as insurers, have increased their efforts to control the cost, utilization and delivery of healthcare services. From time to time, the U.S. Congress has considered and implemented changes in the CMS fee schedules in conjunction with budgetary legislation. Further reductions of reimbursement by CMS for services or changes in policy regarding coverage of tests or other requirements for payment, such as prior authorization or a physician or qualified practitioner's signature on test requisitions, may be implemented from time to time. Reductions in the reimbursement rates and changes in payment policies of other third-party payors may occur as well. Similar changes in the past have resulted in reduced payments as well as added costs and have added more complex regulatory and administrative requirements. For example, on January 29, 2021, Novitas Solutions, a MAC that we, physicians and hospitals rely on to process Medicare reimbursement claims related to our Zio service recently published reimbursement rates that were considerably lower than those than expected. On April 10, 2021, Novitas published rates for 2021 that were retroactive to the January 1, 2021 and replaced the rates that they published on January 29, 2021. These revised rates were higher that the rates posted on January 29, 2021, but continue to be significantly below our historical Medicare rates for our Zio XT service. As a result of our ongoing negotiations to improve reimbursement rates we are holding some Zio XT claims from being processed and this may result in less revenue being recognized in the second quarter of 2021. Further changes in federal, state, local and third-party payor regulations or policies may have a material adverse impact on our business. Actions by agencies regulating insurance or changes in other laws, regulations, or policies may also have a material adverse effect on our business.

If we fail to comply with healthcare and other governmental regulations, we could face substantial penalties and our business, results of operations and financial condition could be adversely affected.

The products and services we offer are highly regulated, and there can be no assurance that the regulatory environment in which we operate will not change significantly and adversely in the future. Our arrangements with physicians, hospitals and clinics may expose us to broadly applicable fraud and abuse and other laws and regulations that may restrict the financial arrangements and relationships through which we market, sell and distribute our products and services. Our employees, consultants, and commercial partners may engage in misconduct or other improper activities, including non-compliance with regulatory standards and requirements. Federal and state healthcare laws and regulations that may affect our ability to conduct business, include, without limitation:

- federal and state laws and regulations regarding billing and claims payment applicable to our Zio service and regulatory agencies enforcing those laws and regulations;
- the federal Anti-Kickback Statute, which prohibits, among other things, any person from knowingly and willfully offering, soliciting, receiving or providing remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual for, or the purchase, order or recommendation of, any good or service for which payment may be made under federal healthcare programs, such as the CMS programs;
- the federal False Claims Act, which prohibits, among other things, individuals or entities from knowingly presenting, or causing to be presented, false claims, or knowingly using false statements, to obtain payment from the federal government;
- federal criminal laws that prohibit executing a scheme to defraud any healthcare benefit program or making false statements relating to healthcare matters;
- the FCPA, the U.K. Bribery Act of 2010, and other local anti-corruption laws that apply to our international activities;
- the federal Physician Payment Sunshine Act, or Open Payments, created under the Affordable Care Act, and its implementing regulations, which requires manufacturers of drugs, medical devices, biologicals and medical supplies for which payment is available under Medicare, Medicaid, or the Children's Health Insurance Program to report annually to the U.S. Department of Health and Human Services, information

related to payments or other transfers of value made to licensed physicians and teaching hospitals, as well as ownership and investment interests held by physicians and their immediate family members;

- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, and its implementing regulations, which impose certain requirements relating to the privacy, security and transmission of individually identifiable health information; HIPAA also created criminal liability for knowingly and willfully falsifying or concealing a material fact or making a materially false statement in connection with the delivery of or payment for healthcare benefits, items or services;
- the GDPR, which replaces the 1995 Data Protection Directive known as Directive 95/46/EC;
- the federal physician self-referral prohibition, commonly known as the Stark Law; and
- state law equivalents of each of the above federal laws, such as anti-kickback and false claims laws which may apply to items or services reimbursed by any third-party payor, including commercial insurers, and state and foreign laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts.

The Affordable Care Act was enacted in 2010. The Affordable Care Act, among other things, amends the intent requirement of the federal Anti-Kickback Statute and criminal healthcare fraud statutes. A person or entity no longer needs to have actual knowledge of this statute or specific intent to violate it. In addition, the Affordable Care Act provides that the government may assert that a claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the False Claims Act.

Because of the breadth of these laws and the narrowness of available statutory and regulatory exemptions, it is possible that some of our activities could be subject to challenge under one or more of such laws. Any action brought against us for violations of these laws or regulations, even successfully defended, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. We may be subject to private "qui tam" actions brought by individual whistleblowers on behalf of the federal or state governments, with potential liability under the federal False Claims Act including mandatory treble damages and significant per-claim penalties, which were increased to $11,665 to $23,331 per false claim in 2020.

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

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

The Zio monitors and Zio service are subject to extensive regulation by the FDA in the United States and by our Notified Body in the European Union and in the UK. Government regulations specific to medical devices are wide ranging and govern, among other things:

- product design, development, manufacture, and release;
- laboratory, preclinical and clinical testing, labeling, packaging, storage and distribution;
- premarketing clearance or approval;
- service operations
- record keeping;

- product marketing, promotion and advertising, sales and distribution; and
- post-marketing surveillance, including reporting of deaths or serious injuries and recalls and correction and removals.

Before a new medical device or service, or a new intended use for an existing product or service, can be marketed in the United States, a company must first submit and receive either 510(k) clearance or premarketing approval from the FDA, unless an exemption applies. Either process can be expensive, lengthy and unpredictable. We may not be able to obtain the necessary clearances or approvals or may be unduly delayed in doing so, which 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 product, which may limit the market for the product. Although we have obtained 510(k) clearance to market the Zio monitors and the Zio service, our clearance can be revoked if safety or efficacy problems develop.

In addition, we are required to file various reports with the FDA, and European regulators, including reports required by the medical device reporting regulations ("MDRs") that require that we report to the regulatory authorities if our Zio service may have caused or contributed to a death or serious injury or malfunctioned in a way that would likely cause or contribute to a death or serious injury if the malfunction were to recur. If these reports are not filed in a timely manner, regulators may impose sanctions and we may be subject to product liability or regulatory enforcement actions, all of which could harm our business.

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

If we assess a potential quality issue or complaint as not requiring either field action or notification, respectively, regulators may review documentation of that decision during a subsequent audit. If regulators disagree with our decision, or take issue with either our investigation process or the resulting documentation, regulatory agencies may impose sanctions and we may be subject to regulatory enforcement actions, including warning letters, all of which could harm our business.

The FDA and the Federal Trade Commission ("FTC") also regulate the advertising and promotion of our products and services to ensure that the claims we make are consistent with our regulatory clearances, that there is adequate and reasonable data to substantiate the claims and that our promotional labeling and advertising is neither false nor misleading. If the FDA or FTC determines that any of our advertising or promotional claims are misleading, not substantiated or not permissible, we may be subject to enforcement actions, including warning letters, and we may be required to revise our promotional claims and make other corrections or restitutions.

The FDA and state and international 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, fines, injunctions, consent decrees and civil penalties;
- repair, replacement, refunds, recall or seizure of our products;
- operating restrictions, partial suspension or total shutdown of production;
- denial of our requests for regulatory clearance or premarket approval of new products or services, new intended uses or modifications to existing products or services;
- withdrawal of regulatory clearance or premarket approvals that have already been granted; and
- criminal prosecution.

If any of these events were to occur, our business and financial condition could be harmed.

Material modifications to the Zio monitors, labelling of the Zio monitors, or Zio service may require new 510(k) clearances, CE Marks or other premarket approvals or may require us to recall or cease marketing our products and services until clearances are obtained.

Material modifications to the intended use or technological characteristics of the Zio monitors or Zio service will require new 510(k) clearances, premarket approvals or CE Mark grants, or require us to recall or cease marketing the modified devices until these clearances or approvals are obtained. Based on FDA published guidelines, the FDA requires device manufacturers to initially make and document a determination of whether or not a modification requires a new approval, supplement or clearance; however, the FDA can review a manufacturer's decision. Any modification to an FDA cleared device or service that would significantly affect its safety or efficacy or that would constitute a major change in its intended use would require a new 510(k) clearance or possibly a premarket approval. We may not be able to obtain additional 510(k) clearances or premarket approvals for new products or for modifications to, or additional indications for, the Zio monitors or Zio service in a timely fashion, or at all. Delays in obtaining required future clearances would harm our ability to introduce new or enhanced products in a timely manner, which in turn would harm our future growth. We have made modifications to the Zio monitors and Zio service in the past that we believe do not require additional clearances or approvals, and we may make additional modifications in the future. If the FDA or an EU Notified Body disagrees and requires new clearances or approvals for any of these modifications, we may be required to recall and to stop selling or marketing the Zio monitors and Zio service as modified, which could harm our operating results and require us to redesign our products or services. In these circumstances, we may be subject to significant enforcement actions.

If we or our suppliers fail to comply with the FDA's QSR or the European Union's Medical Device Directive, our manufacturing or distribution operations could be delayed or shut down and our revenue could suffer.

Our manufacturing and design processes and those of our third-party suppliers are required to comply with the FDA's Quality System Regulation ("QSR") and the EU's Medical Device Directive ("MDD"), through May 2021, after which time compliance with the MDR transitional provisions will be required. All of these regulations cover procedures and documentation requirements for the design, testing, production, control, quality assurance, labeling, packaging, storage and shipping of Zio monitors. We are also subject to similar state requirements and licenses, and to ongoing ISO compliance in all operations, including design, manufacturing, and service, to maintain our CE Mark. In addition, we must engage in extensive recordkeeping and reporting and must make available our facilities and records for periodic unannounced inspections by governmental agencies, including the FDA, state authorities, EU Notified Bodies and comparable agencies in other countries. If we fail a regulatory inspection, our operations could be disrupted and our manufacturing interrupted. Failure to take adequate corrective action in response to an adverse regulatory inspection could result in, among other things, a shutdown of our manufacturing or product distribution operations, significant fines, suspension of marketing clearances and approvals, seizures or recalls of our device, operating restrictions and criminal prosecutions, any of which would cause our business to suffer. Furthermore, our key component suppliers may not currently be or may not continue to be in compliance with applicable regulatory requirements, which may result in manufacturing delays for our product and cause our revenue to decline.

We are registered with the FDA as a medical device specifications developer and manufacturer. The FDA has broad post-market and regulatory enforcement powers. We are subject to unannounced inspections by the FDA and the Food and Drug Branch of the California Department of Public Health ("CDPH") to determine our compliance with the QSR and other regulations at both our design and manufacturing facilities, and these inspections may include the manufacturing facilities of our suppliers. Our design facilities in San Francisco, California were most recently inspected by the FDA in June 2016 and no formal 483 observations resulted. The most recent FDA inspection of our manufacturing facility occurred in October 2018 and no formal 483 observations resulted. No additional follow up with the FDA was required and we believe that we are in compliance, in all material respects, with the QSR.

We are also registered with the EU as a medical device developer, manufacturer and service operator through the National Standard Authority of Ireland ("NSAI") our European Notified Body. Most recently, the NSAI completed an ISO 13485 surveillance audit of our design, manufacturing and service operations in May 2020 and we believe that we are in compliance, in all material respects, with the MDD.

We can provide no assurance that we will continue to remain in compliance with the QSR or MDD, or to the European Union's new MDRs, which will be required to comply with by May 2021. If the FDA, CDPH or NSAI inspect any of our facilities and discover compliance problems, we may have to cease manufacturing and product distribution until we can take the appropriate remedial steps to correct the audit findings. Taking corrective action may be expensive, time consuming and a distraction for management and if we experience a delay at our manufacturing facility we may be unable to produce Zio monitors, which would harm our business.

Zio monitors may in the future be subject to product recalls that could harm our reputation.

The FDA and similar governmental authorities in other countries have the authority to require the recall of commercialized products in the event of material regulatory deficiencies or defects in design or manufacture. A government mandated or voluntary recall by us could occur as a result of component failures, manufacturing errors or design or labeling defects. Recalls of Zio monitors would divert managerial attention, be expensive, harm our reputation with customers and harm our financial condition and results of operations. A recall announcement would also negatively affect our stock price.

Healthcare reform measures could hinder or prevent the Zio service's commercial success.

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 could harm our future revenues and profitability and the demand for the Zio service. 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. The Affordable Care Act contains a number of provisions, including those governing enrollment in federal healthcare programs, reimbursement changes and fraud and abuse measures, all of which will impact existing government healthcare programs and will result in the development of new programs. We face uncertainties that might result from modifications or repeal of any of the provisions of the Affordable Care Act, including as a result of current and future executive orders and legislative actions. The impact of those changes on us and potential effect on the medical device industry as a whole is currently unknown. Any changes to the Affordable Care Act are likely to have an impact on our results of operations, and may have a material adverse effect on our results of operations. We cannot predict what other health care programs and regulations will ultimately be implemented at the federal or state level or the effect of any future legislation or regulation in the United States may have on our business.

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 Zio service;
- our ability to generate revenue and achieve or maintain profitability; and
- the availability of capital.

Compliance with environmental laws and regulations could be expensive, and failure to comply with these laws and regulations could subject us to significant liability.

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

Exposure to United Kingdom political developments, including the outcome of its withdrawal from membership in the European Union, could be costly and difficult to comply with and could seriously harm our business.

We have based a significant portion of our non-U.S. operations in the United Kingdom. In June 2016, a referendum was held in the U.K. which resulted in a majority voting in favor of the U.K. withdrawing from the E.U. (commonly referred to as "Brexit"). Pursuant to legislation approved by the U.K. Parliament and the E.U. Parliament in January 2020, the U.K. withdrew from the E.U. with effect from 11 p.m. (GMT) on January 31, 2020 on the terms of a withdrawal agreement agreed between the U.K. and the E.U. in October 2019. On December 24, 2020, the U.K. and E.U. agreed to a trade deal (the "Trade and Cooperation Agreement") which was ratified by the U.K. on December 30, 2020. The Trade and Cooperation Agreement is subject to formal approval by the European Parliament and the Council of the European Union before it comes into effect and has been applied provisionally since January 1, 2021. There are still a number of areas of uncertainty in connection with the future of the U.K. and its relationship with the E.U. and the application and interpretation of the Trade and Cooperation Agreement, and Brexit related matters may take several years to be clarified and resolved. For example, because a significant proportion of the regulatory framework in the U.K. is currently derived from E.U. directives and regulations, Brexit could result in material changes to the regulatory regime applicable to many of our current operations. Although the Trade and Cooperation Agreement offers U.K. and E.U. companies preferential access to each other's markets, ensuring imported goods will be free of tariffs and quotas, economic relations between the U.K. and the E.U. will now be on more restricted terms than existed previously. Therefore, at this time, we cannot predict the impact that the Trade and Cooperation Agreement and any future agreements contemplated under the terms of the Trade and Cooperation Agreement will have on our future business efforts to commercialize our Zio service in the U.K. and E.U. Accordingly, it is possible that new terms of the Trade and Cooperation Agreement may adversely affect our operations and financial results. We are currently in the process of evaluating our own risks and uncertainties to ascertain what financial, trade, regulatory and legal implications the Trade and Cooperation Agreement could have on our operations in the U.K. and otherwise. Finally, uncertainty surrounding Brexit has contributed to recent fluctuations in the U.K. economy as a whole which could experience future disruptions. As a result, Brexit could cause financial and capital markets within and outside the U.K. or the E.U. to constrict, thereby negatively impacting our ability to finance our U. K. operations which could also have an adverse effect on our results of operations and financial condition.

Risks Related to Our Common Stock

Future sales and issuances of securities could negatively affect our stock price and dilute the ownership interest of our existing investors.

Our expected future capital requirements may depend on many factors, including expanding our customer base, the expansion of our salesforce, and the timing and extent of spending on the development of our technology to increase our product offerings. If we raise additional funds by issuing equity securities, our stockholders may experience dilution. Additionally, new investors could gain rights, preferences and privileges senior to those of existing holders of our common stock. Any future debt financing into which we enter may impose upon us additional covenants that restrict our operations, including limitations on our ability to incur liens or additional debt, pay dividends, repurchase our common stock, make certain investments and engage in certain merger, consolidation or asset sale transactions. Any debt financing or additional equity that we raise may contain terms that are not favorable to us or our stockholders.

Sales or issuances of a substantial amount of securities, or the perception that such sales could occur, may cause a decline in the price of our common stock. Future resales of our common stock by our existing stockholders could cause the market price of our common stock to decline. In addition, the shares of common stock subject to outstanding options and restricted stock units under our 2016 Equity Incentive Plan and our 2016 Employee Stock Purchase Plan and the shares reserved for future issuance under both such plans may become eligible for sale in the public markets in the future, subject to certain legal and control limitations.

We may sell shares or other securities in any offering at a price per share that is less than the price per share paid by existing investors, and investors purchasing shares or other securities in the future could have rights superior to existing stockholders. The price per share at which we sell additional shares of our common stock, or securities convertible or exchangeable into common stock, in future transactions may be higher or lower than the price per share paid by existing investors.

The market price of our common stock may fluctuate substantially, and you could lose all or part of your investment.

The market price of our common stock may continue to fluctuate substantially in response to, among other things, the risk factors described in this Quarterly Report on Form 10-Q and other factors, many of which are beyond our control, including:

- changes in analysts' estimates, investors' perceptions, recommendations by securities analysts or our failure to achieve analysts' estimates;

- quarterly variations in our or our competitors' results of operations;
- the impact or anticipated impact of the COVID-19 pandemic on us;
- periodic fluctuations in our revenue, due in part to the way in which we recognize revenue;
- the financial projections we may provide to the public, any changes in these projections or our failure to meet these projections;
- general market conditions and other factors unrelated to our operating performance or the operating performance of our competitors;
- changes in reimbursement coverage and rates by current or potential payors;
- changes in CPT codes or the establishment of new CPT codes applicable to the Zio service;
- changes in operating performance and stock market valuations of other technology companies generally, or those in the medical device industry in particular;
- actual or anticipated changes in regulatory oversight of our products;
- the results of our clinical trials;
- the loss of key personnel, including changes in our board of directors and management;
- legislation or regulation affecting our market;
- lawsuits threatened or filed against us;
- the announcement of new products or product enhancements by us or our competitors;
- announced or completed acquisitions of businesses or technologies by us or our competitors;
- announcements related to patents issued to us or our competitors and to litigation; and
- developments in our industry.

Fluctuations in our stock price, volume of shares traded, and changes in our market valuations may make our stock less attractive to certain investors. Stockholders file securities class action litigation following periods of market volatility. Securities litigation, like the current action we are subject to in the District Court for the Northern District of California, could subject us to substantial costs, divert resources and the attention of management from our business, and adversely affect our business, results of operations, financial condition, reputation and cash flows. These factors may materially and adversely affect the market price of our common stock.

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

The trading market for our common stock will be influenced by the research and reports that industry or securities analysts publish about us or our business. If any of the analysts who cover us issue an adverse or misleading opinion regarding us, our business model, our intellectual property or our stock performance, or if our target studies and operating results fail to meet the expectations of analysts, our stock price would likely decline. If one or more of these analysts cease coverage of us or fail to publish reports on us regularly, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline.

The requirements of being a public company may strain our resources, divert management's attention and affect our ability to attract and retain executive management and qualified board members.

As a public company, we are subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act, the Dodd Frank Act, the listing requirements of The NASDAQ Stock Market and other applicable securities laws, rules and regulations. Compliance with these laws, rules and regulations 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. 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, our management and other personnel divert attention from operational and other business matters to devote substantial time to these public company requirements. In particular, we incur significant expenses and devote substantial

management effort toward ensuring compliance with the requirements of Section 404. We continue to hire additional accounting and financial staff with appropriate public company experience and technical accounting knowledge. We cannot predict or estimate the amount of additional costs we will incur in order to remain compliant with our public company reporting requirements or the timing of such costs. Additional compensation costs and any future equity awards will increase our compensation expense, which will increase our general and administrative expense and could adversely affect our profitability.

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 harmed.

As a public company, it is more expensive for us to obtain director and officer liability insurance, and 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 executive officers and members of our board of directors, particularly to serve on our audit committee and compensation committee. In addition, compliance with applicable rules and regulations for public companies is generally more expensive than it is for private companies.

As a result of disclosure of information in this filing and in other filings required of a public company, our business and financial condition is more visible, which could be advantageous to our competitors and other third parties and could result in threatened or actual litigation. If such claims are successful, our business and operating results could be harmed, and even if the claims are resolved in our favor, these claims, and the time and resources necessary to resolve them, could divert the resources of our management and harm our business and operating results.

Anti-takeover provisions in our amended and restated certificate of incorporation and bylaws, and Delaware law, could discourage a change in control of our company or a change in our management.

Our amended and restated certificate of incorporation and bylaws contain provisions that might enable our management to resist a takeover. These provisions include:

- a classified board of directors;
- advance notice requirements applicable to stockholders for matters to be brought before a meeting of stockholders and requirements as to the form and content of a stockholders' notice;
- a supermajority stockholder vote requirement for amending certain provisions of our amended and restated certificate of incorporation and bylaws;
- the right to issue preferred stock without stockholder approval, which could be used to dilute the stock ownership of a potential hostile acquirer;
- allowing stockholders to remove directors only for cause;
- a requirement that the authorized number of directors may be changed only by resolution of the board of directors;
- allowing all vacancies, including newly created directorships, to be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum, except as otherwise required by law;
- a requirement that our stockholders may only take action at annual or special meetings of our stockholders and not by written consent;
- limiting the forum to Delaware for certain litigation against us; and
- limiting the persons that can call special meetings of our stockholders to our board of directors, the chairperson of our board of directors, the chief executive officer or the president (in the absence of a chief executive officer).

These provisions might discourage, delay or prevent a change in control of our company or a change in our management. The existence of these provisions could adversely affect the voting power of holders of common stock and limit the price that investors might be willing to pay in the future for shares of our common stock. In addition, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which generally prohibits a Delaware corporation from engaging in any of a broad range of business combinations with any "interested" stockholder for a period of three years following the date on which the stockholder became an "interested" stockholder.

Our amended and restated certificate of incorporation and bylaws provide that the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another State court in Delaware or the federal district court for the District of Delaware) will be the sole and exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders' abilities to obtain a favorable judicial forum for disputes with us or our directors, officers or employees.

Our amended and restated certificate of incorporation and bylaws provide that, unless we consent to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another State court in Delaware or the federal district court for the District of Delaware) is the sole and exclusive forum for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of fiduciary duty owed by any of our directors, officers or other employees to us or to our stockholders, (iii) any action asserting a claim against the company or any director or officer of the company arising pursuant to the Delaware General Corporation Law, our amended and restated certificate of incorporation or bylaws, (iv) any action to interpret, apply, enforce or determine the validity of our amended and restated certificate of incorporation or bylaws, or (v) any action asserting a claim against us governed by the internal affairs doctrine, in each such case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein. This provision would not apply to suits brought to enforce a duty or liability created by the Exchange Act or any other claim for which the U.S. federal courts have exclusive jurisdiction. Our investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder. Our bylaws further 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. The enforceability of similar exclusive federal forum provisions in other companies' organizational documents has been challenged in legal proceedings, and while the Delaware Supreme Court has ruled that this type of exclusive federal forum provision is facially valid under Delaware law, there is uncertainty as to whether other courts would enforce such provisions. The choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other employees, which may discourage such lawsuits against us and our directors, officers and other employees. Alternatively, if a court were to find the choice of forum provision contained in our amended and restated certificate of incorporation or bylaws 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.

We have not paid dividends in the past and do not expect to pay dividends in the future, and, as a result, any return on investment may be limited to the value of our stock.

We have never paid dividends and do not anticipate paying dividends in the foreseeable future. The payment of dividends will depend on our earnings, capital requirements, financial condition, prospects and other factors our board of directors may deem relevant. In addition, our loan agreement with Silicon Valley Bank limits our ability to, among other things, pay dividends or make other distributions or payments on account of our common stock, subject to certain exceptions. If we do not pay dividends, our stock may be less valuable because a return on your investment will only occur if our stock price appreciates and you sell our common stock thereafter.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Not applicable.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

Not applicable.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

We were incorporated in Delaware on September 14, 2006. Our principal executive offices are now located at 699 8th Street, Suite 600, San Francisco, CA 94103, and our telephone number is (415) 632-5700. Our website address is www.iRhythmTech.com. Investors and others should note that we announce material financial information to our investors using SEC filings, press releases, our investor relations website, public conference calls and webcasts. We use these channels as well as social media to communicate with investors, customers and the public about our company, our products and other issues. It is possible that information we post on social media channels could be deemed to be material information. We encourage investors, our customers and others interested in our company to review the information we post on our Facebook page (https://www.facebook.com/iRhythmTechnologies/) and Twitter feed (https://twitter.com/iRhythmTech). The information on, or that may be accessed through, our website and social media channels is not incorporated by reference into this Quarterly Report on Form 10-Q and should not be considered a part of this Quarterly Report on Form 10-Q.

ITEM 6. EXHIBITS

The exhibits listed in the accompanying exhibit index are filed as part of, and incorporated by reference into, this Quarterly Report on Form 10-Q.

EXHIBIT INDEX

Exhibit Number	Description	Incorporated by Reference			Filed Herewith
		Form	Date	Number	
3.1	Amended and Restated Certificate of Incorporation.	8-K	10/25/16	3.1	
3.2	Certificate of Amendment to Amended and Restated Certificate of Incorporation.	8-K	6/23/20	3.1	
3.3	Amended and Restated Bylaws.	8-K	10/25/16	3.2	
3.4	Certificate of Amendment to the Amended and Restated Bylaws.	8-K	8/14/20	3.1	
10.42	Multi-Tenant Office/Industrial Lease by and between iRhythm Technologies, Inc. and Katella/Holder Street LLC dated March 18, 2021.				X
31.1	Certification of Chief Executive Officer required by Securities Exchange Act Rules 13a-14(a) and 15d-14(a).				X
31.2	Certification of Chief Financial Officer pursuant to Securities Exchange Act Rules 13a-14(a) and 15d-14(a)				X
32.1*	Certification of Chief Executive Officer and Chief Financial Officer required by Rule 13a-14(b) or Rule 15d-14(b) and 18 U.S.C. Section 1350.				X
101.INS	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				X
101.SCH	XBRL Taxonomy Extension Schema Document				X
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document				X

101.DEF	XBRL Taxonomy Extension Definition Linkbase Document	X
101.LAB	XBRL Taxonomy Extension Label Linkbase Document	X
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document	X
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)	X

* The certifications filed as Exhibits 32.1 are not deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934 and are not to be incorporated by reference into any filing of the Company under the Securities Exchange Act of 1933 or the Securities Exchange Act of 1934, whether made before or after the date hereof irrespective of any general incorporation by reference language contained in any such filing, except to the extent that the registrant specifically incorporates it by reference.

SIGNATURES

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

iRhythm Technologies, Inc.

Date: May 10, 2021

By: /s/ Michael J. Coyle

Michael J. Coyle
President and Chief Executive Officer
(Principal Executive Officer)

Date: May 10, 2021

By: /s/ Douglas J. Devine

Douglas J. Devine
Chief Financial Officer
(Principal Financial Officer)

MULTI-TENANT

OFFICE/INDUSTRIAL LEASE (NNN)

CYPRESS DISTRIBUTION CENTER
Cypress, California

LANDLORD:

KATELLA/HOLDER STREET, LLC,
a Delaware limited liability company

TENANT:

IRHYTHM TECHNOLOGIES, INC.,
a Delaware corporation

TABLE OF CONTENTS

Article 1 - LEASE SUMMARY AND PROPERTY SPECIFIC PROVISIONS 1
Article 2 - LEASE 9
Article 3 - PREMISES 9
Article 4 - TERM AND POSSESSION 9
Article 5 - RENT 10
Article 6 - SECURITY DEPOSIT 10
Article 7 - OPERATING EXPENSES/UTILITIES/SERVICES 11
Article 8 - MAINTENANCE AND REPAIR 11
Article 9 - USE 12
Article 10 - HAZARDOUS MATERIALS 13
Article 11 - PARKING 13
Article 12 - TENANT SIGNS 14
Article 13 - ALTERATIONS 14
Article 14 - TENANT'S INSURANCE 15
Article 15 - LANDLORD'S INSURANCE 16
Article 16 - INDEMNIFICATION AND EXCULPATION 17
Article 17 - CASUALTY DAMAGE/DESTRUCTION 18
Article 18 - CONDEMNATION 19
Article 19 - WAIVER OF CLAIMS; WAIVER OF SUBROGATION 19
Article 20 - ASSIGNMENT AND SUBLETTING 20
Article 21 - SURRENDER AND HOLDING OVER 21
Article 22 - DEFAULTS 22
Article 23 - REMEDIES OF LANDLORD 22
Article 24 - ENTRY BY LANDLORD 23
Article 25 - LIMITATION ON LANDLORD'S LIABILITY 24
Article 26 - SUBORDINATION 24
Article 27 - ESTOPPEL CERTIFICATE 24
Article 28 - RELOCATION OF PREMISES 24
Article 29 - MORTGAGEE PROTECTION 24
Article 30 - QUIET ENJOYMENT 25
Article 31 - MISCELLANEOUS PROVISIONS 25

Exhibits

Exhibit A Premises Floor Plan
Exhibit B Site Plan
Exhibit C Work Letter
Exhibit D Notice of Lease Term Dates
Exhibit E Rules and Regulations
Exhibit F Estoppel Certificate
Exhibit G Environmental Questionnaire and Disclosure Statement

Riders

Rider No. 1 Extension Option
Rider No. 2 Fair Market Rental Rate
Rider No. 3 Expansion Option
Rider No. 4 Termination Option
Rider No. 5 Options in General

18th
This MULTI-TENANT OFFICE/INDUSTRIAL LEASE (NNN) ("Lease"), entered into as of this __ day of March, 2021 (the "Effective Date") for reference purposes, is by and between KATELLA/HOLDER STREET, LLC, a Delaware limited liability company, hereinafter referred to as "Landlord", and IRHYTHM TECHNOLOGIES, INC., a Delaware corporation, hereinafter referred to as "Tenant".

