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 June 30, 2017

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.)**
650 Townsend Street, Suite 500, 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 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	☒	(Do not check if a smaller reporting company)	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 July 24, 2017, the number of outstanding shares of the registrant's common stock, par value $0.001 per share, was 22,729,907.

IRHYTHM TECHNOLOGIES, INC.

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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:

- 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 expectations regarding the time during which we will be an emerging growth company under the JOBS Act
- our ability to identify and develop new and planned products and acquire new products
- our financial performance
- 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)

	June 30, 2017	December 31, 2016
Assets		
Current assets:		
Cash and cash equivalents	$ 16,249	$ 51,643
Investments, short-term	93,578	54,407
Accounts receivable, net	10,851	9,406
Inventory	1,231	1,390
Prepaid expenses and other current assets	1,817	1,671
Restricted cash	91	91
Total current assets	123,817	118,608
Investments, long-term	—	10,981
Property and equipment, net	6,166	4,653
Goodwill	862	862
Other assets	3,531	3,052
Total assets	$ 134,376	$ 138,156
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	$ 2,658	$ 2,103
Accrued liabilities	9,985	10,165
Deferred revenue	557	947
Accrued interest, current portion	525	—
Debt, current portion	1,471	—
Total current liabilities	15,196	13,215
Debt	31,614	32,227
Deferred rent, noncurrent portion	140	26
Accrued interest, net of current portion	—	126
Total liabilities	46,950	45,594
Commitments and contingencies (Note 7)		
Stockholders' equity:		
Preferred stock, $0.001 par value – 5,000,000 authorized at June 30, 2017 and December 31, 2016, respectively; and none issued and outstanding at June 30, 2017 and December 31, 2016, respectively	—	—
Common stock, $0.001 par value – 100,000,000 shares authorized at June 30, 2017 and December 31, 2016, respectively; 22,588,422 and 22,139,346 shares issued and outstanding at June 30, 2017 and December 31, 2016, respectively	27	22
Additional paid-in capital	226,365	219,718
Accumulated other comprehensive loss	(50)	(9)
Accumulated deficit	(138,916)	(127,169)
Total stockholders' equity	87,426	92,562
Total liabilities and stockholders' equity	$ 134,376	$ 138,156

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 June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
Revenue	$ 23,854	$ 15,734	$ 45,291	$ 28,588
Cost of revenue	6,744	5,156	13,081	9,815
Gross profit	17,110	10,578	32,210	18,773
Operating expenses:				
Research and development	2,776	1,667	5,397	3,212
Selling, general and administrative	20,255	12,608	37,479	24,129
Total operating expenses	23,031	14,275	42,876	27,341
Loss from operations	(5,921)	(3,697)	(10,666)	(8,568)
Interest expense	(839)	(803)	(1,661)	(1,581)
Other income (expense), net	316	64	580	(413)
Net loss	$ (6,444)	$ (4,436)	$ (11,747)	$ (10,562)
Net loss per common share, basic and diluted	$ (0.29)	$ (3.09)	$ (0.53)	$ (7.42)
Weighted-average shares used to compute net loss per common share, basic and diluted	22,362,608	1,435,483	22,257,849	1,424,278

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 June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
Net Loss	$ (6,444)	$ (4,436)	$ (11,747)	$ (10,562)
Other comprehensive loss:				
Change in unrealized loss on available-for-sale securities	(22)	—	(41)	—
Comprehensive loss	$ (6,466)	$ (4,436)	$ (11,788)	$ (10,562)

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)

	Six Months Ended June 30,	
	2017	**2016**
Cash flows from operating activities		
Net loss	$ (11,747)	$ (10,562)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	635	436
Stock-based compensation	4,292	850
Amortization of debt discount and issuance costs	128	125
Amortization of premiums (accretion of discounts) on investments, net	(116)	—
Non-cash interest expense	759	727
Provision for bad debt and contractual allowance	4,216	2,116
Change in fair value of preferred stock warrant liabilities	—	397
Changes in operating assets and liabilities:		
Accounts receivable	(5,662)	(5,768)
Inventory	159	(311)
Prepaid expenses and other current assets	(25)	(17)
Other assets	(508)	(499)
Accounts payable	526	116
Accrued liabilities	219	(827)
Deferred revenue	(390)	(147)
Deferred rent	114	—
Net cash used in operating activities	(7,400)	(13,364)
Cash flows from investing activities		
Purchases of property and equipment	(2,120)	(1,069)
Purchases of available-for-sale investments	(56,034)	—
Maturities of available-for-sale investments	27,800	—
Net cash used in investing activities	(30,354)	(1,069)
Cash flows from financing activities		
Proceeds from issuance of common stock related to the exercise of options and employee stock purchase program, net of repurchases	2,360	75
Payments of deferred issuance costs	—	(1,876)
Net cash provided by (used in) financing activities	2,360	(1,801)
Net decrease in cash and cash equivalents	(35,394)	(16,234)
Cash and cash equivalents, beginning of period	51,643	25,208
Cash and cash equivalents, end of period	$ 16,249	$ 8,974
Supplemental disclosures of cash flow information		
Interest paid	$ 375	$ 838
Non-cash investing and financing activities		
Deferred offering costs included in accounts payable and accrued liabilities	$ —	$ 397
Property, plant and equipment costs included in accounts payable	$ 28	$ —

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 machine-learning capabilities. The Company commenced commercial introduction of its products in the United States in 2009 following clearance by the U.S. Food and Drug Administration.

The Company's headquarters are based in San Francisco, California, and the Company has manufacturing facilities in Cypress, California, and clinical centers in Lincolnshire, Illinois and Houston, Texas. 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, based upon the billing address of the customer.

Reverse Stock Split

On October 4, 2016, the Company's board of directors approved an amendment to the Company's amended and restated certificate of incorporation to effect a reverse split of the Company's issued and outstanding common stock at a 1-for-5.882698 ratio, which was effected on October 5, 2016. The par value and authorized shares of common stock and convertible preferred stock were not adjusted as a result of the reverse split. All issued and outstanding common stock, options to purchase common stock and per share amounts contained in these condensed consolidated financial statements have been retroactively adjusted to reflect the reverse stock split for all periods presented.

Initial Public Offering

The Company's initial public offering ("IPO") of 7,238,235 shares of common stock was effected through a registration statement on Form S-1 (Registration Nos. 333-213773 and 333-214179), which was declared effective on October 19, 2016. The initial public offering closed on October 25, 2016 and resulted in net proceeds of approximately $110.7 million, after deducting underwriting discounts and commissions of $8.6 million and other expenses of $3.7 million.

In October 2016, immediately upon the Company's sale of its common stock in the initial public offering, all outstanding shares of convertible preferred stock converted into 13,375,333 shares of common stock with the related carrying value of $97.6 million reclassified to common stock and additional paid-in capital. In addition, all convertible preferred stock warrants were also thereby converted into common stock warrants.

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, 2016 has been derived from the audited consolidated financial statements at that date but does 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 six months ended June 30, 2017 are not necessarily indicative of the results to be expected for the year ending December 31, 2017 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, 2016 included in the Company's Form 10-K, filed with the SEC on March 31, 2017.

Principles of Consolidation

The accompanying interim unaudited condensed consolidated financial statements are consolidated for the six months ended June 30, 2017 and 2016 and include the accounts of iRhythm Technologies, Inc. and its wholly-owned subsidiary, iRhythm Technologies Ltd., established in March 2016. The financial statements of iRhythm Technologies Ltd. use the U.S. dollar as the functional currency. For all non-functional currency balances, the remeasurement of such balances to functional currency results in a foreign exchange transaction gain or loss, which is recorded in the consolidated statements of operations.

Use of Estimates

The preparation of the condensed 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 for revenue, 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 valuation of deferred tax assets, the fair value of the Company’s preferred and common stock and stock-based compensation. The Company bases these estimates on historical and anticipated results, trends, and various other assumptions that the Company believes are reasonable under the circumstances, including assumptions as to future events. Actual results may differ from those estimates.

Fair Value of Financial Instruments

The carrying amounts of certain of the Company’s financial instruments, which include cash equivalents, short-term investments, accounts receivable, accounts payable and accrued liabilities, approximate fair value due to their short maturities.

Cash Equivalents

Cash equivalents consist of short-term, highly liquid investments with original maturities of three months or less from the date of purchase.

Investments

Short-term investments consist of debt securities classified as available-for-sale and have maturities greater than 90 days, but less than 365 days from the date of acquisition. Long-term investments have maturities greater than 365 days as of the balance sheet date. All investments are carried at fair value based upon quoted market prices. Unrealized gains and losses on available-for-sale securities are excluded from earnings and are reported as a component of accumulated other comprehensive loss. The cost of available-for-sale securities sold is based on the specific-identification method. Realized gains and losses are included in earnings, and are derived for specific-identification method for determining the costs of investments sold.

Restricted Cash

Restricted cash consists of certificates of deposit held with a financial institution as security deposits for building leases and is included in short-term assets on the Company's condensed consolidated balance sheets.

Accounts Receivable, Allowance for Doubtful Accounts and Contractual Allowance

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

The Company establishes an allowance for doubtful accounts for estimated uncollectible receivables based on its historical experience, and recognizes the provision as a component of selling, general and administrative expenses. The Company establishes a contractual allowance, which is a reduction in revenue, for estimated uncollectible amounts from Centers for Medicare & Medicaid Services (“CMS”) and contracted third-party commercial payors.

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

	June 30, 2017	December 31, 2016
Balance, beginning of period	$ 1,792	$ 1,125
Add: provision for doubtful accounts	1,426	1,960
Less: write-offs, net of recoveries and other adjustments	(378)	(1,293)
Balance, end of period	$ 2,840	$ 1,792

The following table presents the changes in the contractual allowance:

	June 30, 2017	December 31, 2016
Balance, beginning of period	$ 2,340	$ 338
Add: contractual allowances	2,790	2,726
Less: write-offs, net of recoveries and other adjustments	(96)	(724)
Balance, end of period	$ 5,034	$ 2,340

Management reviews and updates its estimates for the allowances for doubtful accounts and contractual allowance periodically to reflect its experience regarding historical collections. If management were to make different judgments or utilize different estimates in the allowances for doubtful accounts and contractual allowance, differences in the amount of reported selling, general and administrative expenses and revenue could result, respectively.

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, cash equivalents, and investments 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 when it becomes probable that a receivable will not be collected. Government agencies, including CMS and the Veterans Administration, accounted for approximately 38%, 41%, 37% and 41% of the Company’s revenue for the three and six months ended June 30, 2017 and 2016 respectively. Accounts receivable related to government agencies accounted for 16% and 27% at June 30, 2017 and December 31, 2016, respectively.

Supply Risk

While the Company has not experienced manufacturing supply disruptions to date, the Company relies on single-source vendors for the supply of its disposable housings, instruments and other materials used to manufacture the ZIO Patch and the adhesive that binds the ZIO Patch to a patient’s body. These components and materials are critical, and there could be a considerable delay in finding alternative sources of supply.

Inventory

Inventory is stated at the lower of cost or market, cost being determined on a standard cost basis for material costs and on actual cost basis for labor and overhead, which approximates actual cost on a first in, first out ("FIFO)" basis, and market being determined as the lower of cost or net realizable value. The Company records write-downs of inventory that is obsolete or in excess of anticipated demand or market value based on consideration of product lifecycle stage, technology trends, product development plans and assumptions about future demand and market conditions. Actual demand may differ from forecasted demand and such differences may have a material effect on recorded inventory values. Inventory write-downs are charged to cost of revenue and establish a new cost basis for the inventory.

Property and Equipment

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation and amortization is computed using the straight-line method over the estimated useful lives of the assets, ranging from three to five years. Leasehold improvements are amortized over the shorter of the lease term or the estimated useful lives of the assets. Maintenance and repairs are charged to expense as incurred and improvements and betterments are capitalized.

Internal-Use Software

The Company capitalizes costs related to internal-use software during the application development stage. Costs related to planning and post implementation activities are expensed as incurred. Capitalized internal-use software is amortized, and recognized as cost of revenue, on a straight-line basis over the estimated useful life, which is up to five years. The Company evaluates the useful lives of these assets on an annual basis and tests for impairment whenever events or changes in circumstances occur that could impact the recoverability of these assets. Capitalized internal-use software costs are classified as a component of property and equipment.

Goodwill

Goodwill represents the excess of the purchase price paid over the fair value of tangible and identifiable intangible net assets acquired in business combinations. Goodwill is tested for impairment on an annual basis and at any other time if events occur or circumstances indicate that the carrying amount of goodwill may not be recoverable. Such events or circumstances may include significant adverse changes in the general business climate, among other things. The impairment test is performed by determining the enterprise fair value of the Company, which is primarily based on the Company's market capitalization. If the Company's carrying value, as a one reporting unit entity, is less than its fair value, then the fair value is allocated to all of its assets and liabilities (including any unrecognized intangible assets) as if the fair value was the purchase price to acquire the Company. The excess of the fair value over the amounts assigned to the Company's assets and liabilities is the implied fair value of the goodwill. If the carrying amount of goodwill exceeds the implied fair value of that goodwill, an impairment loss is recognized in an amount equal to that excess. The Company performs its annual evaluation of goodwill during the fourth quarter of each fiscal year. The Company did not record any charges related to goodwill impairment in any of the periods presented in these condensed consolidated financial statements.

Impairment of Long-Lived Assets

The Company annually reviews long-lived assets for impairment or whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability is measured by comparison of the carrying amount to the future net cash flows which the assets are expected to generate. If such assets are considered to be impaired, the impairment to be recognized is measured as the amount by which the carrying amount of the assets exceeds the projected discounted future net cash flows arising from the asset. To date there have been no such impairments of long-lived assets.

Other Assets

Included in the other assets are PCBAs totaling $3.2 million and $2.8 million as of June 30, 2017 and December 31, 2016, respectively. The Company uses a PCBA in each wearable device and it is used numerous times and has a useful life beyond one year. Each time the PCBA is used in a wearable device, a portion of the cost of the PCBA is recorded as a cost of revenue. The Company has based its estimates of how many times a PCBA can be used on testing in research and development, loss rates, product obsolescence, and the amount of time it takes the device to go through the manufacturing, shipping, customer shelf and patient wear time and upload process. The Company periodically evaluates the use estimate.

Comprehensive Loss

Comprehensive loss represents all changes in stockholders' equity except those resulting from and distributions to stockholders. The Company's unrealized gains and losses on available-for-sale securities represent the only component of other comprehensive loss that are excluded from the reported net loss and that are presented in the condensed consolidated statements of comprehensive loss.

Revenue Recognition

The Company's devices, cardiac rhythm monitors, have a wear period for up to 14 days for the ZIO Patch Service or 30 days for the ZIO Event Card. The Company's services, consisting of the delivery of reports containing analysis of data captured by the physical device to the prescribing physician, are generally billable at the start of the wear period or when reports are issued to physicians, depending on the service provided. For the ZIO Event Card, the Company recognizes revenue on a straight-line basis over the applicable wear period, as the event monitoring results are delivered to physicians. For the ZIO Patch Service, the Company recognizes the revenue at the time that a report is delivered to a physician. For all services performed, the Company considers whether or not the following revenue recognition criteria are met: persuasive evidence of an arrangement exists and delivery has occurred or services have been rendered. For services performed for customers the Company invoices directly, additional revenue recognition criteria include that the price is fixed and determinable and collectability is reasonably assured; for customers in which the Company submits claims to third-party commercial and governmental payors for reimbursement, it recognizes revenue only when a reasonable estimate of reimbursement can be made.

The assessment of whether a reasonable estimate of reimbursement can be made requires significant judgment by management. Where management's judgment indicates a reasonable estimate of reimbursement can be made, revenue is recognized upon delivery of the patient report for the ZIO Patch Service and straight-line for the ZIO Event Card. Some patients have out-of-pocket costs for amounts not covered by their insurance carrier, and the Company may bill the patient directly for these amounts in the form of co-payments and co-insurance in accordance with their insurance carrier and health plans. Some payors may not cover the Company's service as ordered by the prescribing physician under their reimbursement policies. In the absence of an agreement with the patient or other clearly enforceable legal right to demand payment from the patient, the related revenue is recognized upon the earlier of notification of the payor benefits allowed or when payment is received, until the Company has the ability to make a reasonable estimate. Once a reasonable estimate can be made, revenue is recognized upon delivery of the service. During 2017, the Company recognized revenue from certain non-contracted payors as a reasonable estimate was able to be made, primarily based on the consistency of historical payments.

The Company recognizes revenue related to billings for CMS and commercial payors on an accrual basis, net of contractual allowances, when a reasonable estimate of reimbursement can be made. These contractual allowances represent the difference between the list price (the billing rate) and the reimbursement rate for each payor. Upon ultimate collection from CMS and commercial payors, the amount is compared to the previous estimates and the contractual allowance is adjusted accordingly. Until a contract has been negotiated with a commercial payor, the Company's services may or may not be covered by these entities' existing reimbursement policies. In addition, patients do not enter into direct agreements with the Company that commit them to pay any portion of the cost of the service in the event that their insurance declines to reimburse the Company. In the absence of an agreement with the patient or other clearly enforceable legal right to demand payment from the patient, the related revenue is recognized upon the earlier of notification of the payor benefits allowed or when payment is received, until the Company has the ability to make a reasonable estimate. Revenue related to non-contracted claims was $2.8 million, $2.4 million, $5.7 million and $4.3 million for the three and six months ended June 30, 2017 and 2016, respectively. Contracted revenue recognized on an accrual basis was $21.1 million, $13.3 million, $39.6 million and $24.3 million for the three and six months ended June 30, 2017 and 2016, respectively.

Certain of the Company's customers pay the Company directly for the ZIO Service upon shipment of devices. Such advance payments are recorded as deferred revenue on the condensed consolidated balance sheets and revenue is recognized when reports are delivered to physicians.

Cost of Revenue

Cost of revenue is expensed as incurred and includes direct labor, material costs, equipment and infrastructure expenses, amortization of internal-use software, allocated overhead, and shipping and handling. Material costs include both the disposable costs of the device and amortization of the PCBAs. Each time the PCBA is used in a wearable device, a portion of the cost of the PCBA is recorded as a cost of revenue.

Research and Development

The Company's research and development costs are expensed as incurred. Research and development costs include, but are not limited to, payroll and personnel-related expenses, laboratory supplies, consulting costs and overhead charges.

Income Taxes

The Company uses the asset and liability method to account for income taxes in accordance with the authoritative guidance for income taxes. Under this method, deferred tax assets and liabilities are determined based on future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases, and tax loss and credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates applied to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. A valuation allowance is established when necessary to reduce deferred tax assets to the amount expected to be realized.

The Company recognizes the effect of income tax positions only if those positions are more likely than not of being sustained. Recognized income tax positions are measured at the largest amount that is greater than 50% likely of being realized. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs. The Company records interest and penalties related to unrecognized tax benefits in income tax expense. To date, there have been no interest or penalties charged in relation to the unrecognized tax benefits.

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 stock options are 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.

Net Loss per Common Share

Basic net loss per common share is calculated by dividing the net loss by the weighted average number of shares of common stock outstanding during the period, without consideration of potentially dilutive securities. Diluted net loss per common share is the same as basic net loss per common share for all periods presented since the effect of potentially dilutive securities are anti-dilutive.

Recent Accounting Pronouncements

In May 2014, the Financial Accounting Standards Board ("FASB"), issued Accounting Standards Update ("ASU") No. 2014-09, *Revenue from Contracts with Customers (Topic 606)*. Areas of revenue recognition that will be affected include, but are not limited to, transfer of control, variable consideration, allocation of transfer pricing, licenses, time value of money, contract costs and disclosures. In August 2015, the FASB issued ASU No. 2015-14, Revenue from Contracts with Customers (Topic 606): Deferral of Effective Date, which defers the effective date of ASU 2014-09 by one year allowing early adoption as of the original effective date of fiscal years and interim reporting periods beginning after December 15, 2016, at which time companies may adopt the new standard update under the full retrospective method or the modified retrospective method. The deferral results in the new revenue standard being effective for the Company for fiscal years and interim reporting periods beginning after December 15, 2017. In March, April and May 2016, the FASB issued additional updates to the new revenue standard relating to reporting revenue on a gross versus net basis, identifying performance obligations and licensing arrangements, and narrow-scope improvements and practical expedients, respectively. The Company plans on adopting this standard on January 1, 2018. While in the initial stages of the evaluation of the new standard, the Company believes the adoption will result in timing differences in its recognition of revenue related to non-contracted third-party payors and the recognition of bad debt expense related to patients, which is expected to be included as contra-revenue rather than as a component of selling, general and administrative expenses.

In July 2015, the FASB issued ASU No. 2015-11, *Inventory, Simplifying the Measurement of Inventory*. Under ASU 2015-11, the measurement principle for inventory will change from lower of cost or market value to lower of cost and net realizable value. Net realizable value is the estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal and transportation. The ASU is effective for fiscal years and interim periods within those years beginning after December 15, 2016. The Company adopted this guidance effective January 1, 2017, and there was no impact on the condensed consolidated financial statements.

In November 2015, the FASB issued ASU No. 2015-17, *Income Taxes (Topic 740): Balance Sheet Classification of Deferred Taxes*. Under ASU 2015-17, deferred tax liabilities and assets will be classified as noncurrent on the balance sheet. Previous guidance required deferred tax liabilities and assets to be separated into current and noncurrent amounts on the balance sheet. The guidance is effective for annual periods beginning after December 15, 2016 and for interim periods within those annual periods. Early adoption is permitted. The Company adopted this guidance effective January 1, 2017, and there was no impact on the condensed consolidated financial statements.

In January 2016, the FASB issued ASU No. 2016-01, *Recognition and Measurement of Financial Assets and Financial Liabilities*, which addresses certain aspects of recognition, measurement, presentation and disclosure of financial instruments. ASU 2016-01 is effective for annual periods, and interim periods within those annual periods, beginning after December 15, 2017. The Company has not determined the potential effects of this ASU on its consolidated financial statements.

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)*, which requires a lessee to recognize assets and liabilities on its consolidated balance sheet for leases with accounting lease terms of more than 12 months. ASU 2016-02 will replace most existing lease accounting guidance in U.S. GAAP when it becomes effective. The new standard states that a lessee will recognize a lease liability for the obligation to make lease payments and a right-of-use asset for the right to use the underlying asset for the lease term. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the consolidated statements of operations. ASU 2016-02 will be effective for our first quarter of fiscal 2020 and requires the modified retrospective method of adoption. Early adoption is permitted. Although the Company is currently evaluating the effect that ASU 2016-02 will have on its consolidated financial statements and related disclosures, the Company expects that most of its operating lease commitments will be subject to the new standard and recognized as operating lease liabilities and right-of-use assets upon adoption.