ARTICLE 1 - LEASE SUMMARY AND PROPERTY SPECIFIC PROVISIONS

1.1 **Landlord's Address:** KATELLA/HOLDER STREET, LLC
c/o LBA Realty LLC
3347 Michelson Drive, Suite 200
Irvine, California 92612
Attn: Asset Manager - Cypress Distribution Center
Telephone: (949) 833-0400
E-mail: leasingnotices@lbarealty.com

With a copy to: Katella/Holder Street, LLC
c/o LBA Realty
3347 Michelson Drive, Suite 210 Irvine, California 92612
Attn: Regional Operations Manager - Cypress Distribution Center
Telephone: (949) 833-0400
E-mail: leasingnotices@lbarealty.com

For payment of Rent: KATELLA/HOLDER STREET, LLC
P.O. Box 741151
Los Angeles, California 90074-1151

1.1 **Tenant's Address:** Before the Commencement Date:

IRHYTHM TECHNOLOGIES, INC. 11085 Knott Ave, Suite B Cypress, CA 90630

Attn: Head of Workplace & Real Estate

After the Commencement Date:

The Premises

With a copy to: IRHYTHM TECHNOLOGIES, INC.

699 8th St # 600
San Francisco, CA 94103
Attn: Head of Workplace & Real Estate

Tenant Billing Address: IRHYTHM TECHNOLOGIES, INC.
699 8th St # 600 San Francisco, CA 94103 Attn: Finance

1.3. **Building; Property:** The building located at 6550 Katella Avenue, Cypress, California 90630 (the **"Building"**). The Building, together with all other buildings, improvements and facilities, now or subsequently located upon the land (the **"Site"**), including, without limitation, the two (2) buildings currently located within the Property, as shown on the Site Plan attached hereto as Exhibit B (as such area may be expanded or reduced from time to time) is referred to herein as **the "Property"**. The Property is commonly known as the Cypress Distribution Center. Landlord and Tenant stipulate and agree that the Property contains 546,219 rentable square feet in the aggregate and the Building contains 342,086 rentable square feet, for all purposes of this Lease.

1.4. **Premises:** Suite 200 of the Building, consisting of 34,573 rentable square feet of office space (the **"Office Premises"**) and 34,360 rentable square feet of warehouse space (the **"Warehouse Premises"**), as outlined on the Premises Floor Plan attached hereto as Exhibit A. The estimated rentable square footage of the Premises is 68,933, subject to adjustment pursuant to Section 3.2 of the Standard Lease Provisions. **Tenant's Percentage of the Building:** 19.75%.

1.5. **City:** The City of Cypress, County of Orange, State of California.

1.6. **Commencement Date:** The later of: (i) six (6) months following the Turnover Date, (ii) August 1, 2021. **Estimated Commencement Date:** August 1, 2021.

1.7. **Term:** One hundred twenty-six (126) full calendar months, plus any partial month at the beginning of the Term, commencing on the Commencement Date and ending on the last day of the one hundred twenty-sixth (126th) full calendar month following the Commencement Date (**"Expiration Date"**).

1.8. **Monthly Base Rent:**

Office Premises:

Months or Period	Monthly Base Rent
01-12*	$57,045.45**
13-24	$58,756.81
01-36	$60,519.52
01-48	$62,335.10
01-60	$64,205.16
01-72	$66,131.31
01-84	$68,115.25
01-96	$70,158.71
01-108	$72,263.47
01-120	$74,431.37
01-126	$76,664.31

Warehouse Premises:

Months or Period	Monthly Base Rent
01-12*	$30,924.00**
13-24	$31,851.72
01-36	$32,807.27
01-48	$33,791.49
01-60	$34,805.23
01-72	$35,849.39
01-84	$36,924.87
01-96	$38,032.62
01-108	$39,173.60
01-120	$40,348.81
01-126	$41,559.27

*Including any partial month at the beginning of the Term.

Notwithstanding the foregoing, provided Tenant is not in default under this Lease beyond any applicable notice and cure period, Landlord hereby agrees to abate Tenant's obligation to pay Monthly Base Rent during the second (2nd) through the seventh (7th) full calendar months of the initial Term (such total amount of abated Monthly Base Rent being hereinafter referred to as the **"Abated Amount"). During such abatement period, Tenant will still be responsible for the payment of all other monetary obligations under the Lease. Tenant acknowledges that any default by Tenant under this Lease will cause Landlord to incur costs not contemplated hereunder, the exact amount of such costs being extremely difficult and impracticable to ascertain, therefore, should Landlord terminate the Lease as after a Tenant default after having been given notice and opportunity to cure, then the total unamortized sum of such Abated Amount (amortized on a straight line basis over the initial Term of this Lease) so conditionally excused shall become immediately due and payable by Tenant to Landlord; provided, however, Tenant acknowledges and agrees that nothing in this subparagraph is intended to limit any other remedies available to Landlord at law or in equity under applicable law (including, without limitation, the remedies under Civil Code Section 1951.2 and/or 1951.4 and any successor statutes or similar laws), in the event Tenant defaults under this Lease beyond any applicable notice and cure period. Upon reasonable notice to Tenant at any time prior to application of the entire Abated Amount, Landlord shall have the right to purchase from Tenant any and all then remaining Abated Amount as it applies to one or more of the remaining abatement months by paying to Tenant an amount equal to the unused balance of the Abated Amount that Landlord elects to purchase back from Tenant (the **"Abated Amount Purchase Price"**). Upon Landlord's payment to Tenant of the Abated Amount Purchase Price with respect to the applicable remaining abatement months, Tenant shall thereupon be required to pay Monthly Base Rent during such months in an amount equal to the Abated Amount that Tenant would have been entitled to receive but for Landlord's payment to Tenant of the Abated Amount Purchase Price.

Accordingly, Tenant shall deliver the following amounts to Landlord upon its execution of this Lease (pursuant to Sections 4.2 and 5.1 of the Standard Provisions):

(a)	Monthly Base Rent:	$87,969.45 for Month 1.
(b)	Tenant's Percentage of Operating Expenses (est.):	$16,514.49 for Month 1.
(c)	Security Deposit:	$354,670.74 (See Section 1.9 below)
Total due upon execution of this Lease:		$459,154.68.

1.9. **Security Deposit:** $354,670.74, subject to reduction in accordance with the terms and conditions of Article 6.

1.10. **Permitted Use:** Warehousing, manufacturing, research and development, storage and general office use, subject to the provisions set forth in this Lease and as permitted by Law.

1.11. **Parking:** One hundred sixty-nine (169) unreserved parking spaces, subject to the terms of Article 11 of the Standard Lease Provisions.

1.12. **Brokers:** Cushman & Wakefield of California, Inc., representing Landlord and Tenant.

1.13. **Interest Rate:** The lesser of: (a) Eight percent (8%) or (b) the maximum rate permitted by law in the State where the Property is located.

1.14. Insurance Amounts:

a. **Commercial General Liability Insurance:** General liability of not less than One Million Dollars ($1,000,000.00) per occurrence and Two Million Dollars ($2,000,000.00) in the aggregate.

b. **Commercial Automobile Liability Insurance:** Limit of liability of not less than One Million Dollars ($1,000,000.00) per accident.

c. **Worker's Compensation and Employers Liability Insurance:** With limits as mandated pursuant to the laws in the State in which the Property is located, or One Million Dollars ($1,000,000.00) per person, disease and accident, whichever is greater.

d. **Umbrella Liability Insurance:** Limits of not less than Three Million Dollars ($3,000,000.00) per occurrence.

e. **If Tenant's business includes professional services, Professional Liability (also known as errors and omissions insurance)**: Not less than the minimum limits required by law for Tenant's profession, and in any event, not less than One Million Dollars ($1,000,000.00) per occurrence.

f. **Loss of Income, Extra Expense and Business Interruption Insurance:** In the amount of at least 12 months of Monthly Base Rent.

1.3. **Tenant Improvements:** Landlord, at Landlord's sole cost and expense, promptly following the mutual execution of this Lease, using Building-standard methods, materials, finishes and specifications, shall complete certain sewer system work as further described in Schedule 2 attached to Exhibit C attached hereto (the "Landlord Improvements"). The Landlord Improvements shall be constructed in accordance with all applicable Laws, in a good and workmanlike manner, free of defects and using new Building standard materials and equipment of good quality. Tenant shall have the right to submit a written "punch list" to Landlord, setting forth any defective item of construction, and Landlord shall promptly cause such items to be corrected.

Landlord hereby grants to Tenant an allowance of: (i) up to $75.00 per rentable square foot of the Office Premises (i.e., up to $2,592,975.00, based on the Office Premises containing approximately 34,573 rentable square feet), plus (ii) up to $2.50 per rentable square foot of the Warehouse Premises (i.e., up to $85,900.00, based on the Warehouse Premises containing approximately 34,360 rentable square feet), plus (iii) $675,000.00 ($3,353,875.00 in the aggregate) (collectively, the "Allowance"), to be applied as provided in the Work Letter.

1.4. **Tenant's Percentage:** 12.62%, which is the ratio that the rentable square footage of the Premises bears to the rentable square footage of the Property.

1.5. **Common Areas; Definitions; Tenant's Rights.** During the Term, Tenant shall have the non-exclusive right to use, in common with other tenants in the Property, and subject to the Rules and Regulations referred to in Article 9 of the Standard Lease Provisions, those portions of the Property (the **"Property Common Areas"**) not leased or designated for lease to tenants that are provided for use in common by Landlord, Tenant and any other tenants of the Property (or by the sublessees, agents, employees, customers invitees, guests or licensees of any such party), whether or not those areas are open to the general public. The Property Common Areas shall include, without limitation, all other buildings on the Property exclusive of areas maintained and repaired by tenants, and all parking areas (subject to Article 11 of the Standard Lease Provisions), loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, driveways and landscaped areas appurtenant to the Building, fixtures, systems, decor, facilities and landscaping contained, maintained or used in connection with those areas, and shall be deemed to include any city sidewalks adjacent to the Property and located on the Site, any pedestrian walkway system, park or other facilities located on the Site and open to the general public. The common areas of the Building shall be referred to herein as the **"Building Common Areas"** and shall include, without limitation, the following areas of the Building: the common entrances, lobbies, common restrooms, accessways, loading docks, ramps, drives and platforms and any passageways and serviceways thereto to the extent not exclusively serving another tenant or contained within another tenant's premises, and the common pipes, conduits, wires and appurtenant equipment serving the Premises. The Building Common Areas and the Property Common Areas shall be referred to herein collectively as the **"Common Areas."** If Tenant is leasing the entire Building, then all elements of the Building and the Building Common Areas shall constitute part of the Premises and all references to Common Areas contained in this Lease shall mean and refer to those elements of the Property outside of the Premises. Notwithstanding anything to the contrary herein, Landlord acknowledges that the Tenant Improvements identified in the plans issued for review by Hendy on January 13, 2021 (the **"Hendy Plans"**) will include certain modifications to the Building and parking areas required to accommodate both grade and dock high loading including, without limitation, the construction of a truck well serving the Premises (the **"Truck Well"**). In furtherance of the foregoing, the Common Areas shall exclude, and Tenant shall have the exclusive right to use and modify, the Truck Well identified in the Hendy Plans.

1.6. Operating Expenses.

a. Intentionally omitted.

b. **Operating Expenses.** In addition to the Monthly Base Rent, Tenant shall pay to Landlord Tenant's Percentage of Operating Expenses, in the manner and at the times set forth in the following provisions of this Section 1.18. **"Operating Expenses"** shall consist of all costs and expenses of operation, maintenance and repair of the Common Areas of the Property as determined by standard accounting practices and calculated assuming the Property is at least ninety-five percent (95%) occupied. Operating Expenses include the following costs by way of illustration but not limitation: (i) any and all assessments imposed with respect to the Property pursuant to any covenants, conditions and restrictions affecting the Property; (ii) costs, levies or assessments resulting from statutes or regulations promulgated by any government authority in connection with the use or occupancy of the Property; (iii) all costs of utilities serving the Common Areas and any costs of utilities for the Premises which are not separately metered, (iv) all Taxes and Insurance Costs as defined in the Standard Lease Provisions, (v) waste disposal; (vi)

security, if any; (vii) costs incurred in the management of the Property, including, without limitation: (1) supplies, materials, equipment and tools, (2) wages, salaries, benefits, pension payments, fringe benefits, (and payroll taxes, insurance and similar governmental charges related thereto) of employees used in the operation and maintenance of the Property, (3) the rental of personal property used by Landlord's personnel in the maintenance, repair and operation of the Property, (4) accounting fees, legal fees and real estate consultant's fees, and (5) a management/administrative fee not to exceed four percent (4%) of gross rents for the Property; (viii) repair and maintenance of all portions of the Building and all buildings on the Property other than such portions as are maintained by Tenant or any other tenants, including the elevators (if any), restrooms (if any), structural and non-structural portions of the Building and all other buildings on the Property, and the plumbing, heating, ventilating, air-conditioning and electrical systems installed or furnished by Landlord and not maintained by Tenant pursuant to Section 8.2 of the Standard Provisions; (ix) maintenance, costs and upkeep of all parking and Common Areas; (x) amortization on a straight-line basis over the useful life together with interest at the rate of eight percent (8%) per annum on the unamortized balance of all costs of a capital nature (including, without limitation, capital improvements, capital replacements, capital repairs, capital equipment and capital tools): (1) reasonably intended to produce a reduction in operating charges or energy consumption; or (2) required after the date of this Lease under any Law that was not applicable to the Building at the time it was originally constructed; or (3) for repair or replacement of any equipment or improvements needed to operate and/or maintain the Property at the same quality levels as prior to the repair or replacement; (xi) costs and expenses of gardening and landscaping; (xii) maintenance of signs (other than signs of tenants of the Property); (xiii) personal property taxes levied on or attributable to personal property used in connection with the Property; and (xiv) costs and expenses of repairs, resurfacing, repairing, maintenance, painting, lighting and similar items. Landlord shall have the right, from time to time, to equitably allocate some or all of the Operating Expenses among different tenants and/or different buildings and/or different premises of the Property based upon differing levels of use, demand, risk or other distinctions among such parties, premises or Buildings (the **"Cost Pools"**). Such Cost Pools may include, for example, all office space tenants or industrial/R&D space tenants in the Property and may be modified to take into account the addition of any additional buildings within the Property. Accordingly, in the event of such allocations into Cost Pools, Tenant's Percentage shall be appropriately adjusted to reflect such allocation. In addition, if Landlord does not furnish a particular service or work (the cost of which, if furnished by Landlord would be included in Operating Expenses) to a tenant (other than Tenant) that has undertaken to perform such service or work in lieu of receiving it from Landlord, then Operating Expenses shall be considered to be increased by an amount equal to the additional Operating Expenses that Landlord would reasonably have incurred had Landlord furnished such service or work to that tenant.

c. **Exclusions from Operating Expenses.** Notwithstanding anything to the contrary contained elsewhere in this Lease, the following items shall be excluded from Operating Expenses: (i) Costs of decorating, redecorating, or special cleaning or other services provided to certain tenants and not provided on a regular basis to all tenants of the Property; (ii) Any charge for depreciation of the Property or equipment and any interest or other financing charge; (iii) All costs relating to activities for the marketing, solicitation, negotiation and execution of leases of space in the Property, including without limitation, costs of tenant improvements; (iv) All costs for which Tenant or any other tenant in the Property is being charged other than pursuant to the operating expense clauses of leases for space in the Property; (v) The cost of correcting defects in the construction of the Building or any other building in the Property or in the building equipment, except that conditions (not occasioned by construction defects) resulting from ordinary wear and tear will not be deemed defects for the purpose of this category; (vi) the cost of repair made by Landlord because of the total or partial destruction of the Property or the condemnation of a portion of the Building or any other building in the Property; (vii) The cost of any items for which Landlord is reimbursed by insurance or otherwise compensated by parties other than tenants of the Building or any other building in the Property pursuant to clauses similar to this paragraph; (viii) Any operating expense representing an amount paid to a related corporation, entity, or person which is in excess of the amount which would be paid in the absence of such relationship; (ix) The cost of any work or service performed for or facilities furnished to any tenant of the Building or any other building in the Property to a greater extent or in a manner more favorable to such tenant than that performed for or furnished to Tenant; (x) The cost of alterations of space in the Building or any other building in the Property which is leased to other tenants; (xi) Ground rent or similar payments to a ground lessor; (xii) Legal fees and related expenses incurred by Landlord (together with any damages awarded against Landlord) due to the gross negligence or willful misconduct of Landlord; (xiii) Costs arising from the presence, removal, abatement, or remediation of any Hazardous Materials within, upon or beneath the Property except to the extent caused by the release or emissions of such Hazardous Materials by Tenant or any Tenant's Parties; (xiv) Salaries and compensation of ownership and management personnel to the extent that such persons provide services to properties other than the Property and wages and/or benefits attributable to personnel above the level of the immediate supervisor of the Property manager; (xv) Costs of selling or financing the Property, the Building or any portions thereof; (xvi) capital costs other than as expressly provided in Section 1.18(b)(x); (xvii) costs, fines, penalties, or interest incurred due to a violation of Laws by Landlord; and (xviii) expense reserves.

d. **Estimate Statement and Payment of Tenant's Percentage of Operating Expenses.** By the first day of April (or as soon as practicable thereafter) of each calendar year during the Term, Landlord shall endeavor to deliver to Tenant a statement (**"Estimate Statement"**) estimating the Tenant's Percentage of Operating Expenses for the current calendar year. If at any time during the Term, but not more often than quarterly, Landlord reasonably determines that the estimated amount of Tenant's Percentage of Operating Expenses payable by Tenant for the current calendar year will be greater or less than the amount set forth in the then current Estimate Statement, Landlord may issue a revised Estimate Statement and Tenant agrees to pay Landlord, within thirty (30) days after receipt of the revised Estimate Statement, the difference between the amount owed by Tenant under such revised Estimate Statement and the amount owed by Tenant under the original Estimate Statement for the portion of the then current calendar year which has expired. Thereafter Tenant agrees to pay Tenant's Percentage of Operating Expenses based on such revised Estimate Statement until Tenant receives the next calendar year's Estimate Statement or a new revised Estimate Statement for the current calendar year. Tenant's Percentage of Operating Expenses shown on the Estimate Statement (or revised Estimate Statement, as applicable) shall be divided into twelve (12) equal monthly installments, and Tenant shall pay to Landlord, concurrently with the regular monthly Rent payment next due following the receipt of the Estimate Statement (or revised Estimate Statement, as applicable), an amount equal to one (1) monthly installment of such Tenant's Percentage of Operating Expenses multiplied by the number of months from January in the calendar year in which such statement is submitted to the month of such payment, both months inclusive (less any amounts previously paid by Tenant with respect to any previously delivered Estimate Statement or revised Estimate Statement for such calendar year). Subsequent installments shall be paid concurrently with the regular monthly Rent payments for the balance of the calendar year and shall continue until the next calendar year's Estimate Statement (or current calendar year's revised Estimate Statement) is received.

e. **Actual Statement.** By the first day of June (or as soon as practicable thereafter) of each subsequent calendar year during the Term, Landlord shall endeavor to deliver to Tenant a statement (**"Actual Statement"**) which states the Tenant's Percentage of actual Operating Expenses payable by Tenant for the immediately preceding calendar year. If the Actual Statement reveals that the Tenant's Percentage of actual Operating Expenses were more than the Tenant's Percentage of estimated Operating Expenses paid by Tenant with respect to the preceding calendar year, Tenant agrees to pay Landlord the difference in a lump sum within thirty (30) days after receipt of the Actual Statement. Such obligation will be a continuing one which will survive

the expiration or earlier termination of this Lease. If the Actual Statement reveals that the Tenant's Percentage of actual Operating Expenses were less than the Operating Expenses paid by Tenant with respect to the preceding calendar year, Landlord will credit any overpayment toward the next monthly installment(s) of Rent due from Tenant or, if no such installments remain (i.e., following the expiration or earlier termination of the Lease), refund such amounts to Tenant within thirty (30) days. Prior to the expiration or sooner termination of the Term and Landlord's acceptance of Tenant's surrender of the Premises, Landlord will have the right to estimate the Tenant's Percentage of actual Operating Expenses for the then current calendar year and to collect from Tenant prior to Tenant's surrender of the Premises, any excess of such Tenant's Percentage of actual Operating Expenses over the Tenant's Percentage of estimated Operating Expenses paid by Tenant in such calendar year, and Landlord shall reconcile the same with the actual Operating Expenses incurred by Landlord and charge or refund Tenant for any underpayment or overpayment in accordance with this Section; provided, however, in the event of an overpayment by Tenant, Landlord shall reimburse Tenant for such overpayment within thirty (30) days following Landlord's delivery of the Actual Statement.

f. **No Release.** Any delay or failure by Landlord in delivering any Estimate Statement or Actual Statement pursuant to this Section 1.18 shall not constitute a waiver of its right to receive Tenant's payment of Tenant's Percentage of Operating Expenses, nor shall it relieve Tenant of its obligations to pay Operating Expenses pursuant to this Section 1.18, except that Tenant shall not be obligated to make any payments based on such Estimate or Actual Statement until thirty (30) days after receipt of such statement.

g. **Review.** Within one hundred twenty (120) days after receiving Landlord's Actual Statement, Tenant may, upon advance written notice to Landlord and during reasonable business hours, cause a review of Landlord's books and records with respect to the preceding calendar year only to determine the accuracy of Landlord's Actual Statement. Landlord shall make all pertinent records available for review that are reasonably necessary for Tenant to conduct its review. If any records are maintained at a location other than the office of the Building, Tenant may either review the records at such other location or pay for the reasonable cost of copying and shipping the records. If Tenant retains an agent, at Tenant's sole cost and expense, to review Landlord's records, the agent shall be an independent accountant of national standing which is reasonably acceptable to Landlord, is not compensated on a contingency basis and is also subject to a confidentiality agreement. Within sixty (60) days after the records are made available to Tenant, Tenant shall have the right to give Landlord written notice (an **"Objection Notice"**) stating in reasonable detail any objection to the Actual Statement of Operating Expenses for that year. If Tenant provides Landlord with a timely Objection Notice, Landlord and Tenant shall work together in good faith to resolve any issues raised in Tenant's Objection Notice. If Tenant fails to provide Landlord with a timely Objection Notice, Landlord's Actual Statement shall be deemed final and binding, and Tenant shall have no further right to review or object to such statement. If Landlord and Tenant determine that Operating Expenses for the calendar year are less than reported, Landlord shall provide Tenant with a credit against the next installment of Rent in the amount of the overpayment by Tenant. Likewise, if Landlord and Tenant determine that Operating Expenses for the calendar year are greater than reported, Tenant shall pay Landlord the amount of any underpayment within thirty (30) days after such determination. The records obtained by Tenant shall be treated as confidential. In no event shall Tenant be permitted to review Landlord's records or to dispute any statement of Operating Expenses unless Tenant has paid and continues to pay all Rent when due.

1.3. Utilities and Services.

a. **Utilities and Services.** As used in this Lease, **"Premises Utilities Costs"** shall mean all actual charges for utilities for the Premises of any kind, including but not limited to water, sewer and electricity, telecommunications and cable service, and the costs of heating, ventilating and air conditioning and other utilities as well as related fees, assessments and surcharges. Tenant shall contract directly for all utilities services for the Premises and shall pay all Premises Utilities Costs directly to the various utility service providers providing such utility services to the Premises. Should Landlord elect to supply any or all of such utilities, Tenant agrees to purchase and pay for the same as Additional Rent. Tenant shall reimburse Landlord within thirty (30) days after billing for fixture charges and/or water tariffs, if applicable, which are charged to Landlord by local utility companies. Landlord will notify Tenant of this charge as soon as it becomes known. This charge will increase or decrease with current charges being levied against Landlord, the Premises or the Building by the local utility company, and will be due as Additional Rent. In no event shall Landlord be liable for any interruption or failure in the supply of any such utility or other services to Tenant. In no event shall any Rent owed Landlord under this Lease be abated by reason of the failure to furnish, delay in furnishing, unavailability or diminution in quality or quantity of any such utility or other services or interference with Tenant's business operations as a result of any such occurrence; nor shall any such occurrence constitute an actual or constructive eviction of Tenant or a breach of an implied warranty by Landlord.

b. **Maintenance/Janitorial/Service Contracts.** Tenant shall, at its sole cost and expense, maintain and repair, and enter into a regularly scheduled preventive maintenance/service contract with a maintenance contractor to service all hot water, heating and air conditioning systems and equipment (**"HVAC"**) within the Premises, or which serve the Premises exclusively, including, without limitation, any rooftop package HVAC units, distribution lines and internal venting systems. Such repair and maintenance shall include any and all services required to conform and maintain the HVAC units in compliance with current ASHRAE Standards. As used herein, **"ASHRAE Standards"** shall mean those standards established by the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc. (**"ASHRAE"**) and Air Conditioning Contractors of America (**"ACCA"**) Standard Practice for Inspection and Maintenance of Commercial Building HVAC Systems, ANSI/ASHRAE/ACCA Standard 180-2008, as the same may be amended from time to time. Tenant shall have complete control over the operation of the HVAC units within the Premises, or which exclusively serve the Premises, during the Term. All cleaning and janitorial services, including regular removal of trash and debris, for the Premises shall be performed and obtained, at Tenant's sole cost and expense, exclusively by or through Tenant or Tenant's janitorial contractors. The maintenance contractor and janitorial contractor for same must be approved in writing by Landlord in advance, such approval not to be unreasonably withheld, conditioned or delayed. All maintenance/service contracts shall include all services recommended by the equipment manufacturer within the operation/maintenance manual and all services required to conform and maintain the HVAC in compliance with current ASHRAE Standards and shall become effective (and a copy thereof delivered to Landlord) within thirty (30) days following the Commencement Date. If Tenant fails to procure and maintain any or all of such service contacts, then Landlord reserves the right, upon thirty (30) days' prior written notice to Tenant and Tenant's failure to cure prior to the expiration of such notice period, to procure and maintain any or all of such service contracts, and if Landlord so elects, Tenant shall reimburse Landlord, as Additional Rent, within thirty (30) days following written demand, for the cost therefor.

c. **Tenant's Obligations.** Tenant shall cooperate fully at all times with Landlord and abide by current ASHRAE Standards all reasonable and non-discriminatory regulations and requirements which Landlord may prescribe for the proper functioning and protection of the Building's services and systems. Tenant shall not connect any conduit, pipe, apparatus or other device to the Building's water, waste or other supply lines or systems for any purpose. Neither Tenant nor its employees, agents, contractors, licensees or invitees shall at any time enter, adjust, tamper with, touch or otherwise in any manner affect the

mechanical installations or facilities of the Building. Tenant agrees to reasonably cooperate with Landlord to the extent required by Landlord to comply with California Public Resources Code Section 25402.10 including, without limitation, providing or consenting to any utility company releasing Tenant's energy consumption information for the Premises to Landlord. Tenant hereby consents to the release of Tenant's energy consumption information for the Premises to Landlord, and if requested, Tenant shall promptly sign any documentation requested by the utility company to evidence such consent.