In March 2016, the FASB issued ASU No. 2016-09, *Compensation—Stock Compensation (Topic 718)*. This ASU was issued as part of the FASB's simplification initiative and affects all entities that issue share-based payment awards to their employees. This standard covers accounting for income taxes, forfeitures, and statutory tax withholding requirements, as well as classification in the statement of cash flows. As a result of adopting ASU No. 2016-09 on January 1, 2017, the Company has made an accounting policy election to continue to estimate forfeitures. The adoption of ASU No. 2016-09 also requires excess tax benefits and tax deficiencies be recorded in the income statement as opposed to additional paid-in capital when the awards vest or are settled, and has been applied on a prospective basis with no impact on the condensed consolidated financial statements as of and for the three months ended June 30, 2017. As a result of the adoption, the Company increased its total NOLs by $0.1 million on January 1, 2017 related to deferred tax assets that arose directly from tax deductions related to equity compensation greater than compensation recognized for financial reporting purposes. This amount is fully offset by the valuation allowance.

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments – Credit Losses (Topic 326)*, which is intended to provide financial statement users with more useful information about expected credit losses on financial assets held by a reporting entity at each reporting date. The new standard replaces the existing incurred loss impairment methodology with a methodology that requires consideration of a broader range of reasonable and supportable forward-looking information to estimate all expected credit losses. This ASU is effective for fiscal years and interim periods within those years beginning after December 15, 2019 and early adoption is permitted for fiscal years and interim periods within those years beginning after December 15, 2018. The Company is currently evaluating the impact of this new guidance.

In August 2016, the FASB issued ASU No. 2016-15, *Statement of Cash Flows (Topic 230) – Classification of Certain Cash Receipts and Cash Payments*, which clarifies the classification of certain cash receipts and cash payments in the statements of cash flow to eliminate the diversity in practice related to eight specific cash flow issues. This ASU is effective for fiscal years and interim periods within those years beginning after December 15, 2017, with early adoption permitted. The Company is currently evaluating the impact of this new guidance.

In November 2016, the FASB issued ASU No. 2016-18, *Statement of Cash Flows (Topic 230) – Restricted Cash*, which requires the presentation of changes in restricted cash or restricted cash equivalents on the statement of cash flows. This ASU is effective for the fiscal years and interim periods within those years beginning after December 15, 2017, with early adoption permitted. The Company is currently evaluating the impact of this new guidance.

In January 2017, the FASB issued ASU No. 2017-04, *Intangibles—Goodwill and Other (Topic 350) – Simplifying the Test for Goodwill Impairment*, which simplifies the measurement of goodwill by eliminating the Step 2 impairment test. Step 2 measures a goodwill impairment loss by comparing the implied fair value of a reporting unit's goodwill with the carrying amount of that goodwill. The new guidance required an entity to compare the fair value of a reporting unit with its carrying amount and recognize an impairment charge for the amount by which the carrying amount exceeds the reporting unit's fair value. Additionally, an entity should consider income tax effects from any tax deductible goodwill on the carrying amount of the reporting unit when measuring the goodwill impairment loss, if applicable. The new guidance becomes effective for goodwill impairment tests in fiscal years beginning after December 15, 2019, though early adoption is permitted. The Company is currently assessing the impact of this new guidance.

On May 10, 2017, the FASB issued ASU 2017-09, *Scope of Modification Accounting*, which amends the scope of modification accounting for share-based payment arrangements, provides guidance on the types of changes to the terms or conditions of share-based payment awards to which an entity would be required to apply modification accounting under ASC 718. This ASU is effective for annual reporting periods, including interim periods within those annual reporting periods, beginning after December 15, 2017, with early adoption permitted. The Company is currently evaluating the impact of this new guidance.

3. Cash Equivalents and Investments

The fair value of securities, not including cash at June 30, 2017 and December 31, 2016, were as follows (in thousands):

	June 30, 2017			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Money market funds	$ 13,059	$ —	$ —	$ 13,059
U.S. government securities	32,937	—	(45)	32,892
Corporate notes	24,263	1	(6)	24,258
Commercial paper	36,428	—	—	36,428
Total available-for-sale securities	$ 106,687	$ 1	$ (51)	$ 106,637
Classified as:				
Cash equivalents				$ 13,059
Short-term investments				93,578
Long-term investments				—
Total cash equivalents and investments				$ 106,637

	December 31, 2016			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Money market funds	$ 45,937	$ —	$ —	$ 45,937
U.S. government securities	16,479	11	—	16,490
Corporate notes	23,947	—	(20)	23,927
Commercial paper	24,971	—	—	24,971
Total available-for-sale securities	$ 111,334	$ 11	$ (20)	$ 111,325
Classified as:				
Cash equivalents				$ 45,937
Short-term investments				54,407
Long-term investments				10,981
Total cash equivalents and investments				$ 111,325

Available-for-sale securities held as of June 30, 2017 had a weighted average days to maturity of 126 days. There have been no material realized gains or realized losses on available-for-sale securities for the periods presented.

As the carrying value approximates the fair value for the Company's cash equivalents, short-term and long-term investments shown in the tables above, the following table summarizes the fair value of the Company's cash equivalents, short-term and long-term investments classified by maturity (in thousands):

	June 30, 2017	December 31, 2016
Due within one year	$ 106,637	$ 100,344
Due after one year through three years	—	10,981
Total available-for-sale marketable debt securities	$ 106,637	$ 111,325

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 bonds 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.

Based on Level 2 inputs and the borrowing rates currently available to the Company for loans with similar terms and maturities, the carrying value of the Company's debt approximates its fair value.

The following table presents the fair value of the Company's financial assets and liabilities determined using the inputs defined above (amounts in thousands).

	June 30, 2017			
	Level 1	Level 2	Level 3	Total
Assets				
Money market funds	$ 13,059	$ —	$ —	$ 13,059
U.S. government securities	—	32,892	—	32,892
Corporate notes	—	24,258	—	24,258
Commercial paper	—	36,428	—	36,428
Total	$ 13,059	$ 93,578	$ —	$ 106,637

	December 31, 2016			
	Level 1	Level 2	Level 3	Total
Assets				
Money market funds	$ 45,937	$ —	$ —	$ 45,937
U.S. government securities	—	16,490	—	16,490
Corporate notes	—	23,927	—	23,927
Commercial paper	—	24,971	—	24,971
Total	$ 45,937	$ 65,388	$ —	$ 111,325

The following table sets forth a summary of the changes in the fair value of the preferred stock warrants which is classified as Level 3 in the fair value hierarchy. There were no transfers into or out of Level 3 during the periods (in thousands):

	Six Months Ended June 30, 2017	Six Months Ended June 30, 2016
Beginning balance	$ —	$ 2,949
Total change in fair value recorded as other expense, net	—	397
Ending balance	$ —	$ 3,346

The valuation of the preferred stock warrant liabilities is discussed in Note 11.

5. Balance Sheet Components

Inventory and PCBAs

Inventory and PCBAs consisted of the following (in thousands):

	June 30, 2017	December 31, 2016
Raw materials	$ 1,051	$ 839
Finished goods	3,411	3,324
Total	$ 4,462	$ 4,163
Reported on the consolidated balance sheet as:		
Inventory	$ 1,231	$ 1,390
Other assets	3,231	2,773
Total	$ 4,462	$ 4,163

Amounts reported as other assets are comprised of the PCBA costs that are included in both raw materials and finished goods totals above.

Property and Equipment, Net

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

	June 30, 2017	December 31, 2016
Laboratory and manufacturing equipment	$ 1,896	$ 1,509
Computer equipment and software	842	736
Furniture and fixtures	679	657
Leasehold improvements	733	502
Internal-use software	4,302	2,900
Total property and equipment, gross	8,452	6,304
Less: accumulated depreciation and amortization	(2,286)	(1,651)
Total property and equipment, net	$ 6,166	$ 4,653

Depreciation and amortization expense for the three and six months ended June 30, 2017 and 2016 was $0.3 million, $0.2 million, $0.6 million and $0.4 million, respectively.

Accrued Liabilities

Accrued liabilities consisted of the following (in thousands):

	June 30, 2017	December 31, 2016
Accrued vacation	$ 1,988	$ 1,642
Accrued payroll and related expenses	4,970	6,179
Accrued ESPP contributions	232	417
Accrued professional services fees	1,152	636
Other	1,643	1,291
Total accrued liabilities	$ 9,985	$ 10,165

6. Related-Party Transactions

Kaiser Permanente (“Kaiser”) is a common stockholder of the Company, representing 6.1% ownership of the total outstanding shares of the Company as of December 31, 2016. For the three and six months ended June 30, 2017 and 2016, the Company recognized revenue of $1.0 million, $0.6 million, $1.8 million and $1.4 million, respectively, for transactions with Kaiser. The amounts receivable from transactions with Kaiser were $0.5 million, and $0.4 million as of June 30, 2017 and December 31, 2016, respectively. Kaiser performs services related to clinical trials and the Company utilizes Kaiser for employee healthcare and the total expense recorded was $0.3 million, $0.2 million, $0.3 million, and $0.3 million as of the three and six months ended June 30, 2017 and 2016, respectively. The amounts outstanding and included in accounts payable and accrued liabilities were $0.1 million and $0.2 million as of June 30, 2017, and December 31, 2016 respectively.

7. Commitments and Contingencies

Lease Arrangements

The Company leases office and manufacturing space under non-cancelable operating leases which expire on various dates through 2027. These leases generally contain scheduled rent increases or escalation clauses and renewal options. The Company recognizes rent expense on a straight-line basis over the lease period.

In May 2017, the Company entered into a commercial building lease agreement for its clinical center in Houston, Texas which expires in September 2027.

The following table summarizes the Company’s future minimum lease payments as of June 30, 2017 (in thousands):

Period Ending December 31:	
2017 (remainder of year)	$ 2,491
2018	5,089
2019	5,108
2020	1,178
2021	406
Thereafter	2,541
Total	$ 16,813

The Company’s rent expense was $1.4 million, $0.5 million, $2.5 million and $0.9 million for the three and six months ended June 30, 2017 and 2016, respectively.

Legal Proceedings

From time to time, the Company may become involved in legal proceedings arising from the ordinary course of its business. Management is currently not aware of any matters that could have a material adverse effect on the financial position, results of operations or cash flows of the Company.

Indemnifications

In the ordinary course of business, the Company enters into agreements that may include indemnification provisions. 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 California corporate 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.

8. Debt

Pharmakon Loan Agreement

In December 2015, the Company entered into the Loan Agreement with Biopharma Secured Investments III Holdings Cayman LP, or Pharmakon (the "Pharmakon Loan Agreement"). The Pharmakon Loan Agreement provides for up to $55.0 million in term loans split into two tranches as follows: (i) the Tranche A Loans are $30.0 million in term loans, and (ii) the Tranche B Loans are up to $25.0 million in term loans. The Tranche A Loans were drawn on December 4, 2015. The Tranche B Loans were available to be drawn prior to December 4, 2016. No additional draw was made.

During the first full eight quarters, payments are interest only and for the first two years, 50% of the interest will be "paid-in-kind." The Company is subject to a financial covenant related to minimum trailing revenue targets that begins in June 2017, and is tested on a semi-annual basis. The minimum net revenue covenant ranges from $44.7 million for the period ended June 30, 2017 to $102.6 million for the period ended December 31, 2021, which was achieved as of June 30, 2017. The minimum net revenues financial covenant has a 45-day equity cure period following required delivery date of the financial statements. Pursuant to this equity cure provision, the Company may cure a revenue covenant default by raising additional funds from the sale of equity. The loan matures December 2021.

The Tranche A Loans bear interest at a fixed rate equal to 9.50% per annum that is due and payable quarterly in arrears. During the first eight calendar quarters, 50% of the interest due and payable shall be added to the then outstanding principal.

The Pharmakon Loan Agreement requires the Company to maintain a minimum consolidated liquidity and minimum net revenue during the term of the loan facility and contains customary affirmative and negative covenants and event of default provisions that could result in the acceleration of the repayment obligations under the loan facility. Upon a change in control of the Company, Pharmakon has the option to demand payment in full of the outstanding loans together with any prepayment premium.

The obligations under the Pharmakon Loan Agreement are secured by a security interest in substantially all of the Company's assets pursuant to the Pharmakon Guaranty and Security Agreement and this security interest is governed by an intercreditor agreement between Pharmakon and Silicon Valley Bank ("SVB").

In December 2015, the Company used the proceeds from the Pharmakon Loan Agreement to repay $4.9 million of bank debt to SVB. The issuance costs and debt discount have been netted against the borrowed funds on the balance sheet. The debt balance as of June 30, 2017 and December 31, 2016 was $31.6 million and $30.8 million, respectively.

Bank Debt

In June 2014, the Company refinanced its debt with SVB by entering into the Second Amendment to the Amended and Restated Loan Security Agreement ("Second Amendment"). Under this amendment, the Company borrowed $4.9 million with an additional advance of $5.0 million available. All the borrowings under the Second Amended Loan Agreement were collateralized by all of the Company's assets, excluding intellectual property. In connection with entering into the Amended Loan Agreement, the Company issued warrants to purchase 20,136 shares of Series D at $7.31 per share that expire in June 2024 (See Note 11).

In December 2015, the Company used the proceeds from the Pharmakon Loan Agreement to repay $4.9 million of bank debt to SVB and entered into a Second Amended and Restated Loan and Security Agreement with SVB, or the SVB Loan Agreement. Under the 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 $15.0 million, until December 4, 2018, when all outstanding principal and accrued interest becomes due and payable. Any principal amount outstanding under the SVB revolving credit line 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%, are tied to the Company's trailing six-month revenue and subject to certain revenue targets. The Company may borrow up to 80% of its eligible accounts receivable, up to the maximum of $15.0 million.

In August 2016, the Company obtained a $3.1 million standby letter of credit pursuant to the SVB revolving credit facility in connection with a lease for the San Francisco office. As of June 30, 2017 and December 31, 2016, the Company was eligible to borrow up to $8.1 million and $2.5 million, respectively, under the SVB revolving credit line.

The SVB Loan Agreement requires the Company to maintain a minimum consolidated liquidity and minimum net sales during the term of the loan facility. In addition, the SVB Loan Agreement contains customary affirmative and negative covenants and events of default. The obligations under the SVB Loan Agreement are collaterialized by substantially all assets of the Company and this security interest is governed by an intercreditor agreement between Pharmakon and SVB.

California HealthCare Foundation Note

In November 2012, the Company entered into a Note Purchase Agreement and Promissory Note with the California HealthCare Foundation, or the CHCF Note, through which the Company borrowed $1.5 million. The CHCF Note accrues simple interest of 2.0%. The accrued interest and the principal was to mature in November 2016. In partial consideration for the issuance of the CHCF Note, the Company issued warrants to purchase 22,807 shares of the Company's Series D convertible preferred stock.

In June 2015, the Company amended the CHCF Note to extend the maturity date to May 2018. In partial consideration for the amendment, the Company issued 8,552 warrants at $6.58 exercise price per share of the Company's Series D convertible preferred stock. The CHCF note is subordinate to other debt. The debt balance, net of debt discount, as of June 30, 2017 and December 31, 2016 was $1.5 million and $1.5 million, respectively.

9. Income Taxes

The Company did not record a provision or benefit for income taxes during the six months ended June 30, 2017 and 2016, respectively, as it reported losses in each period which are not more likely than not to be realized. Due to the uncertainties surrounding the realization of deferred tax assets through future taxable income, the Company has provided a full valuation allowance and, therefore, no benefit has been recognized for the net operating loss carryforwards and other deferred tax assets.

At December 31, 2016, the Company had $0.6 million of unrecognized tax benefit, none of which, if recognized, would affect the effective tax rate as most of the unrecognized tax benefit is deferred tax assets currently offset by a valuation allowance.

A number of years may elapse before an uncertain tax position is audited and finally resolved. While it is often difficult to predict the final outcome or the timing of resolution of any particular uncertain tax position, the Company believes that its reserves for income taxes reflect the most likely outcome. The Company adjusts these reserves in light of changing facts and circumstances. Settlement of any particular position could require the use of cash. As of June 30, 2017, changes to the Company's uncertain tax positions in the next twelve months that are reasonably probable are not expected to have a material impact on the Company's financial position or results of operations.

10. Stockholders' Equity

Common stock

As of June 30, 2017, the Company's amended and restated certificate of incorporation dated October 2016, authorized 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. No dividends were declared through June 30, 2017.

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

	June 30, 2017	December 31, 2016
Options issued and outstanding	3,107,386	2,977,218
Unvested restricted stock units	366,684	105,529
Common stock warrants issued and outstanding	143,795	217,245
Shares available for grant under future stock plans	4,893,448	4,226,068
	8,511,313	7,526,060

11. Preferred Stock Warrant Liabilities

In November 2012, in connection with borrowings under a convertible note, the Company issued warrants to purchase shares of Series C or New Preferred. The warrants were only exercisable if the Convertible Notes were converted into Series C or New Preferred. The warrants' exercise price is $0.001 per share and they have a seven year term. On March 27, 2013 the Company closed the Series D financing. The warrants were converted into warrants to purchase 207,177 shares of Series D convertible preferred stock. The Company recognized a charge of $59,000 and income of $235,000 related to the change in the fair value of the warrants for the three and six months ended June 30, 2016. Upon the IPO, the Series D preferred stock warrants converted into common stock warrants and were reclassified to additional paid-in-capital in the Company's balance sheet. As a result, the warrants are no longer subject to fair value remeasurement. As of June 30, 2017, 143,795 warrants were outstanding.

In June 2014, in connection with borrowings under the Second Amendment (Note 8), the Company issued warrants to purchase 20,136 shares of Series D Preferred Stock at $7.31 per share that expire June 2024. The fair value of the warrants was determined by using an option pricing model prepared by a third-party based on an allocation of the Company's aggregate value to the outstanding equity instruments, applying a 30% discount to the warrant value for lack of marketability. The fair value of the warrant, $98,000, was recorded as a debt discount and is being amortized over the loan repayment period to interest expense. The Company recognized a charge of $1,000 and income of $26,000 related to change in the fair value of the warrants for the three and six months ended June 30, 2016. The warrants were converted into warrants to purchase common stock upon the completion of the IPO in 2016, and were reclassified to additional paid-in-capital in the Company's balance sheet. One of the warrants for 10,068 shares was exercised through a cashless exercise on October 26, 2016 resulting in the issuance of a net 7,310 shares of the Company's common stock, and the other warrant for 10,068 was exercised through a cashless exercise on May 2, 2017 resulting in the issuance of a net 8,077 shares.

12. Stock Incentive Plans

2006 Plan

In October 2006, the Company adopted the 2006 Equity Incentive Plan, as amended, (the "2006 Plan"). The Plan provided for the granting of stock options to employees and non-employees of the Company. Options granted under the Plan were either incentive stock options or nonqualified stock options. Incentive stock options ("ISO") were granted only to employees (including officers and directors who are also employees). Nonqualified stock options ("NSO") were granted to employees and non-employees. The board of directors had the authority to determine to whom options will be granted, the number of options, the term and the exercise price.

Options under the Plan were granted for periods of up to ten years and at the fair value of the shares on the date of grant as determined by the board of directors. In general, options were exercisable at a rate of 25% after the first anniversary of the grant and then monthly vesting for an additional three years from date of grant. The term for options is no longer than five years for ISOs for which the grantee owns greater than 10% of the voting power of all classes of stock and no longer than ten years for all other options. The Company issues new shares upon the exercise of options.

2016 Plan

In October 2016, the Company adopted the 2016 Equity Incentive Plan, (the "2016 Plan"). The 2016 Plan was subsequently approved by the Company's stockholders and became effective on October 19, 2016, immediately before the effective date of the IPO. Following the effectiveness of the 2016 Plan, no additional options were granted under the 2006 Plan. In addition, to the extent that any awards outstanding or subject to vesting restrictions under the 2006 Plan are subsequently forfeited or terminated for any reason before being exercised or settled, the shares of common stock reserved for issuance pursuant to such awards as of the closing of the IPO will become available for issuance under the 2016 Plan. The remaining shares available for grant under the 2006 Plan became available for issuance under the 2016 Plan upon the closing of the IPO. On the first day of each year beginning with 2017, the 2016 Plan authorizes an annual increase of the least of 3,865,000 shares, 5% of outstanding common stock on the last day of the immediately preceding fiscal year or an amount as determined by the Company's Board of Directors. As of June 30, 2017, the Company has reserved 4,971,966 shares of common stock for issuance under the 2016 Stock Incentive Plan.

Pursuant to the 2016 Plan, stock options, restricted shares, stock units, including restricted stock units and stock appreciation rights, may be granted to employees, consultants, and outside directors of the Company. Options granted may be either ISOs or NSOs.

Stock options are governed by stock option agreements between the Company and recipients of stock options. ISOs and NSOs may be granted under the 2016 Plan at an exercise price of not less than 100% of the fair market value of the common stock on the date of grant, determined by the Compensation Committee of the Board of Directors. Options become exercisable and expire as determined by the Compensation Committee, provided that the term of ISOs may not exceed ten years from the date of grant.

Employee Stock Purchase Program ("ESPP")

In October 2016, the Company's Board of Directors and stockholders approved the Employee Stock Purchase Plan (the "ESPP"). Under the ESPP, the Company initially reserved 483,031 shares of common stock for issuance as of its effective date of October 19, 2016. On the first day of each calendar year, beginning in 2017, the number of shares in the reserve will increase by the lesser of 966,062 shares, 1.5% of the shares of the Company's common stock outstanding on the last day of the immediately preceding fiscal year, or an amount as determined by the Company's Board of Directors. The ESPP allows eligible employees to purchase shares of the Company's common stock at a discount through payroll deductions of up to 15% of their eligible compensation, subject to any plan limitations. The ESPP provides for twelve-month offering periods that each contain two six-month purchase periods. At the end of each purchase period, employees are able to purchase shares at 85% of the lower of the fair market value of the Company's common stock on the first trading day of the offering period or on the last day of the purchase period.

As of June 30, 2017, 105,128 shares of common stock have been issued to employees participating in the ESPP and 709,993 shares were available for issuance under the ESPP.