1.20 **Additional Hazardous Materials Requirements.** In addition to Tenant's obligations under Article 10 of the Standard Provisions, Tenant shall comply with the following provisions with respect to Hazardous Materials (as that term is defined in Article 10):

a. **Environmental Questionnaire; Disclosure.** Prior to the execution of this Lease, Tenant shall complete, execute and deliver to Landlord an Environmental Questionnaire and Disclosure Statement (the **"Environmental Questionnaire"**) in the form of Exhibit G, and Tenant shall certify to Landlord all information contained in the Environmental Questionnaire as true and correct to the best of Tenant's knowledge and belief. The completed Environmental Questionnaire shall be deemed incorporated into this Lease for all purposes, and Landlord shall be entitled to rely fully on the information contained therein. Within ten (10) business days following Landlord's demand therefor (each such date of demand is hereinafter referred to as a **"Disclosure Date"**), until and including the last Disclosure Date occurring prior to the expiration or sooner termination of this Lease, Tenant shall disclose to Landlord in writing the names and amounts of all Hazardous Materials, or any combination thereof, that were stored, generated, used or disposed of on, under or about the Premises for the twelve (12) month period prior to each Disclosure Date, and that Tenant intends to store, generate, use or dispose of on, under or about the Premises during the next twelve (12) month period. At Landlord's request, Tenant's disclosure obligations under this Section 1.20 shall include a requirement that Tenant update, execute and deliver to Landlord the Environmental Questionnaire, as the same may be reasonably modified by Landlord from time to time; provided, however, Tenant shall not be required to update the Environmental Questionnaire more than once per year unless an environmental event of default has occurred or Tenant has materially changed its business. In addition to the foregoing, within ten (10) business days of Landlord's request, Tenant shall promptly notify Landlord of, and shall promptly provide Landlord with true, correct, complete and legible copies of, all of the following environmental items relating to the Premises: reports filed pursuant to any self-reporting requirements; reports filed pursuant to any Environmental Laws or this Lease; all permit applications, permits, monitoring reports, workplace exposure and community exposure warnings or notices, and all other reports, disclosures, plans or documents (even those that may be characterized as confidential) relating to water discharges, air pollution, waste generation or disposal, underground storage tanks or Hazardous Materials; all orders, reports, notices, listings and correspondence (even those that may be considered confidential) of or concerning the release, investigation, compliance, clean up, remedial and corrective actions, and abatement of Hazardous Materials whether or not required by Environmental Laws; and all complaints, pleadings and other legal documents filed against Tenant related to Tenant's use, handling, storage or disposal of Hazardous Materials.

b. **Inspection; Compliance.** Subject to the provisions of Article 24, below, Landlord and Landlord Parties (as that term is defined in Article 10) shall have the right, but not the obligation, to inspect, investigate, sample and/or monitor the Premises, including any air, soil, water, groundwater or other sampling, and any other testing, digging, drilling or analyses, at any time to determine whether Tenant is complying with the terms of this Section 1.20 and Article 10, and in connection therewith, Tenant shall provide Landlord with access to all relevant facilities, records and personnel. If Tenant is not in compliance with any of the provisions of this Section 1.20. and Article 10, or in the event of a release of any Hazardous Materials on, under, from or about the Premises by Tenant or any Tenant's Parties in violation of applicable Environmental Laws, Landlord and Landlord Parties shall have the right, but not the obligation, without limitation on any of Landlord's other rights and remedies under this Lease, to immediately enter upon the Premises and to discharge Tenant's obligations under this Section 1.20 and Article 10 at Tenant's expense, including without limitation the taking of emergency or long term remedial action. Landlord and Landlord Parties shall endeavor to minimize interference with Tenant's business but shall not be liable for any such interference. In addition, Landlord, at Tenant's sole cost and expense, shall have the right, but not the obligation, to join and participate in any legal proceedings or actions initiated in connection with any claims or causes of action arising out of the storage, generation, use or disposal by Tenant or Tenant's Parties of Hazardous Materials on, under, from or about the Premises in violation of applicable Environmental Laws. All sums reasonably disbursed, deposited or incurred by Landlord in connection herewith, including, but not limited to, all costs, expenses and actual attorneys' fees, shall be due and payable by Tenant to Landlord, as an item of Additional Rent, on demand by Landlord, together with interest thereon at the Interest Rate from the date of such demand until paid by Tenant. Landlord agrees that if any testing proves that the Tenant or Tenant's Parties have not violated applicable Environmental Laws or this Lease in connection with the presence of said Hazardous Materials, Tenant shall not be liable for any costs or expenses in connection with such inspection, testing and monitoring.

c. **Tenant Obligations.** If the presence of any Hazardous Materials on, under or about the Premises caused by Tenant or Tenant's Parties results in (i) injury to any person, (ii) injury to or contamination of the Premises, or (iii) injury to or contamination of any real or personal property wherever situated, Tenant, at its sole cost and expense, shall promptly take all actions necessary to return the Premises to the condition required by applicable Environmental Laws. Without limiting any other rights or remedies of Landlord under this Lease, Tenant shall pay the cost of any cleanup work performed on, under or about the Premises as required by this Lease or any Environmental Laws in connection with the removal, disposal, neutralization or other treatment of such Hazardous Materials caused by Tenant or Tenant's Parties. If Landlord has reason to believe that Tenant or Tenant's Parties may have caused the release of any Hazardous Materials on, under, from or about the Premises in violation of applicable Environmental Laws, then Landlord may require Tenant, at Tenant's sole cost and expense, to conduct monitoring activities on or about the Premises satisfactory to Landlord, in its sole and absolute judgment, concerning such release of Hazardous Materials on, under, from or about the Premises. Notwithstanding anything to the contrary contained in the foregoing, Tenant shall not, without Landlord's prior written consent, take any remedial action in response to the presence of any Hazardous Materials on, under or about the Premises, or enter into any settlement agreement, consent decree or other compromise with any governmental agency with respect to any Hazardous Materials claims; provided, however, Landlord's prior written consent shall not be necessary in the event that the presence of Hazardous Materials on, under or about the Premises (i) poses an immediate threat to the health, safety or welfare of any individual, or (ii) is of such a nature that an immediate remedial response is necessary and it is not possible to obtain Landlord's consent before taking such action. Tenant's failure to timely comply with this Section 1.20 shall constitute an event of default under this Lease.

d. **Tenant's Responsibility at Conclusion of Lease.** Promptly upon the expiration or sooner termination of this Lease, Tenant shall represent to Landlord in writing that (i) Tenant has made a diligent effort to determine whether any Hazardous Materials are on, under or about the Premises in violation of applicable Environmental Laws, as a result of any acts or omissions of Tenant or Tenant's Parties and (ii) no such Hazardous Materials exist on, under or about the Premises, other than as specifically identified to Landlord by Tenant in writing. If Tenant discloses the existence of Hazardous Materials on, under or

about the Premises or if Landlord at any time discovers that Tenant or Tenant's Parties caused the release of any Hazardous Materials on, under, from or about the Premises in violation of applicable Environmental Laws, Tenant shall, at Landlord's request, immediately prepare and submit to Landlord within thirty (30) days after such request a comprehensive plan, subject to Landlord's approval, specifying the actions to be taken by Tenant to return the Premises to the condition required by applicable Environmental Laws. Upon Landlord's approval of such clean-up plan, Tenant shall, at Tenant's sole cost and expense, without limitation on any rights and remedies of Landlord under this Lease or at law or in equity, immediately implement such plan and proceed to clean up such Hazardous Materials in accordance with all Environmental Laws and as required by such plan and this Lease. Notwithstanding anything to the contrary herein, under no circumstance shall Tenant be liable for any losses, costs, claims, liabilities and damages (including attorneys' and consultants' fees) arising out of any Hazardous Material present at any time on or about the Property, or the soil, air, improvements, groundwater or surface water thereof, except to the extent due to the release or emission of such Hazardous Material by Tenant or Tenant's Parties in violation of applicable Environmental Laws.

1.21 **Landlord's Additional Repair Obligations.** Landlord, at Landlord's cost (subject to inclusion in Operating Expenses as provided in Section 1.18 of the Summary), shall repair, maintain and replace as necessary, the foundation and structural elements of the Building (including structural load bearing walls and roof structure), and utility meters, electrical lines, pipes and conduits serving the Building and the Premises; provided, however, to the extent such maintenance, repairs or replacements are required as a result of any act, neglect, fault or omission of Tenant or any of Tenant's Parties, Tenant shall pay to Landlord, as Additional Rent, the costs of such maintenance, repairs and replacements. In addition, and subject to Sections 17.1 and 17.2 of the Standard Lease Provisions, Landlord shall, as part of the Operating Expenses, repair, maintain and replace, as necessary (a) the basic heating, ventilating, air conditioning ("**HVAC**"), sprinkler and electrical systems within the Building core and standard conduits, connections and distribution systems thereof within the Premises (but not any above standard improvements installed in the Premises such as, for example, but not by way of limitation, custom lighting, special or supplementary HVAC or plumbing systems or distribution extensions, special or supplemental electrical panels or distribution systems, or kitchen or restroom facilities and appliances to the extent such facilities and appliances are intended for the exclusive use of Tenant), and (b) the Common Areas, if any; provided, however, to the extent such maintenance, repairs or replacements are required as a result of any act, neglect, fault or omission of Tenant or any of Tenant's Parties, Tenant shall pay to Landlord, as Additional Rent within ten (10) days after demand, the costs of such maintenance, repairs and replacements. Landlord shall not be liable to Tenant for failure to perform any such maintenance, repairs or replacements, unless Landlord shall fail to make such maintenance, repairs or replacements and such failure shall continue for an unreasonable time following written notice from Tenant to Landlord of the need therefor. Without limiting the foregoing, Tenant waives the right to make repairs at Landlord's expense under any applicable Laws now or hereafter in effect.

1.22 **Tenant Termination Right.** If Tenant is unable to obtain approval from the City of Cypress permitting Tenant to add a loading dock/truck well on or before April 25, 2021 (the **"Outside Termination Date"**), then Tenant shall have the one-time right to terminate the Lease by delivering written notice of such termination (the **"Termination Notice"**) to Landlord on or before April 30, 2021 (the **"Termination Notice Delivery Date"**); provided, that, if the City of Cypress is still reviewing Tenant's application for approval as of the Outside Termination Date, Tenant shall have the right to extend the Outside Termination Date and the Termination Notice Delivery Date by an additional 14 days by providing notice to Landlord of the same. If Tenant timely delivers the Termination Notice to Landlord, then the Lease shall terminate, and Landlord shall promptly return any prepaid Rent and the Security Deposit to Tenant. If Tenant fails to timely deliver the Termination Notice to Landlord on or before April 20, 2021 (as may be extended), then the Lease shall not terminate and Tenant shall be deemed to have irrevocably waived its right to terminate the Lease under this Section 1.22.

[REST OF PAGE INTENTIONALLY BLANK]

STANDARD LEASE PROVISIONS

ARTICLE 2 - LEASE

2.1 **Lease Elements; Definitions; Exhibits.** The Lease is comprised of the Lease Summary and Property Specific Provisions (the **"Summary"**), these Standard Lease Provisions (**"Standard Provisions"**) and all exhibits, and riders attached hereto (collectively, **"Exhibits"**), all of which are incorporated together as part of one and the same instrument. All references in any such documents and instruments to "Lease" means the Summary, these Standard Provisions and all Exhibits attached hereto. All terms used in this Lease shall have the meanings ascribed to such terms in the Summary, these Standard Provisions and any Exhibits. To the extent of any inconsistency between the terms and conditions of the Summary, these Standard Provisions, or any Exhibits attached hereto, the Summary and any Exhibits attached hereto shall control over these Standard Provisions.

ARTICLE 3 - PREMISES

3.1. **Lease of Premises.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, upon and subject to, the terms, covenants and conditions of this Lease. Each party covenants and agrees, as a material part of the consideration for this Lease, to keep and perform their respective obligations under this Lease.

3.2. **Landlord's Reserved Rights.** Provided the same do not unreasonably adversely affect Tenant's use of the Premises or Tenant's parking rights and do not materially increase the obligations or decrease the rights of Tenant under this Lease, Landlord reserves the right from time to time to do any of the following: (a) expand the Building and construct or alter other buildings or improvements on the Property; (b) make any changes, additions, improvements, maintenance, repairs or replacements in or to the Property, Common Areas and/or the Building (including the Premises if required to do so by any applicable Laws or to the extent necessary in conjunction with any improvements to the Property, Common Areas and/or the Building), and the fixtures and equipment thereof, including, without limitation: (i) maintenance, replacement and relocation of pipes, ducts, conduits, wires and meters and equipment above the ceiling surfaces, below the floor surfaces and within the walls of the Building and the Premises; and (ii) changes in the location, size, shape and number of driveways, entrances, stairways, elevators, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas and walkways, easements, parking spaces and parking areas as long as Tenant's parking ratio is not substantially and adversely impacted; (c) close temporarily any of the Property while engaged in making repairs, improvements or alterations to the Property; and (d) perform such other acts and make such other changes with respect to the Property, as Landlord may, in the exercise of reasonable good faith business judgment, deem to be appropriate. In no event shall Landlord reconfigure the Premises as a result of any changes to the Property, Common Areas and/or the Building or as a result of Landlord's exercise of its rights under this Section 3.2. Landlord shall endeavor to minimize, as reasonably practicable, the interference with Tenant's business as a result of any construction performed pursuant to this Section 3.2. All measurements of rentable area of the Premises in this Lease shall be deemed to be correct and shall not be subject to remeasurement.

ARTICLE 4 - TERM AND POSSESSION

4.1. **Term; Notice of Lease Dates.** The Term shall be for the period designated in the Summary commencing on the Commencement Date and ending on the Expiration Date, unless the Term is sooner terminated or extended as provided in this Lease. If the Commencement Date falls on any day other than the first day of a calendar month then the Term will be measured from the first day of the month following the month in which the Commencement Date occurs. Within ten (10) days after Landlord's written request, Tenant shall execute a written confirmation of the Commencement Date and Expiration Date of the Term in the form of the Notice of Lease Term Dates attached hereto as Exhibit D. The Notice of Lease Term Dates shall be binding upon Tenant unless Tenant reasonably objects thereto in writing within such ten (10) day period. Landlord shall use commercially reasonable efforts to complete the Landlord Improvements promptly following the Effective Date, and Landlord shall cooperate with Tenant during the completion of the Landlord Improvements to timely permit Tenant to complete the Tenant Improvement.

4.2. **Possession.** Landlord shall deliver possession of the Premises to Tenant as provided in the Work Letter, or if no Work Letter is attached hereto, Landlord shall deliver possession of the Premises to Tenant in its then as-is condition, subject to the provisions of Section 4.3 below. Tenant agrees that if Landlord is unable to deliver possession of the Premises to Tenant on or prior to the date that this Lease is mutually executed and delivered, the Lease will not be void or voidable, nor will Landlord be liable to Tenant for any loss or damage therefrom. Notwithstanding the foregoing, Landlord will not be obligated to deliver possession of the Premises to Tenant until Landlord has received from Tenant all of the following: (i) a copy of this Lease fully executed by Tenant; (ii) the Security Deposit required hereunder and the first installment of Monthly Base Rent and Additional Rent, if any, due under this Lease; and (iii) copies of Tenant's insurance certificates as required hereunder.

4.3. **Condition of Premises.** Tenant acknowledges that, except as otherwise expressly set forth in this Lease or the Work Letter, neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Premises, the Building or the Property or their condition, or with respect to the suitability thereof for the conduct of Tenant's business, and Tenant shall accept the Premises in its then as-is condition on delivery by Landlord. Pursuant to Section 1938 of the California Civil Code, Landlord hereby advises Tenant that as of the date of this Lease neither the Premises, the Building nor the Property have undergone inspection by a Certified Access Specialist (CASp). Further, pursuant to Section 1938 of the California Civil Code, Landlord notifies Tenant of the following: "A Certified Access Specialist (CASp) can inspect the premises and determine whether the premises comply with all of the applicable construction-related accessibility standards under state law. Although California state law does not require a CASp inspection of the premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the 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 any such CASp inspection, the payment of the costs and fees for the CASp inspection and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." Therefore and notwithstanding anything to the contrary contained in this Lease, Landlord and Tenant agree that (a) Tenant may, at its option and at its sole cost, cause a CASp to inspect the Premises and determine whether the Premises complies with all of the applicable construction-related accessibility standards under California law, (b) the parties shall mutually coordinate and reasonably approve of the timing of any such CASp inspection so that Landlord may, at its option, have a representative present during such inspection, and (c) Tenant shall be solely responsible for the cost of any repairs necessary to correct violations of construction-related accessibility standards within the Premises, any and all such alterations and repairs to be performed in accordance with Article 13 of this Lease, but only to the extent such alterations and repairs are disclosed by such CASp inspection and required by applicable Laws to be corrected; provided Tenant shall have no obligation to remove any repairs or alterations made pursuant to a CASp inspection under this Section 4.3.

4.4. **Early Access.** So long as Landlord has received from Tenant the first month's Monthly Base Rent and Additional Rent, if any, due pursuant to Section 5.1 of this Lease, certificates satisfactory to Landlord evidencing the insurance required to be carried by Tenant under this Lease, and the Security Deposit, and so long as Tenant and its contractors and employees do not interfere with the completion of the Landlord Improvements, Landlord shall give Tenant and Tenant's designated contractors access to the Premises upon mutual execution of this Lease (the **"Early Access Period"**) for purposes of installing Tenant's furniture, fixtures, and equipment (**"Tenant's Work"**) and constructing the Tenant Improvements. Tenant's Work shall be performed by Tenant at Tenant's sole cost and expense. Tenant's access to the Premises during the Early Access Period shall be subject to all terms and conditions of this Lease, except that Tenant shall not be obligated to pay Rent during the Early Access Period until the Commencement Date. Landlord and Tenant agree to cooperate with the other party during the period of any such early access so as not to interfere with such party's completion of the Landlord Improvements or the Tenant Improvements, as the case may be.

ARTICLE 5 - RENT

5.1. **Monthly Base Rent.** Tenant agrees to pay Landlord, the Monthly Base Rent as designated in the Summary. Monthly Base Rent and recurring monthly charges of Additional Rent (defined below) shall be paid by Tenant in advance on the first day of each and every calendar month ("Due Date") during the Term, except that the first full month's Monthly Base Rent and Additional Rent, if any, shall be paid upon Tenant's execution and delivery of this Lease to Landlord. Monthly Base Rent for any partial month shall be prorated in the proportion that the number of days this Lease is in effect during such month bears to the actual number of days in such month.

5.2. **Additional Rent.** All amounts and charges payable by Tenant under this Lease in addition to Monthly Base Rent, if any, including, without limitation, payments for Operating Expenses, Taxes, Insurance Costs and Premises Utilities Costs to the extent payable by Tenant under this Lease shall be considered **"Additional Rent"**, and the word **"Rent"** in this Lease shall include Monthly Base Rent and all such Additional Rent unless the context specifically states or clearly implies that only Monthly Base Rent is referenced. Rent shall be paid to Landlord, without any prior notice or demand therefor and without any notice, deduction or offset, in lawful money of the United States of America.

5.3. **Late Charges & Interest Rate.** If Landlord does not receive Rent or any other payment due from Tenant within five (5) days after the Due Date, Tenant shall pay to Landlord a late charge equal to eight percent (8%) of such past due Rent or other payment. Tenant agrees that this late charge represents a fair and reasonable estimate of the cost Landlord will incur by reason of Tenant's late payment. Accepting any late charge shall not constitute a waiver by Landlord of Tenant's default with respect to any overdue amount nor prevent Landlord from exercising any other rights or remedies available to Landlord. If any installment of Monthly Base Rent or Additional Rent, or any other amount payable by Tenant hereunder is not received by Landlord by the Due Date, it shall bear interest at the Interest Rate set forth in the Summary from the Due Date until paid. All interest, and any late charges imposed pursuant to this Section 5.3, shall be considered Additional Rent due from Tenant to Landlord under the terms of this Lease. Notwithstanding the foregoing, Tenant will not be assessed the foregoing late charge and interest on the first two (2) late payments during the Term, if the applicable payment is made within five (5) days of Tenant's receipt of notice of nonpayment from Landlord.

ARTICLE 6 - SECURITY DEPOSIT

Concurrently with Tenant's execution and delivery of this Lease to Landlord, Tenant shall deposit with Landlord the Security Deposit, if any, designated in the Summary. The Security Deposit shall be held by Landlord as security for the full and faithful performance by Tenant of all of the terms, covenants and conditions of this Lease to be performed by Tenant during the Term. If Tenant defaults beyond the expiration of any applicable notice and cure periods with respect to any of its obligations under this Lease, Landlord may (but shall not be required to) use, apply or retain all or any part of the Security Deposit for the payment of any Monthly Base Rent, Additional Rent or any other sum in default, or for the payment of any other amount, loss or damage which Landlord may spend, incur or suffer by reason of Tenant's default. If any portion of the Security Deposit is so used or applied, Tenant shall, within ten (10) days after demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount. Landlord shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on the Security Deposit. If Tenant shall not be in default beyond applicable notice and cure periods, the Security Deposit or any balance thereof shall be returned to Tenant within thirty (30) days following the expiration of the Term, provided that Landlord may retain the Security Deposit until such time as any amount due from Tenant in accordance with this Lease has been determined and paid in full. If Landlord sells its interest in the Building during the Term and if Landlord deposits with or credits to the purchaser the Security Deposit (or balance thereof), then, upon such sale, Landlord shall be discharged from any further liability with respect to the Security Deposit. Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code to the extent such law (i) establishes the time frame by which a landlord must refund a security deposit under a lease, or (ii) provides that a landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by a tenant, or to clean the subject premises.

Notwithstanding the foregoing, provided Tenant is not then in default beyond any applicable notice and cure periods and has not previously been in default beyond any applicable notice and cure periods under this Lease at any prior to the last day of the thirty-sixth (36th) full calendar month of the initial Term, on the first (1st) day of the thirty- seventh (37th) full calendar month of the initial Term (the **"First Adjustment Date"**), Landlord shall apply $118,223.58 of the Security Deposit against the Monthly Base Rent (for both the Office and Warehouse space) then payable by Tenant for the thirty-seventh (37th) full calendar month of the initial Term. Furthermore, provided Tenant is not then in default beyond any applicable notice and cure periods and has not previously been in default beyond any applicable notice and cure periods under this Lease at any prior to the last day of the forty-eighth (48th) full calendar month of the initial Term, on the first (1st) day of the forty-ninth (49th) full calendar month of the initial Term (the **"Second Adjustment Date"**), Landlord shall apply $118,223.58 of the Security Deposit against the Monthly Base Rent (for both the Office and Warehouse space) then payable by Tenant for the forty-ninth (49th) full calendar month of the initial Term. There shall be no reduction in the Security Deposit if Tenant is in default beyond any applicable notice and cure periods as of the applicable adjustment date set forth herein, or if Tenant has been in default beyond any applicable notice and cure periods under this Lease at any time prior to the First Adjustment Date of the Second Adjustment Date, as the case may be.

ARTICLE 7 - OPERATING EXPENSES/UTILITIES/SERVICES

7.1. **Operating Expenses.** Tenant shall pay for or contribute to the costs of operation, maintenance, repair and replacement of the Premises, Building and Property as provided in the Summary.

7.2. **Utilities and Services.** Utilities and services to the Premises and the Property are described in the Summary.

7.3. **Taxes.** As used in this Lease, the term **"Taxes"** means: All real property taxes and assessments, possessory interest taxes, sales taxes, personal property taxes, business or license taxes or fees, gross receipts taxes, license or use fees, excises, transit charges, and other impositions of any kind (including fees "in-lieu" or in substitution of any such tax or assessment) which are now or hereafter assessed, levied, charged or imposed by any public authority upon the Building, Site, Property and/or Premises or any portion thereof, its operations or the Rent derived therefrom (or any portion or component thereof, or the ownership, operation, or transfer thereof), and any and all costs and expenses (including, without limitation, reasonable attorneys' fees) incurred in attempting to protest, reduce or minimize the same. Taxes shall not include inheritance or estate taxes imposed upon or assessed against the interest of Landlord, gift taxes, excess profit taxes, franchise taxes, or similar taxes on Landlord's business or any other taxes computed upon the basis of the net income of Landlord. If it shall not be lawful for Tenant to reimburse Landlord for any such Taxes, the Monthly Base Rent payable to Landlord under this Lease shall be revised to net Landlord the same net rent after imposition of any such Taxes by Landlord as would have been payable to Landlord prior to the payment of any such Taxes. Tenant shall pay for or contribute to Taxes as part of Operating Expenses as provided in the Summary. Notwithstanding anything herein to the contrary, Tenant shall be liable for all taxes levied or assessed against personal property, furniture, fixtures, above-standard Tenant Improvements and alterations, additions or improvements placed by or for Tenant in the Premises. Furthermore, Tenant shall pay prior to delinquency any (i) rent tax or sales tax, service tax, transfer tax or value added tax, or any other applicable tax on the rent or services provided 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 Property; 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.

7.4. **Insurance Costs.** As used in this Lease, **"Insurance Costs"** means the cost of insurance obtained by Landlord pursuant to Article 15 (including self-insured amounts and deductibles, if any, to the extent permitted under Article 15, below). Tenant shall pay for or contribute to Insurance Costs as part of Operating Expenses as provided in the Summary.

7.5. **Interruption of Utilities.** Landlord shall have no liability to Tenant for any interruption in utilities or services to be provided to the Premises when such failure is caused by all or any of the following: (a) accident, breakage or repairs; (b) strikes, lockouts or other labor disturbances or labor disputes of any such character; (c) governmental regulation, moratorium or other governmental action; (d) inability, despite the exercise of reasonable diligence, to obtain electricity, water or fuel; (e) service interruptions or any other unavailability of utilities resulting from causes beyond Landlord's control including without limitation, any electrical power "brown-out" or "black-out"; or (f) any other cause beyond Landlord's reasonable control. In addition, in the event of any such interruption in utilities or services, Tenant shall not be entitled to any abatement or reduction of Rent (except as expressly provided in Articles 17 and 18 if such failure is a result of any casualty damage or taking described therein), no eviction of Tenant shall result, and Tenant shall not be relieved from the performance of any covenant or agreement in this Lease. In the event of any stoppage or interruption of services or utilities which are not obtained directly by Tenant, Landlord shall diligently attempt to resume such services or utilities as promptly as practicable. Tenant hereby waives the provisions of any applicable existing or future Law, ordinance or governmental regulation permitting the termination of this Lease due to an interruption, failure or inability to provide any services (including, without limitation, to the extent the Premises are located in California, the provisions of California Civil Code Section 1932(1)).

ARTICLE 8 - MAINTENANCE AND REPAIR

8.1. **Landlord's Repair Obligations**. Except as otherwise stated in the Summary, Tenant waives the right to make repairs at Landlord's expense under any applicable Laws (including, without limitation, to the extent the Premises are located in California, the provisions of California Civil Code Sections 1941 and 1942 and any successor statutes or laws of a similar nature). All other repair and maintenance of the Premises, Building and Property to be performed by Landlord, if any, shall be as provided in the Summary.

8.2. **Tenant's Repair Obligations.** Except for Landlord's obligations specifically set forth elsewhere in this Lease and in Section 8.1 above and in the Summary, Tenant shall at all times and at Tenant's sole cost and expense, keep, maintain, clean, repair, preserve and replace, as necessary, the interior of the Premises and all parts thereof including, without limitation, all Tenant Improvements, Alterations, and all furniture, fixtures and equipment, including, without limitation, all computer, telephone and data cabling and equipment, Tenant's signs, if any, door locks, closing devices, security devices, interior of windows, window sashes, casements and frames, floors and floor coverings, shelving, kitchen, restroom facilities and/or appliances of any kind located within the Premises, if any, custom lighting, and any additions and other property located within the Premises, so as to keep all of the foregoing elements of the Premises in good condition and repair, reasonable wear and tear and casualty damage excepted. Tenant shall replace, at its expense, any and all plate and other glass in and about the Premises which is damaged or broken from any cause whatsoever except due to the negligence or willful misconduct of Landlord, its agents or employees. Such maintenance and repairs shall be performed with due diligence, lien-free and in a first-class and workmanlike manner, by licensed contractor(s) that are selected by Tenant and approved by Landlord, which approval Landlord shall not unreasonably withhold or delay. All other repair and maintenance of the Premises, Building and Property to be performed by Tenant, if any, shall be as provided in the Summary. If Tenant refuses or neglects to repair and maintain the Premises properly as required hereunder to the reasonable satisfaction of Landlord, then at any time following ten (10) days from the date on which Landlord makes a written demand on Tenant to effect such repair and maintenance, Landlord may enter upon the Premises and make such repairs and/or maintenance, and upon completion thereof, Tenant agrees to pay to Landlord as Additional Rent, Landlord's costs for making such repairs plus an amount not to exceed ten percent (10%) of such costs for overhead, within thirty (30) days after receipt from Landlord of a written itemized bill therefor. Any amounts not reimbursed by Tenant within such thirty (30) day period will bear interest at the Interest Rate until paid by Tenant.