Equity Incentive Plan Activity

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

	Options Available for Grant
Balance at December 31, 2015	331,938
Additional options authorized	3,865,000
Options granted	(466,914)
Options forfeited	13,013
Balance at December 31, 2016	3,743,037
Additional options authorized	1,106,966
Options granted	(675,071)
Options forfeited	8,523
Balance at June 30, 2017	4,183,455

The following table summarizes stock option activity under the 2006 and 2016 Plans, including grants to non-employees:

		Options Outstanding		
	Options Outstanding	Weighted-Average Exercise Price Per Share	Weighted-Average Remaining Contractual Life (years)	Aggregate Intrinsic Value (in thousands)
Balances at December 31, 2015	2,685,913	$ 4.81	7.63	$ 11,589
Options granted	361,385	15.65		
Options exercised	(57,067)	2.33		
Options forfeited	(13,013)	6.92		
Balances at December 31, 2016	**2,977,218**	6.16	6.93	$ 70,979
Options granted	411,183	35.59		
Options exercised	(272,492)	3.08		
Options forfeited	(8,523)	18.53		
Balances at June 30, 2017	**3,107,386**	$ 10.29	7.29	$ 100,068
Options exercisable – June 30, 2017	1,886,915	$ 4.79	6.28	$ 71,128
Options vested and expected to vest – June 30, 2017	3,028,901	$ 9.97	7.24	$ 98,486

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.

During the six months ended June 30, 2017 and 2016, the estimated weighted-average grant-date fair value of common stock underlying options granted was $18.33 and $5.75 per share, respectively.

13. Stock-Based Compensation

Employee Stock Options Valuation

The fair value of employee and director stock options was estimated at the date of grant using a Black-Scholes option valuation model with the weighted average assumptions below.

	Three Months Ended June 30		Six Months Ended June 30	
	2017	2016	2017	2016
Expected term (in years)	6.1	6.1	6.1	6.1
Expected volatility	48.1%	60.0%	52.6%	60.0%
Risk-free interest rate	2.00%	1.52%	2.08%	1.48%
Dividend yield	0.0%	0.0%	0.0%	0.0%

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 June 30		Six Months Ended June 30	
	2017	2016	2017	2016
Cost of revenue	$ 38	$ 3	$ 76	$ 5
Research and development	383	33	752	69
Selling, general and administrative	1,844	407	3,464	776
Total stock-based compensation expense	$ 2,265	$ 443	$ 4,292	$ 850

As June 30, 2017, there was total unamortized compensation costs of $10.1 million, net of estimated forfeitures, related to unvested stock options which the Company expects to recognize over a period of approximately 2.7 years, $9.4 million, net of estimated forfeitures, related to unrecognized restricted stock unit ("RSU") expense, which the Company expects to recognize over a period of 3.0 years, and $0.9 million unrecognized ESPP expense, which the company will recognize over 0.9 years.

Non-Employee Stock-Based Compensation

Stock-based compensation expense related to stock options granted to non-employees is recognized as the stock options are earned. The measurement of stock-based compensation for non-employees is subject to periodic adjustment as the underlying equity instruments vest, and the related compensation expense is based on the estimated fair value of the equity instruments using the Black-Scholes option pricing model. The Company believes that the estimated fair value of the stock options is more readily measurable than the fair value of the services received. Such expense was not material for the three and six months ended June 30, 2017 and 2016.

14. Net Loss Per Common Share

As the Company had net losses for the three and six months ended June 30, 2017 and 2016, all potential common shares were determined to be anti-dilutive. The following table sets forth the computation of the basic and diluted net loss per share attributable to common stockholders (in thousands, except share and per share data):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
Numerator:				
Net loss	$ (6,444)	$ (4,436)	$ (11,747)	$ (10,562)
Denominator:				
Weighted-average shares used to compute net loss per common share, basic and diluted	22,362,608	1,435,483	22,257,849	1,424,278
Net loss per common share, basic and diluted	$ (0.29)	$ (3.09)	$ (0.53)	$ (7.42)

The following outstanding shares of potentially dilutive securities have been excluded from diluted net loss per common share for the three and six months ended June 30, 2017 and 2016, because their inclusion would be anti-dilutive:

	As of June 30,	
	2017	2016
Convertible preferred stock on an as-if converted basis	—	13,343,981
Options to purchase common stock	3,107,386	2,722,648
RSUs issued and unvested	366,684	—
Warrants to purchase convertible preferred stock on an as-if converted basis	—	328,114
Warrants to purchase common stock	143,795	—
Total	3,617,865	16,394,743

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 machine-learning capabilities. Our goal is to be the leading provider of first-line ambulatory electrocardiogram, or ECG, monitoring for patients at risk for arrhythmias. We have created a unique platform, called the ZIO Service, which combines an easy-to-wear and unobtrusive biosensor that can be worn for up to 14 days, called the ZIO Patch, with powerful proprietary algorithms which distill data from millions of heartbeats into clinically actionable information. The ZIO Service consists of:

- the wearable ZIO Patch biosensor, which continuously records and stores ECG data from every patient heartbeat for up to 14 days
- a cloud-based analysis of the recorded cardiac rhythms using our proprietary machine-learned algorithms
- a final quality assessment review of the data by our certified cardiac technicians
- the 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 and can be integrated into a patient's electronic health record

We receive revenue for the ZIO Service primarily from two sources: third-party payors and institutions. Third-party payors, which accounted for approximately 80% and 72% of our revenue for the six months ended June 30, 2017 and 2016, respectively, consist of commercial payors and government agencies, such as the Centers for Medicare & Medicaid Services, or CMS, and the Veterans Administration, or the VA. A significant portion of our revenue in the third-party commercial payor category is contracted, which means we have entered into pricing contracts with these payors. Approximately 37% and 41% of our total revenue for the six months ended June 30, 2017 and 2016, respectively, is received from federal government agencies under established reimbursement codes. A small portion of this revenue is received from patients in accordance with their insurance co-payments and deductibles. Institutions, which are typically hospitals, clinics, or private physician practices, accounted for approximately 20% and 28% of our revenue for the six months ended June 30, 2017 and 2016, respectively. We bill these organizations directly for our services and they are responsible for paying those invoices and seeking reimbursement from third-party payors where applicable. In addition, a small percentage of patients whose physicians prescribe the ZIO Service pay us directly. Typically, we bill institutional customers and rely on a third-party billing partner, XIFIN, Inc., to submit patient claims and collect from commercial and certain government agencies.

Since our ZIO Service was cleared by the U.S. Food and Drug Administration, or FDA, in 2009, we have provided the ZIO Service to over 700,000 patients and have collected over 200 million hours of curated heartbeat data. We believe the ZIO Service is well-positioned to disrupt an already-established $1.4 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 ZIO Service in the United States to physicians, hospitals and clinics through a direct sales organization comprised of sales management, field billing specialists and quota-carrying sales representatives. 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 departments. We expect to continue to increase the size of our U.S. sales organization to expand the current customer account base and increase utilization of our monitoring solution. In addition, we will continue to explore new opportunities to expand our sales and marketing efforts in international geographies using both direct and distribution channels.

Components of Results of Operations

Revenue

Substantially all of our revenue is currently derived from sales of our ZIO Service in the United States. We earn revenue from the provision of our ZIO Service primarily from two sources, third-party payors and institutions; however, a small percentage of our revenue is derived directly from patient payments. For the six months ended June 30, 2017 and 2016, we recognized approximately 90% and 85%, respectively, of our revenue on an accrual basis for instances where we have a predictable history of collections, contracted payors and institutions. We recognize revenue based on the billing rate less contractual and other adjustments to arrive at the amount we expect to collect from third-party payors with an established billing rate. We determine the amount we expect to collect based on a per-payor or agreement basis, after analyzing payment history. When we do not have a contract or agreement, or have an insufficient or unpredictable history of collections, we recognize revenue only upon the earlier of notification of the payor benefits allowed or when payment is received. We expect our revenue to increase as we increase the number of covered and contracted lives for our ZIO Service, expand our sales and marketing infrastructure, increase awareness of our product offerings, expand the range of indications for our ZIO Service and develop new products and services. 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 year holidays compared to other times of the year. To date, the effect of these seasonal fluctuations on our quarterly results has been obscured by the growth of our business.

Cost of Revenue and Gross Margin

Cost of revenue is expensed as incurred and includes direct labor, material costs, equipment and infrastructure expenses, allocated overhead, and shipping and handling. Direct labor includes personnel involved in manufacturing and data analysis. Material costs include both the disposable materials costs of the ZIO Patch and amortization of the re-usable printed circuit board assemblies, or PCBAs. Each ZIO Patch includes a PCBA, 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. Historically, we have increased our average selling price by entering into contracts with third-party commercial payors at rates that were higher than amounts typically collected from payors without contracts or from institutional customers. 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 believe we will be able to continue to achieve pricing increases as more payors contract with us due to the benefits the ZIO Service provides compared to other available products. 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 workflow enhancements to reduce labor costs. We expect further decreases in the cost of service as we spread the fixed portion of our manufacturing overhead costs over a larger number of units produced, which will result in a decrease in our per unit manufacturing costs.

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 an allocation of 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. We expect our sales and marketing expenses to increase in absolute dollars as we hire additional sales personnel and increase our sales support infrastructure in order to further penetrate the U.S. market and expand into international markets.

Our general and administrative expenses consist primarily of compensation 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.

We expect to incur additional general and administrative expenses as a result of operating as a public company, including expenses related to compliance with the rules and regulations of the Securities and Exchange Commission, or SEC, and those of any national securities exchange on which our securities are traded, additional insurance expenses, investor relations activities and other administrative and professional services.

Interest Expense

Interest expense consists of cash and non-cash components. The cash component of interest expense is attributable to borrowings under our loan agreements and amounts owed under the promissory note issued to California HealthCare Foundation. The non-cash component consists of interest expense recognized from the amortization of debt discounts derived from the issuance of warrants and debt issuance costs capitalized on our balance sheets, and "paid in kind" interest when debt payments are interest only and are added back to the debt balance.

Other Expense, Net

Other expense, net consists primarily of the change in fair value of our convertible preferred stock warrant liabilities and interest income. Our convertible preferred stock warrants were exercisable for shares that were contingently redeemable and as such, were classified as a liability on our balance sheets at their estimated fair value. Upon completion of our IPO, all convertible preferred stock warrants converted into warrants to purchase common stock. Interest income consists primarily of interest received on our cash, cash equivalents and investments balances.

Results of Operations

Comparison of the Three Months Ended June 30, 2017 and 2016

	Three Months Ended June 30,			
	2017	2016	$ Change	% Change
Revenue	$ 23,854	$ 15,734	$ 8,120	52%
Cost of revenue	6,744	5,156	1,588	31%
Gross profit	17,110	10,578	6,532	62%
Gross margin	72%	67%		
Operating expenses:				
Research and development	2,776	1,667	1,109	67%
Selling, general and administrative	20,255	12,608	7,647	61%
Total operating expenses	23,031	14,275	8,756	61%
Loss from operations	(5,921)	(3,697)	(2,224)	60%
Interest expense	(839)	(803)	(36)	4%
Other income (expense), net	316	64	252	394%
Net loss and comprehensive loss	$ (6,444)	$ (4,436)	$ (2,008)	45%

Revenue

Revenue increased $8.1 million, or 52%, to $23.9 million during the three months ended June 30, 2017 from $15.7 million during the three months ended June 30, 2016. Revenue in the period primarily benefitted from volume increases of the ZIO Service performed, as well as an improvement in the average contracted rate.

Cost of Revenue and Gross Margin

Cost of revenue increased $1.6 million, or 31%, to $6.7 million during the three months ended June 30, 2017 from $5.2 million during the three months ended June 30, 2016. The increase in cost of revenue was primarily due to increased ZIO Service volume. This increase was partially offset by the reduction in costs to provide the ZIO Service, which was achieved primarily through manufacturing efficiencies in the production of our device and material cost reductions, and to a lesser extent by fixed costs absorption and reduced labor costs per device through our algorithm improvements and software-driven workflow enhancements.

Gross margin for the six months ended June 30, 2017 increased to 72%, compared to 67% for the three months ended June 30, 2016. The increase was primarily due to the revenue mix shift driven by the success of our contracting efforts, secondarily by the reduction in the cost of the ZIO Service due to our continued efforts to lower manufacturing costs, and to a lesser extent by fixed costs absorption and reduced labor costs per device through our algorithm improvements and software-driven workflow enhancements.

Research and Development Expenses

Research and development expenses increased $1.1 million, or 67%, to $2.8 million during the three months ended June 30, 2017 from $1.7 million during the three months ended June 30, 2016. The increase was primarily attributable to a $0.6 million increase in payroll and personnel-related expenses as a result of increased headcount and a $0.4 million increase in allocated facility-related expenses.

Selling, General and Administrative Expenses

Selling, general and administrative expenses increased $7.6 million, or 61%, to $20.3 million during the three months ended June 30, 2017 from $12.6 million during the three months ended June 30, 2016. The increase was primarily attributable to a $3.8 million increase in payroll and personnel-related expenses, including $1.4 million for non-cash stock-based compensation, as a result of increased headcount to support the growth in our operations, a $2.0 million increase in professional services expenses, primarily as a result of an increase in consulting expenses, a $0.7 million increase in allocated facility-related expenses, $0.4 million increase related to travel expenses and a $0.4 million increase in bad debt expense.

Interest Expense

Interest expense remained consistent at $0.8 million during the three months ended June 30, 2017 and the three months ended June 30, 2016 and is due to our debt financing entered into in December 2015.

Other Income (Expense), Net

Other income (expense), net increased $0.3 million to income of $0.3 million during the three months ended June 30, 2017 from expense of less than $0.1 million in other income during the three months ended June 30, 2016. The increase was primarily related to a $0.3 million increase of interest income from our investments.

Comparison of the Six Months Ended June 30, 2017 and 2016

	Six Months Ended June 30,			
	2017	2016	$ Change	% Change
Revenue	$ 45,291	$ 28,588	$ 16,703	58%
Cost of revenue	13,081	9,815	3,266	33%
Gross profit	32,210	18,773	13,437	72%
Gross margin	71%	66%		
Operating expenses:				
Research and development	5,397	3,212	2,185	68%
Selling, general and administrative	37,479	24,129	13,350	55%
Total operating expenses	42,876	27,341	15,535	57%
Loss from operations	(10,666)	(8,568)	(2,098)	24%
Interest expense	(1,661)	(1,581)	(80)	5%
Other income (expense), net	580	(413)	993	(240)%
Net loss and comprehensive loss	$ (11,747)	$ (10,562)	$ (1,185)	11%

Revenue

Revenue increased $16.7 million, or 58%, to $45.3 million during the six months ended June 30, 2017 from $28.6 million during the six months ended June 30, 2016. Revenue in the period primarily benefitted from volume increases of the ZIO Service performed, as well as improvements in the overall contracted rate.

Cost of Revenue and Gross Margin

Cost of revenue increased $3.3 million, or 33%, to $13.1 million during the six months ended June 30, 2017 from $9.8 million during the six months ended June 30, 2016. The increase in cost of revenue was primarily due to increased ZIO Service volume. This increase was partially offset by the reduction in costs to provide the ZIO Service, which was achieved primarily through manufacturing efficiencies in the production of our device and material cost reductions, and to a lesser extent by fixed costs absorption and reduced labor costs per device through our algorithm improvements and software-driven workflow enhancements.

Gross margin for the six months ended June 30, 2017 increased to 71%, compared to 66% for the six months ended June 30, 2016. The increase was primarily due to the revenue mix shift driven by the success of our contracting efforts, secondarily by the reduction in the cost of the ZIO Service due to our continued efforts to lower manufacturing costs, and to a lesser extent by fixed costs absorption and reduced labor costs per device through our algorithm improvements and software-driven workflow enhancements.

Research and Development Expenses

Research and development expenses increased $2.2 million, or 68%, to $5.4 million during the six months ended June 30, 2017 from $3.2 million during the six months ended June 30, 2016. The increase was primarily attributable to a $1.4 million increase in payroll and personnel-related expenses as a result of increased headcount and a $0.8 million increase in allocated facility-related expenses.

Selling, General and Administrative Expenses

Selling, general and administrative expenses increased $13.4 million, or 55%, to $37.5 million during the six months ended June 30, 2017 from $24.1 million during the six months ended June 30, 2016. The increase was primarily attributable to a $6.2 million increase in payroll and personnel-related expenses, including $2.7 million for non-cash stock-based compensation, as a result of increased headcount to support the growth in our operations, a $3.4 million increase in professional services expenses, primarily as a result of an increase in consulting, accounting, legal, claims processing and recruiting services expenses, a $2.2 million increase in allocated facility and other-related expenses, a $1.0 million increase related to travel expenses and a $0.5 million increase in bad debt expense.

Interest Expense

Interest expense increased $0.1 million during the six months ended June 30, 2017 as compared to the six months ended June 30, 2016 due to the increased principal balance of our December 2015 debt financing as a result of paid-in-kind interest.

Other Income (Expense), Net

Other income (expense), net increased $1.0 million to income of $0.6 million during the six months ended June 30, 2017 from expense of $0.4 million in other income during the six months ended June 30, 2016. The change was primarily related to an increase of $0.5 million of interest income from our investments and $0.4 million decrease from the fair value re-measurement of preferred warrant liabilities at each balance sheet date, which concluded upon the conversion to common warrants upon the IPO in October 2016.

Liquidity and Capital Expenditures

Overview

As of June 30, 2017, we had cash and cash equivalents of $16.2 million and short-term investments of $93.6 million and an accumulated deficit of $138.9 million. In connection with our IPO that closed in October 2016, we received net cash proceeds of $110.7 million, net of underwriters' discounts and commissions and expenses paid by us. Prior to the IPO, we financed our operations primarily through sales of our private securities, sales of our products and services and debt financings.

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):

(in thousands)	Six Months Ended June 30, 2017	2016
Net cash (used in) provided by:		
Operating activities	$ (7,400)	$ (13,364)
Investing activities	(30,354)	(1,069)
Financing activities	2,360	(1,801)
Net decrease in cash and cash equivalents	$ (35,394)	$ (16,234)

Cash Used in Operating Activities

During the six months ended June 30, 2017, cash used in operating activities was $7.4 million, which consisted of a net loss of $11.7 million, adjusted by non-cash charges of $9.9 million and a net change of $5.6 million in our net operating assets and liabilities. The non-cash charges are primarily comprised of a change in stock based-based compensation of $4.3 million, in allowance for doubtful accounts and contractual allowance of $4.2 million, non-cash interest expense of $0.8 million and depreciation and amortization of $0.6 million. The change in our net operating assets and liabilities was primarily due to a decrease of $5.7 million in accounts receivable as a result of increased revenues.

During the six months ended June 30, 2016, cash used in operating activities was $13.4 million, which consisted of a net loss of $10.6 million, adjusted by non-cash charges of $4.7 million and a net change of $7.5 million in our net operating assets and liabilities. The non-cash charges are primarily comprised of a change in allowance for doubtful accounts and contractual allowance of $2.1 million, change in value of warrant liability of $0.4 million, stock based-based compensation of $0.9 million and depreciation and amortization of $0.4 million. The change in our net operating assets and liabilities was primarily due to an increase of $5.8 million in accounts receivable as a result of an increase in revenue and a decrease of $0.8 million in accrued liabilities, primarily related to payments made on accrued payroll and related compensation accruals and a $0.5 million increase in other assets primarily related to the purchase of PCBAs to support the growth in volume of ZIO Service performed.

Cash Used in Investing Activities

Cash used in investing activities during the six months ended June 30, 2017 was $30.4 million, which consisted of $56.0 million in purchases of investments, $2.1 million of capital expenditures to purchase property and equipment, which were partially offset by $27.8 million of maturities of investments.

Cash used in investing activities during the six months ended June 30, 2016 was $1.1 million, which consisted of capital expenditures to purchase property and equipment

Cash Provided by Financing Activities

During the six months ended June 30, 2017, cash provided by financing activities was $2.4 million from the proceeds of employee option exercises and ESPP stock purchases.

During the six months ended June 30, 2016, cash used in financing activities was $1.8 million, primarily consisting of payments of deferred issuance costs related to the IPO.

Indebtedness

Pharmakon Loan Agreement

In December 2015, we entered into the Loan Agreement with Pharmakon. The Pharmakon Loan Agreement provides for up to $55.0 million in term loans split into two tranches as follows: (i) Tranche A Loans of $30.0 million in term loans, and (ii) Tranche B Loans are up to $25.0 million in term loans. The Tranche A Loans were drawn on December 4, 2015. The Tranche B Loans were available to be drawn prior to December 4, 2016. No additional draw was taken.

During the first four years, payments are interest only, and for the first two years, 50% of the interest will be “paid-in-kind.” We are subject to a financial covenant related to minimum trailing revenue targets that begins in June 2017, and is tested on a semi-annual basis. The minimum net revenue covenant ranges from $44.7 million for the period ended June 30, 2017 to $102.6 million for the period ended December 31, 2021. The minimum net revenue financial covenant has a 45-day equity cure period following required delivery date of the financial statements. Pursuant to this equity cure provision, we may cure a revenue covenant default by raising additional funds from the sale of equity. The loan matures in December 2021. As of June 30, 2017, $32.4 million in principal and interest was outstanding under the Pharmakon Loan Agreement.

The Tranche A Loans bear interest at a fixed rate equal to 9.50% per annum, which is due and payable quarterly in arrears. During the first eight calendar quarters, 50% of the interest due and payable shall be added to the then-outstanding principal.

The Pharmakon Loan Agreement requires us to maintain a minimum liquidity and minimum net sales during the term of the loan facility and contains customary affirmative and negative covenants and event of default provisions that could result in the acceleration of the repayment obligations under the loan facility. Upon a change in control of our company, Pharmakon has the option to demand payment in full of the outstanding loans together with the prepayment premium. The obligations under the Pharmakon Loan Agreement are secured by a security interest in substantially all of our assets pursuant to the Pharmakon Guaranty and Security Agreement, and this security interest is governed by an intercreditor agreement between Pharmakon and Silicon Valley Bank, or SVB.

SVB Loan and Security Agreement

In June 2014, we refinanced our debt with SVB by entering into a Second Amendment to the Amended and Restated Loan Security Agreement, or Second Amendment. Under the Second Amendment, we borrowed $4.9 million.

In December 2015, we used the proceeds from the Pharmakon Loan Agreement to repay $4.9 million of bank debt to SVB and entered into a Second Amended and Restated Loan and Security Agreement with SVB, or the SVB Loan Agreement. Under the SVB Loan Agreement we may 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 becomes due and payable. Any principal amount outstanding under the SVB revolving credit line bears 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 credit line is subject to financial covenants tied to our trailing twelve-month net sales. We may borrow up to 80% of our eligible accounts receivable, up to the maximum of $15.0 million. In August 2016, we obtained a $3.1 million letter of credit pursuant to the SVB revolving credit facility in connection with a new lease. As of June 30, 2017, we were eligible to borrow up to approximately $8.1 million and no amount was outstanding under the SVB revolving credit line.

The SVB Loan Agreement requires us to maintain a minimum consolidated liquidity and minimum net sales during the term of the loan facility. In addition, the SVB Loan Agreement contains customary affirmative and negative covenants and events of default. The obligations under the SVB Loan Agreement are secured by a security interest in substantially all of our assets, and this security interest is governed by an intercreditor agreement between Pharmakon and SVB.

CHCF Note

In November 2012, we entered into a Note Purchase Agreement and Promissory Note with the California HealthCare Foundation, or the CHCF Note, through which we borrowed $1.5 million. The CHCF Note accrues simple interest of 2.0%. The accrued interest and the principal was set to mature in November 2016. In June 2015, we amended the CHCF Note to extend the maturity date to May 2018. The CHCF Note is subordinate to other debt.

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, 2016 are presented in our 10-K filed with the SEC on March 31, 2017. With the exception of the following, there have been no material changes:

On May 1, 2017, the Company entered into a commercial building lease agreement. The lease will expire in September 2027 and provides for the lease of 20,276 square feet of office space in Houston, Texas. With the exception of the first four months, which are at a discount, the base annual rent is approximately $31,000 per month and escalates 2.5% per year. The total base rent payable over the lease period is approximately $4.3 million.

Recent Accounting Pronouncements

Refer to Note 2 in the financial statements for discussion of recent accounting pronouncements.

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 $109.8 million as of June 30, 2017, which consisted of bank deposits, money market funds and 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 $33.1 million, which is net of debt discount and debt issuance costs, as of June 30, 2017. The interest rates on our outstanding debt carry fixed 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.

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. 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

Our management, with the participation of our President and Chief Executive Officer and our Chief Financial Officer, have evaluated our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended) prior to the filing of this quarterly report. Based on that evaluation, our President and Chief Executive Officer and our Chief Financial Officer have concluded that, as of the end of the period covered by this quarterly report, our disclosure controls and procedures were effective at the reasonable assurance level.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting that occurred during our most recently completed fiscal quarter that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Limitations on Effectiveness of Controls and Procedures

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. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply judgment in evaluating the benefits of possible controls and procedures relative to their costs.

PART II – OTHER INFORMATION

ITEM 1 LEGAL PROCEEDINGS

Legal Proceedings

We are not currently a party to any material legal proceedings. From time to time we may be involved in legal proceedings or investigations by governmental agencies. For example, we could become involved in litigation related to advertising, unfair competition or intellectual property litigation with our competitors. The defense of these and other 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, all of which could have an adverse impact on our results of operations, financial position or cash flows.

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.

Risks Related to 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 six months ended June 30, 2017 and 2016, we had a net loss of $11.7 million and $10.6 million, respectively, and we expect to continue to incur additional losses. As of June 30, 2017, we had an accumulated deficit of $138.9 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 and to develop additional arrhythmic 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. In addition, as a public company, we will continue to incur significant legal, accounting and other expenses that we did not incur as a private company. 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 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 a first-line 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, or CMS, for the professional services they provide in applying the ZIO Patch 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 the 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 through at least 2017. 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 limited operating history makes it difficult to evaluate our current business and future prospects

We first commercialized the ZIO Service in the first quarter of 2011 and do not have a long history operating as a commercial company. As a result, our operating results are not predictable. Since 2011, our revenue has been derived, and we expect it to continue to be derived, substantially from sales of the ZIO Service and its predecessor products. Because of its recent commercial introduction, the ZIO Service has limited product and brand recognition. In addition, demand for our services may decline or may not increase as quickly as we expect. Failure of the ZIO Service to significantly penetrate current or new markets would harm our business, financial condition and results of operations.

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

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 acceptance of the ZIO Service
- our ability to get payors under contract at acceptable reimbursement rates
- the availability of reimbursement for the ZIO Service 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
- our revenue recognition policy, which generally provides that we recognize revenue only upon the earlier of notification of the payor benefits allowed or when payment is received
- 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 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 filed against us or by us for intellectual property infringement or otherwise
- our ability to obtain additional financing as necessary
- 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.

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 six months ended June 30, 2017, we received approximately 28% of our revenue from reimbursement for our ZIO Service by CMS. CMS imposes extensive and detailed requirements on manufacturers of medical devices and providers of medical services, 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. In addition, regional Medicare Administrative Contractors, or MACs, change from time to time, which may result in changes to our reimbursement rates, increased administrative burden and reimbursement delay.

Changes in public health insurance coverage and CMS reimbursement rates for the ZIO Service could affect the adoption of the ZIO Service and our future revenue.

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. For example, government and other third-party payors require us to identify the service for which we are seeking reimbursement by using a Current Procedural Terminology, or CPT, code set maintained by the American Medical Association. We have secured CPT codes specific to our category of diagnostic monitoring through 2022. In addition, third-party payors often reimburse based on CMS reimbursement rates. To the extent CMS reduces its reimbursement rates for the ZIO Service, third-party payors may reduce the rates at which they reimburse the ZIO Service, which could adversely affect our revenue.

Determinations of which products or services will be reimbursed under Medicare can be developed at the national level through a national coverage determination, or an NCD, by CMS, or at the local level through a local coverage determination, or an LCD, by one or more of the regional Medicare Administrative Contractors, or MACs, which are private contractors that process and pay claims on behalf of CMS for different regions. In the absence of an NCD, as is the case with the ZIO Service, the MAC with jurisdiction over a specific geographic region will have the discretion to make an LCD and determine the fee schedule and reimbursement rate within the region, and regional LCDs may not always be consistent in their determinations. We have in the past been, and in the future may be, required to respond to potential changes in reimbursement rates for our products. Reductions in reimbursement rates, if enacted, could have a material adverse effect on our business. Further, a reduction in coverage by Medicare could cause some commercial third-party payers 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, 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.

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.

The current presidential administration and Congress are expected to attempt to make sweeping changes to the current health care laws. It is uncertain how modification or repeal of any of the provisions of the ACA, including as a result of current and future executive orders and legislative actions, will impact us and the medical device industry as a whole. Any changes to, or repeal of, the ACA 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.

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 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 or require or increase co-payments from patients. Any such actions could have a negative effect on our revenue and the revenue of providers prescribing our products. Physicians may not prescribe our products 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 Patch and the interpretation of results which may inform a diagnosis. Additionally, certain payors may require that physicians prescribe a Holter monitor as the first-line monitoring option. 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 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
- advocated by key opinion leaders

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, 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 products. These contracts provide a high degree of certainty to us, physicians and hospitals and clinics with respect to the rate at which our products 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. 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., or 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, hospitals and clinics. 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 products.

We expect to continue to dedicate significant 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 products at rates that are favorable to us. If we fail to establish these contracts, we will be able to recognize revenue only upon the earlier of notification of payor benefits allowed or when payment is received. 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 products because of the administrative work involved in interacting with patients to answer their questions and help them obtain reimbursement for our products. If physicians are unwilling to prescribe our products 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 and manufacturing operations and general and administrative infrastructure. In addition to the need to scale our clinical operations 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 Patch, market and sell our ZIO Service and analyze the data to produce ZIO Reports, which could result in inefficiencies and unanticipated costs, reduced quality in our ZIO Reports and disruptions to our 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 cardiac 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. We recently installed a new Enterprise Resource Planning, or ERP, platform, which is critical to our ability to track our claims processing and the delivery of our ZIO Reports to physicians, as well as to support our financial reporting systems. The time and resources required to optimize these systems are uncertain, and failure to complete optimization in a timely and efficient manner could adversely affect our operations. 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 cardiac technicians and other personnel to process higher volumes of data. We cannot assure you that any increases in scale, related improvements and quality assurance will be successfully implemented 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 recently received FDA clearance for our ZIO AT ECG Monitoring System, which is designed to provide timely transmission of data during the wear period. We do not yet know whether this 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.

We have limited experience manufacturing the ZIO Patch in commercial quantities and providing services on a broad scale, which could harm our business.

Because we have only limited experience in manufacturing the ZIO Patch in commercial quantities and providing services on a broad scale, 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
- key components of the ZIO Patch 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
- we may experience a delay in completing validation and verification testing for new controlled environment rooms at our manufacturing facilities
- we are subject to state and federal regulations, including the FDA's Quality System Regulation, or the QSR, for both the manufacture of the ZIO Patch and the provision of the ZIO Service, noncompliance with which could cause an interruption in our manufacturing and services
- to increase our manufacturing output significantly and scale our services, we will have to attract and retain qualified employees for our operations

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. Our inability to successfully manufacture the ZIO Patch 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 and state regulatory inspections for compliance with the QSR. Developing and maintaining a compliant quality system is time consuming and expensive. 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 used in our ZIO Patch. 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
- 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

- delays in product shipments resulting from uncorrected defects, reliability issues, or a supplier's failure to consistently produce quality components
- 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
- 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 reusable printed circuit board assemblies, disposable housings, instruments and other materials that we use to manufacture our ZIO Patch and the adhesive that binds the ZIO Patch to a patient's body. These components and materials are critical and 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 Patch 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 a facility, we may be unable to manufacture the ZIO Patch 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 Patch 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, flooding and power outages. Any of these may render it difficult or impossible for us to manufacture products for some period of time. If our Cypress facility is inoperable for even a short period of time, the inability to manufacture the ZIO Patch, 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 independent diagnostic testing facility, or 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
- 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 get reimbursed by CMS, we must establish an IDTF. IDTFs are defined by CMS as entities 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 cardiac 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 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 cardiac 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.

In 2017, we have recognized approximately ten percent of our revenue on a non-accrual basis, and as a result, our quarterly operating results are difficult to predict.

If we do not have a contracted rate with a payor, we recognize revenue only upon the earlier of notification of the payor benefits allowed or when payment is received. 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. There is currently no predictable payment history for direct-billed non-contracted payors, and thus because a reasonable estimate of reimbursement cannot be made, we recognize revenue from such accounts only when we are notified of payment or it is received. 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. When management's judgement indicates a reasonable estimate of reimbursement can be made we will begin recognizing the revenue on an accrual basis upon delivery. 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, Inc. 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
- third-party reimbursement

Large competitors in the ambulatory cardiac market include companies that sell standard Holter monitor equipment such as GE Healthcare, Philips Healthcare, Mortara Instrument, Inc., Spacelabs Healthcare, Inc. and Welch Allyn Holdings, Inc., which was acquired by Hill-Rom Holdings, Inc. Additional competitors who offer Holter and event monitors, and also function as service providers, include BioTelemetry, Inc. and Medtronic plc. These companies have also developed other patch-based mobile cardiac monitors that have recently received FDA and foreign regulatory clearances. For example, LifeWatch AG, which was subsequently acquired by BioTelemetry in July 2017, received FDA clearance and CE mark for its mobile cardiac telemetry monitoring patch in January 2016 and December 2015, respectively. In addition, in July 2016, BioTelemetry, Inc. announced FDA clearance for its own patch-based mobile cardiac telemetry monitor. There are also several small start-up companies trying to compete in the patch-based cardiac monitoring 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. Two examples of this are Medtronic plc's 2014 acquisition of Corventis, Inc. and Boston Scientific Corporation's 2015 equity investment and sales cooperation agreement with Preventice Solutions, Inc., which was formerly named eCardio Diagnostics, LLC. Future competition could come from makers of wearable fitness products or large information technology companies focused on improving healthcare. These competitors and potential competitors may introduce new products that compete with our ZIO Service. 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, or 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.

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, or OIG, the Department of Justice, or 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 June 30, 2017, we had $34.4 million in principal and interest outstanding under our credit facilities consisting of our loan agreements with Pharmakon and SVB and a promissory note issued to California HealthCare Foundation. We must make significant annual debt payments under the loan agreements and the promissory note, which will divert resources from other activities. Our debt with Pharmakon and 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 these loan agreements, the promissory note and the note purchase agreement pursuant to which the promissory note was issued, 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 agreements, the promissory note and the note purchase agreement. If not waived, future defaults could cause all of the outstanding indebtedness under the loan agreements and the promissory note 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 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 Kevin M. King, our Chief Executive Officer, and Matthew C. Garrett, 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 cardiac technicians. We may not be able to attract or retain qualified engineers and certified cardiac 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, either because we are a public company or otherwise, 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.

We added two new directors to our board of directors in July 2017, which may lead to changes in our operations.

Two new directors were elected to our board of directors on July 17, 2017. One of these directors, Bruce G. Bodaken, served as Chairman and Chief Executive Officer of a payor, and the other director, Dr. Ralph Snyderman, served as founding Chief Executive Officer and President of a provider. Another of our directors has served on our board of directors for less than 18 months. Because of these recent additions, our board of directors has not worked together as a group for an extended period of time. This change in the composition of our board of directors from directors affiliated with financial investors to directors with industry experience may lead to changes in our operations as these new directors analyze our business and contribute to the formulation of business strategies and objectives. If our board of directors does not align on the business strategies and objectives of our company, our operating results could be adversely affected.

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 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 ZIO Patches 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, or FCPA, U.K. Bribery Act of 2010 and comparable laws and regulations in other countries

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 U.S. Foreign Corrupt Practices Act, or 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 the ZIO Patch 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 machine-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. 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 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.

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 and store sensitive data, including legally-protected personally identifiable health information about patients in the United States and the United Kingdom. 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, 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. Although we take measures to protect sensitive information from unauthorized access or disclosure, our information technology and infrastructure, and that of XIFIN, may be vulnerable to attacks by hackers or viruses or breaches due to employee error, malfeasance or other disruptions. 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, or PHI, is transmitted to us by third parties, who may not implement adequate security and privacy measures.

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, our operations could be disrupted, we may be unable to provide the ZIO Service and we may suffer loss of reputation, financial loss and other regulatory penalties because of lost or misappropriated information, including sensitive patient data. In addition, these breaches and other inappropriate access can be difficult to detect, and any delay in identifying them may lead to increased harm.

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, and the European Union Data Protection Directive, and regulatory penalties. 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.

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.

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 Patch 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 Patch 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, 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.

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

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 recent 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, 2016, we had federal and state net operating loss carryforwards, or NOLs, of $104.6 million and $58.6 million, respectively, which if not utilized will begin to expire in 2027 for federal purposes and 2017 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 of 1986, 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 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. 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.

If we are unable to implement and maintain effective internal control over financial reporting in the future, investors may lose confidence in the accuracy and completeness of our financial reports and the market price of our common stock may decrease.

Prior to our IPO, our Chief Financial Officer had not been the chief financial officer of a publicly traded company and although our Chief Executive Officer had been the chief executive officer of another public company, he had never been involved in the transition of a private company to a public company through an initial public offering.

The Sarbanes-Oxley Act requires, among other things, that we assess the effectiveness of our internal controls over financial reporting annually and the effectiveness of our disclosure controls and procedures quarterly. Section 404 of the Sarbanes-Oxley Act, or Section 404, requires us to perform system and process evaluation and testing of our internal control over financial reporting to allow management to report on, and our independent registered public accounting firm potentially to attest to, the effectiveness of our internal control over financial reporting. As an "emerging growth company," we avail ourselves of the exemption from the requirement that our independent registered public accounting firm attest to the effectiveness of our internal control over financial reporting under Section 404. We will no longer be able to take advantage of this exemption beginning on December 31, 2017, when we will be deemed a large accelerated filer and, as a result, cease to be an "emerging growth company." When our independent registered public accounting firm is required to undertake an assessment of our internal control over financial reporting, the cost of our compliance with Section 404 will correspondingly increase. Our compliance with applicable provisions of Section 404 will require that we incur substantial accounting expense and expend significant management time on compliance-related issues as we implement additional corporate governance practices and comply with reporting requirements.

Section 404 also requires that we evaluate and determine the effectiveness of our internal control over financial reporting and, beginning with our annual report for the year ending December 31, 2017, provide a management report on our internal control over financial reporting. If we have material weaknesses in our internal control over financial reporting, we may not detect errors on a timely basis and our financial statements may be materially misstated. We are implementing the process and documentation necessary to perform the evaluation needed to comply with Section 404, but we may not be able to complete our evaluation, testing and any required remediation in a timely fashion.

During the evaluation and testing process, if we identify one or more material weaknesses in our internal control over financial reporting, our management will be unable to conclude that our internal control over financial reporting is effective. Moreover, when we are no longer an emerging growth company, our independent registered public accounting firm will be required to issue an attestation report on the effectiveness of our internal control over financial reporting. Even if our management concludes that our internal control over financial reporting is effective, our independent registered public accounting firm may conclude that there are material weaknesses with respect to our internal controls or the level at which our internal controls are documented, designed, implemented or reviewed.

If we identify material weaknesses in our internal control over financial reporting, if we are unable to comply with the requirements of Section 404 in a timely manner, if we are unable to conclude that our internal control over financial reporting is effective, or when we are no longer an emerging growth company if our auditors were to express an adverse opinion on the effectiveness of our internal control over financial reporting because we had one or more material weaknesses, investors could lose confidence in the accuracy and completeness of our financial disclosures, which could cause the price of our common stock to decline. Internal control deficiencies could also result in a restatement of our financial results in the future. We could also become subject to stockholder or other third-party litigation as well as investigations by the stock exchange on which our securities are listed, the Securities and Exchange Commission, or other regulatory authorities, which could require additional financial and management resources and could result in fines, trading suspensions or other remedies.

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 and other intellectual property assets for the purpose of making claims of infringement in order to extract settlements. From time to time, we may receive threatening letters, notices or "invitations to license," or may be the subject of claims that our products and business operations infringe or violate the intellectual property rights of others. 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 whom we purchase hardware or software may not indemnify us in the event that such hardware or software is accused of infringing a third-party's patent or trademark or of misappropriating a third-party's trade secret.

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 fees and court costs. In addition, if we are found to willfully infringe third-party patents or trademarks or to have misappropriated trade secrets, we could be required to pay treble damages in addition to other penalties. Although patent, 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 Patch 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, or USPTO, may be necessary to determine priority with respect to our patents, patent applications, trademarks or trademark applications. We may also become involved in other proceedings, such as reexamination, inter partes review, derivation or opposition proceedings before the USPTO or other jurisdictional body relating to our intellectual property rights or the intellectual property rights of others. Adverse determinations in a judicial or administrative proceeding or failure to obtain necessary licenses could prevent us from manufacturing the ZIO Patch 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 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 ZIO Service. 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. These risks could be difficult to eliminate or manage, and, if not addressed, could harm our business, 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 June 30, 2017, we owned, or retained exclusive license to, nine issued U.S. patents, the earliest of which will expire in 2028. As of June 30, 2017, we also owned, or retained an exclusive license to, two issued patents from each of the patent offices in Japan and Australia, and one issued patent from the patent offices in each of Canada, the European Union and Korea. The earliest expiration date of these international patents is 2027. As of June 30, 2017, we had twenty-one pending patent applications globally, including four in the United States, one in Australia, three in Canada, one in China, five in the European Union, one in India, four in Japan, two in Korea. Our patents and patent applications include claims covering key aspects of the design, manufacture and use of the ZIO Patch 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. 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.

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, tradenames 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 do not own any registered trademarks for the mark “IRHYTHM” and we are aware of at least one third-party that has registered the “IRHYTHM” mark in the United States, the European Union and Taiwan 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 Offices in the United States and the European Union, and those proceedings could impact our ability to register the “IRHYTHM” mark in those jurisdictions. It is possible that the third-party could bring suit against us claiming infringement of the “IRHYTHM” mark, and if it did so and if there were a court determination against us, we might then be obligated to pay monetary damages, enter into a license agreement, or cease use of the “IRHYTHM” name and mark, all of which could have a material adverse effect on our business, financial condition, results of operations and prospects.

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, or the 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. The USPTO recently developed new regulations and procedures to govern administration of the Leahy-Smith Act, and many of the substantive changes to patent law associated with the Leahy-Smith Act, and in particular, the first to file provisions, only became effective in 2013. 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. 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. 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 (as defined below), 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, or HHS, 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 federal physician self-referral prohibition, commonly known as the Stark Law
- 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 Patient Protection and Affordable Care Act, as amended by the Health Care and Education Affordability Reconciliation Act, or 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, currently set at $5,500 to $11,000 per false claim.

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

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

- product marketing, promotion and advertising, sales and distribution
- 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 Patch and 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, including reports required by the medical device reporting regulations, or 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.

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

- adverse publicity, warning letters, fines, injunctions, consent decrees and civil penalties
- repair, replacement, refunds, recall or seizure of our products
- operating restrictions, partial suspension or total shutdown of production
- denial of our requests for 510(k) clearance or premarket approval of new products or services, new intended uses or modifications to existing products or services
- withdrawal of 510(k) clearance or premarket approvals that have already been granted
- criminal prosecution

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

Material modifications to the ZIO Patch, labelling of the ZIO Patch, 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 Patch 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 Patch 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 Patch 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 Patch 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, or QSR and the EU's Medical Device Directive, or MDD, both of which cover procedures and documentation of the design, testing, production, control, quality assurance, labeling, packaging, storage and shipping of ZIO Patches. We are also subject to similar state requirements and licenses, and to ongoing ISO 13485 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, or 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 audited by the FDA in June 2016 and no formal observations resulted. For our manufacturing facility, the most recent FDA audit occurred in May 2013 at our previous location in Huntington Beach, California. One Form 483 observation resulted from this audit, which required a change to documentation procedures. Remedial action was completed within the 45-day timeline that was agreed to at the audit close. No additional follow up with the FDA was required and we believe that we are in substantial compliance 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, or NSAI, our European Notified Body. Most recently, the NSAI conducted an ISO 13485 recertification audit of our design, manufacturing and service operations in March, April and June 2017.

We can provide no assurance that we will continue to remain in compliance with the QSR or MDD. 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 Patches, which would harm our business.

ZIO Patches 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 Patches 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 that could harm our future revenue and profitability. 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. For example, 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. The Affordable Care Act, among other things, imposes an excise tax of 2.3% on the sale of most medical devices, including ours. Although this excise tax has temporarily been suspended for two years beginning on January 1, 2016, any failure to pay this amount if it becomes due in the future could result in an injunction on the sale of our products, fines and penalties.

We cannot assure you that the Affordable Care Act, as currently enacted or as amended, repealed or replaced in the future, will not harm our business and financial results and we cannot predict how future federal or state legislative or administrative changes relating to healthcare reform will affect our business. There likely will continue to be legislative and regulatory proposals at the federal and state levels directed at containing or lowering the cost of healthcare. We cannot predict the initiatives that may be adopted in the future or their full impact. The continuing efforts of the government, insurance companies, managed care organizations and other payors of healthcare services to contain or reduce costs of healthcare may harm:

- our ability to set a price that we believe is fair for our ZIO Service
- our ability to generate revenue and achieve or maintain profitability
- 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 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.