ARTICLE 9 - USE

Tenant shall procure, at its sole cost and expense, any and all permits required by applicable Law for Tenant's use and occupancy of the Premises. Tenant shall use the Premises solely for the Permitted Use specified in the Summary, and shall not use or permit the Premises to be used for any other use or purpose whatsoever without Landlord's prior written approval. Tenant shall observe and comply with the Rules and Regulations attached hereto as Exhibit E, as the same may be modified by Landlord from time to time, and all reasonable non-discriminatory modifications thereof and additions thereto from time to time put into effect and furnished to Tenant by Landlord. Landlord shall endeavor to enforce the Rules and Regulations, but shall have no liability to

Tenant for the violation or non-performance by any other tenant or occupant of any such Rules and Regulations. Tenant shall not use or allow the Premises to be used for any improper, immoral, unlawful or reasonably objectionable purpose. Tenant shall not do or permit to be done anything that will obstruct or interfere with the rights of other tenants or occupants of the Building or the Property, if any, or injure or annoy them. Tenant shall not cause, maintain or permit any nuisance in, on or about the Premises, the Building or the Property, nor commit or suffer to be committed any waste in, on or about the Premises. Without limiting the foregoing, Tenant agrees that the Premises shall not be used for the use, growing, producing, processing, storing (short or long term), distributing, transporting, or selling of marijuana, cannabis, cannabis derivatives, or any cannabis containing substances (**"Cannabis"**), or any office uses related to the same, nor shall Tenant permit, allow or suffer, any of Tenant's officers, employees, agents, servants, licensees, subtenants, concessionaires, contractors and invitees to bring onto the Premises, any Cannabis. Without limiting the foregoing, the prohibitions in this paragraph shall apply to all Cannabis, whether such Cannabis is legal for any purpose whatsoever under state or federal law or both. Notwithstanding anything to the contrary, any failure b y Tenant to comply with each of the terms, covenants, conditions and provisions of this paragraph relating to Cannabis shall automatically and without the requirement of any notice be a Default that is not subject to cure, and Tenant agrees that upon the occurrence of any such Default, Landlord may elect, in its sole discretion, to exercise all of its rights and remedies under this Lease, at law or in equity with respect to such Default. Furthermore Tenant is prohibited from engaging or permitting others to engage in any activity which would be a violation of any state and/or federal laws relating to the use, sale, possession, cultivation and/or distribution of any controlled substances (whether for commercial or personal purposes) regulated under any applicable law or other applicable law relating to the medicinal use and/or distribution of marijuana/Cannabis (**"Prohibited Drug Law Activities"**).

Tenant shall, at its sole cost and expense, observe and comply with all Laws and all requirements of any board of fire underwriters or similar body relating to (i) Tenant's particular use of the Premises, (ii) the Alterations or the Tenant Improvements in the Premises (as opposed to any pre-existing improvements in the Premises), or (iii) the Base Building, but, as to the Base Building, only to the extent such obligations are triggered by (x) Tenant's Alterations or the Tenant Improvements to the extent the same are non-general office improvements (i.e., any changes that would be required simply by "pulling a permit," whether by Tenant, another tenant or Landlord for improvements to the Premises, would be a Landlord obligation pursuant to Section 9.3, below), or (z) Tenant's particular use of the Premises for non-general office use. The **"Base Building"** shall include the structural portions of the Building, and the public restrooms, elevators, exit stairwells and the systems and equipment located in the internal core of the Building on the floor or floors on which the Premises is located.

Landlord shall comply with all applicable Laws relating to the Common Areas of the Property and Base Building, provided that compliance with such applicable Laws is not the responsibility of Tenant under this Lease (such as improvements to the Common Areas required in connection with Tenant's particular use of the Premises for non-general office use and other requirements described in the immediately preceding paragraph), and provided further that Landlord's failure to comply therewith would prohibit Tenant from obtaining or maintaining a certificate of occupancy for the Premises, or would unreasonably and materially affect the safety of Tenant's employees or create a significant health hazard for Tenant's employees. Landlord shall be permitted to include in Operating Expenses any costs or expenses incurred by Landlord under this Section 9.3 to the extent not prohibited by the terms of Section 1.18 above.

ARTICLE 10 - HAZARDOUS MATERIALS

As used in this Lease, the term **"Environmental Law(s)"** means any past, present or future federal, state or local Law relating to (a) the environment, human health or safety, including, without limitation, emissions, discharges, releases or threatened releases of Hazardous Materials (as defined below) into the environment (including, without limitation, air, surface water, groundwater or land), or (b) the manufacture, generation, refining, processing, distribution, use, sale, treatment, receipt, storage, disposal, transport, arranging for transport, or handling of Hazardous Materials. As used in this Lease, the term **"Hazardous Materials"** means and includes any hazardous or toxic materials, substances or wastes as now or hereafter designated or regulated under any Environmental Laws including, without limitation, asbestos, petroleum, petroleum hydrocarbons and petroleum based products, urea formaldehyde foam insulation, polychlorinated biphenyls (**"PCBs"**), and freon and other chlorofluorocarbons. Except for ordinary and general office supplies, such as copier toner, liquid paper, glue, ink and common household cleaning materials, and motor vehicle fuel stored in fuel tanks of motor vehicles used on site in compliance with all Environmental Laws (some or all of which may constitute Hazardous Materials), and other Hazardous Materials used in connection with the Permitted Use, Tenant agrees not to cause or permit any Tenant Parties (as defined below) to cause any Hazardous Materials to be brought upon, stored, used, handled, generated, released or disposed of on, in, under or about the Premises, the Building, the Common Areas or any other portion of the Property by Tenant, its agents, officers, directors, shareholders, members, managers, partners, employees, subtenants, assignees, licensees, contractors or invitees (collectively, **"Tenant's Parties"**), without the prior written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion. Upon the expiration or earlier termination of this Lease, Tenant agrees to promptly remove from the Premises, the Building and the Property, at its sole cost and expense, any and all Hazardous Materials, including any equipment or systems containing Hazardous Materials which are installed, brought upon, stored, used, generated or released upon, in, under or about the Premises, the Building and/or the Property or any portion thereof by Tenant or any of Tenant's Parties, to the extent required by Environmental Laws. To the fullest extent permitted by law, Tenant agrees to promptly indemnify, protect, defend and hold harmless Landlord and Landlord's members, shareholders, partners, officers, directors, managers, employees, agents, contractors, successors and assigns (collectively, **"Landlord Parties"**) from and against any and all claims, damages, judgments, suits, causes of action, losses, liabilities, penalties, fines, expenses and costs (including, without limitation, clean-up, removal, remediation and restoration costs, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees and court costs) which arise or result from the presence of Hazardous Materials on, in, under or about the Premises, the Building or any other portion of the Property and which are caused by Tenant or any of Tenant's Parties. The provisions of this Article 10 will survive the expiration or earlier termination of this Lease. Tenant shall give Landlord written notice of any evidence of Mold, water leaks or water infiltration in the Premises promptly upon discovery of same. At its expense, Tenant shall investigate, clean up and remediate any Mold in the Premises caused or exacerbated by Tenant or any of Tenant's Parties; provided, however, that, subject to Section 19.1 below, Tenant shall have no obligation to investigate, clean up and remediate any Mold in the Premises caused by Landlord, Landlord's Parties or any other tenant of the Building or any unaffiliated third-party. Investigation, clean up and remediation may be performed only after Tenant has Landlord's written approval of a plan for such remediation. All clean up and remediation shall be done in compliance with all applicable Laws and to the reasonable satisfaction of Landlord. As used in this Lease, **"Mold"** means mold, fungi, spores, microbial matter, mycotoxins and microbiological organic compounds. Landlord represents to Tenant that to Landlord's "actual knowledge", as of the date hereof, no pre-existing Hazardous Materials are present at or under the Premises, the Building or the Project in violation of any applicable Environmental Laws.

ARTICLE 11 - PARKING

During the Term, Tenant shall be entitled to utilize the number and type of parking spaces specified in the Summary within the parking areas for the Property as designated by Landlord from time to time at no cost to Tenant. Landlord shall at all times have the right to establish and modify the nature and extent of the parking areas for the Building and Property (including whether such areas shall be surface, underground and/or other structures); provided, that, Tenant's parking ratio is not reduced as a result thereof. In addition, if Tenant is not the sole occupant of the Property, Landlord may, in its discretion, designate any unreserved parking spaces as reserved parking; provided, that, Tenant's parking ratio is not reduced as a result thereof. The terms and conditions for parking at the Property shall be as specified in the Summary and in the Rules and Regulations regarding parking as contained in Exhibit E attached hereto, as the same may be modified by Landlord from time to time. Tenant shall not use more parking spaces than its allotment and shall not use any parking spaces specifically assigned by Landlord to other tenants, if any, or for such other uses such as visitor, handicapped or other special purpose parking. Tenant's visitors shall be entitled to access to the parking areas on the Property designated for visitor use, subject to availability of spaces and the terms of the Summary.

Notwithstanding the foregoing, Tenant shall have the right to convert up to ten (10) unreserved parking spaces to up to ten (10) reserved, exclusive electric vehicle charging stations, on a one-to-one basis, at Tenant's sole cost and expense, in a location designated by Landlord and approved by Tenant within reasonable proximity to the Premises. Tenant, at Tenant's sole cost and expense, in accordance with the terms and conditions of the Lease governing Alterations, shall install such electric vehicle charging stations and power upgrades to the Property as required to install such electric vehicle charging stations. Tenant shall pay to Landlord $100.00 per month for each electric vehicle charging station throughout the Term. In addition, Tenant shall have the right, subject to Landlord's prior approval as to design and location (not to be unreasonably withheld, conditioned or delayed), at Tenant's sole cost and expense, to designate that such electric vehicle charging stations are for Tenant's exclusive use (via stencil, sign, or other identifier). Landlord shall have no obligation to enforce or police the exclusivity of Tenant's electric charging stations. In the event Tenant exercises its rights under this paragraph, the parties will execute an amendment to the Lease in order to identify those spaces reserved for Tenant's exclusive use.

ARTICLE 12 - TENANT SIGNS

Tenant shall have the right to install, at Tenant's sole cost and expense: (i) one (1) Building standard entry sign (restricted solely to Tenant's name and logo) on the exterior of the Building above the doorway to the Premises or such other location as may be reasonably approved by Landlord, (ii) one (1) Building-top sign (restricted solely to Tenant's name and logo) on the exterior of the Building in a mutually agreed-upon location, and (iii) one (1) monument sign (restricted solely to Tenant's name and logo) at the entrance of the Property in a mutually agreed-upon location, subject to the provisions of this Article 12. Subsequent changes to Tenant's sign and/or any additional signs, to the extent permitted by Landlord herein, shall be made or installed at Tenant's sole cost and expense. All aspects of any such signs shall be subject to the prior written consent of Landlord (which shall not be unreasonably withheld), and shall be per Landlord's standard specifications and materials, as revised by Landlord from time to time. Tenant shall have no right to install or maintain any other signs, banners, advertising, notices, displays, stickers, decals or any other logo or identification of any person, product or service whatsoever, in any location on or in the Property except as
(i) shall have been expressly approved by Landlord in writing prior to the installation thereof (which approval may be granted or withheld in Landlord's reasonable discretion), (ii) shall not violate any signage restrictions or exclusive sign rights contained in any then existing leases with other tenants of the Property, if any, and (iii) are consistent and compatible with all applicable Laws, and the design, signage and graphics program from time to time implemented by Landlord with respect to the Property, if any. Landlord shall have the right to remove any signs or signage material installed without Landlord's permission, without being liable to Tenant by reason of such removal, and to charge the cost of removal to Tenant as Additional Rent hereunder, payable within ten (10) days after written demand by Landlord. Any additional sign rights of Tenant, if any, shall be as provided in the Summary. The Building top-sign and monument rights granted to Tenant under this Article 12 are personal to the original Tenant executing this Lease and any Permitted Transferee and approved Transferee in connection with an assignment of the Lease or sublease of all or substantially all of the Premises, and are not transferable to third party Transferees separate and apart from an assignment of the Lease or sublease of all or substantially all of the Premises; provided, however, that the name of any such Permitted Transferee or Transferee that desires to replace Tenant's name on such signage is not an Objectionable Name. As used herein, "Objectionable Name" shall mean any name 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 landlords of comparable buildings in the vicinity of the Building.

ARTICLE 13 - ALTERATIONS

13.1. **Alterations.** After installation of the initial Tenant Improvements for the Premises, Tenant may, at its sole cost and expense, make alterations, additions, improvements and decorations to the Premises (**" Alteration(s)"**) subject to and upon the following terms and conditions:

a. Tenant shall not make any Alterations which: (i) affect any area outside the Premises including the outside appearance, character or use of any portions of the Building or other portions of the Property;
(ii) materially and adversely affect the Building's roof, roof membrane, any structural component or any base Building equipment, services or systems (including fire and life/safety systems), or the proper functioning thereof, or Landlord's access thereto; (iii) in the reasonable opinion of Landlord, lessen the value of the Building or the Property; (iv) will violate or require a change in any occupancy certificate applicable to the Premises; or (v) would trigger a legal requirement which would require Landlord to make any alteration or improvement to the Premises, Building or other aspect of the Property unless Tenant agrees to perform such alterations or reimburse Landlord for the cost thereof.

b. Tenant shall not make any Alterations not prohibited by Section 13.1(a), unless Tenant first obtains Landlord's prior written consent, which consent Landlord shall not unreasonably withhold, provided Landlord's prior approval shall not be required for any Alterations that is not prohibited by Section 13.1(a) above and is of a cosmetic nature that satisfies all of the following conditions (hereinafter a **"Pre-Approved Alteration"**): (i) the costs of such Alterations do not exceed One Dollar ($1.00) per rentable square foot of the Premises; (ii) to the extent reasonably required by Landlord or by Law due to the nature of the work being performed, Tenant delivers to Landlord final plans, specifications, working drawings, permits and approvals for such Alterations at least ten (10) days prior to commencement of the work thereof; (iii) Tenant and such Alterations otherwise satisfy all other conditions set forth in this Section 13.1; and (iv) the making of such Alterations will not otherwise cause a default by Tenant under any provision of this Lease. Tenant shall provide Landlord with ten (10) days' prior written notice before

commencing any Alterations. In addition, before proceeding with any Alteration, Tenant's contractors shall obtain, on behalf of Tenant and at Tenant's sole cost and expense: (A) all necessary governmental permits and approvals for the commencement and completion of such Alterations, and (B) if the cost of such Alterations exceeds $250,000.00, a completion and lien indemnity bond, or other surety satisfactory to Landlord for such Alterations. Landlord's approval of any plans, contractor(s) and subcontractor(s) of Tenant shall not release Tenant or any such contractor(s) and/or subcontractor(s) from any liability with respect to such Alterations and will create no liability or responsibility on Landlord's part concerning the completeness of such Alterations or their design sufficiency or compliance with Laws.

c. All Alterations shall be performed: (i) in accordance with the approved plans, specifications and working drawings, if any; (ii) lien-free and in a first-class workmanlike manner; (iii) in compliance with all building codes and Laws; (iv) in such a manner so as not to impose any additional expense upon nor materially delay Landlord in the maintenance and operation of the Building; (v) by licensed and bondable contractors,
subcontractors and vendors selected by Tenant and reasonably approved by Landlord, and (vi) at such times, in such manner and subject to such rules and regulations as Landlord may from time to time reasonably designate. Tenant shall pay to Landlord, within ten (10) days after written demand, the costs of any increased insurance premiums incurred by Landlord to include such Alterations in the causes of loss - special form property insurance obtained by Landlord pursuant to this Lease, if Landlord elects in writing to insure such Alterations; provided, however, Landlord shall not be required to include the Alterations under such insurance. If the Alterations are not included in Landlord's insurance, Tenant shall insure the Alterations under its causes of loss-special form property insurance pursuant to this Lease. Without limitation on the foregoing, upon Landlord's obtaining knowledge of the commencement of any alteration, change, improvement, or addition to the Premises, Landlord shall be permitted to post a timely Notice of Non-Responsibility at the Premises, which shall also be recorded in the office of the Recorder of the County in which the Building is located, all in accordance with the terms of Sections 8444 and 8060 of the California Civil Code.

d. Tenant shall pay to Landlord, as Additional Rent, the reasonable third-party costs of Landlord's engineers and other consultants for review of all plans, specifications and working drawings for the Alterations and for any services rendered by Landlord's management personnel and engineers to coordinate and/or supervise any of the Alterations to the extent such services are provided in excess of or after the normal on-site hours of such engineers and management personnel, within thirty (30) days after Tenant's receipt of invoices either from Landlord or such engineers, consultants, and/or management personnel; provided, however, such third party costs shall not exceed a total of Five Thousand and No/100 Dollars ($5,000.00) in connection with any particular request for Alterations, unless and to the extent (i) Landlord, in advance of incurring such costs, notifies Tenant in writing that given the particular nature and scope of the Alterations and the corresponding review and services by Landlord's engineers and other consultants, the same is anticipated to exceed Five Thousand and No/100 Dollars ($5,000.00) and proposes an alternate budget for such costs, and (ii) Tenant thereafter approves such budget; provided further, however, if Tenant fails within five (5) business days to either affirmatively approve such proposed budget or otherwise rescind the corresponding request for Alterations, Tenant shall be deemed to have approved such proposed budget. In addition to such costs, Tenant shall pay to Landlord, within thirty (30) days after completion of any Alterations, a construction supervision fee equal to three percent (3%) of the total hard cost of the Alterations.

e. Throughout the performance of the Alterations, Tenant shall obtain, or cause its contractors to obtain, workers compensation insurance and commercial general liability insurance in compliance with the insurance provisions of this Lease.

13.2. **Removal of Alterations.** All Alterations and the initial Tenant Improvements in the Premises (whether installed or paid for by Landlord or Tenant), shall become the property of Landlord and shall remain upon and be surrendered with the Premises at the end of the Term; provided, however, Landlord may, by written notice delivered to Tenant concurrently with Landlord's consent to plans for any Alterations identify those Alterations which Landlord shall require Tenant to remove at the end of the Term. If Landlord requires Tenant to remove any such Alterations, Tenant shall, at its sole cost, remove the identified items on or before the expiration or sooner termination of this Lease and repair any damage to the Premises caused by such removal to its original condition (or, if Tenant fails to so remove any such Alterations, Tenant shall pay to Landlord all of Landlord's costs of such removal and repair). Notwithstanding anything to the contrary herein, in no event shall Tenant be required to remove the Tenant Improvements, or (2) any Alterations, other than Alterations that are Specialty Improvements. "Specialty Improvements" means any Alterations other than normal and customary general office improvements. Notwithstanding the foregoing, "Specialty Improvements" (i) shall not include conference rooms or training space and (ii) shall include (a) any Alterations which affect the Base Building, (b) any fitness facility in the Premises, and
(c) any kitchens, showers, restrooms, washrooms or similar facilities in the Premises that are not part of the Base Building.

13.2. **Liens.** Tenant shall not permit any mechanic's, materialmen's or other liens to be filed against all
or any part of the Property or the Premises, nor against Tenant's leasehold interest in the Premises, by reason of or in connection with any repairs, alterations, improvements or other work contracted for or undertaken by Tenant or any of the Tenant's Parties. If any such liens are filed, Tenant shall, at its sole cost, immediately cause such liens to be released of record or bonded so that such lien(s) no longer affect(s) title to the Property, the Building or the Premises. If Tenant fails to cause any such lien to be released or bonded within ten (10) days after filing thereof, Landlord may cause such lien to be released by any means it shall deem proper, including payment in satisfaction of the claim giving rise to such lien, and Tenant shall reimburse Landlord within five (5) business days after receipt of invoice from Landlord, any sum paid by Landlord to remove such liens, together with interest at the Interest Rate from the date of such payment by Landlord.

ARTICLE 14 - TENANT'S INSURANCE

14.1. **Tenant's Insurance.** On or before the earlier of any Early Access Period, the Commencement Date or the date Tenant commences or causes to be commenced any work of any type in the Premises, and continuing during the entire Term, Tenant shall obtain and keep in full force and effect, the following insurance with limits of coverage as set forth in Section 1.14 of the Summary:

a. Special Form (formerly known as "all risk") insurance, including fire and extended coverage, sprinkler leakage (including earthquake sprinkler leakage), vandalism, malicious mischief upon property of every description and kind owned by Tenant and located in the Premises or the Building, or for which Tenant is legally liable or installed by or on behalf of Tenant including, without limitation, furniture, equipment and any other personal property, and any Alterations (but excluding the initial Tenant Improvements previously existing or installed in the Premises), in an amount not less than the full replacement

cost thereof. In the event that there shall be a dispute as to the amount which comprises full replacement cost, the decision of Landlord or any Mortgagee of Landlord shall be presumptive.

b. Commercial general liability insurance coverage on an occurrence basis, including personal injury, bodily injury (including wrongful death), broad form property damage, contractual liability (including Tenant's indemnification obligations under this Lease), and liquor liability (if Tenant serves alcohol on the Premises). The limits of liability of such commercial general liability insurance may be increased every five (5) years during the Term upon reasonable prior notice by Landlord to an amount reasonably required by Landlord and appropriate for tenants of buildings comparable to the Building.

c. Commercial Automobile Liability covering all owned, hired and non-owned automobiles.

d. Worker's compensation, in statutory amounts and employers' liability, covering all persons employed in connection with any work done in, on or about the Premises for which claims for death, bodily injury or illness could be asserted against Landlord, Tenant or the Premises.

e. Umbrella liability insurance on an occurrence basis, in excess of and following the form of the underlying insurance described in Section 14.1.b. and 14.1.c. and the employer's liability coverage in Section 14.1.d. which is at least as broad as each and every area of the underlying policies. Such umbrella liability insurance shall include pay on behalf of wording, concurrency of effective dates with primary policies, blanket contractual liability, application of primary policy aggregates, and shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance, subject to customary commercially reasonable deductible amounts imposed on umbrella policies.

f. If Tenant's business includes professional services, Tenant shall, at Tenant's expense, maintain in full force and effect professional liability (also known as errors and omissions insurance), covering Tenant and Tenant's employees from work related negligence and liability in trade.

g. Loss of income, extra expense and business interruption insurance in the amount of at least 12 months of Monthly Base Rent.

h. Any other form or forms of insurance as Tenant or Landlord or any Mortgagee of Landlord may reasonably require from time to time, in form, amounts and for insurance risks against which a prudent tenant of a building similar to the Building would protect itself, but only to the extent such risks and amounts are available in the insurance market at commercially reasonable costs.

14.2. **Requirements.** Each policy required to be obtained by Tenant hereunder shall: (a) be issued by insurers which are reasonably approved by Landlord and/or Landlord's Mortgagees and are authorized to do business in the state in which the Building is located and rated not less than Financial Size VII, and with a Financial Strength rating of A in the most recent version of Best's Key Rating Guide (provided that, in any event, the same insurance company shall provide the coverages described in Sections 14.1.a. and 14.1.g. above); (b) be in form reasonably satisfactory from time to time to Landlord; (c) name Tenant as named insured thereunder and Landlord as a loss payee as to Tenant's property insurance, as their respective interests may appear, and shall name Landlord and, at Landlord's request, such other persons or entities of which Tenant has been informed in writing, as additional insureds as to Tenant's commercial liability and umbrella insurance, all as their respective interests may appear; (d) not have a deductible amount exceeding One Hundred Thousand Dollars ($100,000.00), which deductible amount shall be deemed self-insured with full waiver of subrogation; (e) be primary, and any insurance carried by Landlord or any other additional insureds shall be excess and non-contributing; (f) with respect to Tenant's property policy, include language containing an endorsement that the insurer waives its right to subrogation; (g) intentionally deleted; (h) contain a cross liability or severability of interest endorsement; and (i) be in amounts sufficient at all times to satisfy any coinsurance requirements thereof. Tenant agrees to deliver to Landlord, as soon as practicable after the placing of the required insurance, but in no event later than the date Tenant is required to obtain such insurance as set forth in Section 14.1 above, certificates from the insurance company evidencing the existence of such insurance. Tenant shall cause replacement certificates to be delivered to Landlord prior to the expiration of any such policy or policies. If any such initial or replacement certificates are not furnished within the time(s) specified herein, Landlord shall have the right, but not the obligation, to procure such policies and certificates at Tenant's expense.

14.3. **Effect on Insurance.** Tenant shall not do or permit to be done anything which will (a) violate or invalidate any insurance policy or coverage maintained by Landlord or Tenant hereunder, or (b) increase the costs of any insurance policy maintained by Landlord. If Tenant's occupancy or conduct of its business in or on the Premises (other than for the Permitted Use) results in any increase in premiums for any insurance carried by Landlord with respect to the Building or the Property, Tenant shall either discontinue the activities affecting the insurance or pay such increase as Additional Rent within ten (10) days after being billed therefor by Landlord. If any insurance coverage carried by Landlord pursuant to this Lease or otherwise with respect to the Building or the Property shall be cancelled or reduced (or cancellation or reduction thereof shall be threatened) by reason of the use or occupancy of the Premises other than as allowed by the Permitted Use by Tenant or by anyone permitted by Tenant to be upon the Premises, and if Tenant fails to remedy such condition within five (5) business days after notice thereof, Tenant shall be deemed to be in default under this Lease and Landlord shall have all remedies provided in this Lease, at law or in equity, including, without limitation, the right (but not the obligation) to enter upon the Premises and attempt to remedy such condition at Tenant's cost.

ARTICLE 15 - LANDLORD'S INSURANCE

During the Term, Landlord shall maintain property insurance written on a Special Form (formerly known as "all risk") basis covering the Property and the Building, including the initial Tenant Improvements (excluding, however, Tenant's furniture, equipment and other personal property and Alterations, unless Landlord otherwise elects to insure the Alterations pursuant to Section 13.1 above) against damage by fire and standard extended coverage perils and with vandalism and malicious mischief endorsements, rental loss coverage, at Landlord's option, earthquake damage coverage, and such additional coverage as Landlord deems appropriate. Landlord shall also carry commercial general liability in such reasonable amounts and with such reasonable deductibles as would be carried by a prudent owner of a similar building in the state in which the Building is located. At Landlord's option, all such insurance may be carried under any blanket or umbrella policies that Landlord has in force for other buildings and projects. In addition, at Landlord's option, Landlord may elect to self-insure all or any part of such required insurance coverage. Landlord may but shall not be obligated to carry any other form or forms of insurance as Landlord or any Mortgagee or ground lessors of Landlord may reasonably determine is advisable. The cost of insurance obtained by Landlord pursuant to this Article 15

(including self-insured amounts and commercially reasonable deductibles) shall be consistent with the cost of insurance obtained by comparable landlords of comparable office projects in the northwestern Orange County area and shall be included in Insurance Costs; provided, however, any increase in the premium for the property insurance attributable to the replacement cost of the Tenant Improvements in excess of Building standard shall not be included as Insurance Costs, but shall be paid by Tenant within thirty (30) days after receipt of an invoice from Landlord; provided further, however, to the extent that the cumulative total of any such self-insured and commercially reasonable deductible amounts includable in Insurance Costs exceed One and No/100 Dollars ($1.00) per rentable square foot in any particular calendar year, then for purposes of calculating Insurance Costs for such calendar year, the excess shall be excluded from such calendar year, but instead carried over into subsequent calendar years (although each such subsequent calendar year will, in turn, remain subject to the annual $1.00 per rentable square foot maximum inclusion provided for hereinabove).

ARTICLE 16 - INDEMNIFICATION AND EXCULPATION

16.1. **Tenant's Assumption of Risk and Waiver.** Except to the extent such matter is not covered by the insurance required to be maintained by Tenant under this Lease and/or except to the extent such matter is attributable to the negligence or willful misconduct of Landlord or Landlord's agents, contractors or employees, Landlord shall not be liable to Tenant, or any of Tenant's Parties for: (i) any damage to property of Tenant, or of others, located in, on or about the Premises, (ii) the loss of or damage to any property of Tenant or of others by theft or otherwise,
(iii) any injury or damage to persons or property resulting from fire, explosion, falling ceiling tiles masonry, steam, gas, electricity, water, rain or leaks from any part of the Premises or from the pipes, appliance of plumbing works or from the roof, street or subsurface or from any other places or by dampness or by any other cause of whatsoever nature, (iv) any such damage caused by other tenants or persons in the Premises, occupants of any other portions of the Property, or the public, or caused by operations in construction of any private, public or quasi-public work, or (v) any interruption of utilities and services. Landlord shall in no event be liable to Tenant or any other person for any consequential, special or punitive damages or for loss of business, revenue, income or profits and Tenant hereby waives any and all claims for any such damages. Notwithstanding anything to the contrary contained in this Section 16.1, all property of Tenant and Tenant's Parties kept or stored on the Premises, whether leased or owned by any such parties, shall be so kept or stored at the sole risk of Tenant and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carriers. Landlord or its agents shall not be liable for interference with light or other intangible rights.