Risks Related to Our Common Stock

Our common stock has only recently become publicly traded, and we expect that the price of our common stock will fluctuate substantially.

Our common stock has only recently become publicly traded, and we cannot be certain that an active trading market for our common stock will be sustained. The lack of an active market may impair the value of our common stock, or your ability to sell your shares at the time you wish to sell them or at a price that you consider reasonable. An inactive market may also impair our ability to raise capital to continue to fund operations by selling common stock and may impair our ability to acquire other companies or products by using our common stock as consideration. Although our common stock is listed on the NASDAQ Global Market, if we fail to satisfy the continued listing standards of the NASDAQ Global Market, we could be de-listed, which would negatively impact the price of our common stock.

The market price of our common stock is likely to be highly volatile and may 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
- 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 by current or potential payors
- 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 of 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
- developments in our industry

In addition, the market prices of the stock of many new issuers in the medical device industry and of other companies with smaller market capitalizations like us have been volatile and from time to time have experienced significant share price and trading volume changes unrelated or disproportionate to the operating performance of those companies. In the past, stockholders have filed securities class action litigation following periods of market volatility. If we were to become involved in securities litigation, it could subject us to substantial costs, divert resources and the attention of management from our business, and 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 publish negative reports about our business, our share price and trading volume could decline.

The trading market for our common stock depends in part on the research and reports that securities or industry analysts publish about us or our business, our market and our competitors. We do not have any control over these analysts. If one or more of the analysts who cover us downgrade our shares or change their opinion of our business, our share price would likely decline. If one or more of these analysts cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which could cause our share price or trading volume to decline.

Sales of a substantial number of shares of our common stock in the public market, including by our existing stockholders, could cause our stock price to fall.

Sales of a substantial number of shares of our common stock in the public market, or the perception that these sales might occur, could depress the market price of our common stock and could impair our ability to raise capital through the sale of additional equity securities. We are unable to predict the effect that these sales and others may have on the prevailing market price of our common stock.

In addition, certain of our stockholders can require us to register shares of our capital stock owned by them for public sale in the United States. We have also filed a registration statement to register shares of our common stock reserved for future issuance under our equity compensation plans. Subject to the satisfaction of applicable exercise periods and applicable volume and restrictions that apply to affiliates, the shares of our common stock issued upon exercise of outstanding options will become available for immediate resale in the public market upon issuance.

Future sales of our common stock may make it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate. These sales also could cause the market price of our common stock to decline and make it more difficult for you to sell shares of our common stock.

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, particularly after we no longer qualify as an "emerging growth company," under the JOBS Act. 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 will incur
significant expenses and devote substantial management effort toward ensuring compliance with the requirements of Section 404, which has increased now that we will no longer be an emerging growth company under the JOBS Act starting with our next fiscal year. 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.

We will incur additional compensation costs in the event that we decide to pay our executive officers cash compensation closer to that of executive officers of other public medical device companies, which would increase our general and administrative expense and could harm our profitability. Any future equity awards will also increase our compensation expense. We also expect that being a public company and compliance with applicable rules and regulations will make it 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.

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.

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

We currently qualify as an "emerging growth company" under the JOBS Act. For as long as we continue to be an emerging growth company, we may take advantage of certain exemptions from reporting requirements that are applicable to other public companies including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. We cannot predict if investors will find our common stock less attractive to the extent we rely on available exemptions. If some investors do find our common stock less attractive, there may be a less active trading market for our common stock and our stock price may be more volatile or may decline.

Based on our market capitalization as of June 30, 2017, our status as an emerging growth company will cease on December 31, 2017 and we will be required to comply with, among other requirements, the auditor attestation requirements of Section 404 for our next annual report.

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
- 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 provides that the Court of Chancery of the State 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 provides that, unless we consent to the selection of an alternative forum, the Court of Chancery of the State 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 arising pursuant to the Delaware General Corporation Law or 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 governed by the internal affairs doctrine. 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 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 cash dividends and do not anticipate paying cash 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 agreements limit our ability to, among other things, pay dividends or make other distributions or payments on account of our common stock, in each case 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 you sell our common stock after our stock price appreciates.

ITEM 2 UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Unregistered Sales of Equity Securities

None.

Use of Proceeds

Our initial public offering of 7,238,235 shares of common stock was effected through a registration statement on Form S-1 (Registration Nos. 333-213773 and 333-214179), which was declared effective on October 19, 2016. Our initial public offering closed on October 25, 2016 and resulted in net proceeds of approximately $110.9 million, after deducting underwriting discounts and commissions of approximately $8.6 million and other expenses of approximately $3.5 million. No payments for such expenses were made directly or indirectly to any of our officers or directors.

J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, Canaccord Genuity Inc. and BTIG, LLC acted as the underwriters. There has been no material change in the planned use of proceeds from our initial public offering as described in our final prospectus filed with the SEC on October 20, 2016.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES.

Not applicable.

ITEM 4. MINE SAFETY DISCLOSURES.

Not applicable.

ITEM 5. OTHER INFORMATION

Not applicable.

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.

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: August 4, 2017

By: /s/ Kevin M. King
Kevin M. King
President and Chief Executive Officer
(Principal Executive Officer)

Date: August 4, 2017

By: /s/ Matthew C. Garrett
Matthew C. Garrett
Chief Financial Officer
(Principal Financial Officer and Chief Accounting Officer)

EXHIBIT INDEX

Exhibit Number	Description
31.1	Certification of Principal 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
31.2	Certification of Principal 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
32.1	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
10.32	Office Lease dated May 1, 2017 between the Registrant and Radler Limited Partnership
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

LEASE AGREEMENT

BASIC LEASE PROVISIONS ("Basic Lease Provisions"):

ITEM 1: This Lease Agreement ("**Lease**") is made and entered into as of the 1st day of May, 2017, between Lessor and Lessee herein below named.

ITEM 2:

Lessor Name:	Radler Limited Partnership
Address:	5825 North Sam Houston Parkway West, Suite 100 Houston, Texas 77086
Federal Employee ID No.:	76-0624929
Address for payment and notices:	Same as above.
Lessee Name:	iRhythm Technologies, Inc., a Delaware corporation
Doing Business as:	Not Applicable
Address:	5775 North Sam Houston Parkway West, Suite 200 Houston, Texas 77086
Federal Emp. ID No.:	20-8149544
Lessee Address for billings:	650 Townsend Street, Suite 500 San Francisco, CA 94103 Attn: CFO
Lessee Address for notices:	650 Townsend Street, Suite 500 San Francisco, CA 94103 Attn: Chief Financial Officer & 2 Marriott Drive Lincolnshire, FL 60069 Attn: Legal Department

ITEM 3:

Building Complex Name:	Beltway Lakes
Building Name:	Beltway Lakes III
Building Address:	5775 North Sam Houston Parkway West Houston, Texas 77086
Relevant County:	Harris County, Texas

ITEM 4: Premises: Suite No. 200; Floor 2nd
Premises Net Rentable Area: 20,276 square feet

Parking Spaces:	(a)	Unreserved:	90 Spaces (Total)
	(b)	Reserved:	Up to 20 Spaces (out of the unreserved and exercisable at any time)

ITEM 5:

(a)	Total Net Rentable Area of Building:	257,237 square feet
(b)	Lessee's Building Expense Percentage:	7.8%

ITEM 6: (a) Base Monthly Rental:

Beginning Month #	Ending Month #	Base Rent Rate/Year /SF	Total Base Rent Per Month
1	4	$10.78	$18,214.60
5	16	$18.50	$31,258.80
17	28	$18.96	$32,040.30
29	40	$19.44	$32,841.30
41	52	$19.92	$33,662.30
53	64	$20.42	$34,503.90
65	76	$20.93	$35,366.50
77	88	$21.45	$36,250.70
89	100	$21.99	$37,156.90
101	112	$22.54	$38,085.90
113	124	$23.10	$39,038.00

(b) Parking Space Rent (per space per month):
Reserved: $75.00 plus tax
Unreserved: $45.00 plus tax (Abated)

(c) First month's rent and additional rent for: The first full calendar month of the Term
Due on Lease execution: $45,620.97

(d) Next Monthly Rent Due: The first day of the second full calendar month of the Term

(e) Initial Monthly Estimated Additional Rent Payment for Building Operating Expenses: $14,166.67

ITEM 7: (a) Anticipated Commencement Date: July 15, 2017
(b) Term: 124 months (plus any partial month of commencement, if any)
(c) Projected Expiration Date: November 30, 2027

ITEM 8: Security Deposit: $45,620.97

ITEM 9: Broker(s): Lessor's Broker: None
Lessee's Broker: Proximity Real Estate Advisors, LLC.

ITEM 10: (a) Guarantor: Corporate Guarantee Not Applicable.
Form of Guaranty - **Exhibit "M"**
(b) Letter of Credit: Not Applicable
Form of Letter of Credit - **Exhibit "N**"

ITEM 11: Permitted Office Use: General Executive Office, including clinical operations (but excluding direct patient care) administration, and IT support

ITEM 12: Normal Building Operating Hours:
Monday - Friday: 7:00 a.m. to 6:00 p.m.
Saturday: 8:00 a.m. to 12:00 p.m.

ITEM 13: Allotted Number of Keys: 3 Access Cards: 90

This Lease Agreement consists of 55 Articles on 30 pages, plus Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M and N.

ARTICLE 1.
Premises

1.1 **Demise; Description of Premises.** In consideration of the covenant of that party set forth as Lessee in Item 2 of the Basic Lease Provisions ("**Lessee**") to pay rent as herein provided, and in consideration of the observance and performance by Lessee of other terms, provisions and covenants hereof, that party set forth as Lessor in Item 2 of the Basic Lease Provisions ("**Lessor**") hereby leases, demises and lets to Lessee, and Lessee does hereby lease and take from Lessor that certain space described in Item 4 of the Basic Lease Provisions, located in the building described in Item 3 of the Basic Lease Provisions (hereinafter called the "**Building**"). The Building is an office building that contains approximately 257,237 square feet of Net Rentable Area, and is located on that certain tract or parcel of land located in the Relevant County referenced in Item 3 of the Basic Lease Provisions, as is more particularly described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "**Land**"). The space hereby leased in the Building is hereinafter called the "**Premises**", is identified on the floor plan marked **Exhibit "B"** attached hereto and made a part hereof for all purposes, and is leased and taken subject to all liens, covenants, easements, agreements and restrictions of record and all applicable laws, ordinances, statutes and governmental regulations. All terms used in this Lease and that are listed in the Basic Lease Provisions have the meaning given them in the Basic Lease Provisions when used anywhere in this Lease or any referenced exhibit or attachment, and are as much a substantive part of this Lease as any other clause. If there is any conflict between the Basic Lease Provisions and the remainder of the Lease, the remainder of the Lease shall control for all purposes.

ARTICLE 2.
Term

2.1 **Term.** This Lease is for a term (the "**Term**") set forth in Item 7(b) of the Basic Lease Provisions, commencing on the later to occur of (i) the Anticipated Commencement Date set forth in Item 7(a) of the Basic Lease Provisions (as extended, if extended, under the terms of this Lease), or (ii) the date by which Lessor has delivered the Premises to Lessee in the required condition (such later date, as and if extended pursuant to Section 2.2 hereof, being herein called the "**Commencement Date**"). If the Commencement Date is not on the first of a calendar month, then the Term is deemed extended to include any partial calendar month between the Commencement Date and the first of the following calendar month, and the period referenced in Item 7(b) of the Basic Lease Provisions will begin on the first of that following calendar month. This Lease shall expire at midnight on the last day of the Term as so defined, unless earlier terminated as herein provided herein; provided, however the Term may be extended pursuant to the Renewal Options set forth in **Exhibit "F**" hereof. Upon the exercise by Lessee of a Renewal Option or the commencement of the Extended Term, as applicable, all references to the "Lease Term" in this Lease shall be deemed to include the Extended Term or Renewal Term, as applicable, and all references to the "Expiration Date" shall be deemed to be the last day of the Extended Term or Renewal Term, as applicable. From and after the date of Substantial Completion (as such term is defined in **Exhibit "C"** to this Lease), Lessee shall have the right to enter the Premises for purposes of moving Lessee's personal property, fixtures, and equipment into the Premises, installing Lessee's voice and data cabling and otherwise preparing the Premises for Lessee's occupancy.

2.2 **Projected Commencement Date; Extension.** Lessor expects to have the Premises Substantially Completed and ready for occupancy by the Anticipated Commencement Date specified in Item 7(a) of the Basic Lease Provisions. In the event, however, that the Premises are not Substantially Completed and ready for occupancy by such date, for any reason or cause, Lessor shall not be liable or responsible to Lessee for any claims, damages or liabilities in connection therewith or by reason thereof, nor shall this Lease become void or voidable, but rather the Commencement Date of this Lease shall be extended to the date that the Premises have been substantially completed and are ready for occupancy by Lessee (subject to the provisions of Section 2.1 by which Lessor must otherwise deliver the Premises in the required condition). In such event, rental under this Lease shall not commence until such revised Commencement Date, and the expiration date hereof shall be extended so as to give effect to the full stated Term. Lessor shall deliver possession of the Premises to Lessee in good, vacant, broom clean condition, with all building systems in good working order and in compliance with all laws. Notwithstanding anything to the contrary herein, if the Commencement Date has not occurred for any reason whatsoever on or before sixty (60) days following the estimated completion date, then, in addition to Lessee's other rights or remedies, the date Lessee is otherwise obliged to commence payment of rent shall be delayed by two (2) days for each day that the Commencement Date is delayed beyond such date.

2.3 **Confirmation of Commencement Date.** When the Premises are Substantially Completed and ready for occupancy and are delivered to Lessee in the required condition, the parties shall, at the request of either, execute an Acknowledgment of Commencement Date in the form attached hereto as **Exhibit "E"**, attached hereto and incorporated herein by reference, specifying the Commencement Date and Term hereof, and such other matters as such form may specify; provided, however, that if Lessee fails to sign and return the Acknowledgment of Commencement Date to Lessor within ten (10) days of its receipt from Lessor, the Acknowledgment of Commencement Date as sent by Lessor shall be deemed to have correctly set forth the Commencement Date of the Lease and Lessee shall be deemed to have consented to each of the other matters addressed in the Acknowledgment of Commencement Date. The failure of Lessor to send the Acknowledgment of Commencement Date shall have no effect on the Commencement Date. In connection with the completion of the Premises, Lessor shall deliver to Lessee a Certificate of Compliance from Harris County.

2.4 **No Delay Because Lessee Refuses to Occupy.** There shall be no delay in the occurrence of the Commencement Date of this Lease and/or the commencement of payment of rental under this Lease by reason of Lessee's failure to occupy the Premises on or before the Commencement Date.

ARTICLE 3.
Base Rental

3.1 **Amount; Payment Terms.** Lessee agrees to pay Lessor, without any offset or deduction whatsoever, in lawful money of the United States of America, at Lessor's address as set forth in Item 2 of the Basic Lease Provisions or elsewhere as designated from time to time by Lessor's notice in writing to Lessee, the monthly sum set forth in Item 6(a) of the Basic Lease Provisions (hereinafter called "**Base Rental**") on the first day of each calendar month, monthly in advance without demand or invoicing, for each and every calendar month of the Term. Lessee and Lessor further agree, pursuant to Item 6(b), that any unreserved parking spaces will be made available to the Lessee at no cost during the Term.

3.2 **First Paid Month's Rent.** Lessee shall pay to Lessor, upon execution of this Lease, the sum set forth in Item 6(c) of the Basic Lease Provisions, representing payment of Base Rental and Additional Rent for the first paid calendar month of the Term. If the Term commences on a day other than the first day of a calendar month, Lessee shall pay rental as provided herein for such commencement month on a pro rata basis, and the first month's Base Rental and Additional Rent paid by Lessee upon execution hereof shall apply and be credited to the next full month's Base Rental and Additional Rent due hereunder.

3.3 **Next Monthly Rent.** The next monthly Base Rental due under the terms of this Lease is payable on the date set forth in Item 6(d) of the Basic Lease Provisions.

3.4 **Late Charge, Etc.** Lessee shall be required to pay Lessor (as a late charge to compensate Lessor for the added administrative expense caused by such late payment) a sum equal to five percent (5%) of any monthly rental (or other amounts of any kind) required to be paid by Lessee to Lessor under the terms hereof should Lessee fail to pay such rental (or other amounts) within five (5) days of the due date therefor as provided in this Lease. The covenants by Lessee to pay rent under this Lease are independent of any other covenants of Lessor set forth in this Lease. Notwithstanding the foregoing, before assessing a late charge the first time in any one (1) year period, Lessor shall provide Lessee written notice of the delinquency and shall waive such late charge if Lessee pays such delinquency within five (5) days thereafter.

3.5 **Lessee Pays Applicable Taxes.** Lessee shall also pay to Lessor as additional rental under this Lease any excise, sales, privilege or gross receipts tax levied on rents or charges paid hereunder.

3.6 **Payment of Rent**. Notwithstanding anything contained in this Lease to the contrary, all Base Rental, Additional Rent or other monetary obligations due Lessor hereunder shall be payable to Radler Enterprises, Inc. at Lessor's address set forth in Item 2 of the Basic Lease Provisions.

ARTICLE 4.
Security Deposit

4.1 **Amount; Deposit.** Upon Lessee's execution and submission of this Lease to Lessor, Lessee shall pay to Lessor the cash sum set forth in Item 8 of the Basic Lease Provisions as a security deposit (hereinafter called the "**Security Deposit**"). Such sum shall be held by Lessor for the full Term (including any Renewal Options) as security for the faithful performance of Lessee's obligations hereunder. The Security Deposit shall not be assigned, transferred or encumbered by Lessee and any attempt to do so shall be void and shall not be binding upon Lessor. Lessor is not required to segregate the Security Deposit from its other funds, and is not liable to Lessee for interest thereon or other income of any kind therefrom.

4.2 **Application to Obligations of Lessee.** If Lessee defaults with respect to any provision of this Lease or if Lessor makes any payment on behalf of Lessee which Lessee is required to make under the terms of this Lease, Lessor may (but shall not be required to) use, apply or retain all or any part of the Security Deposit for the payment of any amount which Lessor may spend or become obligated to spend by reason of Lessee's acts or default, or to compensate Lessor for any loss or damage which Lessor has suffered or may suffer by reason of Lessee's acts or default. If any portion of the Security Deposit is so used, applied or retained, Lessee shall, within ten (10) days of Lessor's demand therefor, deposit cash with Lessor in an amount sufficient to restore the Security Deposit to its original amount. Lessee's failure to so restore the Security Deposit within applicable notice and cure periods shall entitle Lessor to exercise all remedies hereunder which Lessor would have for Lessee's failure to pay rent which extended beyond any applicable notice and cure period, if any.

4.3 **Forfeiture for Early Termination.** If this Lease is terminated prior to the expiration of the stated Term due to Lessee's default, Lessor may retain all of the Security Deposit as its minimum damages for such early termination, without prejudice to any other right, remedy or damage claim of Lessor hereunder.

4.4 **Return.** If Lessee shall have fully and faithfully performed all of its obligations under this Lease, the The Security Deposit (or the then remaining balance thereof) shall be refunded to Lessee within thirty (30) days after the expiration of the Lease Term (as extended), or on such earlier date as may be mandated by law (i.e., unless such law allows the parties to contract to the contrary). In the event Lessor's interest in this Lease is sold, transferred or otherwise terminated, Lessor shall transfer the Security Deposit (or the remaining balance thereof) to its successor in interest and thereupon Lessor shall be discharged from any further liability with respect thereto. The provisions of this Section 4.4 shall also apply to any subsequent transferor(s).

ARTICLE 5.
Definitions

5.1 **Net Rentable Area.** For purposes of this Lease, the term "Net Rentable Area" (hereinafter called "**NRA**") shall mean and refer in the case of a single tenancy floor to (A) all floor area within the Premises measured pursuant to Standard Method for Measuring Floor Area in Office Buildings, ANSI/BOMA z65.1-1996, June 7, 1996 ("**BOMA**") from (1) an imaginary exterior building perimeter comprised of either (i) the plane established by the outside surface of the outer glass of the exterior Building windows (ignoring protruding columns or walls), or (ii) the plane established by the inside of the finished column or wall of the Building which forms the exterior Building wall along the perimeter of the Premises, whichever calculation results in the greater NRA, to (2) the inside surface of the same imaginary plane of the opposite exterior Building wall established in the same manner, excluding only the areas ("**service areas**") within the outside walls used for elevator mechanical rooms, building stairs, fire towers, elevator shafts, flues, vents, stacks, vertical pipe shafts and vertical ducts, but including any such areas which are for the specific use of the particular lessee such as special stairs or elevators, plus (B) an allocation of the square footage of the Building's elevator and main mechanical rooms and ground and basement lobbies in the ratio that has been established by Lessor. In the case of a partial floor, "Net Rentable Area" (NRA) is calculated identically to the calculation set forth above (both Lessor and Lessee agree that the Add-on Factor is calculated to be 17.4% for the duration of the Lease) except that (a) in clause (A)(1)(ii) of this section, the measurement shall instead be made to the mid-point of the walls separating areas leased by or held for lease to other lessees or from areas devoted to corridors, elevator foyers, rest rooms, mechanical rooms, janitor closets, vending areas and other similar facilities for the use of all lessees on the particular floor (hereinafter sometimes called "**Common Areas**"), and (b) there shall also be added to the NRA a proportionate part of the Common Areas located on such floor based upon the ratio which Lessee's

NRA on such floor (but for such Common Area add-on) bears to the aggregate NRA on such floor (but for Common Area add-on). No deductions from NRA are made for columns or projections necessary to the Building. The NRA in the Premises has in Lessor's opinion been calculated based on a reasonable approximation of the foregoing definition of BOMA but is hereby stipulated to be the square footage set forth in Item 4 of the Basic Lease Provisions, whether the same should be more or less based on measurement pursuant to the definition above. Lessee and Lessor shall have no right to remeasure or recalculate the NRA of the Premises, which is conclusively stipulated by the parties to be the amount set forth in Item 4 of the Basic Lease Provisions. The NRA in the Building has in Lessor's opinion been calculated on a reasonable approximation of the foregoing but is hereby stipulated for all purposes hereof to be as set forth in Item 5(a) of the Basic Lease Provisions, whether the same should be more or less.

5.2 **Building Operating Expenses.** For purposes of this Lease, the term "**Building Operating Expenses**" shall mean all expenses, costs and disbursements (but not replacement of capital investment items except as provided in Section 5.2(g), depreciation, debt service, income taxes or specific costs especially billed to and paid by specific lessees) of every kind and nature which Lessor shall pay or become obligated to pay because of or in connection with the ownership and operation of the Land, the Building, amenity center containing an exercise center with exercise equipment, bathroom, shower and lockers, conference room center conference room coffee bar and a future possible deli, and all other improvements, landscaping, paving, access drives, buildings or garage structures now or hereafter located on the Land (hereinafter collectively called the "**Complex**"), including, but not limited to, the following:

(a) Wages and salaries of all employees to the extent engaged in operating and maintenance, or security, of the Complex and personnel to the extent they may provide traffic control relating to ingress and egress to and from the Complex's parking area to the adjacent public streets. All taxes, insurance and benefits relating to employees providing these services shall be included.

(b) All supplies tools, equipment and materials used in operation and maintenance of the Complex.

(c) Cost of all utilities for the Complex.

(d) Cost of all maintenance, management and service agreements for the Complex and the equipment therein, including, but not limited to, all janitorial service, security service, alarm service, monitoring service, distributed audio service, telephone service, fiber optic and cable connectivity service, window cleaning, trash removal, recycling service, and elevator maintenance.

(e) Cost of all insurance premiums relating to the Complex, including, but not limited to, the cost of casualty and liability insurance applicable to the Complex and Lessor's personal property used in connection therewith, worker's compensation and rental insurance.

(f) Cost of repairs and general maintenance (excluding repairs and general maintenance paid by proceeds of insurance or by Lessee or other third parties, and alterations paid for solely by lessees of the Building other than Lessee).

(g) Amortization of the cost of installation of capital investment items which are primarily for the purpose of reducing operating costs, which may be required by any governmental authority, or which may be more cost effective than continued repairs. All such costs shall be amortized over the reasonable life of the capital investment items with the reasonable life and amortization schedule being determined in accordance with generally accepted accounting principles and in no event to extend beyond the reasonable life of the Building.

(h) Lessor's central accounting costs applicable to the Complex.

(i) The total ad valorem taxes for the Complex, including all taxes and assessments and governmental charges, whether state, federal, county or municipal, and whether levied by a taxing district or authorities presently taxing the Building or the Complex or by others subsequently created, it being understood and agreed that such ad valorem taxes shall be computed on the accrual basis, notwithstanding the fact that the total Building Operating

Expenses shall be computed on the cash basis with appropriate accrual adjustments to ensure that each year includes substantially the same major recurring items. It is expressly agreed that Lessor may include in "real property taxes," "real estate taxes" or "ad valorem taxes" for purposes of the Lease any rental taxes, excise taxes, franchise taxes or other similar gross receipts or modified gross receipts or "margin" tax.

(j) The reasonable fair market rental value of the Building management office.

(k) All costs incurred by Lessor for the purpose of reducing Operating Expenses, including, without limitation, the cost of all tax protests and energy management.

(l) Costs associated with maintaining on an ongoing basis the Building's LEED® Gold certification by the U.S. Green Building Council, including, without limitation, any membership fees, costs for the purchase of "green" power or renewable energy certificates, or costs in connection with cleaning the Building under a green housekeeping program or utilizing green pesticides.

(m) The property management fees incurred by Lessor, which shall not exceed four percent (4%) of the sum of annual base rental and additional rental for the Complex grossed up to ninety-five percent (95%) occupancy.

Notwithstanding the foregoing, Building Operating Expenses do not include Excluded Costs. "**Excluded Costs**" means the following costs and expenses:

(A) Leasing commissions, attorneys' fees, costs and disbursements and other expenses incurred in connection with negotiation of leases with lessees and/or prospective occupants of the Building and similar costs incurred in connection with disputes between Lessor and lessees of the Building;

(B) Costs incurred in building-out, renovating or otherwise improving or decorating or redecorating space for lessees or other occupants in the Building or vacant leasable space in the Building;

(C) Capital Costs incurred in correcting structural defects in the original construction of the Building but the mere failure of a component of the Building to wear as well or as long as originally anticipated or as it would under ideal circumstances and normal wear and tear and obsolescence do not constitute defects in original construction for purposes hereof;

(D) Costs of electricity and other services sold or provided to other lessees and for which Lessor is reimbursed by other lessees as an additional charge for the specific service (other than pursuant to a clause similar to this Building Operating Expense provision);

(E) Costs of capital expenditures, improvements or replacements except as provided in Section 5.2(g) above;

(F) Depreciation of the Building and all equipment, fixtures, improvements and facilities used in connection therewith;

(G) Payment of principal and/or interest on debt; or amortization payments on any mortgage or mortgages;

(H) All services for which Lessee specifically reimburses Lessor or for which Lessee pays directly to third persons;

(I) Costs incurred by Lessor due to the proven violation by Lessor of the terms and/or conditions of any lease of space in the Building;

(J) Overhead and profit increment paid to Lessor or to subsidiaries or affiliates of Lessor for goods and/or services in the Building to the extent the same is proven by Lessee to exceed the range of cost of such goods and/or services rendered by unaffiliated third parties on a competitive basis;

(K) Lessor's general corporate overhead and general and administrative expenses which are not expressly chargeable to operating expenses of the Building in accordance with generally accepted accounting principles, including salaries of Lessor's executive officers or any employee or agent above the grade of building manager (or equivalent);

(L) Any compensation paid to clerks, attendants or other persons in commercial concessions operated by Lessor or an affiliate of Lessor or other costs related to such concessions;

(M) Advertising costs;

(N) Charitable or political contributions;

(O) Costs incurred by Lessor to remove or otherwise remedy or remediate or due to the presence of Hazardous Material (as such term is defined in Section 52.1 below), with the exception of with the exception of monitoring and training of employees regarding same and normal environmental compliance costs typical for similar office buildings in the same market on a routine basis;

(P) Costs incurred in connection with the sale, refinancing, mortgaging or changing in ownership of the Building including brokerage commissions, legal and accounting fees and closing costs;

(Q) Costs occasioned by casualties or condemnation;

(R) Expense reserves; and

(S) Costs to comply with any covenant, condition, restriction, underwriter's requirement or law applicable to the Complex on the Commencement Date;

All Building Operating Expenses shall be computed on a modified cash basis, with all expenditures being accounted for in the year of their expenditure, except that property taxes and insurance costs will be attributed to the period to which they relate regardless of when paid. Notwithstanding any other provision herein to the contrary, it is agreed that in the event the Building is not fully occupied during any year of the term of this Lease, an adjustment shall be made in computing the Building Operating Expenses for such year so that the Building Operating Expenses shall be increased for such year to an amount that would have been incurred if the Building had been 95% occupied during such year. Additionally, in the event additional office buildings are added to the Complex, then where applicable, Building Operating Expenses which are for the benefit of all buildings shall be allocated by Lessor to each such office building on an equitable basis taking into consideration the total net rental area of each building in relation to the total net area of all buildings in the Complex.

5.3 **Normal Building Operating Hours.** For purposes of this Lease, the term "**Normal Building Operating Hours**" shall be as defined in Item 12 of the Basic Lease Provisions, excluding Sundays and New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas. Lessor and Lessee agree to coordinate with regard to when to recognize any legal holiday observed for the Building that falls on a Saturday or Sunday.

ARTICLE 6.
Additional Monthly Rent

6.1 **Payment Obligation.** During each calendar year during the term of this Lease, including the year in which this Lease commences (hereinafter called the "**Commencement Year**"), Lessee shall pay, in addition to Base Rental, additional rent (the "**Additional Rent**") in the amount of Lessee's Building Expense Percentage set forth in Section 5(b) of the Basic Lease Provisions (herein called "**Lessee's Building Expense Percentage**") multiplied by the total Building

Operating Expenses. Any references in this Lease to “Lessee’s pro rata share” or “Lessee’s share” or other similar term or phrase shall mean and refer to the Lessee’s Building Expense Percentage unless otherwise expressly stated taking into account the actual expenses incurred during the months during the calendar year that this Lease was in effect adjusted as though the Building has been ninety five percent (95%) occupied during such year (to the extent that the Building was less than ninety five percent (95%) occupied in such year) or the actual real occupancy, whichever is greater. Additional Rent shall be proportionately prorated with respect to any calendar year during the term of this Lease with respect to which this Lease is only in effect for a portion of such year. Such Additional Rent will be paid in monthly installments based on estimates pursuant to Section 6.2(b), below (“**Monthly Estimated Additional Rent Payments**”), with an annual reconciliation payment or credit as provided therein.

6.2 **Periodic Estimates; Readjustments; Statements.** Each year during the Lease term, as to the succeeding or current year, from time to time as Lessor determines to be appropriate, Lessor shall make a good faith estimate of the amount of Additional Rent for the then current or next succeeding calendar year. Lessor’s good faith estimate of the Monthly Estimated Additional Rent Payments that will be payable for the Commencement Year is the amount set forth in Section 6(e) of the Basic Lease Provisions. However, it is expressly understood, stipulated and agreed that such amount does not constitute a representation or warranty by Lessor that the actual Additional Rent for the Commencement Year will be that amount or will not be materially in excess of that amount provided, however, that, notwithstanding anything to the contrary herein, the controllable operating expense portion (which, for the avoidance of doubt, shall exclude only those items beyond the reasonable control of Lessor, which are applicable taxes, insurance, utilities, security and janitorial services) of Additional Rent shall not exceed for each Subsequent Year (as defined below), one hundred and five percent (105%) (calculated on a cumulative basis) of the controllable operating expense portion of the Additional Rent applicable to the preceding year.

(a) Commencing on the Commencement Date of this Lease, Lessee shall pay to Lessor as Monthly Estimated Additional Rent Payments, on the first day of each calendar month until adjusted pursuant to Section 6.2(b), below, in advance and without demand, the amount stated in Item 6(e) of the Basic Lease Provisions. Lessee shall pay the Monthly Estimated Additional Rent Payment for each succeeding month until Lessee receives a statement from Lessor in accordance with Section 6.2(b) specifying a lower amount of the Monthly Estimated Additional Rent Payment that shall be due. Following the closing of Lessor's operating expense books whenever that may occur after the end of the Commencement Year, Lessor shall submit to Lessee a statement setting forth the exact amount of Lessee's share of the Building Operating Expenses for the Commencement Year, and the difference, if any, between the amount of Monthly Estimated Additional Rent Payments paid by Lessee for the Commencement Year and the actual amount of Lessee's share of the final Building Operating Expenses calculated by Lessor for the Commencement Year. To the extent that such amount of Monthly Estimated Additional Rent Payments paid by Lessee exceeds the actual amount of Lessee's pro rata share of the Building Operating Expenses for the Commencement Year, Lessor shall credit such excess against the Monthly Estimated Additional Rent Payments to be due in the calendar year following the Commencement Year. To the extent that the actual amount of Lessee's share of the final Building Operating Expenses calculated by Lessor with respect to the Commencement Year exceeds the aggregate amount of Monthly Estimated Additional Rent Payments paid by Lessee with respect to the Commencement Year, such shortfall shall be waived for the Commencement Year only.

(b) With respect to any calendar year subsequent to the Commencement Year (hereinafter called "**Subsequent Year**"), Lessor may, prior to January 1 of such Subsequent Year or at any time and from time to time during the then current year, deliver to Lessee a written statement setting forth Lessor's good faith estimate (or revised estimate) of Building Operating Expenses for such Subsequent Year or Commencement Year and a revised Monthly Estimated Additional Rent Payments (an “**Expense Adjustment Statement**”). Beginning on the first day of the first calendar month following Lessee’s receipt of such Expense Adjustment Statement (but no sooner than January 1 of the Subsequent Year to which such Expense Adjustment Statement is stated to apply), Lessee shall pay in accordance with the terms hereof the Monthly Estimated Additional Rent Payments for each succeeding month (including into successive Subsequent Years) based on that statement until Lessee receives a new Expense Adjustment Statement from Lessor in accordance with this Section 6.2(b) specifying a different amount of the Monthly Estimated Additional Rent Payments. Any Expense Adjustment Statement given by Lessor may require a retroactive lump sum adjustment payment by Lessee (as Additional Rent) to the first of the then current calendar

year based on the revised estimate of the Building Operating Expenses or may require that the underpayment be made up in such increments as Lessor may specify. Following the closing of Lessor's operating expense books whenever that may occur after the end of each Subsequent Year, Lessor shall submit to Lessee a statement setting forth the exact amount of Lessee's share of Building Operating Expenses for such Subsequent Year, and the difference, if any, between the amount of Monthly Estimated Additional Rent Payments paid by Lessee for estimated Building Operating Expenses for such Subsequent Year and the actual amount of Lessee's share of the final Building Operating Expenses calculated for such Subsequent Year. To the extent that such amount of Monthly Estimated Additional Rent Payments paid by Lessee exceeds the actual amount of Lessee's share of the final Building Operating Expenses calculated by Lessor for such Subsequent Year, Lessor shall credit such excess against the Monthly Estimated Additional Rent Payments to be due in the calendar year following such Subsequent Year or, if no such payments remain, such amounts shall be promptly refunded to Lessee. To the extent that the actual amount of Lessee's share of the final Building Operating Expenses calculated by Lessor for such Subsequent Year exceeds such amount of Monthly Estimated Additional Rent Payments paid by Lessee with respect to that year, Lessee shall pay such shortfall in Additional Rent payments to Lessor in cash within thirty (30) days after receipt of such final adjustment statement from Lessor.

(c) Lessee's covenant to pay Additional Rent under this Section 6.2 shall survive the expiration or early termination of this Lease and Lessor shall have the right to retain the Security Deposit, or so much thereof as Lessor deems necessary, to secure payment of Lessee's share of Building Operating Expenses for the portion of the final year of this Lease during which Lessee was obligated to pay such Additional Rent. If the final year of this Lease is less than a full calendar year, Lessee's pro rata share of the Building Operating Expenses for such partial year shall be prorated as of the expiration of the stated term of this Lease. Lessee shall pay such final prorated Additional Rent to Lessor within thirty (30) days following receipt of notice thereof.

(d) Lessor shall endeavor to prepare and deliver all annual adjustment statements required under this Section 6.2 on or before May 1 of the year following the calendar year for which payment of Additional Rent is required, but in no event shall Lessor's failure to do so constitute a waiver of any Additional Rent due hereunder. No disputation by Lessee as to whether any estimates provided by Lessor hereunder are in good faith will ever excuse Lessee from timely paying Additional Rent based on Lessor’s estimates prior to the date on which Lessee obtains an injunction against Lessor’s collection thereof based on a claim of bad faith. Lessee or its authorized representative shall have the right to inspect the books of Lessor, for the purpose of verifying the information contained in the preceding annual statement. Lessor and Lessee each hereby acknowledges and agrees that it is knowledgeable and experienced in commercial transactions and that the provisions of this Lease Agreement for determining Additional Rent are commercially reasonable and valid even though such methods may not state precise mathematical formulae for determining Operating Expenses. **ACCORDINGLY, LESSEE HEREBY VOLUNTARILY AND KNOWINGLY WAIVES ALL RIGHTS AND BENEFITS TO WHICH LESSEE MAY BE ENTITLED UNDER SECTION 93.012 OF THE TEXAS PROPERTY CODE, AS ENACTED BY HOUSE BILL 2186, 77TH LEGISLATURE, AS SUCH SECTION NOW EXISTS OR AS SAME MAY BE HEREAFTER AMENDED OR SUCCEEDED, IN RELATION TO THIS PARAGRAPH AND ANY OTHER PROVISION OF THIS LEASE.**

ARTICLE 7.
Use of the Premises

7.1 **Limited Permitted Use.** Lessee will use and occupy the Premises only for the Permitted Office Use as more particularly described in Item 11 of the Basic Lease Provisions, (including such ancillary uses in connection therewith as shall be reasonably required by Lessee in the operation of its business) consistent with that found in Class A office buildings in Houston, Texas; provided, that in no event shall any of the following be permitted in the Premises: (i) offices or agencies of a foreign government or political subdivision thereof; (ii) offices of any governmental bureau or agency of the United States or any state or political subdivision thereof; (iii) personnel agencies; or (iv) customer service offices of any public utility company. The following uses shall not be permitted in the Premises except to the extent they are ancillary to an otherwise permitted use: (v) clinical health care activities that involve direct patient care, schools or other training or educational uses; (vi) clerical support services; (vii) reservation centers for airlines or travel agencies; (viii) retail or restaurant use; (ix) studios for radio, television or other media; or (x) storage. The Premises shall not be used for any

purpose which would, in Lessor's reasonable opinion, lower the first-class character of the Building or any part thereof, create unreasonable or excessive elevator or floor loads, interfere with any of the operations of the Building or any part thereof or the proper and economic heating, air-conditioning, cleaning or other servicing of the Building, or any part thereof, be unlawful, constitute a nuisance or would unreasonably interfere with the use of the other areas of the Building by any other lessee or occupants or for any other purpose whatsoever without the prior written consent of Lessor.

7.2 **No Alterations.** Lessee shall not make or allow to be made any alterations or physical additions in or to the Premises without the prior written consent of Lessor, which consent may be given subject to such conditions as Lessor may reasonably require or impose. Lessor's consent with respect to structural changes may be withheld by Lessor for any reason, but its consent to non-structural alterations (including, without limitation, paint, carpet and wall coverings) will not be withheld in an arbitrary manner. Any and all such alterations, physical additions or improvements shall be made by Lessor and, when made to the Premises, shall at once become the property of Lessor and shall be surrendered to Lessor upon the termination of this Lease by lapse of time or otherwise; provided, however, this Section 7.2 shall not apply to equipment or furniture owned by Lessee. Notwithstanding the foregoing to the contrary, at the time it consents thereto, Lessor may require Lessee to remove any alterations or physical additions to the Premises upon termination of this Lease or Lessee's possession of the Premises, other than the initial Lessee Finish Improvements (hereafter defined). In regards to such removal, Lessee shall be responsible at Lessee's sole cost and expense to repair any damage to the Building, Complex and Premises. The preceding sentence shall survive the termination of this Lease. Notwithstanding anything in this Section 7.2 to the contrary, Lessee may construct non-structural alterations, additions and improvements in the Premises without Lessor's prior approval or notice to Lessor, if the cost of any such project does not exceed Five Thousand Dollars ($5,000) so long as alterations do not involve building fire systems, electrical, mechanical or plumbing.

7.3 **Certain Specific Prohibitions.** Without limiting the Permitted Office Use specified in Item 11 of the Basic Lease Provisions, Lessee will not use, occupy or permit the use or occupancy of the Premises for any purpose which is, directly or indirectly, forbidden by law, ordinance or governmental or municipal regulation or order, or which may be dangerous to life, limb or property; or permit the maintenance of any public or private nuisance; or do or permit any act or thing which may disturb the quiet enjoyment of any other lessee of the Building; or keep any substance or carry on or permit any operation which might emit offensive odors or conditions into other portions of the Building; or use any apparatus which might make undue noise or set up vibrations in the Building; or permit anything to be done which would increase the fire and extended coverage insurance rate on the Building or contents, and if there is any increase in such rates by reason of the acts of Lessee, then Lessee agrees to pay such increase promptly upon demand therefor by Lessor. Lessee agrees specifically that no food, soft drink or other vending machine will be installed or operated within the Premises, that Lessee shall not permit any pets into the Premises and that the Premises will not be used as the temporary or permanent residence of any person.

ARTICLE 8.
Services Provided by Lessor

8.1 **Lessor's Basic Services.** Lessor covenants and agrees with Lessee to use commercially reasonable efforts to furnish Lessee, at Lessor's expense except as otherwise provided in Article 6 and below in this Article 8, and subject to the Rules and Regulations described in Section 24.1, the following services during the Lease term:

(a) Central heating and air conditioning service in season, as reasonably required for comfortable use (as reasonably determined by Lessor) in occupancy during Normal Building Operating Hours (as defined in Section 5.3, it being expressly agreed by each of Lessor and Lessee, that Normal Building Operating Hours for purposes of central heating and air conditioning service include the hours of 7:00 a.m. to 6:00 p.m. on Monday through Friday, 8:00 a.m. to noon on Saturday, and to expressly exclude Sunday and holidays). Lessor shall furnish additional central heating and air conditioning service in season required for comfortable use in occupancy during other than Normal Building Operating Hours provided that Lessee agrees in advance of the request of such service to reimburse Lessor on demand at the rate of Fifty and No/100 Dollars ($50.00) per hour per floor. Whenever non-standard machines or equipment which generate heat are used in the Premises and affect temperature otherwise maintained by the Building air conditioning system, Lessor reserves the right to install supplementary air conditioning units in the Premises and the cost of such units as well as the cost of installation, operation and maintenance thereof shall be paid by Lessee to Lessor.

(b) Electrical facilities to furnish during Normal Building Operating Hours (i) power to operate typewriters, personal computers, calculating machines, photocopying machines and other equipment that operates on 120/208 volts (collectively, the "**Low Power Equipment**"); provided, however, total rated connected load by the Low Power Equipment shall not exceed an average of five (5) watts per square foot of Net Rentable Area of the Premises and (ii) power to operate Lessee's lighting and Lessee's equipment that operates on 277/480 volts (collectively, the "**High Power Equipment**"); provided, however, total rated connected load by the High Power Equipment shall not exceed an average of two (2) watts per square foot of Net Rentable Area of the Premises (the restrictions on Low Power Equipment and High Power Equipment, collectively the "**Maximum Allowed Incidental Electrical Usage**"). In the event that the Lessee's connected loads for low electrical consumption (120/208 volts) and high electrical consumption (277/480 volts) are in excess of the Maximum Allowed Incidental Electrical Usage, and Lessor agrees to provide such additional load capacities to Lessee (such determination to be made by Lessor in its sole discretion), then Lessor may install and maintain, at Lessee's expense, electrical submeters, wiring, risers, transformers, and electrical panels, and other items required by Lessor, in Lessor's discretion, to accommodate Lessee's design loads and capacities that exceed the Maximum Allowed Incidental Electrical Usage, including, without limitation, the installation and maintenance thereof. Subject to the limitations stated above, Lessee shall have the right to use electricity for permitted incidental uses after Normal Building Operating Hours provided that the overall incidental electrical usage for the Premises does not exceed the Maximum Allowed Incidental Electrical Usage. Lessee shall bear the utility cost, including, but not limited to, any increased air conditioning costs, occasioned by the use of special lighting in excess of Building standard.

(c) Domestic water for drinking, lavatory and toilet purposes drawn through fixtures installed by Lessor in public or common areas and water for lavatory purposes from regular Building supply at prevailing temperature.