16.2. **Tenant's Indemnification.** Except to the extent arising from the negligence or willful misconduct of Landlord or Landlord's agents, contractors or employees, Tenant shall be liable for, and shall indemnify, defend, protect and hold Landlord and the Landlord Parties harmless from and against, any and all claims, damages, judgments, suits, causes of action, losses, liabilities and expenses, including, without limitation, attorneys' fees and court costs (collectively, **"Indemnified Claims"**), arising or resulting from (a) any occurrence in the Premises following the date Landlord delivers possession of all or any portion of the Premises to Tenant, except to the extent caused by the negligence or willful misconduct of Landlord or Landlord's agents, contractors or employees, (b) any act or omission of Tenant or any of Tenant's Parties; (c) the use of the Premises, the Building and the Property and conduct of Tenant's business by Tenant or any of Tenant's Parties, or any other activity, work or thing done, permitted or suffered by Tenant or any of Tenant's Parties, in or about the Premises, the Building or elsewhere on the Property; and/or (d) any default by Tenant as to any obligations on Tenant's part to be performed under the terms of this Lease or the terms of any contract or agreement to which Tenant is a party or by which it is bound, affecting this Lease or the Premises. The foregoing indemnification shall include, but not be limited to, any injury to, or death of, any person, or any loss of, or damage to, any property on the Premises, or on adjoining sidewalks, streets or ways, or connected with the use, condition or occupancy thereof, whether or not Landlord or any Landlord Parties has or should have knowledge or notice of the defect or conditions causing or contributing to such injury, death, loss or damage. In case any action or proceeding is brought against Landlord or any Landlord Parties by reason of any such Indemnified Claims, Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel approved in writing by Landlord, which approval shall not be unreasonably withheld. Tenant's indemnification obligations under this Section 16.2 and elsewhere in this Lease shall survive the expiration or earlier termination of this Lease. Tenant's covenants, agreements and indemnification in Section 16.1 and this Section 16.2 are not intended to 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.

16.3. **Landlord's Indemnification of Tenant.** Notwithstanding anything to the contrary contained in Section 16.1 or 16.2, Tenant shall not be required to protect, defend, save harmless or indemnify Landlord from any liability for injury, loss, accident or damage to any person resulting from Landlord's negligent acts or omissions or willful misconduct or that of its agents, contractors, servants, employees or licensees, in connection with Landlord's activities on or about the Premises, and subject to the terms of Article 22, Landlord hereby indemnifies and agrees to protect, defend and hold Tenant harmless from and against Indemnified Claims arising out of Landlord's grossly negligent acts or omissions or willful misconduct or those of its agents, contractors, servants, employees or licensees in connection with Landlord's activities on or about the Premises. Such exclusion from Tenant's indemnity and such agreement by Landlord to so indemnify and hold Tenant harmless are not intended to and shall not relieve any insurance carrier of its obligations under policies required to be carried by Tenant pursuant to the provisions of this
Lease to the extent that such policies cover (or, if such policies would have been carried as required, would have covered) the result of grossly negligent acts or omissions or willful misconduct of Landlord or those of its agents, contractors, servants, employees or licensees; provided, however, the provisions of this sentence shall in no way be construed to imply the availability of any double or duplicate coverage. Landlord's and Tenant's indemnification obligations hereunder may or may not be coverable by insurance, but the failure of either Landlord or Tenant to carry insurance covering the indemnification obligation shall not limit their indemnity obligations hereunder.

ARTICLE 17 - CASUALTY DAMAGE/DESTRUCTION

17.1. **Landlord's Rights and Obligations.** If the Premises or the Building is damaged by fire or other casualty not caused by the gross negligence or willful misconduct of Tenant (**"Casualty"**) to an extent not exceeding twenty-five percent (25%) of the full replacement cost thereof, and Landlord's contractor estimates in writing delivered to the parties (the **"Restoration Estimate"**) that the damage thereto is such that the Building and/or Premises may be repaired, reconstructed or restored to substantially its condition immediately prior to such damage within twelve (12) months from the date of such Casualty, and Landlord will receive insurance proceeds sufficient to cover the costs of such repairs, reconstruction and restoration (including proceeds from Tenant and/or Tenant's insurance which Tenant is required to deliver to Landlord pursuant to this Lease), then Landlord shall commence and proceed diligently with the work of repair, reconstruction and restoration and this Lease shall continue in full force and effect. If, however, the Premises or the Building is damaged to an extent exceeding twenty-five percent (25%) of the full replacement cost thereof, or Landlord's contractor estimates that such work of repair, reconstruction and

restoration will require longer than twelve (12) months to complete from the date of Casualty, or Landlord will not receive insurance proceeds (and/or proceeds from Tenant, as applicable) sufficient to cover the costs of such repairs, reconstruction and restoration, then Landlord may elect to either: (a) repair, reconstruct and restore the portion of the Premises or Building damaged by such Casualty (including the Tenant Improvements, the Alterations that Landlord elects to insure pursuant to Section 13.1 and, to the extent of insurance proceeds received from T enant, the Alterations that Tenant is required to insure pursuant to Section 13.1), in which case this Lease shall continue in full force and effect; or (b) terminate this Lease effective as of the date which is thirty (30) days after Tenant's receipt of Landlord's election to so terminate; provided that Landlord shall only have the right to terminate this Lease if Landlord also terminates the leases of all other similarly situated tenants at the Property for which Landlord has termination rights. Under any of the conditions of this Section 17.1, Landlord shall give written notice to Tenant of its intention to repair or terminate within the later of sixty (60) days after the occurrence of such Casualty, or fifteen (15) days after Landlord's receipt of the estimate from Landlord's contractor or, as applicable, thirty (30) days after Landlord receives approval from Landlord's Mortgagee to rebuild.

17.2. **Tenant's Costs and Insurance Proceeds.** In the event of any damage or destruction of all or any part of the Premises, Tenant shall immediately: (a) notify Landlord thereof; and (b) if Landlord elects or is required to repair the Premises pursuant to Section 17.1, deliver to Landlord all insurance proceeds received by Tenant with respect to the Tenant Improvements and Alterations (to the extent such items are not covered by Landlord's casualty insurance) and with respect to Alterations in the Premises that Tenant is required to insure pursuant to Section 13.1, excluding proceeds for Tenant's furniture and other personal property, and Tenant hereby assigns to La ndlord all rights to receive such insurance proceeds. If, for any reason (including Tenant's failure to obtain insurance for the full replacement cost of any Alterations which Tenant is required to insure pursuant to Section 13.1 hereof), Tenant fails to receive insurance proceeds covering the full replacement cost of such Alterations which are damaged, Tenant shall be deemed to have self-insured the replacement cost of such Alterations, and upon any damage or destruction thereto, if Landlord elects or is required to repair the Premises pursuant to Section 17.1, Tenant shall immediately pay to Landlord the full replacement cost of such items, less any insurance proceeds actually received by Landlord from Landlord's or Tenant's insurance with respect to such items.

17.3. **Abatement of Rent.** If as a result of any such damage, repair, reconstruction and/or restoration of the Premises or the Building, Tenant is prevented from using, and does not use, the Premises or any portion thereof, then Rent shall be equitably abated or reduced, as the case may be, during the period that Tenant continues to be so prevented from using and does not use the Premises or portion thereof, in the proportion that the rentable square feet of the portion of the Premises that Tenant is prevented from using, and does not use, bears to the total rentable square feet of the Premises. Notwithstanding the foregoing to the contrary, if the damage is due to the gross negligence or willful misconduct of Tenant or any of Tenant's Parties, there shall be no abatement of Rent. Except for abatement of Rent as provided hereinabove, Tenant shall not be entitled to any compensation or damages for loss of, or interference with, Tenant's business or use or access of all or any part of the Premises resulting from any such damage, repair, reconstruction or restoration.

17.4. **Inability to Complete.** Notwithstanding anything to the contrary contained in this Article 17, if Landlord is obligated or elects to repair, reconstruct and/or restore the damaged portion of the Building or Premises pursuant to Section 17.1 above, but is delayed from completing such repair, reconstruction and/or restoration beyond the date which is six (6) months after the date estimated by Landlord's contractor for completion thereof pursuant to Section 17.1, by reason of any causes beyond the reasonable control of Landlord (including, without limitation, delays due to Force Majeure (not to exceed thirty (30) days), and delays caused by Tenant or any of Tenant's Parties), then Landlord and Tenant may elect to terminate this Lease upon thirty (30) days' prior written notice to the other party; provided, however, if Landlord completes such repair, reconstruction and/or restoration prior to the expiration of such thirty (30) day notice period, then the Lease shall not terminate, and Tenant's election to terminate the Lease in accordance with this sentence shall be null, void and of no further force and effect.

17.5. **Damage to the Property.** If there is a total destruction of the improvements on the Property or partial destruction of such improvements, the cost of restoration of which would exceed one-third (1/3) of the then replacement value of all improvements on the Property, by any cause whatsoever, whether or not insured against and whether or not the Premises are partially or totally destroyed, Landlord may within a period of one hundred eighty (180) days after the occurrence of such destruction, notify Tenant in writing that it elects not to so reconstruct or restore such improvements, in which event this Lease shall cease and terminate as of the date of such destruction.

17.6. **Damage Near End of Term.** In addition to its termination rights in Sections 17.1, 17.4 and 17.5 above, Landlord shall have the right to terminate this Lease if any damage to the Building or Premises occurs during the last twelve (12) months of the Term and Landlord's contractor estimates in writing delivered to the parties that the repair, reconstruction or restoration of such damage cannot be completed within the earlier of (a) the scheduled expiration date of the Term, or (b) ninety (90) days after the date of such Casualty.

17.7. **Tenant's Termination Right.** In the event of any damage or destruction which affects Tenant's use and enjoyment of the Premises, if the Restoration Estimate states that the damage cannot be restored by Landlord within two hundred seventy (270) days from the date of the Casualty, Tenant shall have the right to terminate this Lease upon written notice to Landlord given within thirty (30) days after receipt of the Restoration Estimate, unless Landlord completes the restoration within said 30-day notice period, in which case this Lease shall continue in full force and effect.

17.8. **Waiver of Termination Right.** This Lease sets forth the terms and conditions upon which this Lease may terminate in the event of any damage or destruction. Accordingly, except as expressly provided herein, Tenant hereby waives any and all provisions of applicable Law that provide alternative rights for the parties in the event of damage or destruction (including, without limitation, to the extent the Premises are located in California, the provisions of California Civil Code Section 1932, Subsection 2, and Section 1933, Subsection 4 and any successor statute or laws of a similar nature).

ARTICLE 18 - CONDEMNATION

18.1. **Substantial or Partial Taking.** Subject to the provisions of Section 18.3 below, either party may terminate this Lease if any material part of the Premises is taken or condemned for any public or quasi-public use under law, by eminent domain or private purchase in lieu thereof (a **"Taking"**). Landlord shall also have the right to terminate this Lease if there is a Taking of any portion of the Building or the Property which would have a material adverse effect on Landlord's ability to profitably operate the remainder of the Building and/or the Property. The terminating party shall provide written notice of termination to the other

party within thirty (30) days after it first receives notice of the Taking. The termination shall be effective as of the effective date of any order granting possession to, or vesting legal title in, the condemning authority. If this Lease is not terminated, Base Rent and all other elements of this Lease which are dependent upon the area of the Premises, the Building or the Property shall be appropriately adjusted to account for any reduction in the square footage of the Premises, Building or Property, as applicable. All compensation awarded for a Taking shall be the property of Landlord. The right to receive compensation or proceeds are expressly waived by Tenant, however, Tenant may file a separate claim for Tenant's furniture, fixtures, equipment, and other personal property, Tenant Improvements (to the extent of any out of pocket costs paid by Tenant and not applied against the Allowance), Alterations paid for by Tenant, loss of goodwill and Tenant's reasonable relocation expenses.

18.2. **Condemnation Award.** Subject to the provisions of Section 18.3 below, in connection with any Taking of the Premises or the Building, Landlord shall be entitled to receive the entire amount of any award which may be made or given in such taking or condemnation, without deduction or apportionment for any estate or interest of Tenant, it being expressly understood and agreed by Tenant that no portion of any such award shall be allowed or paid to Tenant for any so-called bonus or excess value of this Lease, and such bonus or excess value shall be the sole property of Landlord. Tenant shall not assert any claim against Landlord or the taking authority for any compensation because of such taking (including any claim for bonus or excess value of this Lease); provided, however, if any portion of the Premises is taken, Tenant shall be granted the right to recover from the condemning authority (but not from Landlord) any compensation as may be separately awarded or recoverable by Tenant for the taking of Tenant's furniture, fixtures, equipment and other personal property within the Premises, Tenant Improvements (to the extent of any out of pocket costs paid by Tenant and not applied against the Allowance), Alterations paid for by Tenant, for Tenant's relocation expenses, and for any loss of goodwill or other damage to Tenant's business by reason of such taking.

18.3. **Temporary Taking.** In the event of a Taking of the Premises or any part thereof for temporary use, (a) this Lease shall be and remain unaffected thereby and Rent shall not abate, and (b) Tenant shall be entitled to receive for itself such portion or portions of any award made for such use with respect to the period of the taking which is within the Term, provided that if such taking shall remain in force at the expiration or earlier termination of this Lease, Tenant shall perform its obligations with respect to surrender of the Premises and shall pay to Landlord the portion of any award which is attributable to any period of time beyond the Term expiration date. For purpose of this Section 18.3, a temporary taking shall be defined as a taking for a period of two hundred seventy (270) days or less.

18.4. **Waiver.** Tenant hereby waives any rights it may have pursuant to any applicable Laws (including, without limitation, to the extent the Premises are located in California, any rights Tenant might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure) and agrees that the provisions hereof shall govern the parties' rights in the event of any Taking.

ARTICLE 19 - WAIVER OF CLAIMS; WAIVER OF SUBROGATION

19.1. **Waiver of Subrogation.** Notwithstanding anything to the contrary herein, Landlord and Tenant hereby waive their rights against the other party for any claims or damages or losses, including any deductibles and self-insured amounts, which are caused by or result from (a) any occurrence insured under any property insurance policy carried by Landlord or Tenant, or (b) any occurrence which would have been covered under any property insurance required to be obtained and maintained by Landlord or Tenant under this Lease had such insurance been obtained and maintained as required. The foregoing waiver shall be in addition to, and not a limitation of, any other waivers or releases contained in this Lease. All of Landlord's and Tenant's repair and indemnity obligations in this Lease shall be subject to the release contained in this Section 19.1.

19.2. **Waiver of Insurers.** Tenant shall cause each property insurance policy carried by Tenant to provide that the insurer waives all rights of recovery by way of subrogation against Landlord, in connection with any claims, losses and damages covered by such policy. If Tenant fails to maintain insurance for an insurable loss, such loss shall be deemed to be self-insured with a deemed full waiver of subrogation as set forth in the immediately preceding sentence.

ARTICLE 20 - ASSIGNMENT AND SUBLETTING

20.1. **Restriction on Transfer.** Except with respect to a Permitted Transfer pursuant to Section 20.6 below, Tenant shall not, without the prior written consent of Landlord, which consent Landlord will not unreasonably withhold or delay, assign this Lease or any interest herein or sublet the Premises or any part thereof, or permit the use or occupancy of the Premises by any party other than Tenant (any such assignment, encumbrance, sublease, license or the like being sometimes referred to as a **"Transfer"**). In no event may Tenant encumber or hypothecate this Lease or the Premises. This prohibition against Transfers shall be construed to include a prohibition against any assignment or subletting by operation of law. Any Transfer without Landlord's consent (except for a Permitted Transfer pursuant to Section 20.6 below) shall constitute a default by Tenant under this Lease, and in addition to all of Landlord's other remedies at law, in equity or under this Lease, such Transfer shall be voidable at Landlord's election. For purposes of this Article 20, other than with respect to a Permitted Transfer under Section 20.6 and transfers of stock of Tenant if Tenant is a publicly-held corporation and such stock is transferred publicly over a recognized security exchange or over-the-counter market, if Tenant is a corporation, partnership or other entity, any transfer, assignment, encumbrance or hypothecation of fifty percent (50%) or more (individually or in the aggregate) of any stock or other ownership interest in such entity (each, a **"Change of Control"**), shall be deemed an assignment of this Lease and shall be subject to all of the restrictions and provisions contained in this Article 20.

20.2. **Landlord's Options.** If Tenant desires to effect a Transfer, then at least thirty (30) days prior to the date when Tenant desires the Transfer to be effective (the **"Transfer Date"**), Tenant shall deliver to Landlord written notice (**"Transfer Notice"**) setting forth the terms and conditions of the proposed Transfer and the identity of the proposed assignee, sublessee or other transferee (sometimes referred to hereinafter as a **"Transferee"**). Tenant shall also deliver to Landlord with the Transfer Notice, a current financial statement and such evidence of financial responsibility and standing as Landlord may reasonably require of the Transferee which have been certified by a financial officer of such Transferee and or audited by a reputable independent accounting firm (if such is the normal practice of such Transferee), and such other information concerning the business background and financial condition of the proposed Transferee as Landlord may reasonably request. Except with respect to a Permitted Transfer, within fifteen (15) days after Landlord's receipt of any Transfer Notice, and any additional information requested by Landlord pursuant to this Section 20.2, Landlord will notify Tenant of its election to do one of the following: (a) consent to the proposed Transfer subject to such reasonable conditions as Landlord may impose in providing such consent; (b) refuse such consent, which refusal shall be on reasonable grounds; or (c) terminate this Lease and recapture the Premises for reletting by Landlord, which termination shall be effective as of the proposed Transfer Date. Notwithstanding the foregoing, Landlord may

only terminate the Lease and recapture the Premises in the event Tenant desires to effect a Transfer of the entire Premises for substantially all of the remaining Term of the Lease.

20.3. **Additional Conditions; Excess Rent.** A condition to Landlord's consent to any Transfer will be the delivery to Landlord of a true copy of the fully executed instrument of assignment, sublease, transfer or hypothecation, in form and substance reasonably satisfactory to Landlord, an original of Landlord's standard consent form executed by both Tenant and the proposed Transferee, and an affirmation of guaranty in form satisfactory to Landlord executed by each guarantor of this Lease, if any. In addition, Tenant shall pay to Landlord as Additional Rent within thirty (30) days after receipt thereof, without affecting or reducing any other obligations of Tenant hereunder, fifty percent (50%) of any rent or other economic consideration received by Tenant as a result of any Transfer which exceeds, in the aggregate, (i) the total Rent which Tenant is obligated to pay Landlord under this Lease (prorated to reflect obligations allocable to any portion of the Premises subleased) for the applicable period, plus (ii) any reasonable brokerage commissions and attorneys' fees actually paid by Tenant in connection with such Transfer, (iii) the cost of any changes, alterations and improvements to the Premises performed by Tenant in connection with such Transfer, and (iv) the amount of any free base rent reasonably provided to such Transferee. If Tenant effects a Transfer or requests the consent of Landlord to any Transfer (whether or not such Transfer is consummated), then, upon demand, and as a condition precedent to Landlord's consideration of the proposed assignment or sublease, Tenant agrees to pay Landlord a non-refundable administrative fee of Five Hundred Dollars ($500.00), plus Landlord's reasonable attorneys' and paralegal fees and other costs incurred by Landlord in reviewing such proposed assignment or sublease (whether attributable to Landlord's in-house attorneys or paralegals or otherwise), in an amount not to exceed Three Thousand Dollars ($3,000) for a transfer in the ordinary course of business. Acceptance of the Five Hundred Dollar ($500.00) administrative fee and/or reimbursement of Landlord's attorneys' and/or paralegal fees shall in no event obligate Landlord to consent to any proposed Transfer.

20.4. **Reasonable Disapproval.** Without limiting in any way Landlord's right to withhold its consent on any reasonable grounds, it is agreed that Landlord will not be acting unreasonably in refusing to consent to a Transfer if, in Landlord's reasonable opinion: (a) the proposed Transfer would result in more than three subleases of portions of the Premises being in effect at any one time during the Term; (b) the net worth or financial capabilities of a proposed assignee or subtenant is insufficient to meet the obligations assumed under this Lease or a sublease; (c) the proposed Transferee is an existing tenant of the Building or Property or is negotiating with Landlord (or has negotiated with
Landlord in the last six (6) months) for space in the Building or the Property (as demonstrated by an exchange of proposals or other negotiations during the preceding six (6) month period) and, in either case, Landlord has reasonably comparable space at the Property available; (d) the proposed Transferee is a governmental entity; (e) the portion of the Premises to be sublet or assigned is irregular in shape with inadequate means of ingress and egress; (f) the proposed Transfer involves a change of use of the Premises or would violate any exclusive use covenant to which Landlord is bound; (g) the Transfer would likely result in significant increase in the use of the parking areas by the Transferee's employees or visitors, and/or significantly increase the demand upon utilities and services to be provided by Landlord to the Premises; or (h) the Transferee is not in Landlord's reasonable opinion of reputable or good character or consistent with Landlord's desired tenant mix for the Building.

20.5. **No Release.** No Transfer, occupancy or collection of rent from any proposed Transferee shall be deemed a waiver on the part of Landlord, or the acceptance of the Transferee as Tenant and no Transfer shall release Tenant of Tenant's obligations under this Lease or alter the primary liability of Tenant to pay Rent and to perform all other obligations to be performed by Tenant hereunder. Following a default beyond any applicable notice and cure periods by Tenant, Landlord may require that any Transferee remit directly to Landlord on a monthly basis, all monies due Tenant by said Transferee, and each sublease shall provide that if Landlord gives said sublessee written notice that Tenant is in default under this Lease, said sublessee will thereafter make all payments due under the sublease directly to or as directed by Landlord, which payments will be credited against any payments due under this Lease. Tenant hereby irrevocably and unconditionally assigns to Landlord all rents and other sums payable under any sublease of the Premises; provided, however, that Landlord hereby grants Tenant a license to collect all such rents and other sums so long as Tenant is not in default beyond applicable notice and cure periods under this Lease. Consent by Landlord to one Transfer shall not be deemed consent to any subsequent Transfer. In the event of default by any Transferee of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such Transferee or successor. Landlord may consent to subsequent assignments of this Lease or sublettings or amendments or modifications to this Lease with assignees of Tenant, without notifying Tenant, or any successor of Tenant, and without obtaining its or their consent thereto and any such actions shall not relieve Tenant of liability under this Lease. To the extent the Premises are located in California, Tenant hereby waives (for itself and all persons claiming under Tenant) the provisions of Civil Code Section 1995.310.

20.6. **Permitted Transfers.** Notwithstanding the provisions of Section 20.1 above to the contrary, provided that Tenant is not then in default beyond applicable notice and cure periods, Tenant may assign this Lease or sublet the Premises or any portion thereof (herein, a **"Permitted Transfer"**), without Landlord's consent and without being subject to the profit sharing or recapture provisions set forth in Sections 20.2 and 20.3 above, to any entity that controls, is controlled by or is under common control with Tenant, or to any entity resulting from a merger or consolidation with Tenant, or to any person or entity which acquires all or substantially all of the assets or equity interest of Tenant's business as a going concern (each, a **"Permitted Transferee"**), provided that: (a) at least thirty (30) days prior to such assignment or sublease, Tenant delivers to Landlord a reasonably detailed description of the proposed Transfer and the financial statements and other financial and background information of the assignee or sublessee described in Section 20.2 above; (b) in the case of an assignment, the assignee assumes, in full, the obligations of Tenant under this Lease (or in the case of a sublease, the sublessee of a portion of the Premises or Term assumes, in full, the obligations of Tenant with respect to such portion) pursuant to an assignment and assumption agreement (or a sublease, as applicable) reasonably acceptable to Landlord, a fully executed copy of which is delivered to Landlord within thirty (30) days following the effective date of such assignment or subletting; (c) each guarantor of this Lease executes a reaffirmation of its guaranty in form satisfactory to Landlord; (d) the tangible net worth and ongoing profitability of the assignee or sublessee is demonstrably sufficient to satisfy Tenant's remaining obligations under this Lease; (e) Tenant remains fully liable under this Lease; (f) the use of the Premises is pursuant to Section 1.10 of this Lease; (g) such transaction is not entered into as a subterfuge to avoid the restrictions and provisions of this Article 20 and will not violate any exclusive use covenant to which Landlord is bound; and (h) with respect to a subletting only, Tenant and such Permitted Transferee execute Landlord's standard consent to sublease form; and (i) Tenant is not in default beyond all applicable notice and cure periods under this Lease. In addition, a Change of Control shall be deemed a Permitted Transfer and shall be permitted without Landlord's consent and without being subject to the profit sharing or recapture provisions set forth in Sections 20.2 and 20.3 above, provided that Tenant satisfies the conditions of subparts (a)-(i), above.

ARTICLE 21 - SURRENDER AND HOLDING OVER

21.1. **Surrender of Premises.** Upon the expiration or sooner termination of this Lease, Tenant shall surrender all keys for the Premises and exclusive possession of the Premises to Landlord broom clean and in the condition and repair received and thereafter improved, excepting reasonable wear and tear, casualty damage which is not Tenant's obligation to repair hereunder, and maintenance, repair, and replacement obligations that are Landlord's express obligations under this Lease, with all of Tenant's personal property, electronic, fiber, phone and data cabling and related equipment that is installed by or for the exclusive benefit of Tenant (other than those items installed in connection with the Tenant Improvements) and those items, if any, of Alterations identified by Landlord pursuant to Section 13.2, removed therefrom and all damage caused by such removal repaired. Notwithstanding the foregoing, Tenant shall not be required to remove or restore the loading doors in the Premises, or any of the initial Landlord Improvements or Tenant Improvements at the expiration or earlier termination of this Lease. If Tenant fails to remove by the expiration or sooner termination of this Lease all of its personal property and Alterations identified by Landlord for removal pursuant to Section 13.2, Landlord may, (without liability to Tenant for loss thereof), at Tenant's sole cost and in addition to Landlord's other rights and remedies under this Lease, at law or in equity: (a) remove and store such items in accordance with applicable Law; and/or (b) upon ten (10) days' prior notice to Tenant, sell all or any such items at private or public sale for such price as Landlord may obtain as permitted under applicable Law. Landlord shall apply the proceeds of any such sale to any amounts due to Landlord under this Lease from Tenant (including Landlord's attorneys' fees and other costs incurred in the removal, storage and/or sale of such items), with any remainder to be paid to Tenant.

21.2. **Holding Over.** Tenant will not be permitted to hold over possession of the Premises after the expiration or earlier termination of the Term without the express written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion. If Tenant holds over after the expiration or earlier termination of the Term with or without the express written consent of Landlord, then, in addition to all other remedies available to Landlord, Tenant shall become a tenant at sufferance only, upon the terms and conditions set forth in this Lease so far as applicable (including Tenant's obligation to pay all Additional Rent under this Lease), but at a Monthly Base Rent equal to one hundred twenty-five percent (125%) of the Monthly Base Rent applicable to the Premises immediately prior to the date of such expiration or earlier termination for the first two months of such holdover and one hundred fifty percent (150%) thereafter. Any such holdover Rent shall be paid on a per month basis without reduction for partial months during the holdover. Acceptance by Landlord of Rent after such expiration or earlier termination shall not constitute consent to a hold over hereunder or result in an extension of this Lease. This Section 21.2 shall not be construed to create any express or implied right to holdover beyond the expiration of the Term or any extension thereof. If Tenant holds over possession of the Premises for a period in excess of sixty (60) days following the expiration of the Term or any extension thereof, without Landlord's consent, Tenant shall be liable, and shall pay to Landlord within ten (10) days after demand, for all losses incurred by Landlord as a result of such holdover, and shall indemnify, defend and hold Landlord and the Landlord Parties harmless from and against all liabilities, damages, losses, claims, suits, costs and expenses (including reasonable attorneys' fees and costs) arising from or relating to any such holdover tenancy, including without limitation, any claim for damages made by a succeeding tenant. Tenant's indemnification obligation hereunder shall survive the expiration or earlier termination of this Lease. The foregoing provisions of this Section 21.2 are in addition to, and do not affect, Landlord's right of re -entry or any other rights of Landlord hereunder or otherwise at law or in equity.

ARTICLE 22 - DEFAULTS

22.1. **Tenant's Default.** The occurrence of any one or more of the following events shall constitute a **"Default"** under this Lease by Tenant:

a. the abandonment of the Premises by Tenant. **"Abandonment"** is defined pursuant to applicable Law;

b. the failure by Tenant to make any payment of Rent, Additional Rent or any other payment required to be made by Tenant hereunder, where such failure continues for three (3) business days after written notice thereof from Landlord that such payment was not received when due;

c. the failure by Tenant to observe or perform any of the express or implied covenants or provisions of this Lease to be observed or performed by Tenant, other than as specified in Sections 22.1(a) or (b) above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that it may be cured but more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said thirty (30) day period and thereafter diligently prosecute such cure to completion, which completion shall occur not later than sixty (60) days from the date of such notice from Landlord; or

d. A general assignment by Tenant or any guarantor or surety of Tenant's obligations hereunder (**"Guarantor"**) for the benefit of creditors;

e. The filing of a voluntary petition in bankruptcy by Tenant or any Guarantor, the filing by Tenant or any Guarantor of a voluntary petition for an arrangement, the filing by or against Tenant or any Guarantor of a petition, voluntary or involuntary, for reorganization, or the filing of an involuntary petition by the creditors of Tenant or any Guarantor, said involuntary petition remaining undischarged for a period of one hundred twenty (120) days;

f. Receivership, attachment, or other judicial seizure of substantially all of Tenant's assets on the Premises, such attachment or other seizure remaining undismissed or undischarged for a period of thirty (30) days after the levy thereof;

g. Death or disability of Tenant or any Guarantor, if Tenant or such Guarantor is a natural person, or the failure by Tenant or any Guarantor to maintain its legal existence (other than pursuant to a Permitted Transfer), if Tenant or such Guarantor is a corporation, partnership, limited liability company, trust or other legal entity.

Any notice sent by Landlord to Tenant pursuant to this Section 22.1 shall be in lieu of, and not in addition to, any notice required under any applicable Law.

ARTICLE 23 - REMEDIES OF LANDLORD

23.1. **Landlord's Remedies; Termination.** In the event of any such Default by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity (including, without limitation, to the extent the Premises are located in California, the remedies of Civil Code Section 1951.4 and any successor statute or similar Law, which provides that Landlord may continue this Lease in effect following Tenant's breach and abandonment and collect rent as it falls due, if Tenant has the right to sublet or assign, subject to reasonable limitations), Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder and to re-enter the Premises and remove all persons and property from the Premises; such property may be removed, stored and/or disposed of as permitted by applicable Law. If Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant: (a) the worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus (b) the worth at the time of the 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 (c) the worth at the time of award of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus (d) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would be likely to result therefrom including, but not limited to: the total unamortized sum of any Abated Amount (amortized on a straight line basis over the initial Term of this Lease), tenant improvement costs, and brokers' commissions; attorneys' fees; any costs required to return the Premises to the condition required at the end of the Term; the costs of refurbishment, alterations, renovation and repair of the Premises; and removal (including the repair of any damage caused by such removal) and storage (or disposal) of Tenant's personal property, equipment, fixtures, Alterations, Tenant Improvements and any other items which Tenant is required under this Lease to remove but does not remove; plus (e) all other monetary damages allowed under applicable Law.

As used in Sections 23.1(a) and 23.1(b) above, the **"worth at the time of award"** is computed by allowing interest at the Interest Rate set forth in the Summary. As used in Section 23.1(c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). To the extent the Premises are located in California, Tenant hereby waives for Tenant and all those claiming under Tenant all right now or hereafter existing including, without limitation, any rights under California Code of Civil Procedure Sections 1174 and 1179 and Civil Code Section 1950.7 to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease.

23.2. **Landlord's Remedies; Continuation of Lease; Re-Entry Rights.** In the event of any such Default by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity, Landlord shall also have the right to (a) continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, and (b) with or without terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed, stored and/or disposed of as permitted by applicable Law. No re-entry or taking possession of the Premises by Landlord pursuant to this Section 23.2, and no acceptance of surrender of the Premises or other action on Landlord's part, shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. No notice from Landlord or notice given under a forcible entry and detainer statute or similar Laws will constitute an election by Landlord to terminate this Lease unless such notice specifically so states. Notwithstanding any reletting without termination by Landlord because of any Default, Landlord may at any time after such reletting elect to terminate this Lease for any such Default.

23.3. **Landlord's Right to Perform.** Except as specifically provided otherwise in this Lease, all covenants and agreements by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement or offset of Rent. In the event of any Default by Tenant, Landlord may, without waiving or releasing Tenant from any of Tenant's obligations, make such payment or perform such other act as required to cure such Default on behalf of Tenant. All sums so paid by Landlord and all necessary incidental costs incurred by Landlord in performing such other acts shall be payable by Tenant to Landlord within five (5) days after demand therefor as Additional Rent.

23.4. **Rights and Remedies Cumulative.** All rights, options and remedies of Landlord contained in this Article 23 and elsewhere in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Lease. Nothing in this Article 23 shall be deemed to limit or otherwise affect Tenant's indemnification of Landlord pursuant to any provision of this Lease.

23.5. **Costs Upon Default and Litigation.** Tenant shall pay to Landlord and its Mortgagee as Additional Rent all the expenses incurred by Landlord or its Mortgagee in connection with any default by Tenant hereunder or the exercise of any remedy by reason of any default by Tenant hereunder, including reasonable attorneys' fees and expenses. If Landlord or its Mortgagee shall be made a party to any litigation commenced against Tenant or any litigation pertaining to this Lease or the Premises, at the option of Landlord and/or its Mortgagee, Tenant, at its expense, shall provide Landlord and/or its Mortgagee with counsel approved by Landlord and/or its Mortgagee and shall pay all costs incurred or paid by Landlord and/or its Mortgagee in connection with such litigation.

ARTICLE 24 - ENTRY BY LANDLORD

Landlord and its employees and agents shall at all reasonable times and upon giving Tenant reasonable notice of its election to do so (except in case of an emergency and to perform regularly scheduled services in which event no notice shall be required), have the right to enter the Premises to inspect the same, to supply any service required to be provided by Landlord to Tenant under this Lease, to exhibit the Premises to prospective lenders or purchasers (or during the last year of the Term or during any Default by Tenant, to prospective tenants), to post notices of nonresponsibility, and/or to alter, improve or repair the Premises or any other portion of the Building or Property, all without being deemed guilty of or liable for any breach of Landlord's covenant of quiet enjoyment or any eviction of Tenant, and without abatement of Rent. In exercising such entry rights, Landlord shall comply with Tenant's reasonable security measures (of which Landlord is informed in advance) and shall endeavor to minimize, to the extent reasonably practicable, the interference with Tenant's business, and shall provide Tenant with one (1) business day advance notice (oral or written) of such entry (except in emergency situations and for scheduled services). For each of the foregoing purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, excluding Tenant's vaults and safes, and Landlord shall have the means which Landlord may deem proper to open

said doors in an emergency in order to obtain entry to the Premises. Any entry to the Premises obtained by Landlord pursuant to this Article 24 by any of said means or otherwise shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof, or grounds for any abatement or reduction of Rent and Landlord shall not have any liability to Tenant for any damages or losses on account of any such entry by Landlord.

ARTICLE 25 - LIMITATION ON LANDLORD'S LIABILITY

Notwithstanding anything contained in this Lease to the contrary, the obligations of Landlord under this Lease (including as to any actual or alleged breach or default by Landlord) do not constitute personal obligations of the individual members, managers, investors, partners, directors, officers, or shareholders of Landlord or Landlord's members or partners, and Tenant shall not seek recourse against the individual members, managers, investors, partners, directors, officers, or shareholders of Landlord or Landlord's members or partners or any other p ersons or entities having any interest in Landlord, or any of their personal assets for satisfaction of any liability with respect to this Lease. In addition, in consideration of the benefits accruing hereunder to Tenant and notwithstanding anything contained in this Lease to the contrary, Tenant hereby covenants and agrees for itself and all of its successors and assigns that the liability of Landlord for its obligations under this Lease (including any liability as a result of any actual or alleged failure, breach or default hereunder by Landlord), shall be limited solely to, and Tenant's and its successors' and assigns' sole and exclusive remedy shall be against, Landlord's interest in the Building, and no other assets of Landlord. The term "Landlord" as used in this Lease, so far as covenants or obligations on the part of the Landlord are concerned, shall be limited to mean and include only the owner or owners, at the time in question, of the fee title to, or a lessee's interest in a ground lease of, the Property. In the event of any transfer or conveyance of any such title or interest (other than a transfer for security purposes only), the transferor shall be automatically relieved of all covenants and obligations on the part of Landlord contained in this Lease, provided that the transferee agrees to assume all such covenants and obligations. Landlord and Landlord's transferees and assignees shall have the absolute right to transfer all or any portion of their respective title and interest in the Premises, the Building, the Property and/or this Lease without the consent of Tenant, and such transfer or subsequent transfer shall not be deemed a violation on Landlord's part of any of the terms and conditions of this Lease.

ARTICLE 26 - SUBORDINATION

Tenant accepts this Lease subject and subordinate to any mortgage(s), deed(s) of trust, ground lease(s) or other lien(s) now or subsequently arising upon the Premises, the Building or the Property, and to renewals, modifications, refinancings and extensions thereof (collectively referred to as a **"Mortgage"**). This clause shall be self-operative, but no later than ten (10) business days after written request from Landlord or any holder of a Mortgage (each a **"Mortgagee"** and collectively, **"Mortgagee(s)"**), Tenant shall execute a commercially reasonable subordination, nondisturbance and attornment agreement. As an alternative, a Mortgagee shall have the right at any time to subordinate its Mortgage to this Lease. No later than ten (10) business days after written request by Landlord or any Mortgagee, Tenant shall, without charge, attorn to any successor to Landlord's interest in this Lease. Tenant hereby waives its rights under any current or future Law which gives or purports to give Tenant any right to terminate or otherwise adversely affect this Lease and the obligations of Tenant hereunder in the event of any such foreclosure proceeding or sale. Should Tenant fail to sign and return any such documents within said ten (10) business day period, Tenant shall be in default hereunder. Within thirty (30) days following the full execution and delivery of this Lease, Landlord will use commercially reasonable efforts to provide Tenant with a non-disturbance agreement from the holder of the existing Mortgage (the **"Existing Lender"**), on the Existing Lender's standard, commercially reasonable form; provided, however, Landlord's failure to provide such non-disturbance agreement shall not be a default under this Lease or otherwise affect the parties' rights and obligations under this Lease. In addition, Landlord will use commercially reasonable efforts to provide Tenant with a non-disturbance agreement from the holder of any future Mortgagees; provided, however, Landlord's failure to provide such non-disturbance agreement shall not be a default under this Lease or otherwise affect the parties' rights and obligations under this Lease.

ARTICLE 27 - ESTOPPEL CERTIFICATE

Within ten (10) business days following Landlord's written request, Tenant shall execute and deliver to Landlord an estoppel certificate, in a form substantially similar to the form of Exhibit F attached hereto. Any such estoppel certificate delivered pursuant to this Article 27 may be relied upon by any Mortgagee, beneficiary, purchaser or prospective purchaser of any portion of the Property, as well as their assignees. Tenant's failure to deliver such estoppel certificate following an additional two (2) business day cure period after notice shall constitute a default hereunder. Tenant's failure to deliver such certificate within such time shall be conclusive upon Tenant that this Lease is in full force and effect, without modification except as may be represented by Landlord, that there are no uncured defaults in Landlord's performance, and that not more than one (1) month's Rent has been paid in advance.

ARTICLE 28 -INTENTIONALLY DELETED ARTICLE 29 - MORTGAGEE

PROTECTION

If, in connection with Landlord's obtaining or entering into any financing or ground lease for any portion of the Building or Property, the lender or ground lessor shall request modifications to this Lease, Tenant shall, within thirty (30) days after request therefor, execute an amendment to this Lease including such modifications, provided such modifications are reasonable, do not increase the obligations of Tenant hereunder, or adversely affect the leasehold estate created hereby or Tenant's rights hereunder. In the event of any default on the part of Landlord, Tenant will give notice by registered or certified mail to any beneficiary of a deed of trust or Mortgagee covering the Premises or ground lessor of Landlord whose address shall have been furnished to Tenant, and shall offer such beneficiary, Mortgagee or ground lessor a reasonable opportunity to cure the default (including with respect to any such beneficiary or Mortgagee, time to obtain possession of the Premises, subject to this Lease and Tenant's rights hereunder, by power of sale or judicial foreclosure, if such should prove necessary to effect a cure).

ARTICLE 30 - QUIET ENJOYMENT

Landlord covenants and agrees with Tenant that, upon Tenant performing all of the covenants and provisions on Tenant's part to be observed and performed under this Lease (including payment of Rent hereunder), Tenant shall have the right to use and occupy the Premises in accordance with and subject to the terms and conditions of this Lease as against all persons claiming by, through or under Landlord. This covenant shall be binding upon Landlord and its successors only during its or their respective periods of ownership of the Building.

ARTICLE 31 - MISCELLANEOUS PROVISIONS

31.1. **Broker.** Tenant represents that it has not had any dealings with any real estate broker, finder or intermediary with respect to this Lease, other than the Brokers specified in the Summary. Tenant shall indemnify, protect, defend (by counsel reasonably approved in writing by Landlord) and hold Landlord harmless from and against any and all claims, judgments, suits, causes of action, damages, losses, liabilities and expenses (including attorneys' fees and court costs) resulting from any breach by Tenant of the foregoing representation, including, without limitation, any claims that may be asserted against Landlord by any broker, agent or finder claiming to have represented Tenant in connection with this Lease and undisclosed by Tenant herein. Landlord shall indemnify, protect, and hold Tenant harmless from and against any and all claims, judgments, suits, causes of action, damages, losses, liabilities and expenses (including attorneys' fees and court costs) resulting from any other brokers claiming to have represented Landlord in connection with this Lease. The foregoing indemnities shall survive the expiration or earlier termination of this Lease. Landlord shall pay to the Brokers the brokerage fee, if any, pursuant to a separate written agreement between Landlord and Brokers.

31.2. **Governing Law.** This Lease shall be governed by, and construed pursuant to, the laws of the state in which the Building is located. Venue for any litigation between the parties hereto concerning this Lease or the occupancy of the Premises shall be initiated in the county in which the Premises are located. Subject to Article 9 above, Tenant shall comply with all governmental and quasi-governmental laws, ordinances and regulations applicable to the Building, Property and/or the Premises, and all rules and regulations adopted pursuant thereto and all covenants, conditions and restrictions applicable to and/or of record against the Building, Property and/or the Site (individually, a **"Law"** and collectively, the **"Laws")**. Landlord and Tenant desire and intend that any disputes arising between them with respect to or in connection with this Lease be subject to expeditious resolution in a court trial without a jury. Consequently, Landlord and Tenant each hereby waives the right to trial by jury of any cause of action, claim, counterclaim or cross complaint in any action, proceeding or other hearing brought either by Landlord against Tenant, or by Tenant against Landlord, on any matter whatever arising out of, or in any way connected with, this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, any claim of injury or damage, and the enforcement of any remedy under any law, statute and regulation, emergency or otherwise, now or hereafter in effect; provided, however, the foregoing waiver shall not apply to any action for personal injury or property damage. If Landlord commences any summary or other proceeding for nonpayment of Rent or the recovery of possession of the Premises, Tenant shall not interpose any permissive counterclaim of whatever nature or description in any such proceeding. The foregoing shall not, however, constitute a waiver of Tenant's right to assert any claim against Landlord in any separate action brought by Tenant. This waiver is knowingly, intentionally, and voluntarily made by each of parties hereto and each party acknowledges to the other that neither the other party nor any person acting on its respective behalf has made any representations to induce this waiver of trial by jury or in any way to modify or nullify its effect. The parties acknowledge that they have read and understand the meaning and ramifications of this waiver provision and have elected same of their own free will.

31.3. **Successors and Assigns.** Subject to the provisions of Article 25 above, and except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, personal representatives and permitted successors and assigns; provided, however, no rights shall inure to the benefit of any Transferee of Tenant unless the Transfer to such Transferee is made in compliance with the provisions of Article 20, and no options or other rights which are expressly made personal to the original Tenant hereunder or in any rider attached hereto shall be assignable to or exercisable by anyone other than the original Tenant and any Permitted Transferee under this Lease.

31.4. **No Merger.** The voluntary or other surrender of this Lease by Tenant or a mutual termination thereof shall not work as a merger and shall, at the option of Landlord, either (a) terminate all or any existing subleases, or (b) operate as an assignment to Landlord of Tenant's interest under any or all such subleases.

31.5. **Professional Fees**. If either Landlord or Tenant should bring suit (or alternate dispute resolution proceedings) against the other with respect to this Lease, including for unlawful detainer, forcible entry and detainer, or any other relief against the other hereunder, then all costs and expenses incurred by the prevailing party therein (including, without limitation, its actual appraisers', accountants', attorneys' and other professional fees, expenses and court costs), shall be paid by the other party, including any and all costs incurred in enforcing, perfecting and executing such judgment and all reasonable costs and attorneys' fees associated with any appeal. Further, if for any reason Landlord consults legal counsel or otherwise incurs any costs or expenses as a result of its proper attempt to enforce the provisions of this Lease against Tenant, even though no litigation is commenced, or if commenced is not pursued to final judgment, Tenant shall be obligated to pay to Landlord, in addition to all other amounts for which Tenant is obligated hereunder, all of Landlord's reasonable costs and expenses incurred in connection with any such acts, including attorneys' fees incurred associated with any appeal.

31.6. **Waiver.** The waiver by either party of any breach by the other party of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant and condition herein contained, nor shall any custom or practice which may become established between the parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of any party to insist upon the performance by the other in strict accordance with said terms. No waiver of any default of either party hereunder shall be implied from any acceptance by Landlord or delivery by Tenant (as the case may be) of any Rent or other payments due hereunder or any omission by the non-defaulting party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect defaults other than as specified in said waiver.

31.7. **Terms and Headings.** The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. Words used in any gender include other genders. The Article and Section headings of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof. Any deletion of language from this Lease prior to its execution by Landlord and Tenant shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse of the deleted language. The parties hereto acknowledge and agree that each has participated in the negotiation and drafting of this Lease; therefore, in the event of an ambiguity in, or dispute regarding the interpretation of, this Lease, the interpretation of this Lease shall not be resolved by any rule of interpretation providing for interpretation against the party who caused the uncertainty to exist or against the draftsman.

31.8. **Time.** Time is of the essence with respect to performance of every provision of this Lease in which time or performance is a factor.

31.9. **Business Day.** A “business day” is Monday through Friday, excluding holidays observed by the United States Postal Service and reference to 5:00 p.m. is to the time zone of the recipient. Whenever action must be taken (including the giving of notice or the delivery of documents) under this Lease during a certain period of time (or by a particular date) that ends (or occurs) on a non-business day, then such period (or date) shall be extended until the immediately following business day.

31.10. **Payments and Notices.** All Rent and other sums payable by Tenant to Landlord hereunder shall be paid to Landlord at the address designated in the Summary, or to such other persons and/or at such other places as Landlord may hereafter designate in writing. Any notice required or permitted to be given hereunder must be in writing and may be given by personal delivery (including delivery by nationally recognized overnight courier or express mailing service), by registered or certified mail, postage prepaid, return receipt requested, addressed to Tenant at the address(es) designated in the Summary, or to Landlord at the address(es) designated in the Summary. Either party may, by written notice to the other, specify a different address for notice purposes. Notice given in the foregoing manner shall be deemed given (i) when actually received or refused by the party to whom sent if delivered by a carrier or personally served or (ii) if mailed, on the day of actual delivery or refusal as shown by the certified mail return receipt or the expiration of three (3) business days after the day of mailing, whichever first occurs.

31.11. **Prior Agreements; Amendments.** This Lease, including the Summary and all Exhibits attached hereto, contains all of the covenants, provisions, agreements, conditions and understandings between Landlord and Tenant concerning the Premises and any other matter covered or mentioned in this Lease, and no prior agreement or understanding, oral or written, express or implied, including without limitation any marketing materials, brochures, or the like, written or verbal, provided by Landlord or its agents pertaining to the Premises or any such other matter shall govern the parties or be effective for any purpose, once this Lease has been executed by the parties. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. The parties acknowledge that all prior agreements, communications, representations and negotiations are deemed superseded by the execution of this Lease to the extent they are not expressly incorporated herein.

31.12. **Separability.** The invalidity or unenforceability of any provision of this Lease shall in no way affect, impair or invalidate any other provision hereof, and such other provisions shall remain valid and in full force and effect to the fullest extent permitted by law.

31.13. **Recording.** Neither Landlord nor Tenant shall record this Lease or a short form memorandum of this Lease.

31.14. **Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than the Rent payment herein stipulated shall be deemed to be other than on account of the Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord’s right to recover the balance of such Rent or pursue any other remedy provided in this Lease. Tenant agrees that each of the foregoing covenants and agreements shall be applicable to any covenant or agreement either expressly contained in this Lease or imposed by any statute or at common law.

31.15. **Financial Statements.** Upon ten (10) business days prior written request from Landlord (which Landlord may only make in connection with Tenant's exercise of any Option(s) in this Lease, following an event of default by Tenant, and/or in connection with a sale, recapitalization or refinance of the Property), Tenant shall deliver to Landlord for review by Landlord and by Landlord's accountants, investors and prospective purchasers and lenders: (a) Tenant’s most recent, annual financial statement prepared in Tenant’s normal and customary manner, and (b) to the extent available and subsequent to such annual financial statement, Tenant’s most recent, quarterly financial statement prepared in Tenant’s normal and customary manner. Landlord covenants and agrees not to disclose any information regarding Tenant's financial statements to any parties other than its accountants, investors, purchasers, and lenders to keep all of Tenant's financial information confidential. Such statements shall have been prepared in accordance with Tenant’s normal and customary practices, and certified as true in all material respects by an authorized officer (e.g., CFO or Controller), member/manager or general partner of Tenant. Notwithstanding the foregoing, in the event that (i) stock in the entity which constitutes Tenant under this Lease (as opposed to an entity that controls Tenant or is otherwise an affiliate of Tenant) is publicly traded on NASDAQ or a national stock exchange, and (ii) Tenant has its own, separate and distinct 10K and 10Q filing requirements (as opposed joint or cumulative filings with an entity that controls Tenant or with entities which are otherwise affiliates of Tenant), then Tenant's obligation to provide Landlord with a copy of its most recent current financial statement shall be deemed satisfied.

31.16. **No Partnership**. Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or joint venture or a member of a joint enterprise with Tenant by reason of this Lease.

31.17. **Force Majeure.** If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, governmental moratorium or other governmental action or inaction (including, without limitation, failure, refusal or delay in issuing permits, approvals and/or authorizations), injunction or court order, riots, insurrection, war, governmental boycott or trade embargo, terrorism, bioterrorism, fire, earthquake, inclement weather including rain, flood or other natural disaster or other reason of a like nature not the fault of the party delaying in performing work or doing acts required under the terms of this Lease (but excluding delays due to financial inability) (herein collectively, **“Force Majeure Delay(s)”**), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such Force Majeure Delay. The provisions of this Section 31.17 shall not apply to nor operate to excuse Tenant from the payment of Monthly Base Rent, or any Additional Rent or any other payments strictly in accordance with the terms of this Lease.

31.18. **Counterparts.** This Lease may be executed in one or more counterparts, each of which shall constitute an original and all of which shall be one and the same agreement. Signatures and initials required in this document may be executed via “wet” original handwritten signature or initials, or via electronic signature or mark, which shall be binding on the parties as originals, and the executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud based server, e-signature technology (such as DocuSign) or other similar electronic means, and any such transmittal shall constitute delivery of the executed document for all purposes of this Lease.

31.19. **Nondisclosure of Lease Terms.** Tenant acknowledges and agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord. Disclosure of the terms could adversely affect the ability of Landlord to negotiate other leases and impair Landlord’s relationship with other tenants. Accordingly, Tenant agrees that it, and its partners,

officers, directors, shareholders, members, managers, employees, agents and attorneys, shall not intentionally and voluntarily disclose the terms and conditions of this Lease to any newspaper or other publication or any other tenant or apparent prospective tenant of the Building or other portion of the Property, or prospective real estate agent, either directly or indirectly, without the prior written consent of Landlord, provided, however, that Tenant may disclose the terms to prospective subtenants or assignees under this Lease or as may be required pursuant to applicable Laws and regulations.

31.20. **Authority.** If Tenant executes this Lease as a partnership, corporation or limited liability company, then Tenant represents and warrants that: (a) Tenant is a duly organized and existing partnership, corporation or limited liability company, as the case may be, and is qualified to do business in the state in which the Building is located; (b) such persons and/or entities executing this Lease are duly authorized to execute and deliver this Lease on Tenant's behalf; and (c) this Lease is binding upon Tenant in accordance with its terms. Tenant shall provide to Landlord a copy of any documents reasonably requested by Landlord evidencing such qualification, organization, existence and authorization within ten (10) days after Landlord's request. Tenant represents and warrants to Landlord that Tenant is not, (i) in violation of any Laws relating to terrorism or money laundering, or (ii) among the individuals or entities identified on any list compiled pursuant to Executive Order 13224 for the purpose of identifying suspected terrorists or on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, http://www.treas.gov/ofac/tllsdn.pdf or any replacement website or other replacement official publication of such list. Landlord represents and warrants that: (a) Landlord is a duly organized and existing limited partnership and is qualified to do business in the state in which the Building is located; (b) such persons and/or entities executing this Lease are duly authorized to execute and deliver this Lease on Landlord's behalf; and (c) this Lease is binding upon Landlord in accordance with its terms

31.21. **Joint and Several Liability.** If more than one person or entity executes this Lease as Tenant: (a) each of them is and shall be jointly and severally liable for the covenants, conditions, provisions and agreements of this Lease to be kept, observed and performed by Tenant; and (b) the act or signature of, or notice from or to, any one or more of them with respect to this Lease shall be binding upon each and all of the persons and entities executing this Lease as Tenant with the same force and effect as if each and all of them had so acted or signed, or given or received such notice.

31.22. **No Option.** The submission of this Lease for examination or execution by Tenant does not constitute a reservation of or option for the Premises and this Lease shall not become effective as a Lease until the final lease has been approved by any and all Mortgagee(s) and it has been executed by Landlord and delivered to Tenant.

31.23. **OFAC.** Tenant represents and warrants to Landlord that Tenant is not in violation of any Laws relating to terrorism or money laundering and will not, act, directly or indirectly, for or on behalf of any of the following:

a. Any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, including without limitation, pursuant to Executive Order 13224 for the purpose of identifying suspected terrorists or on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control ("OFAC") at its official website, http://www.treas.gov/ofac/tllsdn.pdf or any replacement website or other replacement official publication of such list;

b. Any "Specially Designated National" or "Blocked Person" as designated pursuant to any law, order, rule, or regulation that is enforced or administered by the United States Government or any of its departments or agencies; or

c. Any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by OFAC.

TENANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LANDLORD FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, RISKS, LIABILITIES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COSTS) INCURRED BY LANDLORD ARISING FROM OR RELATED TO ANY BREACH OF THE FOREGOING REPRESENTATIONS. In addition, if the foregoing representations are untrue at any time during the Term (or any extension of the Term) of the Lease, an Event of Default will be deemed to have occurred, without the necessity of notice to Tenant, and shall entitle Landlord to terminate this Lease and realize any and all remedies available under this Lease and/or at law or in equity.

31.24. **Options and Rights in General.** Any option (each an **"Option"** and collectively, the **"Options")**, including without limitation, any option to extend, option to terminate, option to expand, right to lease, right of first offer, and/or right of first refusal, granted to Tenant is personal to the original Tenant executing this Lease or a Permitted Transferee and may be exercised only by the original Tenant executing this Lease or a Permitted Transferee, while leasing the entire Premises, and may not be exercised or be assigned, voluntarily or involuntarily, by any person or entity other than the original Tenant executing this Lease or a Permitted Transferee. The Options, if any, granted to Tenant under this Lease are not assignable separate and apart from this Lease, nor may any Option be separated from this Lease in any manner, either by reservation or otherwise. Tenant will have no right to exercise any Option, notwithstanding any provision of the grant of option to the contrary, and Tenant's exercise of any Option may be nullified by Landlord and deemed of no further force or effect, if (i) Tenant is in Default under the terms of this Lease as of Tenant's exercise of the Option in question or at any time after the exercise of any such Option and prior to the commencement of the Option event, (ii) Tenant has sublet all of the Premises except pursuant to a Permitted Transfer, or (iii) Landlord has given Tenant three (3) or more notices of default that remained uncured beyond applicable notice and cure periods during any twelve (12) consecutive month period of this Lease. Each Option granted to Tenant, if any, is hereby deemed an economic term which Landlord, in its sole and absolute discretion, may or may not offer in conjunction with any future extensions of the Term. Notwithstanding the foregoing, items (i) - (iii) of this Section 31.24. shall not apply to tenant's Termination Option described in Rider No. 4 hereto.

31.25. **Approvals.** Whenever this Lease requires an approval, consent, determination or judgment by either Landlord or Tenant, unless another standard is expressly set forth, such approval, consent, determination or judgment and any conditions imposed thereby shall be reasonable and shall not be unreasonably withheld or delayed.

31.26. **Access.** Except when and where Tenant's right of access is specifically excluded in this Lease, Tenant shall have access to the Premises twenty-four (24) hours per day, seven (7) days per week.

[NO FURTHER TEXT ON THIS PAGE; SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed the date first above written.

Tenant:

IRHYTHM TECHNOLOGIES, INC.

By: /s/ Michael Coyle
Michael Coyle
Chief Executive Officer

By: /s/ Douglas Devine
Douglas Devine
Chief Financial Officer

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

Landlord:

KATELLA/HOLDER STREET, LLC
a Delaware limited liability company

By: _____
Its: Authorized Signatory

EXHIBIT A

PREMISES FLOOR PLAN

EXHIBIT B

SITE PLAN

EXHIBIT C

WORK LETTER (ALLOWANCE)

1. **TENANT IMPROVEMENTS.** As used in the Lease and this Work Letter, the term **"Tenant Improvements"** or "**Tenant Improvement Work"** or **"Tenant's Work"** means those items of general tenant improvement construction shown on the Final Plans (described in Section 4 below), more particularly described in Section 5 below.