(d) Janitor service in and about the Premises in accordance with the Beltway Lakes Green Housekeeping Program attached hereto as **Exhibit "L**", and incorporated by reference herein, provided, however, that Lessee shall pay, as additional rent, any additional costs attributable to the cleaning of improvements within the Premises other than building standard improvements provided therein.

(e) Automatic passenger elevator(s) in common with other lessees for ingress and egress to and from the Premises, twenty-four (24) hours a day, seven (7) days per week. Freight services in common with other lessees will be provided only at times to be agreed upon by Lessor and Lessee.

(f) At Lessor's option, blinds, draperies or other type coverings of exterior and interior windows as determined by Lessor. Lessor reserves the right to install, maintain and operate uniform window coverings in all windows either exterior or interior.

(g) Maintenance of building standard fluorescent lighting fixtures installed by Lessor and replacement of defective lamps in such fixtures as needed from time to time for efficient operations. Lessee shall be responsible for the cost of maintenance of all non-building standard light fixtures and for providing to Lessor's maintenance personnel necessary replacement bulbs or tubes.

If excess service usage is permitted by Lessor, Lessee shall pay to Lessor upon demand Lessor's prevailing charge therefor as additional rental due under this Lease, it being agreed that an administrative or supervision charge of fifteen percent (15%) shall be acceptable to Lessee.

8.2 **Failure to Pay for Excess Usage.** If Lessee fails to pay promptly when due any additional rent provided for in Section 8.1, Lessor shall be entitled to exercise all remedies hereunder which Lessor would have for Lessee's failure to pay rent, subject to any applicable notice and cure period.

8.3 **No Warranty Against Interruption.** Lessor does not warrant that any service will be free from interruption caused by repairs, renewal, improvements, changes of service, alterations, strikes, lockouts, labor controversies,

accidents, intentional misconduct or negligence of third parties including other lessees, inability to obtain fuel or power at a reasonable cost or other causes not entirely within Lessor's control. If such service can be restored by repairs on the grounds of the Building, and such repairs are within Lessor's authority and control, Lessor shall exercise reasonable diligence to restore such interrupted service upon receipt of written notice from Lessee. Should any equipment or machinery at the Building break down, or for any cause cease to function properly, Lessor shall use reasonable diligence to repair such equipment or machinery; provided, however that Lessee shall have no claim for rebate of rent or damages or other relief on account of any interruption of services resulting therefrom. **No such interruption shall otherwise be deemed an eviction or disturbance of Lessee's use and possession, or a breach by Lessor of its obligations or render Lessor liable for damages, by abatement of rent or otherwise, or relieve Lessee from any obligation under this Lease.**

8.4 **Non-Payment of Excess or Ancillary Services.** In the event that Lessor furnishes extra or additional services (over and above those provided for in Section 8.1) at Lessee's request or in accordance with a prior agreement with Lessee wherein Lessee agrees to pay for such services, and Lessee fails to pay for such services when payment is due, Lessor shall be entitled, following ten (10) days' written notice to Lessee of such default and in Lessor's sole discretion, to discontinue all such extra or additional services provided under this Lease until such amounts are paid. The money due for extra or additional services requested by Lessee or called for under any such separate agreement shall be deemed additional rent due hereunder, and such additional rent shall be subject to all of the provisions in this Lease pertaining to the payment of rental.

8.5 **Excess Electricity Usage; Billing.** Notwithstanding any other term or provision of this Lease to the contrary, Lessee shall pay to Lessor, monthly, as billed, such charges as may be separately metered or as Lessor's engineer may compute for any electric services utilized by Lessee in excess of the amounts provided as part of the rent pursuant to Section 8.1(a) or (b). No failure of Lessor to bill Lessee for excess use for any particular period shall be deemed a waiver of such amounts or of the right to bill Lessee for excess use for any other period.

8.6 **Keys.** Upon the Commencement Date and Lessee’s completion of the appropriate Lessee information packet, Lessor shall furnish Lessee, free of charge, the Allotted Number (per Item 13 of the Basic Lease Provisions) of keys. Lessor will furnish additional keys (whether Core Door Access Cards or Garage Access Stickers) at the rate of Twenty-Five and No/100 Dollars ($25.00) per Core Door Access Card or Garage Access Sticker plus an activation/programming fee of Fifteen and No/100 Dollars ($15.00) or at Lessor’s then prevailing charge on an order signed by Lessee or Lessee's authorized representative; provided there will be no fees for defective cards that do not function from the date of issue. All such Core Door Access Cards and Garage Access Stickers shall at all times remain the property of Lessor. No additional locks shall be allowed on any core door of the Premises without Lessor's permission, and Lessee shall not make or permit to be made any duplicate keys, except those furnished by Lessor. Upon termination of this Lease, Lessee shall surrender to Lessor all Core Door Access Cards and Garage Access Stickers, and give to Lessor the explanation of the combination of all locks for safes, safe cabinets and vault doors, if any, in the Premises. Lessor shall not be liable to Lessee for losses due to theft, burglary, or for damages done by unauthorized persons on the Premises.

8.7 **Lettering of Main Entry Door; Directory Listing.** Lessor shall provide and install, at Lessee's cost, all letters or numerals on or adjacent to doors in the Premises; all such letters and numerals shall be in the building standard graphics and placed in a location specified by Lessor. No other types of lettering shall be used or permitted on the Premises, nor shall the location thereof be changed except at the request or with the approval of Lessor, such approval not to be unreasonably withheld, conditioned or delayed. Lessor shall provide and install, at Lessor's expense, a Building standard listing for Lessee on the electronic building directory board. Lessee may, at Lessee’s sole cost and expense, install and maintain its company identification sign on the existing Building monument sign, subject to Lessor’s reasonable written approval of the design, materials and location on such monument sign.

ARTICLE 9.
Leasehold Improvements

9.1 **Construction for Lessee’s Initial Occupancy.** The parties agree to perform their respective obligations under **Exhibit “C”**, which is attached hereto and incorporated herein by this reference.

ARTICLE 10.
Quiet Possession

10.1 **Lessor's Exclusive Covenant.** Upon payment by Lessee of the rents provided for in this Lease, and upon the observance and performance of all the covenants, terms and conditions on Lessee's part to be observed and performed, Lessee shall, subject to the terms and provisions of this Lease, peaceably and quietly hold and enjoy the Premises for the term hereby demised, against any and all interference therewith by the affirmative acts of Lessor, its employees or agents, and against any person who may claim superior title to the Premises by, through or under Lessor, but not otherwise. Lessor shall under no circumstances be held responsible for restriction or disruption of access to the Building from public streets caused by construction work or other actions taken by or on behalf of governmental authorities, or for actions taken by other lessees (their employees, agents, visitors, contractors or invitees), or any other cause not entirely within Lessor's direct control, and same shall not constitute a constructive eviction of Lessee or give rise to any right or remedy of Lessee against Lessor of any nature or kind. This covenant of quiet enjoyment is in lieu of any covenant of quiet enjoyment provided or implied by law, and Lessee expressly waives any such other covenant of quiet enjoyment to the extent broader than the covenant contained in this Article 10.

ARTICLE 11.
Condition of Premises; Repairs

11.1 **Lessee's Acceptance of Possession; Lessee's Maintenance and Repair.** Subject to Lessor's express obligations under this Lease, taking possession of the Premises by Lessee shall be conclusive evidence as against Lessee that the Premises were Substantially Completed and then in good order and in satisfactory condition when possession was so taken. Lessee, throughout the term of this Lease, shall, at its expense, keep and maintain, and take good care of, the Premises and make all needed interior and non-structural repairs in and to, the Premises, including all needed repairs to Lessee's improvements and property. Lessee shall also be responsible for the cost of repairs made by Lessor to the Building to the extent that the need for the same arises out of (i) Lessee's performance of alterations, (ii) the operation, use or presence of any Lessee improvements, or the installation, operation, use or presence of Lessee's property, (iii) the moving of any Lessee's improvements or property, or (iv) any breach of Lessee's obligations under this Lease, or any negligent or wrongful act or omission by Lessee. Lessor, throughout the term of this Lease, shall keep and maintain, and make reasonable repairs in and to, the Building, the Common Areas and Building systems, but only to the extent that the same affect Lessee's use and occupancy of the Premises.

11.2 **Lessor's Right of Entry.** Lessor, its officers, agents and representatives, subject to any security regulations imposed by any governmental authority, shall have the right to enter all parts of the Premises at all reasonable hours and upon one (1) business day prior written notice to Lessee, to inspect, clean, make repairs, alterations and additions to the Building or the Premises which Lessor may deem necessary or desirable, or to provide any service which Lessor is obligated to furnish to Lessee, and Lessee shall not be entitled to any abatement or reduction of rent by reason thereof. Unless otherwise stipulated in this Lease, Lessor shall not be required to make any improvements or repairs of any kind or character on, in or to the Premises during the term of this Lease except as expressly required by Section 8.1 hereof. The obligation of Lessor to provide janitorial service to the Premises shall be limited to building standard items only. All work to be performed by Lessor inside the Premises at times when Lessee is conducting business therein shall be diligently performed and conducted so as to keep any interference with Lessee's normal business operations to a reasonable level giving due consideration to customary practice in the office building industry and the economics of providing such service or making such repair. Any entry by Lessor or Lessor's agents shall comply with Lessee's reasonable security measures.

11.3 **Certain Rights Reserved to Lessor.** This Lease does not grant any rights to light or air over or about the Building or Complex. Lessor excepts and reserves exclusively to itself the use of the following areas of the Complex: (i) roofs, (ii) telephone, electrical and janitorial closets, (iii) equipment rooms, Building risers and similar areas that are used by Lessor for the provision of Building services, (iv) rights to the land and improvements below the floor of the Premises (if the Premises is on the first floor or basement floor) or below the bottom floor of the Building if the Premises is on a floor that is above the bottom floor, (v) the improvements and air rights outside the demising walls of the Premises, and (vii) the areas within the Premises used for the installation of utility lines and other installations serving occupants of the Building. Lessor also has the right to change the name and address of the Building or Complex, and to make other physical changes

to the Complex as Lessor deems appropriate, provided the changes do not materially affect Lessee's rights or obligations hereunder including, but not limited to, Lessee's ability to use the Premises for the Permitted Office Use specified in Item 11 of the Basic Lease Provisions. Lessor shall also have the right, but not the obligation, to temporarily close the Building if Lessor reasonably determines that there is an imminent danger of significant damage to the Building or of bodily injury to Lessor's employees or the occupants of the Building. The circumstances under which Lessor may temporarily close the Building shall include, without limitation, electrical interruptions, hurricanes and civil disturbances. A closure of the Building under such circumstances shall not constitute a constructive eviction of Lessee nor entitle Lessee to an abatement or reduction of rent.

ARTICLE 12.
Common Areas and Parking
Facilities; Parking

12.1 **Lessee's Limited Rights in the Common Areas; Lessor's Rights.** All automobile parking areas, driveways, entrances and exits thereto, and other facilities (including, but not limited to, all parking areas, truck ways, loading areas, pedestrian walkways and ramps, landscaped areas, lobbies, amenity center and stairways) from time to time provided by Lessor for the general use in common of lessees, their officers, agents, employees, invitees, licensees, visitors and customers, shall be at all times subject to the Rules and Regulations specified in **Exhibit "D"** and the terms hereof. Lessor shall also have the right from time to time to establish, modify and enforce Rules and Regulations of general applicability with respect to all facilities and areas described in this Section 12.1. Without limiting the generality of the foregoing provision, Lessor shall have, with respect to such areas and facilities, the right to do any of the following so long as the same do not materially adversely affect Lessee's rights or obligations hereunder including, but not limited to, Lessee's parking rights and Lessee's access to the gym, locker rooms and conference rooms serving the Building (which shall remain part of the Common Areas throughout the Term):

(a) To construct, maintain, operate and alter lighting facilities on or in such areas and facilities;

(b) To clean and maintain such areas and facilities;

(c) From time to time to change the area, level, location and arrangement of parking areas and other parking facilities, and to reserve certain parking areas for visitor parking only or for the exclusive use of particular tenants;

(d) To change, alter, relocate, rearrange, convert or eliminate common areas provided adequate parking remains;

(e) To restrict parking to lessees, their officers, agents, invitees, employees, licensees, visitors and customers, and discourage non-customer parking by instituting restricted access systems, parking permits or stickers and/or a system of validation for visitor parking;

(f) To close all or any portion of such areas or facilities to such extent as may, in the opinion of Lessor's counsel, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person or the public therein or to close temporarily all or any portion of the public areas or facilities;

(g) To charge a fee for visitor and/or customer parking on the exterior surface lot; and

(h) To do and perform such other acts in and to such areas and facilities as, in the use of Lessor's business judgment, Lessor shall determine to be advisable with a view to the improvement of the efficiency, productivity and/or profitability thereof.

12.2 **Lessee's Parking Rights.** Lessee shall be entitled to the use of parking spaces in the Complex as specified in Item 4 of the Basic Lease Provisions. Lessee shall have no other parking rights except that it shall be entitled to have its customers and visitors make use of visitor parking areas subject to the terms of Section 12.1, above. All parking rental

called for pursuant to Item 6(b) of the Basic Lease Provisions shall be deemed additional rental due by Lessee to Lessor pursuant to this Lease, and Lessor shall have all of the same rights and remedies in the event of Lessee's failure to pay parking rental as it has for Lessee's failure to pay any other rental due hereunder. Lessor shall be entitled to designate the location from time to time of any reserved parking spaces allocated to Lessee herein. Lessee agrees to abide by all of the rules and regulations for the parking facilities that Lessor may from time to time establish.

ARTICLE 13.
Lessor's Casualty Insurance

13.1 **Lessor's Casualty Insurance.** Lessor shall at all times during the term of this Lease and, subject to the Building Operating Expenses provisions of Article 5.2(e) hereof, at Lessor's sole cost and expense, maintain a policy or policies of insurance issued by and binding upon an insurance company licensed to do business in the State of Texas, insuring the Building against loss or damage from the perils which Lessor deems necessary in such amounts to cover the full replacement value exclusive of the foundation and excavation costs. Lessor shall not be obligated to insure any furniture, equipment, machinery, goods or supplies not covered by this Lease which Lessee may bring or obtain upon the Premises, or any additional improvements which Lessee may construct on the Premises. If the annual premiums charged Lessor for such casualty insurance exceed the standard premium rates because of the extra-hazardous nature of Lessee's operation, Lessee shall, upon receipt of appropriate premium invoices, reimburse Lessor for such increases in such premiums. Nothing contained in this Section 13.1, however, shall be construed as permitting Lessee to operate in such a way as to result in any extra-hazardous exposure.

ARTICLE 14.
Lessor's Liability Insurance

14.1 **Lessor's Liability Insurance.** Lessor shall at all times during the term of this Lease and, subject to the Building Operating Expenses provisions of Article 5.2(e) hereof, at Lessor's sole cost and expense, maintain a policy or policies of comprehensive general liability insurance issued by and binding upon an insurance company licensed to do business in the State of Texas, such insurance to afford such protection as Lessor shall determine in its reasonable discretion.

ARTICLE 15.
Lessee's Insurance

15.1 **Liability Insurance.** Lessee shall, at Lessee's expense, obtain and keep in force during the term of this Lease, a policy of commercial general liability insurance in the minimum amount of Two Million and No/100 Dollars ($2,000,000.00) combined annual aggregate limits for bodily injury and property damage (with no lower per occurrence limits specific to this location only and which limit may be met by an umbrella policy), including contractual liability coverage, insuring Lessee against any liability arising out of the use, occupancy and/or maintenance of the Premises, or arising out of this Lease, and naming Lessor as an additional insured. The limit of such insurance shall not, however, limit the liability of Lessee under this Lease. Insurance required under this Section 15.1 shall be licensed to do business in the State of Texas.

15.2 **Lessee's Delivery of Policies/Certificates of Insurance.** Within five (5) days of the earlier to occur of the Commencement Date or the date Lessee takes occupancy of the Premises, Lessee shall furnish Lessor with a certificate evidencing the insurance required by Section 15.1. Lessee's insurance carriers will endeavor to provide at least fifteen (15) days' notice to Lessor of cancellation or non-renewal and ten (10) days' notice for non-payment of premium. If Lessee shall fail to procure and maintain such insurance, Lessor may, but shall not be required to, procure and maintain such insurance at Lessee's sole expense which amount shall be paid by Lessee to Lessor upon demand as additional rent hereunder.

15.3 **Property Insurance and Additional Lessee Insurance Requirements.** At all time during the Term, Lessee shall: (1) Lessee insure all of the furniture, furnishings, fixtures, alterations installed by Lessee, equipment and personal property of Lessee, its employees, agents and personnel at any time and from time to time anywhere on the Premises or the Complex, under property insurance coverage against loss or damage by fire and such other risks as are from time to

time included in a standard special form policy (formerly known as “all risk”) insuring the full insurable value, with a one hundred percent replacement cost endorsement, and a stated value endorsement specifying an amount not less than the actual replacement cost thereof; (2) comprehensive automobile liability insurance for vehicles used in the operation of Lessee’s business; (3) business interruption insurance; (4) worker's compensation insurance; and (5) employer's liability insurance, all on forms and in such amounts as Lessor may from time to time reasonably require. Any deductible shall be at Lessee's sole risk, as it relates to Lessee's waiver of claims set forth in Article 16 hereof.

All policies required to be carried by Lessee under this Section 15 shall be written with financially responsible insurance companies authorized to do business in Texas and with a Best & Company rating of "B+, VII" or better, and all evidence of insurance provided to Lessor shall contain an endorsement naming Lessor and Lessor's property management company as additional insureds (with respect to the liability insurance policies) and Lessor as a loss payee as its interest appears (with respect to the property insurance policy, as its interest may appear), respectively and Lessee shall provide for at least thirty (30) days' prior written notice to Lessor of any cancellation or material change. Lessee shall deliver to Lessor a certificate of insurance outlining the insurance required herein at least fifteen (15) days prior to the Commencement Date and within three (3) business days of all renewals thereof. Any self-insurance policies maintained by Lessee shall be subject to Lessor's prior written approval. If Lessee fails to provide evidence of insurance required hereunder, prior to commencement of the Term, and thereafter during the Term, within three (3) business days of the expiration date of any such coverage, Lessor shall be authorized (but not required) to procure such coverage in the amounts stated with all costs thereof to be charged to Lessee and paid upon written invoice therefor as Additional Rental. Lessee, and not Lessor, will be liable for any costs or damages in excess of the statutory limit for which Lessee would, in the absence of worker's compensation, be liable. In the event that Lessee fails to take out or maintain any policy required by this Section 15 to be maintained by Lessee, such failure shall be a defense to any claim asserted by Lessee against Lessor by reason of any loss sustained by Lessee that would have been covered by such policy, **NOTWITHSTANDING THAT SUCH LOSS MAY HAVE BEEN PROXIMATELY CAUSED SOLELY OR PARTIALLY BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF LESSOR OR LESSOR'S AGENTS, CONTRACTORS, LICENSEES, VISITORS, CUSTOMERS, INVITEES, SERVANTS OR EMPLOYEES**. If Lessee does not procure insurance as required herein, Lessor may, upon advance written notice to Lessee, cause the insurance to be issued and Lessee shall pay to Lessor the premium for such insurance within ten (10) days of Lessor's demand, plus interest at the past due rate provided for in this Lease until repaid by Lessee. All insurance policies obtained by Lessee shall be written as primary policies (primary over any insurance carried by Lessor), not contributing with and not in excess of coverage which Lessor may carry, if any.

15.4 **Hold Harmless.** Neither Lessor nor any mortgagee of Lessor shall be liable to Lessee, or to Lessee's agents, contractors, licensees, visitors, servants, employees, customers or invitees for any damage to person (including death) or property caused by any act, omission or neglect of Lessee, its agents, contractors, licensees, visitors, customers, invitees, servants or employees, and Lessee agrees to indemnify and hold Lessor harmless from all liability and claims for any such damage. Lessee shall not be liable to Lessor, or to Lessor's agents, contractors, licensees, visitors, servants, employees, customers or invitees for any damage to person (including death) or property caused by any act, omission or neglect of Lessor, its agents, contractors, licensees, visitors, customers, invitees, servants or employees, and Lessor agrees to indemnify and hold Lessee harmless from all claims for such damage.

ARTICLE 16.
Waiver of Subrogation Rights

16.1 **Waiver of Claims and Subrogation.** Notwithstanding anything in this Lease to the contrary, **Lessor and Lessee hereby waive any and all rights of recovery, claim, action or cause of action, against the other party and its agents (including Lessor’s property manager), officers, partners and employees,** for any loss or damage that may occur to the Premises, or any improvements thereto, or the Building, or any improvements thereto, or any personal property of such party in the Premises or the Building, or on the grounds of the Property, by reason of fire, the elements, or any other cause which is caused by or results from a risk which is insured against or was required to have been insured against under the terms of Section 15 hereof (to the required limits stated therein) or which would normally be covered by “special form” property insurance, **regardless of cause or origin, including negligence of the other party hereto, its agents, officers, partners or employees** , and each party shall cause such insurance policies to contain provisions or endorsements wherein such insurer waives its right of recovery against such parties. All of Lessor’s and Lessee’s repair, restoration and indemnity

obligations under this Lease shall be subject to the foregoing waiver. Lessee also waives, releases and relinquishes any and all recoveries, claims, actions, causes of action or rights of recovery against Lessor, its property manager, and their respective agents, employees, officers, partners and affiliates, for any loss or damage to Lessee's business (including loss of profit or revenue) arising from casualty events to the Premises or any property of Lessee on the Property to the extent such loss could have been covered by a business interruption insurance policy covering full loss of Lessee's business from any casualty event for a period of twelve months, **whether or not arising from the negligence of Lessor or such other released parties**, and Lessee further covenants and warrants to Lessor that no insurance company issuing Lessee a policy of business interruption insurance shall have any rights of subrogation against Lessor by reason of any payment of any such claim made thereon by Lessee.

ARTICLE 17.
Damage by Fire or Other Casualty

17.1 **Intentionally Deleted.**

17.2 **Substantial Destruction.** If the Building should be so badly damaged by such fire or other casualty as to make the Premises or any material part of the Building (in excess of thirty percent (30%) of the total NRA of the Building) untenantable, then, in any such event, Lessor shall have the option to (a) terminate this Lease by written notice delivered to Lessee within sixty (60) days following the event of such damage or destruction, in which event neither party hereto shall thereafter have any further or future obligations hereunder, or (b) continue this Lease in force and effect. If Lessor elects option (b), Lessor shall upon receipt of insurance proceeds adequate therefor, diligently repair and restore the damaged or destroyed improvements to substantially the same condition existing prior to such damage or destruction. For the period beginning on the date that the Premises were rendered untenantable to the date of restoration of the Premises to substantially the same condition existing prior to such damage or destruction, provided that such casualty was not caused by negligence, fault or acts of Lessee, its agents, employees or invitees the rental payable hereunder shall be proportionately abated to the extent that Lessee does not actually conduct business upon or within untenantable portion of the Premises following such casualty. For purposes of this Article, "**untenantable**" shall mean that the Premises have been made inaccessible or unfit, in Lessor's reasonable opinion, for use for the purposes set forth in Section 7.1 as a result of fire or other casualty.