2. **WORK SCHEDULE.** Prior to commencing construction, Tenant will deliver to Landlord, for Landlord's review and approval, a schedule (**"Work Schedule"**), which will set forth the timetable for the planning and completion of the installation of the Tenant Improvements.

3. **CONSTRUCTION REPRESENTATIVES.** Landlord hereby appoints the following person(s) as Landlord's representative (**"Landlord's Representative"**) to act for Landlord in all matters covered by this Work Letter: Donna Clark.

Tenant hereby appoints the following person(s) as Tenant's representative (**"Tenant's Representative"**) to act for Tenant in all matters covered by this Work Letter: Claudia Purdy.

All communications with respect to the matters covered by this Work Letter are to be made to Landlord's Representative or Tenant's Representative, as the case may be, in writing in compliance with the notice provisions of the Lease. Either party may change its representative under this Work Letter at any time by written notice to the other party in compliance with the notice provisions of the Lease.

4. **TENANT IMPROVEMENT PLANS**

(a) **Preparation of Space Plans.** In accordance with the Work Schedule, Landlord agrees to meet with Tenant's architect and/or space planner for the purpose of preparing and promptly reviewing preliminary space plans for the layout of the Premises prepared by Tenant (**"Space Plans"**). The Space Plans are to be sufficient to convey the architectural design of the Premises and layout of the Tenant Improvements therein and are to be submitted to Landlord in accordance with the Work Schedule for Landlord's approval. If Landlord reasonably disapproves any aspect of the Space Plans, Landlord will advise Tenant in writing of such disapproval and the reasons therefor in accordance with the Work Schedule. Tenant will then submit to Landlord for Landlord's approval, in accordance with the Work Schedule, a redesign of the Space Plans incorporating the revisions reasonably required by Landlord. Landlord hereby approves of the Space Plan attached hereto as Schedule 1.

(b) **Preparation of Final Plans.** Based on the approved Space Plans, and in accordance with the Work Schedule, Tenant's architect will prepare complete architectural plans, drawings and specifications and complete engineered mechanical, structural and electrical working drawings for all of the Tenant Improvements for the Premises (collectively, the **"Final Plans"**). The Final Plans will show (a) the subdivision (including partitions and walls), layout, lighting, finish and decoration work (including carpeting and other floor coverings) for the Premises; (b) all internal and external communications and utility facilities which will require conduiting or other improvements from the base Building shell work and/or within common areas; and (c) all other specifications for the Tenant Improvements. The Final Plans will be submitted to Landlord for signature to confirm that they are consistent with the Space Plans. If Landlord reasonably disapproves any aspect of the Final Plans based on any inconsistency with the Space Plans, Landlord agrees to advise Tenant in writing of such disapproval and the reasons therefor within the time frame set forth in the Work Schedule. In accordance with the Work Schedule, Tenant will then cause Tenant's architect to redesign the Final Plans incorporating the revisions reasonably requested by Landlord so as to make the Final Plans consistent with the Space Plans.

(c) **Requirements of Tenant's Final Plans.** Tenant's Final Plans will include locations and complete dimensions, and the Tenant Improvements, as shown on the Final Plans, will: (i) be compatible with the Building shell and with the design, construction and equipment of the Building; (ii) if not comprised of the Building standards set forth in the written description thereof (the **"Standards"**), then compatible with and of at least equal quality as the Standards and reasonably approved by Landlord; (iii) comply with all applicable laws, ordinances, rules and regulations of all governmental authorities having jurisdiction, and all applicable insurance regulations; (iv) not require Building service beyond the level normally provided to other tenants in the Building and will not overload the Building floors; and (v) be of a nature and quality consistent with the overall objectives of Landlord for the Building, as determined by Landlord in its reasonable but subjective discretion.

(d) **Submittal of Final Plans.** Once approved by Landlord and Tenant, Tenant's architect will submit the Final Plans to the appropriate governmental agencies for plan checking and the issuance of a building permit. Tenant's architect, with Landlord's cooperation, will make any changes to the Final Plans which are requested by the applicable governmental authorities to obtain the building permit. After approval of the Final Plans no further changes may be made without the prior written approval of both Landlord and Tenant, which approval shall not be unreasonably withheld, conditioned or delayed, unless a Design Problem exists, and then only after agreement by Tenant to pay any excess costs resulting from the design and/or construction of such changes. **"Design Problem"** shall mean, individually or collectively, as reasonably determined by Landlord, (i) an adverse effect on the structural integrity of the Building, (ii) non-compliance with Laws (including applicable codes), (iii) an adverse effect on the systems and equipment of the Building, (iv) an adverse effect on the exterior appearance of the Building, (v) an effect on the exterior appearance of the Building, (vi) non-compliance with the Landlord's construction rules and regulations and/or Building Standards, (vii) having a server room located below an existing room containing a wet plumbing connection of another tenant in the Building, (viii) having a wet plumbing connection above an existing server room of another tenant in the Building, or (ix) incomplete, missing or inaccurate specifications.

(e) **Changes to Shell of Building.** If the Final Plans or any amendment thereof or supplement thereto shall require changes in the Building shell, the increased cost of the Building shell work caused by such changes will be paid for by Tenant or charged against the "Allowance" described in Section 5 below.

(f) **Work Cost Estimate and Statement.** Prior to the commencement of construction of any of the Tenant Improvements shown on the Final Plans, Tenant will submit to Landlord a written estimate of the cost to complete the Tenant Improvement Work, which written estimate will be based on the Final Plans taking into account any modifications which may be required to reflect changes in the Final Plans required by the City or County in which the Premises are located (the **"Work Cost Estimate")**.

Landlord will either approve the Work Cost Estimate or disapprove specific items and submit to Tenant revisions to the Final Plans to reflect deletions of and/or substitutions for such disapproved items. Submission and approval of the Work Cost Estimate will proceed in accordance with the Work Schedule. Upon Landlord's approval of the Work Cost Estimate (such approved Work Cost Estimate to be hereinafter known as the **"Work Cost Statement"**), Tenant will have the right to purchase materials and to commence the construction of the items included in the Work Cost Statement pursuant to Section 6 hereof. If the total costs reflected in the Work Cost Statement exceed the Allowance described in Section 5 below, Tenant agrees to pay such excess.

5. **PAYMENT FOR THE TENANT IMPROVEMENTS**

(a) **Allowance.** Landlord hereby grants to Tenant an Allowance as referenced in the Summary. The Allowance is to be used only for:

(i) Payment of the cost of preparing the Space Plans and the Final Plans, including mechanical, electrical, plumbing and structural drawings and of all other aspects necessary to complete the Final Plans. The Allowance will not be used for the payment of extraordinary design work not consistent with the scope of the Standards (i.e., above-standard design work) or for payments to any other consultants, designers or architects other than Landlord's architect and/or Tenant's architect, engineers, and construction manager (provided that not more than three percent (3%) of the Allowance may be applied against the cost of Tenant's construction manager).

(ii) The payment of plan check, permit and license fees relating to construction of the Tenant Improvements (including the portion of the Tenant Improvements located outside of the Premises).

(iii) Construction of the Tenant Improvements (including the portion of the Tenant Improvements located outside of the Premises), including, without limitation, the following:

(aa) Installation within the Premises of all partitioning, doors, floor coverings, ceilings, wall coverings and painting, millwork and similar items;

(bb) All electrical wiring, lighting fixtures, outlets and switches, and other electrical work necessary for the Premises;

(cc) The furnishing and installation of all duct work, terminal boxes, diffusers and accessories necessary for the heating, ventilation and air conditioning systems within the Premises, and supplemental systems installed therein, including the cost of meter and key control for after-hour air conditioning;

(dd) Any additional improvements to the Premises required for Tenant's use of the Premises including, but not limited to, odor control, special heating, ventilation and air conditioning, noise or vibration control or other special systems or improvements;

(ee) All fire and life safety control systems such as fire walls, sprinklers, halon, fire alarms, including piping, wiring and accessories, necessary for the Premises;

(ff) All plumbing, fixtures, pipes and accessories necessary for the Premises;

(gg) Testing and inspection costs; and

(hh) Fees and costs attributable to general conditions associated with the construction of the Tenant Improvements plus a construction administration fee in the amount of three percent (3%) of the Allowance (**"Construction Administration Fee"**) to cover the services of Landlord's tenant improvement coordinator.

(b) **Excess Costs.** The cost of each item referenced in Section 5(a) above shall be charged against the Allowance. If the work cost exceeds the Allowance, Tenant shall be solely responsible for payment of all excess costs, including the Construction Administration Fee, which fee shall be paid to Landlord within thirty (30) days after invoice therefor. In no event will the Allowance be used to pay for Tenant's furniture, artifacts, equipment, telephone systems or any other item of personal property which is not affixed to the Premises.

(c) **Changes.** Any changes to the Final Plans will be approved by Landlord and Tenant in the manner set forth in Section 4 above. Tenant shall be solely responsible for any additional costs associated with such changes; provided, however, that Landlord will first apply toward any such increase any remaining balance of the Allowance. Landlord will have the right to decline Tenant's request for a change to the Final Plans if such changes are inconsistent with the provisions of Section 4 above.

(d) **Governmental Cost Increases.** If increases in the cost of the Tenant Improvements as set forth in the Work Cost Statement are due to requirements of any governmental agency, Tenant shall be solely responsible for such additional costs; provided, however, that Landlord will first apply toward any such increase any remaining balance of the Allowance.

(e) **Unused Allowance Amounts.** Any unused portion of the Allowance upon completion of the Tenant Improvements will not be refunded to Tenant or be available to Tenant as a credit against any obligations of Tenant under the Lease.

(f) **Disbursement of the Allowance**. Provided Tenant is not in default following the giving of notice and passage of any applicable cure period under the Lease or this Work Letter, Landlord shall disburse the Allowance to Tenant to reimburse Tenant for the actual construction costs which Tenant incurs in connection with the construction of the Tenant Improvements in accordance with the following:

(i) Ninety percent (90%) of the Allowance shall be disbursed to Tenant no more frequently than monthly during the course of construction of the Work (i.e., corresponding to, and consistent with, an industry standard 10% retention in connection with progress payments to general contractors);

(ii) The final ten percent (10%) of the Allowance (i.e., the final retention) shall be disbursed to Tenant when Landlord shall have received "Evidence of Completion and Payment" as to one hundred percent (100%) of Tenant's Work having been completed and paid for by Tenant as described hereinbelow and satisfaction of the items described in subparagraph (iii) below;

(iii) As to each phase of completion of Tenant's Work described in subparagraphs (i) through (ii) above, the appropriate portion of the Allowance shall be disbursed to Tenant only when Landlord has received the following **"Evidence of Completion and Payment"**:

(A) Tenant has delivered to Landlord a draw request (**"Draw Request"**) in a form reasonably satisfactory to Landlord and Landlord's lender with respect to the Improvements specifying that the requisite portion of Tenant's Work has been completed, together with invoices, receipts and bills evidencing the costs and expenses set forth in such Draw Request and evidence of payment by Tenant for all costs which are payable in connection with such Tenant's Work covered by the Draw Request. As between Landlord and Tenant, the Draw Request shall be deemed to constitute Tenant's agreement that the Tenant's Work identified therein has been completed in a good and workmanlike manner and in accordance with the Final Plans and the Work Schedule and has been paid for;

(B) The architect for the Tenant Improvements has certified to Landlord that the Tenant Improvements have been completed to the level indicated in the Draw Request in accordance with the Final Plans;

(C) Tenant has delivered to Landlord such other evidence of Tenant's payment of the general contractor and subcontractors for the portions of Tenant's Work covered by the Draw Request and the absence of any liens generated by such portions of the Tenant's Work as may be reasonably required by Landlord (i.e., unconditional lien releases in accordance with California Civil Code Sections 8120 through 8138 or release bond(s) in accordance with California Civil Code Sections 8424 and 8534);

(D) Landlord or Landlord's architect or construction representative has inspected the Tenant Improvements and determined that the portion of Tenant's Work covered by the Draw Request has been completed in a good and workmanlike manner;

(vi) The final disbursement of the balance of the Allowance shall be disbursed to Tenant only when Landlord has received Evidence of Completion and Payment as to all of Tenant's Work as provided hereinabove and the following conditions have been satisfied:

(A) Intentionally omitted;

(B) A certificate of occupancy, temporary certificate of occupancy, or legal equivalent for the Tenant Improvements and the Premises has been issued by the appropriate governmental body;

(C) Tenant has delivered to Landlord: (i) properly executed mechanics lien releases from all of Tenant's contractors, agents and suppliers in compliance with both California Civil Code Sections 8120 through 8138, which lien releases shall be conditional with respect to the then-requested payment amounts and unconditional with respect to payment amounts previously disbursed by Landlord; (ii) an application and certificate for payment (AIA form G702-1992 or equivalent) signed by Tenant's architect/space planner; (iii) original stamped building permit plans; (iv) copy of the building permit; (v) original stamped building permit inspection card with all final sign-offs;
(vi) a reproducible copy (in a form approved by Landlord) of the "as-built" drawings of the Tenant Improvements;
(vii) air balance reports; (viii) excess energy use calculations; (ix) one year warranty letters from Tenant's contractors; (x) manufacturer's warranties and operating instructions; (xi) final punch list completed and signed off by Tenant's architect/space planner; and (xii) an acceptance of the Premises signed by Tenant;

(D) Landlord has determined that no 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, or any other tenant's use of such other tenant's leased premises in the Building.
Notwithstanding anything to the contrary contained hereinabove, until the full amount of the Construction Administration Fee is paid to Landlord, all disbursements of the Allowance shall be subject to the prior deduction of the portion of the Construction Administration Fee allocable to the Tenant Improvements described in the applicable Draw Request.

(g) **Books and Records.** At its option, Landlord, at any time within six (6) months after final disbursement of the Allowance to Tenant, and upon at least ten (10) days prior written notice to Tenant, may cause an audit to be made of Tenant's books and records relating to Tenant's expenditures in connection with the construction of the Tenant Improvements. Tenant shall maintain complete and accurate books and records in accordance with generally accepted accounting principles of these expenditures for at least one (1) year. Tenant shall make available to Landlord's auditor at the Premises within ten (10) business days following Landlord's notice requiring the audit, all books and records maintained by Tenant pertaining to the construction and completion of the Tenant Improvements. In addition to all other remedies which Landlord may have pursuant to the Lease, Landlord may recover from Tenant the reasonable cost of its audit if the audit discloses that Tenant falsely reported to Landlord expenditures which were not in fact made or falsely reported a material amount of any expenditure or the aggregate expenditures. Landlord shall execute a commercially reasonable confidentiality agreement in connection with such audit.

6. **CONSTRUCTION OF TENANT IMPROVEMENTS.** Following Landlord's approval of the Final Plans and the Work Cost Statement described in Section 4(f) above, Tenant's contractor (selected as provided in Section 8(n)) will commence and diligently proceed with the construction of the Tenant Improvements. Tenant shall use diligent efforts to cause its contractor to complete the Tenant Improvements in a good and workmanlike manner in accordance with the Final Plans and the Work Schedule. Tenant agrees to use diligent efforts to cause construction of the Tenant Improvements to commence promptly following the issuance of a building permit for the Tenant Improvements. Landlord shall have the right to enter upon the Premises to inspect Tenant's construction activities following reasonable advance notice Tenant.

7. **DELIVERY OF POSSESSION; SUBSTANTIAL COMPLETION**

(a) **Delivery of Possession.** Landlord shall deliver the Premises to Tenant in vacant, broom-clean condition and free of debris. Landlord agrees to use its commercially reasonable efforts to deliver possession of the Premises to Tenant on the date the Lease is fully executed. Tenant agrees that if Landlord is unable to deliver possession of the Premises to Tenant on or prior to such date, the Lease will not be void or voidable, nor will Landlord be liable to Tenant for any loss or damage resulting therefrom. The actual date upon which Landlord turns over possession of the Premises to Tenant is the "Turnover Date."

(b) **Substantial Completion; Punch-List.** The Tenant Improvements will be deemed to be "substantially completed" when Tenant's contractor certifies in writing to Landlord and Tenant that Tenant has substantially performed all of the Tenant Improvement Work required to be performed by Tenant under this Work Letter, other than decoration and minor "punch-list" type items and adjustments which do not materially interfere with Tenant's use of the Premises; and Tenant has obtained a temporary certificate of occupancy or other required equivalent approval from the local governmental authority permitting occupancy of the Premises. Within ten (10) days after receipt of such certificates, Tenant and Landlord will conduct a walk-through inspection of the Premises and Landlord shall provide to Tenant a written punch-list specifying those decoration and other punch-list items which require completion, which items Tenant will thereafter diligently complete.

8. **MISCELLANEOUS CONSTRUCTION COVENANTS**

(a) **No Liens.** Tenant shall not allow the Tenant Improvements or the Building or any portion thereof to be subjected to any mechanic's, materialmen's or other liens or encumbrances arising out of the construction of the Tenant Improvements.

(b) **Diligent Construction.** Tenant will promptly, diligently and continuously pursue construction of the Tenant Improvements to successful completion in full compliance with the Final Plans, the Work Schedule and this Work Letter. Landlord and Tenant shall cooperate with one another during the performance of Tenant's Work to effectuate such work in a timely and compatible manner.

(c) **Compliance with Laws.** Tenant will construct the Tenant Improvements in a safe and lawful manner. Tenant shall, at its sole cost and expense, comply with all applicable laws and all regulations and requirements of, and all licenses and permits issued by, all municipal or other governmental bodies with jurisdiction which pertain to the installation of the Tenant Improvements. Copies of all filed documents and all permits and licenses shall be provided to Landlord. Any portion of the Tenant Improvements which is not acceptable to any applicable governmental body, agency or department, or not reasonably satisfactory to Landlord, shall be promptly repaired or replaced by Tenant at Tenant's expense. Notwithstanding any failure by Landlord to object to any such Tenant Improvements, Landlord shall have no responsibility therefor.

(d) **Indemnification.** Subject to the terms of the Lease regarding insurance and waiver of subrogation by the parties, Tenant hereby indemnifies and agrees to defend and hold Landlord, the Premises and the Building harmless from and against any and all suits, claims, actions, losses, costs or expenses of any nature whatsoever, together with reasonable attorneys' fees for counsel of Landlord's choice, arising out of or in connection with the Tenant Improvements or the performance of Tenant's Work (including, but not limited to, claims for breach of warranty, worker's compensation, personal injury or property damage, and any materialmen's and mechanic's liens).

(e) **Insurance.** Construction of the Tenant Improvements shall not proceed without Tenant first acquiring workers' compensation and commercial general liability insurance and property damage insurance as well as "All
Risks" builders' risk insurance, with minimum coverage of $2,000,000 or such other amount as may be approved by Landlord in writing and issued by an insurance company reasonably satisfactory to Landlord. Before commencing the construction of the Tenant Improvements, certificates of such insurance shall be furnished to Landlord for Landlord's approval. All such policies shall provide that thirty (30) days prior notice must be given to Landlord before modification, termination or cancellation. All insurance policies maintained by Tenant pursuant to this Work Letter shall name Landlord and any lender with an interest in the Premises as additional insureds and comply with all of the applicable terms and provisions of the Lease relating to insurance. Tenant's contractor shall be required to maintain the same insurance policies as Tenant, and such policies shall name Tenant, Landlord and any lender with an interest in the Premises as additional insureds.

(f) **Construction Defects.** Landlord shall have no responsibility for the Tenant Improvements and Tenant will remedy, at Tenant's own expense, and be responsible for any and all defects in the Tenant Improvements that may appear during or after the completion thereof whether the same shall affect the Tenant Improvements in particular or any parts of the Premises in general. Tenant shall indemnify, hold harmless and reimburse Landlord for any costs or expenses incurred by Landlord by reason of any defect in any portion of the Tenant Improvements constructed by Tenant or Tenant's contractor or subcontractors, or by reason of inadequate cleanup following completion of the Tenant Improvements.

(g) **Additional Services.** If the construction of the Tenant Improvements shall require that additional services or facilities (including, but not limited to, hoisting, cleanup or other cleaning services, trash removal, field supervision, or ordering of materials) be provided by Landlord, then Tenant shall pay Landlord for such items at Landlord's cost or at a reasonable charge if the item involves time of Landlord's personnel only. Notwithstanding anything to the contrary herein, electrical power, utilities, parking, elevator and heating, ventilation and air conditioning shall be available to Tenant during normal business hours for construction and move-in purposes at no charge to Tenant.

(h) **Coordination of Labor.** All of Tenant's contractors, subcontractors, employees, servants and agents must work in harmony with and shall not interfere with any labor employed by Landlord, or Landlord's contractors or by any other tenant or its contractors with respect to the any portion of the Property. Notwithstanding anything to the contrary herein, nothing in this Work Letter shall, however, require Tenant to use union labor.

(i) **Work in Adjacent Areas.** Any work to be performed in areas adjacent to the Premises shall be performed only after obtaining Landlord's express written permission, which shall not be unreasonably withheld, conditioned or delayed.

(j) **HVAC Systems.** Tenant agrees to be entirely responsible for the maintenance or the balancing of any heating, ventilating or air conditioning system installed by Tenant and/or maintenance of the electrical or plumbing work installed by Tenant and/or for maintenance of lighting fixtures, partitions, doors, hardware or any other installations made by Tenant.

(k) **Coordination with Lease.** Nothing herein contained shall be construed as (i) constituting Tenant as Landlord's agent for any purpose whatsoever, or (ii) a waiver by Landlord or Tenant of any of the terms or provisions of the Lease. Any default by Tenant following the giving of notice and the passage of any applicable cure period with respect to any portion of this Work Letter shall be deemed a breach of the Lease for which Landlord shall have all the rights and remedies as in the case of a breach of said Lease.

(l) **Approval of Plans.** Landlord will not check Tenant drawings for building code compliance. Approval of the Final Plans by Landlord is not a representation that the drawings are in compliance with the requirements of governing authorities, and it shall be Tenant's responsibility to meet and comply with all federal, state, and local code requirements. Approval of the Final Plans does not constitute assumption of responsibility by Landlord or its architect for their accuracy, sufficiency or efficiency, and Tenant shall be solely responsible for such matters. Where no time period is specified herein, Landlord shall respond to any consent or approval request within five (5) business days and Landlord's failure to provide or reasonably refuse its consent within two (2) business days of a second written request (delivered after the expiration of the initial five (5) business day notice) shall be deemed Landlord's consent or approval to the request.

(m) **Tenant's Deliveries.** Tenant shall deliver to Landlord, at least five (5) days prior to the commencement of construction of Tenant's Work, the following information:

(i) The names, addresses, telephone numbers, and primary contacts for the general, mechanical and electrical contractors Tenant intends to engage in the performance of Tenant's Work; and

(ii) The date on which Tenant's Work will commence, together with the estimated dates of completion of Tenant's construction and fixturing work.

(n) **Qualification of Contractors.** Once the Final Plans have been proposed and approved, Tenant shall select and retain a contractor, subcontractors and vendors (such as HVAC engineers), subject to Landlord's approval, which shall not be unreasonably withheld, conditioned or delayed. All contractors, subcontractors and vendors engaged by Tenant shall be bondable and licensed, possessing good labor relations, capable of performing quality workmanship and working in harmony with Landlord's general contractor and other contractors on the job, if any, all as determined by Landlord. All Tenant Improvement Work shall be coordinated with any ongoing general construction work on the Site or in the Building, if any. Landlord hereby approves the following architect, contractor, subcontractors, and vendors: Hendy and KPRS.

(o) **Warranties.** Tenant shall cause its contractor to provide warranties for not less than one (1) year (or such shorter time as may be customary and available without additional expense to Tenant) against defects in workmanship, materials and equipment, which warranties shall run to the benefit of Landlord or shall be assignable to Landlord to the extent that Landlord is obligated to maintain any of the improvements covered by such warranties.

(p) **Landlord's Performance of Work**. Within ten (10) business days after receipt of Landlord's notice of Tenant's failure to perform its obligations under this Work Letter, if Tenant shall fail to commence to cure such failure, Landlord shall have the right, but not the obligation, to perform, on behalf of and for the account of Tenant, subject to reimbursement of the cost thereof by Tenant, any and all of Tenant's Work which Landlord determines, in its reasonable discretion, should be performed immediately and on an emergency basis for the best interest of the Premises including, without limitation, work which pertains to structural components, mechanical, sprinkler and general utility systems, roofing and removal of unduly accumulated construction material and debris; provided, however, Landlord shall give Tenant at least ten (10) business days prior notice to the performance of any of Tenant's Work.

(q) **As-Built Drawings.** Tenant shall cause "As-Built Drawings" (excluding furniture, fixtures and equipment) to be delivered to Landlord and/or Landlord's representative no later than sixty (60) days after the completion of Tenant's Work. In the event these drawings are not received by such date, Landlord may, at its election, cause said drawings to be obtained and Tenant shall pay to Landlord, as additional rent, the cost of producing these drawings.

9. **TEST FIT ALLOWANCE.** In addition to the Allowance, Landlord shall provide a test-fit allowance, in an amount not to exceed $0.15 per rentable square foot of the Premises (i.e., up to $10,339.95, based on the Premises containing approximately 68,933 rentable square feet), to reimburse Tenant for preparation of the initial preliminary space plan for the layout of the Premises. Landlord shall disburse the test-fit allowance to Tenant within thirty (30) days following Tenant's demand therefor, accompanied by a written invoice documenting Tenant's out of pocket test- fit costs that have been incurred and paid by Tenant.

10. **LANDLORD CAUSED DELAY**

(a) **Landlord Caused Delays.** The Commencement Date shall occur as provided in Section 1.6 of the Summary, provided that the Commencement Date shall be extended by the number of days of delay of the substantial completion of the Tenant Improvements in the Premises or Tenant's occupancy of the Premises and commencement of operations to the extent caused by a "Landlord Caused Delay," as that term is defined, below, but only to the extent such Landlord Caused Delay causes the substantial completion of the Tenant Improvements to occur after the initially scheduled Commencement Date. As used in this Work Letter, **"Landlord Caused Delay"** shall mean actual delays to the extent resulting from (i) the failure of Landlord to timely approve or disapprove the Space Plans, Final Plans or Work Cost Estimate; (ii) material and unreasonable (when judged in accordance with industry custom and practice) interference by Landlord, its agents or Landlord Parties (except as otherwise allowed under this Work Letter) with the substantial completion of the Tenant Improvements and which objectively preclude or delay 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 (including loading docks and freight elevators) or service (including temporary power and parking areas as provided herein) during normal construction hours, or the use thereof during normal construction hours; and (iii) delays due to the acts or failures to act of Landlord with respect to payment of the Tenant Improvements (except as otherwise allowed under this Work Letter).

(b) **Determination of Landlord Caused Delay.** If Tenant contends that a Landlord Caused Delay has occurred, Tenant shall notify Landlord in writing within three (3) business days of each of (i) the event which constitutes such Landlord Caused Delay and (ii) the date upon which such Landlord Caused Delay ends. Tenant's failure to deliver either or both of such notices to Landlord within the required time period shall be deemed a waiver by Tenant of the contended Landlord Caused Delay.

If such action, inaction or circumstance described in the notice set forth in (i) above of this Section 10(b) of this Work Letter (the **"Delay Notice"**) are not cured by Landlord within one (1) business days of Landlord's receipt of the Delay Notice (**"Landlord's Cure Period"**), then a Landlord Caused Delay shall be deemed to have occurred commencing as of the day such Landlord Caused Delay commenced and ending as of the date such delay ends.

11. **REMOVAL.** All removal requirements for the Tenant Improvements are set forth in Section 13.2 of the Lease.

12. **COVID DELAY.** Notwithstanding anything to the contrary in this Work Letter or the Lease, if a statute, law, regulation, declaration of emergency or other decree or order is issued by a federal, California state or local governmental agency with jurisdiction over the Premises relating to the ongoing COVID-19 pandemic or a similar emergency related to infectious disease (collectively, a **"Government Order"**) and such Governmental Order results in a delay in the substantial completion of the Tenant Improvements (including, without limitation, delays in materials and labor resulting from the implementation of any Governmental Order or Voluntary Measure), then, provided that Tenant has applied commercial reasonably efforts in good faith to expeditiously complete the Tenant Improvements notwithstanding such Government Order, the date Tenant is otherwise obligated to pay Rent under the Lease shall be delayed one day for reach day of such interference or delay; provided, however, any such delay due to Government Order shall be offset by any days of Tenant Delays.

Schedule 1

Approved Space Plan

Schedule 2

Landlord’s Work

EXHTBTT D

NOTICE OF LEASE TERM DATES

Date:_____,_____

To: _____

Re: [Lease (describe lease title)_____] dated _____,_____ ("Lease") by and between _____, a _____ ("Landlord"), and _____, a _____ ("Tenant"), for the premises commonly known as _____ ("Premises").

Dear:_____:

In accordance with the above-referenced Lease, we wish to advise and/or confirm as follows:

- That Tenant has accepted and is in possession of the Premises and acknowledges the following:
  - Term of the Lease:
  - Commencement Date:
  - Expiration Date:
  - Rentable Square Feet:
  - Tenant's Percentage of Building:

- That in accordance with the Lease, rental payments have commenced on _____ and rent is payable in accordance with the following schedule:

  Months Monthly Base Rent

- Rent is due and payable in advance on the first day of each and every month during the Term of the Lease.

Your rent checks should be made payable to: _____

ACCEPTED AND AGREED

TENANT:	LANDLORD:
By: _____	By: _____
Print Name: _____	
Its: _____	Print Name: _____
	Its: _____

EXHIBIT E

RULES AND REGULATIONS

1. Tenant agrees that it shall comply with all fire and security regulations that may be issued from time to time by Landlord, and Tenant also shall provide Landlord with the name of a designated responsible employee to represent Tenant in all matters pertaining to such fire or security regulations. Tenant shall cooperate fully with Landlord in all matters concerning fire and other emergency procedures.

2. Tenant assumes any and all responsibility for protecting its Premises from theft, robbery and pilferage. Such responsibility shall include keeping doors locked and other means of entry to the Premises closed.

3. Tenant shall not lay linoleum, tile, carpet or other similar floor covering so that the same shall be affixed to the floor of the Premises in any manner except by a paste, or other material which may easily be removed with water, the use of cement or other similar adhesive materials being expressly prohibited. The method of affixing any such linoleum, tile, carpet or other similar floor covering shall be subject to the approval of Landlord. The expense of repairing any damage resulting from a violation of this rule shall be borne by Tenant.

4. Tenant shall not without Landlord's consent, which may be given or withheld in Landlord's sole and absolute discretion, receive, store, discharge, or transport firearms, ammunition, or weapons or explosives of any kind or nature at, on or from the Premises.

5. No vehicle or equipment of any kind shall be dismantled, repaired or serviced on the Common Area.

6. Signs will conform to sign standards and criteria established from time to time by Landlord. No other signs, placards, pictures, advertisements, names or notices shall be inscribed, displayed or printed or affixed on or to any part of the outside or inside of the building without the written consent of Landlord and Landlord shall have the right to remove any such non-conforming signs, placards, pictures, advertisements, names or notices without notice to and at the expense of Tenant.

7. No antenna, aerial, discs, dishes or other such device shall be erected on the roof or exterior walls of the Premises, or on the grounds, without the written consent of the Landlord in each instance. Any device so installed without such written consent shall be subject to removal without notice at any time.

8. No loud speakers, televisions, phonographs, radios or other devices shall be used in a manner so as to be heard or seen outside of the Premises without the prior written consent of the Landlord.

9. Tenant shall not place or permit any obstruction or materials in the outside areas immediately adjoining the Premises or permit any work to be performed outside the Premises, other than as provided in the Lease.

10. No open storage shall be permitted in the Property.

11. All garbage and refuse shall be placed in containers placed at the location designated for refuse collection, in the manner specified by Landlord.

12. No vending machine or machines of any description shall be installed, maintained or operated upon the Common Area except for the use of Tenant's employees.

13. Tenant shall not disturb, solicit, or canvass any occupant of the building and shall cooperate to prevent same.

14. No noxious or offensive trade or activity shall be carried on upon any units or any part of the Common Area nor shall anything be done thereon which would in any way interfere with the quiet enjoyment of each of the other tenants of the Project.

15. Landlord reserves the right to make such amendments to these rules and regulations from time to time as are reasonable and nondiscriminatory and not inconsistent with the Lease.

PARKING RULES AND REGULATIONS

In addition to any parking provisions contained in the Lease, the following rules and regulations shall apply with respect to the use of the Property's parking facilities.

1. Every parker is required to park and lock his/her own vehicle. All responsibility for damage to or loss of vehicles is assumed by the parker and Landlord shall not be responsible for any such damage or loss by water, fire, defective brakes, the act or omissions of others, theft, or for any other cause.

2. Tenant shall not park or permit its employees to park in any parking areas designated by Landlord as areas for parking by visitors to the Property. Except as otherwise expressly provided in the Lease, Tenant shall not leave vehicles in the parking areas overnight nor park any vehicles in the parking areas other than automobiles, motorcycles, motor driven or non-motor driven bicycles or four wheeled trucks.

3. Except as otherwise expressly provided in the Lease, no extended term storage of vehicles shall be permitted.

4. All directional signs and arrows must be observed.

5. The speed limit within all parking areas shall be five (5) miles per hour.

6. Parking is prohibited: (a) in areas not striped for parking; (b) in aisles; (c) where "no parking" signs are posted; (d) on ramps; (e) in cross-hatched areas; and (f) in reserved spaces and in such other areas as may be designated by Landlord.

7. Washing, waxing, cleaning or servicing of any vehicle in any area not specifically reserved for such purpose is prohibited.

8. Landlord reserves the right to modify and/or adopt such other reasonable and non-discriminatory rules and regulations for the parking facilities as it deems necessary for the operation of the parking areas. Landlord may refuse to permit any person who violates these rules to park at the Property, and any violation of the rules shall subject the vehicle to removal, at such vehicle owner's expense.

9. Tenant's parking spaces shall be used only for parking by vehicles no larger than normally sized passenger automobiles, vans and sport utility vehicles. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant's employees, suppliers, shippers, customers or invitees to be loaded, unloaded, or parked in areas other than those designated by Landlord for such activities. If Tenant permits or allows any of the prohibited activities described herein, then Landlord shall have the right, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost thereof to Tenant, which cost shall be payable by Tenant upon demand by Landlord.

In the event of a conflict between the terms of this Exhibit E and the other terms of the Lease, Summary, Work Letter or other Exhibits or Riders hereto, the terms of the Lease, Summary, Work Letter or other Exhibits or Riders shall control.

EXHIBIT F

ESTOPPEL CERTIFICATE

The undersigned (**"Tenant"**) hereby certifies to _____(**"Landlord"**), and _____, as follows:

1. Attached hereto is a true, correct and complete copy of that certain Lease dated _____, between Landlord and Tenant (the**"Lease"**), for the premises commonly known as _____(the **"Premises")**. The Lease is now in full force and effect and has not been amended, modified or supplemented, except as set forth in Section 6 below.

2. The term of the Lease commenced on _____,___.

3. The term of the Lease is currently scheduled to expire on_____,___.

4. Tenant has no option to renew or extend the Term of the Lease except: _____.

5. Tenant has no preferential right to purchase the Premises or any portion of the Building/Premises except: _____.

6. The Lease has: (Initial One)

( ) not been amended, modified, supplemented, extended, renewed or assigned.

( ) been amended, modified, supplemented, extended, renewed or assigned by the following described agreements, copies of which are attached hereto: _____.

7. Tenant has accepted and is now in possession of the Premises and has not sublet, assigned or encumbered the Lease, the Premises or any portion thereof except as follows: _____.

8. The current Base Rent is $_____; and current monthly parking charges are $_____.

9. The amount of security deposit (if any) is $_____. No other security deposits have been made.

10. All rental payments payable by Tenant have been paid in full as of the date hereof. No rent under the Lease has been paid for more than thirty (30) days in advance of its due date.

11. All work required to be performed by Landlord under the Lease has been completed and has been accepted by Tenant, and all tenant improvement allowances have been paid in full except _____.

12. As of the date hereof, Tenant has no actual knowledge of any defaults on the part of Landlord under the Lease except _____.

13. As of the date hereof, to Tenant's actual knowledge, there are no defaults on the part of Tenant under the Lease.

14. As of the date hereof, to Tenant's actual knowledge, Tenant has no defense as to its obligations under the Lease and claims no set-off or counterclaim against Landlord.

15. Tenant has no right to any concession (rental or otherwise) or similar compensation in connection with renting the space it occupies, except as expressly provided in the Lease.

16. To Tenant's actual knowledge, all insurance required of Tenant under the Lease has been provided by Tenant and all premiums have been paid.

17. There has not been filed by or, to Tenant's actual knowledge, against Tenant a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws of the United States or any state thereof, or any other action brought pursuant to such bankruptcy laws with respect to Tenant.

18. Tenant pays rent due Landlord under the Lease to Landlord and does not have any knowledge of any other person who has any right to such rents by collateral assignment or otherwise.

The foregoing certification is made with the knowledge that _____ is about to [fund a loan to Landlord or purchase the Building from Landlord], and that _____ is relying upon the representations herein made in [funding such loan or purchasing the Building].

Dated: _____,_____.

"TENANT" _____

By: _____
Print Name: _____
Its: _____

RIDER NO.1 TO LEASE

EXTENSION OPTION

This Rider No. 1 is made and entered into by and between KATELLA/HOLDER STREET, LLC, a Delaware limited liability company (**"Landlord"**), and IRHYTHM TECHNOLOGIES, INC., a Delaware corporation (**"Tenant"**), as of the day and year of the Lease between Landlord and Tenant to which this Rider is attached. Landlord and Tenant hereby agree that, notwithstanding anything contained in the Lease to the contrary, the provisions set forth below shall be deemed to be part of the Lease and shall supersede any inconsistent provisions of the Lease. All references in the Lease and in this Rider to the "Lease" shall be construed to mean the Lease (and all Exhibits and Riders attached thereto), as amended and supplemented by this Rider. All capitalized terms not defined in this Rider shall have the same meaning as set forth in the Lease.

1. Subject to Rider No. 5 entitled, "Options in General", Landlord hereby grants to Tenant one (1) option (the **"Extension Option"**) to extend the Term of the Lease for one (1) additional period of five (5) years (the **"Option Term"**), on the same terms, covenants and conditions as provided for in the Lease during the initial Term, except for the Monthly Base Rent, which shall initially be equal to the "fair market rental rate" for the Premises for the Option Term as defined and determined in accordance with the provisions of the Fair Market Rental Rate Rider attached to the Lease as Rider No. 2, subject to fair market annual rent adjustments during the Option Term.

2. The Extension Option must be exercised, if at all, by written notice (**"Extension Notice"**) delivered by Tenant to Landlord no sooner than that date which is fifteen (15) months and no later than that date which is twelve (12) months prior to the expiration of the then current Term of the Lease. Provided Tenant has properly and timely exercised the Extension Option, the then current Term of the Lease shall be extended by the Option Term, and all terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect, except that the Monthly Base Rent shall be as set forth above and except that there shall be no remaining Extension Option.

RIDER NO. 2 TO LEASE

FAIR MARKET RENTAL RATE

This Rider No. 2 is made and entered into by and between KATELLA/HOLDER STREET, LLC, a Delaware limited liability company (**"Landlord"**), and IRHYTHM TECHNOLOGIES, INC., a Delaware corporation (**"Tenant"**), as of the day and year of the Lease between Landlord and Tenant to which this Rider is attached. Landlord and Tenant hereby agree that, notwithstanding anything contained in the Lease to the contrary, the provisions set forth below shall be deemed to be part of the Lease and shall supersede any inconsistent provisions of the Lease. All references in the Lease and in this Rider to the "Lease" shall be construed to mean the Lease (and all Exhibits and Riders attached thereto), as amended and supplemented by this Rider. All capitalized terms not defined in this Rider shall have the same meaning as set forth in the Lease.

1. The term **"fair market rental rate"** as used in this Rider and any Rider attached to the Lease means the annual amount per square foot, projected for each year of the Option Term (including annual adjustments), that a willing, non-equity tenant (excluding sublease and assignment transactions) would pay, and a willing landlord of a comparable quality building located in the Cypress, California area would accept, in an arm's length transaction (what Landlord is accepting in then current transactions for the Building may be used for purposes of projecting rent for the Option Term), for space of comparable size, quality and floor height as the Premises, taking into account the age, quality and layout of the existing improvements in the Premises (but excluding any improvements installed at Tenant's cost), and taking into account items that professional real estate brokers or professional real estate appraisers customarily consider, including, but not limited to, rental rates, space availability, tenant size, tenant improvement allowances, parking charges and any other lease considerations, if any, then being charged or granted by Landlord or the lessors of such similar buildings. All economic terms other than Monthly Base Rent, such as tenant improvement allowance amounts, if any, operating expense allowances, parking charges, etc., will be factored into the determination of the fair market rental rate for the Option Term. Accordingly, the fair market rental rate will be an effective rate, not specifically including, but accounting for, the appropriate economic considerations described above.

2. Landlord shall provide written notice of Landlord's determination of the fair market rental rate not later than sixty (60) days after the last day upon which Tenant may timely exercise the right giving rise to the necessity for such fair market rental rate determination. Tenant shall have thirty (30) days (**"Tenant's Review Period"**) after receipt of Landlord's notice of the fair market rental rate within which to accept such fair market rental rate or to reasonably object thereto in writing. Failure of Tenant to so object to the fair market rental rate submitted by Landlord in writing within Tenant's Review Period shall conclusively be deemed Tenant's disapproval and rejection thereof. If within Tenant's Review Period Tenant reasonably objects to or is deemed to have disapproved the fair market rental rate submitted by Landlord, Landlord and Tenant will meet together with their respective real estate brokers and legal counsel to present and discuss their individual determinations of the fair market rental rate for the Premises under the parameters set forth in Paragraph 1 above and shall diligently and in good faith attempt to negotiate a rental rate on the basis of such individual determinations. Such meeting shall occur no later than ten (10) days after the expiration of Tenant's Review Period. The parties shall each provide the other with such supporting information and documentation as they deem appropriate. At such meeting if Landlord and Tenant are unable to agree upon the fair market rental rate, they shall each submit to the other their respective best and final offer as to the fair market rental rate. If Landlord and Tenant fail to reach agreement on such fair market rental rate within five (5) business days following such a meeting (the **"Outside Agreement Date"**), then Landlord and Tenant shall submit each party's determination to appraisal in accordance with the provisions of Section 3 below.

3. (a) Landlord and Tenant shall each appoint one (1) independent appraiser who shall by profession be an M.A.I. certified real estate appraiser who shall have been active over the five (5) year period ending on the date of such appointment in the leasing of commercial (including office) properties in the Cypress, California area. The determination of the appraisers shall be limited solely to the issue of whether Landlord's or Tenant's last proposed (as of the Outside Agreement Date) best and final fair market rental rate for the Premises is the closest to the actual fair market rental rate for the Premises as determined by the appraisers, taking into account the requirements specified in Section 1 above. Each such appraiser shall be appointed within ten (10) business days after the Outside Agreement Date.

(b) The two (2) appraisers so appointed shall within ten (10) business days after the date of the appointment of the last appointed appraiser agree upon and appoint a third appraiser who shall be qualified under the same criteria set forth hereinabove for qualification of the initial two (2) appraisers.

(c) The three (3) appraisers shall within ten (10) business days after the appointment of the third appraiser reach a decision as to whether the parties shall use Landlord's or Tenant's submitted best and final fair market rental rate, and shall notify Landlord and Tenant thereof. During such ten (10) business day period, Landlord and Tenant may submit to the appraisers such information and documentation to support their respective positions as they shall deem reasonably relevant and Landlord and Tenant may each appear before the appraisers jointly to question and respond to questions from the appraisers.

(d) The decision of the majority of the three (3) appraisers shall be binding upon Landlord and Tenant and neither party shall have the right to reject the decision or to undo the exercise of the applicable Option. If either Landlord or Tenant fails to appoint an appraiser within the time period specified in Section 3(a) hereinabove, the appraiser appointed by one of them shall within ten (10) business days following the date on which the party failing to appoint an appraiser could have last appointed such appraiser reach a decision based upon the same procedures as set forth above (i.e., by selecting either Landlord's or Tenant's submitted best and final fair market rental rate), and shall notify Landlord and Tenant thereof, and such appraiser's decision shall be binding upon Landlord and Tenant and neither party shall have the right to reject the decision or to undo the exercise of the applicable Option.

(e) If the two (2) appraisers fail to agree upon and appoint a third appraiser, either party, upon ten (10) days written notice to the other party, can apply to the Presiding Judge of the Superior Court of Orange County to appoint a third appraiser meeting the qualifications set forth herein. The third appraiser, however, selected shall be a person who has not previously acted in any capacity for either party.

(f) The cost of each party's appraiser shall be the responsibility of the party selecting such appraiser, and the cost of the third appraiser (or arbitration, if necessary) shall be shared equally by Landlord and Tenant.

(g) If the process described hereinabove has not resulted in a selection of either Landlord's or Tenant's submitted best and final fair market rental rate by the commencement of the applicable Option Term, then, as of the commencement of the Option Term, Tenant shall be required to pay Monthly Base Rent in an amount equal to the Monthly Base Rent in effect at the end of the initial Term, but in no event shall such amount be greater than Landlord's best and final determination of the fair market rental rate submitted to the appraiser and in no event less than Tenant's best and final determination of the fair market rental rate submitted to the appraiser. Upon the final determination of the fair market rental rate, the payments made by Tenant shall be reconciled with the actual amounts of Monthly Base Rent due during the Option Term, and the appropriate party shall make any corresponding payment to the other party within thirty (30) days after the final determination of the fair market rental rate. The parties shall enter into an amendment to this Lease confirming the terms of the decision.

RIDER NO. 3 TO LEASE

EXPANSION OPTION RIDER

This Rider No. 3 is made and entered into by and between KATELLA/HOLDER STREET, LLC, a Delaware limited liability company (**"Landlord"**), and IRHYTHM TECHNOLOGIES, INC., a Delaware corporation (**"Tenant"**), as of the day and year of the Lease between Landlord and Tenant to which this Rider is attached. Landlord and Tenant hereby agree that, notwithstanding anything contained in the Lease to the contrary, the provisions set forth below shall be deemed to be part of the Lease and shall supersede any inconsistent provisions of the Lease. All references in the Lease and in this Rider to the "Lease" shall be construed to mean the Lease (and all exhibits and Riders attached thereto), as amended and supplemented by this Rider. All capitalized terms not defined in this Rider shall have the same meaning as set forth in the Lease.

1. Subject to the terms and conditions of this Rider No. 3 and Rider No. 5, entitled "Options in General", Landlord hereby grants to Tenant the one-time option to expand (**"Expansion Option"**) into that certain office space within the Building located contiguous to the Premises consisting of approximately 25,000 rentable square feet, as depicted in Schedule 1 to Rider No. 3 attached hereto (the **"Expansion Space"**), which Expansion Option must be exercised on or before the date Landlord enters into a lease with a third-party following the Effective Date. For the avoidance of doubt, if Tenant does not deliver to Landlord the Expansion Notice following the Effective Date, and Landlord leases the Expansion Space to a third party following the Effective Date and prior to Tenant's delivery to Landlord of the Expansion Notice, then the Expansion Option shall terminate, and Tenant shall have no right to lease the Expansion Space in accordance with this Rider No. 3. Tenant must exercise its Expansion Option by providing Landlord with written notice of its election to exercise the Expansion Option ("**Expansion Notice"**) at any time within the initial Term (the **"Option Exercise Period"**). The Term as to the Expansion Space shall be coterminous with the Term with respect to the original Premises as the same may be extended pursuant to Tenant's Extension Option. If Tenant exercises its Expansion Option within the Option Exercise Period, then commencing upon delivery of the Expansion Space to Tenant in the required condition (the **"Expansion Space Commencement Date**"), the Monthly Base Rent for the Expansion Space shall be adjusted to the "fair market rental rate" as defined and determined in accordance with the provisions of the Fair Market Rental Rate Rider attached to the Lease as Rider No. 2, subject to fair market annual rent adjustments during the Term; provided, that, Landlord shall provide written notice of Landlord's initial determination of the fair market rental rate not later than ten (10) business days after Landlord's receipt of the Expansion Notice. If Tenant exercises its Expansion Option within the Option Exercise Period, Landlord shall deliver the Expansion Space to Tenant in vacant, broom clean condition, with all Building Systems in good working order, and in compliance with all Laws to the extent such compliance is required in order to allow Tenant to obtain a demolition or construction permit or other governmental approvals for the construction of the Tenant Improvements.

2. Subject to the foregoing provisions of this Rider No. 3, Tenant's lease of the Expansion Space will be on the same terms and conditions as affect the original Premises; provided, however, effective upon the Expansion Space Commencement Date: (i) Tenant's Percentage will be increased to take into account the additional square footage of the Expansion Space within the Building and all figures in this Lease affected by the addition of the square footage of the Expansion Space to the Premises will be adjusted accordingly; (ii) Tenant will not be entitled to any economic concessions applicable to the original Premises pursuant to the provisions of this Lease; (iii) Tenant shall deposit an additional deposit in an amount reasonably determined by Landlord based on Tenant's financial condition at the time it exercises the Expansion Notice, in an amount not to exceed an amount that is proportionate to the Security Deposit for the original Premises; (iv) the improvement of the Expansion Space will be subject to the provisions of Paragraph 3 below; and (v) Tenant will be entitled to a pro rata increase to the number of parking spaces allocated to Tenant under the Lease.

3. Within ten (10) days following Tenant's delivery of the Expansion Notice to Landlord, the parties will execute an amendment to the Lease in order to include the Expansion Space as part of the Premises and to document the terms of Tenant's lease thereof. Except as otherwise set forth herein, the Expansion Space will be delivered to Tenant and Tenant shall accept the Expansion Space from Landlord in its "AS IS" condition.

4. Any termination of the Lease shall terminate all rights of Tenant with respect to the Expansion Space. The Expansion Option shall not be severable from the Lease, nor may the Expansion Option be assigned or otherwise conveyed in connection with any permitted assignment of the Lease other than to a Permitted Transferee. Landlord's consent to any assignment of the Lease shall not be construed as allowing an assignment or a conveyance of the Expansion Option to any assignee.

5. Tenant shall have no right to exercise the Expansion Option, notwithstanding any provision hereof to the contrary, (a) during the time commencing from the date Landlord gives to Tenant a notice of default pursuant to Article 22 of this Lease and continuing until the noncompliance alleged in said notice of default is cured, or (b) during the period of time commencing on the day after a monetary obligation to Landlord is due from Tenant and unpaid (without any necessity for notice thereof to Tenant) and continuing until the obligation is paid, or (c) if Landlord has given to Tenant three or more notices of default under Article 22 of this Lease that remain uncured beyond applicable notice and cure periods, (d) if Tenant has committed any non-curable breach, or is otherwise in default of any of the terms, covenants or conditions of this Lease, or (e) if Tenant fails to timely exercise its Expansion Option within the Option Exercise Period. The provisions of this Paragraph 5 shall also apply to a Permitted Transferee.

SCHEDULE 1 TO RIDER NO. 3

EXPANSION SPACE

RIDER NO. 4 TO LEASE

TERMINATION OPTION RIDER

This Rider No. 4 is made and entered into by and between KATELLA/HOLDER STREET, LLC, a Delaware limited liability company (**"Landlord"**), and IRHYTHM TECHNOLOGIES, INC., a Delaware corporation (**"Tenant"**), as of the day and year of the Lease between Landlord and Tenant to which this Rider is attached. Landlord and Tenant hereby agree that, notwithstanding anything contained in the Lease to the contrary, the provisions set forth below shall be deemed to be part of the Lease and shall supersede any inconsistent provisions of the Lease. All references in the Lease and in this Rider to the "Lease" shall be construed to mean the Lease (and all exhibits and Riders attached thereto), as amended and supplemented by this Rider. All capitalized terms not defined in this Rider shall have the same meaning as set forth in the Lease.

1. Subject to the terms of this Rider No. 4 and Rider No. 5, entitled "Options In General", and notwithstanding anything to the contrary contained in the Lease, Tenant will have the one-time option to terminate and cancel the Lease (**"Termination Option"**), effective as of 11:59 p.m. on the last day of the ninetieth (90^{th}) full calendar month of the initial Term (**"Termination Date"**), by delivering to Landlord, on or before the date which is nine (9) months prior to the Termination Date, written notice of Tenant's exercise of its Termination Option. As a condition to the effectiveness of Tenant's exercise of its Termination Option and in addition to Tenant's obligation to satisfy all other monetary and non-monetary obligations arising under this Lease through to the Termination Date, Tenant shall pay to Landlord the following "Termination Consideration": (a) the then unamortized value of the following (amortized over the initial Term together with interest at the rate of eight percent (8%) per annum): (i) the portion of the Allowance calculated based on the rentable area of the Premises, exclusive of $675,000 (i.e., $2,678,875.00 of the Allowance), (ii) the Abated Amount set forth in Section 1.8 of the Lease, and (iii) brokerage commissions paid by Landlord in connection with the execution of this Lease attributable to the portion of the Term remaining following the Termination Date; plus (b) $540,956.65. The Termination Consideration shall be due and payable by Tenant to Landlord concurrently with Tenant's delivery of notice to Landlord of the exercise of the Termination Option. If Tenant properly and timely exercises its Termination Option and properly and timely delivers the Termination Consideration to Landlord as set forth above, then the Lease will terminate as of midnight on the Termination Date.

2. Upon determination of the final unamortized value of the Allowance, Abated Amount, and the brokerage commissions, Landlord and Tenant shall enter into an amendment acknowledging the total Termination Consideration.

RIDER NO. 5 TO LEASE

OPTIONS IN GENERAL

This Rider No. 5 is made and entered into by and between KATELLA/HOLDER STREET, LLC, a Delaware limited liability company (**"Landlord"**), and IRHYTHM TECHNOLOGIES, INC., a Delaware corporation (**"Tenant"**), as of the day and year of the Lease between Landlord and Tenant to which this Rider is attached. Landlord and Tenant hereby agree that, notwithstanding anything contained in the Lease to the contrary, the provisions set forth below shall be deemed to be part of the Lease and shall supersede any inconsistent provisions of the Lease. All references in the Lease and in this Rider to the "Lease" shall be construed to mean the Lease (and all exhibits and Riders attached thereto), as amended and supplemented by this Rider. All capitalized terms not defined in this Rider shall have the same meaning as set forth in the Lease.

1. Definition. As used in this Lease and any Rider or Exhibit attached hereto, the word "Option" has the following meaning:

(i) The Extension Option pursuant to Rider No. 1 herein;

(ii) The Expansion Option pursuant to Rider No. 2 herein; and

(ii) The Termination Option pursuant to Rider No. 3 herein.

2. Options Personal. Each Option granted to Tenant is personal to the original Tenant executing this Lease and any Permitted Transferee and may be exercised only by the original Tenant executing this Lease or such Permitted Transferee while leasing the entire Premises and without having assigned this Lease or sublet any portion of the Premises (other than to a Permitted Transferee), and may not be exercised or be assigned, voluntarily or involuntarily, by any person or entity other than the original Tenant executing this Lease and any Permitted Transferee. The Options, if any, granted to Tenant under this Lease are not assignable separate and apart from this Lease, nor may any Option be separated from this Lease in any manner, either by reservation or otherwise.

3. Effect of Default on Options. Except with respect to the Termination Option, Tenant will have no right to exercise any Option, notwithstanding any provision of the grant of option to the contrary, and Tenant' s exercise of any Option may be nullified by Landlord and deemed of no further force or effect, if Tenant is in Default of any monetary obligation or material non-monetary obligation under the terms of this Lease as of Tenant's exercise of the Option in question or at any time after the exercise of any such Option and prior to the commencement of the Option event, or (ii) Landlord has given Tenant three (3) or more notices of default that remained uncured beyond applicable notice and cure periods during any twelve (12) consecutive month period of this Lease.

4. Options as Economic Terms. Each Option is hereby deemed an economic term which Landlord, in its sole and absolute discretion, may or may not offer in conjunction with any future extensions of the Term.

Exhibit 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
Pursuant to
Securities Exchange Act Rules 13a-14(a) and 15d-14(a),
As Adopted Pursuant to
Section 302 of the Sarbanes-Oxley Act of 2002

I, Michael Coyle, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of iRhythm Technologies, Inc.;

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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a–15(f) and 15d–15(f)) for the registrant and have:

    a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(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.

/s/ Michael Coyle

Michael Coyle
President, Chief Executive Officer and Director
(Principal Executive Officer)

Date: May 10, 2021

Exhibit 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER
Pursuant to
Securities Exchange Act Rules 13a-14(a) and 15d-14(a),
As Adopted Pursuant to
Section 302 of the Sarbanes-Oxley Act of 2002

I, Douglas J. Devine, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of iRhythm Technologies, Inc.;

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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a–15(f) and 15d–15(f)) for the registrant and have:

    a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(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.

/s/ Douglas J. Devine

Douglas J. Devine
Chief Financial Officer
(Principal Financial and Accounting Officer)

Date: May 10, 2021

Exhibit 32.1

CERTIFICATIONS OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of iRhythm Technologies, Inc. (the "Company") on Form 10-Q for the period ended March 31, 2021, as filed with the Securities and Exchange Commission (the "Report"), Michael Coyle, as Chief Executive Officer of the Company, and Douglas J. Devine, as Chief Financial Officer of the Company, each hereby certifies, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. Section 1350), to his knowledge:

1. The Report, fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act of 1934, as amended; and

2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Michael Coyle

Michael Coyle
President, Chief Executive Officer and Director
(Principal Executive Officer)

Date: May 10, 2021

/s/ Douglas J. Devine

Douglas J. Devine
Chief Financial Officer
(Principal Financial and Accounting Officer)

Date: May 10, 2021

This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of iRhythm Technologies, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.