17.3 **Minor Destruction.** If a fire or other casualty occurs to the Building but does not render the Premises or a material part of the Building (as defined in Section 17.2 above) untenantable, this Lease shall continue in force and effect (unless terminated by Lessor pursuant to Section 17.5), and Lessor shall, upon receipt of insurance proceeds adequate therefor, diligently repair and restore the damaged improvements to substantially the same condition existing prior to such damage. Provided that such casualty was not caused by negligence, fault or acts of Lessee, its agents, employees or invitees, then for the period during which Lessee is deprived of any part of the Premises by reason of such damage and the repair or restoration of the Premises, the rental payable hereunder shall be proportionately abated to the extent that Lessee does not actually conduct business upon or within the untenantable portion of the Premises following such casualty.

17.4 **Damage to Parking Structures.** If the covered parking structures in the Complex should be totally or substantially destroyed by fire or other casualty, then Lessor shall continue this Lease in full force and effect and Lessor shall diligently repair and restore the damage to substantially the same condition existing prior to such damage.

17.5 **Unavailability of Insurance Proceeds.** Lessor's obligation to repair and restore the Premises, the Building or covered parking structures in the event of a fire or other casualty as provided for in this Article 17 shall not require Lessor to expend funds in excess of insurance recoveries made by reason of such fire or other casualty. In the event insurance recoveries are not sufficient to make the repairs and restoration provided for in this Article 17, or such proceeds are required by Lessor's lender to be applied to indebtedness secured by the Complex, then Lessor may, at Lessor's option, terminate this Lease by written notice to Lessee within thirty (30) days after Lessor makes the determination of inadequacy or unavailability of insurance proceeds. If Lessor elects to exercise such option to terminate this Lease, neither party hereto shall have any further or future obligations hereunder as of the date Lessee vacates the Premises, except those that may have theretofore accrued. Notwithstanding anything in this Article 17 to the contrary, (i) Lessor shall not have the right to terminate this Lease if Lessor actually intends to restore the damage, and (ii) if the Premises are damaged by any peril and Lessor does not terminate this Lease, then Lessee shall have the option to terminate this Lease if the Premises cannot be, or

are not in fact, fully restored by Lessor to their prior condition within one hundred eighty (180) days after the damage.

17.6 **Adjustment of Rent on Termination.** In the event this Lease is so terminated as provided for in Sections 17.2, 17.4 or 17.5, the rentals payable hereunder shall be adjusted as of the date of such termination (or the date on which Lessee fully vacates the Premises, whichever is later), and any rental paid for any period beyond such later date shall be promptly refunded to Lessee.

ARTICLE 18.
Indemnification of Lessor

18.1 **Lessee's Indemnity.** Except to the extent due to the gross negligence or willful misconduct of Lessor, Lessee shall indemnify and hold harmless Lessor, its agents, employees, partners, lenders and affiliates ("**Lessor Related Parties**"), from and against any and all third party claims arising from or in connection with: (a) the conduct or management of the Premises or of any business therein, or any work or thing whatsoever done, or any condition created in or about the Premises during the term of this Lease; (b) any negligence or willful misconduct of Lessee, Lessee's agent, employees, partners, lenders and affiliates ("**Lessee Related Parties**"); (c) any accident, injury or damage whatever occurring in, at or upon the Premises or to Lessee Related Parties when using the exercise center or conference room center; and (d) any breach or default by Lessee under this Lease; together with all actual reasonable out-of-pocket costs, expenses and liabilities incurred in or in connection with each such claim, or any action or proceeding brought thereon, including all reasonable attorney's fees and expenses.

ARTICLE 19.
Limitation of Lessor's Personal Liability

19.1 **Absolute Limitation of Lessor's Liability.** Notwithstanding anything to the contrary in this Lease, Lessee specifically agrees to look solely to the amount of Lessor's interest in the Complex for the recovery of any judgment from Lessor, it being agreed by Lessor and Lessee that Lessor's (or its successor's) partners, shareholders, officers, directors and employees shall never be personally liable for any such judgment. **Lessee hereby expressly waives any right to recover for any claims against Lessor to the extent not recoverable from the amount of Lessor's interest in the Complex, whether based on Lessor's alleged negligence, breach of contract or otherwise.** The foregoing is not intended to, and shall not, limit any right that Lessee might otherwise have to obtain injunctive relief against Lessor or Lessor's successors in interest, or any other action not involving the personal liability of Lessor to respond in monetary damages from assets other than Lessor's interest in the Building or any suit or action in connection with enforcement or collection of amounts which may become owing or payable under or on account of insurance maintained by Lessor. LESSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LEASE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LESSOR OTHER THAN THOSE CONTAINED IN THIS LEASE. Lessor shall only be liable for actual damages and shall never be liable for consequential, punitive, exemplary or special damages.

ARTICLE 20.
Damage to Lessee's Property

20.1 **Lessee's Risk.** All property in, on or about the Premises, the Building or the Complex belonging to Lessee, its agents, representatives, employees, visitors, contractors, patrons or licensees shall be there at the risk of Lessee, and **Lessor shall not be liable for, and Lessee agrees to indemnify, defend and hold harmless Lessor from and against any and all claims (including attorney's fees) for damages to, or liabilities resulting from, theft, misappropriation or loss of such property, whether such claim is based in whole or in part on the alleged negligence of Lessor, or its employees, agents or representatives, or any party over whom Lessor is alleged to have authority or control.**

ARTICLE 21.
Condemnation

21.1 **Effect of Taking.** If there shall be taken by exercise of the power of eminent domain during the term of the Lease any part of the Premises or the Building, Lessor may elect either to terminate this Lease and all future obligations of the parties hereunder, or to continue this Lease in effect. If Lessor elects to continue the Lease, the rental shall be reduced in proportion to the area of the Premises so taken and Lessor shall repair any damage to the Premises or the Building resulting from such taking. All sums awarded or agreed upon between Lessor and the condemning authority for the taking of the interest of Lessor or Lessee, whether as damages or as compensation, shall be the property of Lessor, and Lessee hereby assigns to Lessor any right of Lessee therein or claim of Lessee thereto. If Lessor elects to terminate this Lease, rental shall be payable up to the date that possession is taken by the condemning authority, and Lessor will refund to Lessee any prepaid unaccrued rent less any sum then owing by Lessee to Lessor.

ARTICLE 22.
Assignment or Sublease

22.1 **Assignment or Sublease.** Lessee shall not assign, sublease, mortgage, encumber, hypothecate, pledge, convey or otherwise transfer all or any part of Lessee's interest in this Lease or the Premises, by operation of law or otherwise, including without limitation, the transfer of Control (as defined below) of Lessee (any of the foregoing being referred to herein as a "**Transfer**"), without the prior written consent of Lessor.

22.2 **Notice of Proposed Sublet or Assignment.** In the event Lessee should desire to effect a Transfer, Lessee shall give Lessor the following, at least thirty (30) days in advance of the date on which Lessee desires to make such sublease or assignment:

(a) written notice of such intent, including the name and address of the proposed sublessee or assignee;

(b) banking and other credit information along with a current financial statement of the proposed sublessee or assignee and general references sufficient to enable Lessor to determine the proposed transferee's creditworthiness and character;

(c) reasonably satisfactory information about its business and business history;

(d) its proposed use of the Premises;

(e) certification that the proposed sublessee or assignee: (i) shall fully comply with Section 25.2 of the Lease as if they were a Representing Party (as defined in Section 25.2 below), (ii) that the proposed sublessee or assignee is not a Prohibited Person (as defined in section 25.2 below); and

(f) all information concerning the proposed sublease or assignment.

22.3 **Lessor's Options Upon Receipt of Notice.** Lessor shall have a period of thirty (30) days following receipt of such notice within which to notify Lessee in writing that Lessor elects: (1) if the sublease or assignment is for all or substantially all of the Premises for all or substantially all of the remaining Lease Term, to terminate this Lease as to the space so affected as of the date so specified by Lessee in which event Lessee will be relieved of all further obligation hereunder as to such space; (2) to permit Lessee to effect such Transfer, subject, however, to the requirement that Lessee and such transferee enter into a written consent agreement with Lessor stipulating and agreeing to certain matters with respect to such Transfer as reasonably requested by Lessor, including without limitation that fifty percent (50%) of any profit and other consideration realized by Lessee as a result of any transfer (e.g., the difference between the consideration or rental received by Lessee from sublessee, and the rent then required to be paid under this Lease, after deducting Lessee's reasonable costs associated with the sublease, multiplied by the number of months in the term of the sublease) shall, to the extent such profit and other consideration is received immediately, be due and payable by Lessee to Lessor upon the execution of an assignment or sublease, and, to the extent such profit and other consideration is deferred, be payable to Lessor by Lessee as it is received; or (3) to refuse to consent to Lessee's proposed Transfer and to continue this Lease in full force and effect as to the entire Premises. If Lessor should fail to notify Lessee in writing of such election within the stated thirty (30) day period, Lessor shall be deemed to have elected option (3) above. No consent by Lessor to any assignment or sublease shall be deemed to be consent to a use not permitted under this Lease, to any act in violation of this Lease, or to any other or subsequent Transfer, and no Transfer by Lessee shall relieve Lessee of any obligation under this Lease. Any sublease or assignment shall be subject to all the terms and conditions of this Lease. Lessee shall not have the right to assign the Lease or sublet all or any portion of the Premises to any existing Lessees in the Complex, or to any prospective Lessees with whom Lessor is in negotiations for lease space in the Complex. Any attempted Transfer by Lessee in violation of the terms and covenants of this paragraph shall be void ab initio. Lessor agrees that it will only withhold its consent to a proposed assignment or subletting if one of the following is true, which Lessee acknowledges shall be deemed to be a reasonable basis for Lessor to withhold it consent (i) the nature and character of the proposed transferee, its creditworthiness, business and activities or its intended use of the Premises are not consistent with the permitted use set forth in this Lease and/or the standards of the Building in Lessor's sole judgment, (ii) the proposed transferee (or any of its affiliates) is then an occupant of any part of the Complex or a party with whom Lessor is then negotiating to lease space within the Complex, (iii) the proposed occupancy would impose a significantly extra burden upon the Building systems or Lessor's ability to provide services to the other Lessees of the Buildings, (iv) the granting of such consent would constitute a default under any other agreement to which Lessor is a party or by which Lessor is bound or (v) a default by Lessee under this Lease is then pending; provided, however, if an uncured default is then pending Lessor may require that Lessee cure such default as a condition to Lessor's consent to such assignment or subletting. In the event that Lessee requests that Lessor consider a sublease or assignment hereunder, Lessee shall pay (i) Lessor's reasonable fees, not to exceed Seven Hundred Fifty and No/100 Dollars ($750.00) per transaction, incurred in connection with the consideration of such request for such sublease or assignment, and (ii) all attorneys' fees and costs incurred by Lessor in connection with the consideration of such request or such sublease or assignment, not to exceed Two Thousand Five Hundred Dollars ($2,500) per transaction. Notwithstanding the foregoing provisions of this Section 22, Lessee may sublease the Premises or assign this Lease to an Affiliate (as defined below), or a Successor (as defined below) without Lessor's right to any profits or to recapture, and without Lessor's consent or approval, provided Lessor shall be furnished with a copy thereof at least ten (10) business days prior to its execution and/or consummation (or, if prohibited by law or contract, promptly thereafter). The term "Affiliate" shall mean and refer to any person or entity Controlling, Controlled by, or under common Control with another such person or entity. "Successor", as used herein, means any partnership, corporation, limited liability company, or to any successor of Lessee (A) into which or with which Lessee is merged or consolidated, or (B) arising from a reorganization of Lessee or the transfer of Lessee's interest under this Lease made in conjunction with the transfer of all or substantially all of the assets and liabilities of Lessee. "Control" and its derivatives, as used herein, shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of Lessee; the ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, at least fifty-one percent (51%) of the voting interest in, any person or entity shall be presumed to constitute such control.

No assignment or subletting by Lessee shall relieve Lessee of any then existing or future accruing obligation under this Lease. Fifty percent (50%) of any and all consideration paid to Lessee in connection with any sublease or assignment in excess of the rental called for herein (after deducting Lessee's reasonable costs and expenses associated with such sublease or assignment) shall be for Lessor's account and shall be paid over to Lessor by Lessee upon Lessee's receipt thereof.

ARTICLE 23.
Assignment by Lessor

23.1 **Lessor May Assign.** Lessor shall have the right to transfer and assign, in whole or in part, all its rights and obligation hereunder and in the Complex and property referred to in this Lease, and in such event and upon its transferee's assuming Lessor's future accruing obligations hereunder, no further liability or obligation shall thereafter accrue against Lessor under this Lease.

ARTICLE 24.
Rules and Regulations

24.1 **Adoption by Lessor; Lessee's Compliance.** Lessee agrees to comply with all reasonable rules and regulations that Lessor may adopt from time to time for operation of the Complex, parking areas and drives and protection and welfare of the Complex and covered parking structures, its lessees, visitors and occupants. Present rules and regulations entitled "Rules and Regulations" are attached to this Lease as **Exhibit "D"** and are incorporated herein by this reference. Any amendments, modifications or additions to such Rules and Regulations shall become a part of this Lease upon delivery of a copy thereof to Lessee in accordance with Section 43.1 of this Lease.

ARTICLE 25.
Governmental Regulations

25.1 **Lessee Must Comply.** Lessee shall, at Lessee's sole cost and expense, comply with all requirements of all county, municipal, state, federal and other applicable governmental authorities, now in force or which may hereafter be in force, pertaining to Lessee's use of the Premises, and shall faithfully observe in the use of the Premises all municipal and county ordinances and state and federal statutes, laws and regulations now in force or which may hereafter be in force. Notwithstanding anything to the contrary herein, Lessee shall not be required to comply with or cause the Premises to comply with any laws, rules, regulations or insurance requirements requiring the construction of alterations unless such compliance is necessitated solely due to Lessee's particular use of the Premises.

25.2 **Compliance with Federal Law.** Lessor and Lessee (each a "**Representing Party**") each represents and warrants to the other (i) that neither the Representing Party nor, to its knowledge, any person or entity that directly owns a ten percent (10%) or greater equity interest in it nor, to its knowledge, any of its officers, directors or managing members is a person or entity (each a "**Prohibited Person**") with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("**OFAC**"), of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including Executive Order 13224 (the "**Executive Order**"), signed on September 23, 2001 and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action, (ii) that the Representing Party's activities do not violate the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders promulgated thereunder (as amended from time to time, the "**Money Laundering Act**"), and (iii) that throughout the term of this Lease the Representing Party shall comply with the Executive Order and with the Money Laundering Act.

ARTICLE 26.
Solicitation of Business

26.1 **No Solicitation Permitted.** Except for the permitted purpose provided for in Item 4 of the Basic Lease Provisions, Lessee and Lessee's employees, officers, agents, licensees and invitees shall not solicit business in the Building or the Building's parking facilities or common areas or elsewhere within the Complex, nor shall Lessee distribute any handbills or other advertising matter on automobiles parked in the parking facilities or in common areas.

ARTICLE 27.
Taxes on Lessee's Personal Property

27.1 **Lessee Responsible for Taxes.** Lessee shall be responsible for and shall pay before delinquency all municipal, county or state taxes assessed during the term of this Lease against any occupancy interest or personal property of any kind, owned by or placed in, upon or about the Premises by Lessee.

ARTICLE 28.
Mechanic's and Materialmen's Liens

28.1 **Lessee Not Authorized to Create.** Lessee shall pay promptly all contractors and materialmen, and prevent the filing and attachment of any lien or claim of lien to the Premises, the Complex and/or this Lease. Nothing herein shall be read or construed to authorize Lessee to construct any improvements on behalf of Lessor or to create on behalf of or for the account of Lessor any mechanic's, materialman's or other lien of any kind on the Land, Building or any part of the Complex (other than Lessee's leasehold interest in the Premises under this Lease), and such authority is hereby expressly denied to Lessee.

28.2 **Lessee's Obligations to Obtain Release.** Should any such lien notice be made or filed against the Land, the Complex or Lessee's leasehold interest, Lessee shall bond against (in form, amount and content satisfactory to Lessor) or discharge the same within fifteen (15) days after written request by Lessor (which period shall be in lieu of any notice or opportunity to cure required by Section 31.1 hereof). In the event of Lessee's failure to do so Lessor may (among its other remedies) pay the amount thereof and add the cost, including attorney's fees (plus a seven and one-half percent (7.5%) charge for Lessor's overhead and administrative costs) to the next month's rental due hereunder.

ARTICLE 29.
Lessor's Mortgages

29.1 **Subordination and Attornment.** Lessee accepts this Lease subject and subordinate to any mortgage, deed of trust, ground lease or similar interest (herein, a "**Mortgage**"); provided, however, that if the holder of such Mortgage (the "**Mortgagee**") thereunder elects to have Lessee's interest in this Lease superior to any such Mortgage, then by written notice to Lessee from the Mortgagee, this Lease shall be deemed superior to the lien created by that Mortgage, provided that Mortgagee signs a Non-Disturbance Agreement which shall provide that so long as the Lessee is not in default in its obligations under this Lease, Lessee's possession of the Premises will not be disturbed during the term. In the event of any foreclosure of any such lien or mortgage, Lessee agrees to attorn to the Mortgagee or other purchaser at foreclosure, upon demand. Notwithstanding anything to the contrary contained herein, Lessee agrees that this Lease shall be subordinate to any future Mortgage placed against the Premises or the Complex, and that it will attorn to the future Mortgagee, only if the Mortgagee agrees with Lessee in a subordination, non-disturbance and attornment agreement (an "**SNDA Agreement**"), in the Mortgagee's then standard form, that Lessee's right to use and occupy the Premises under the terms of this Lease will not be deprived as a result of a termination or foreclosure of such Mortgage so long as Lessee is not then in default under this Lease; provided, however, that Lessee acknowledges and agrees that such SNDA Agreement may contain, among other terms and conditions required for obtaining such Mortgage (i) any provision (or the substantial equivalent thereof) contained in any previous SNDA Agreement executed by Lessee, (ii) a provision requiring that notices of Lessor default be given to the Mortgagee and the Mortgagee allowed a reasonable time in addition to Lessor's cure period hereunder to cure such default before Lessee shall be entitled to take its remedies hereunder or by law, (iii) a provision stating that the terms of the Mortgage govern over any conflicting provision of this Lease pertaining to the Mortgagee's obligation to make insurance

or condemnation proceeds available for reconstruction of any part of the Premises, (iv) provisions by which such Mortgagee or successor-in-interest upon foreclosure is agreed not to be bound by (a) any payment of rent or additional rent for more than one (1) month in advance, including prepayment in the nature of security for the performance by Lessee of its obligations under this Lease (unless actually received by such successor in interest), (b) any obligations of Lessor to construct initial improvements (although if the Mortgagee insists on this clause it must agree that Lessee may complete the Premises pursuant to the approved Final Plans and Specifications provided in Exhibit "C" hereto, and offset the amount expended against rentals due hereunder, as long as Lessee makes such election within ten (10) days after the Mortgagee's demand following transfer of the Premises to the Mortgagee or a purchaser at foreclosure), (c) any amendment or modification of this Lease (or implied waiver of Lessee's obligations) made without the written consent of such trustee or such beneficiary or such successor in interest, (d) any representations or defaults by any prior Lessor unless such defaults are continuing, and (e) any other matters that such Mortgagee is not directly responsible for causing, as such Mortgagee may specify, unless such matter constitutes a continuing default and/or (v) such other provisions and protections as such Mortgagee may request that are reasonably customary in the commercial mortgage lending industry at the time so long as such provisions do not materially adversely affect Lessee's rights or obligations hereunder. Lessee, at any time hereafter on demand by Lessor, shall promptly execute and deliver to Lessor, in any event within ten (10) days of such demand, an SNDA Agreement meeting the above criteria or in any other commercially reasonable form.

ARTICLE 30.
Lessee's Covenants

30.1 **Covenants.** Lessee hereby covenants and agrees (among its other covenants herein) as follows:

(a) To pay all rent or other monies as such become due and payable to Lessor under this Lease, at all times and in the manner specified, including, but not limited to, the late charge provided for in Section 3.4, if applicable, and to pay interest on all past due rental amounts and other past due payments at the maximum rate of interest permitted by Article 5069-1.04 of the Texas Revised Civil Statutes, as amended, from the due date until paid.

(b) To permit Lessor to install signs on the interior or exterior of the Building, or change the name of the Building or street address after thirty (30) days' written notice of Lessor's intention to do so.

(c) To permit Lessor six (6) months prior to the termination of this Lease to show the Premises during business or non-business hours to prospective lessees and to advertise the Premises for rent.

(d) To surrender and return the Premises and all keys, equipment and fixtures of Lessor in as good condition as existed on the Commencement Date, ordinary wear and tear, and natural deterioration, casualties, condemnation, and repairs that Lessee is not responsible for under this Lease, excepted, promptly at the termination of this Lease by lapse of time or otherwise; provided, however, that all Lessee's fixtures and personal property shall be removed on or prior to the date of termination of this Lease and those fixtures and personal property not removed from the Premises within ten (10) days after date of termination of this Lease shall be conclusively presumed to have been abandoned by Lessee and title thereto shall, at Lessor's election, pass to Lessor under this Lease as a bill of sale. In addition, upon surrender of the Premises, Lessee shall have removed, at its sole cost and expense, all voice and data cabling it installed from the Premises and all other portions of the Building.

(e) Not to advertise the business, profession or activities of Lessee in any manner which violates the letter or spirit of any code of ethics adopted by any recognized association or organization pertaining thereto or use the name of the Building for any purpose other than that of the business address of Lessee or use pictures or likenesses of the Building or the Building name in any letterheads, envelopes, circulars, notices, advertisements, containers or wrapping material, without Lessor's prior written consent, such consent shall not be unreasonably withheld.

(f) To conduct its business and control its agents, employees, invitees, customers and visitors in such manner as to not create any nuisance, or interfere with, annoy or disturb any other lessee or Lessor in its operation of the Building.

(g) Not to permit, erect and/or place drapes, furniture, fixtures, shelving, display cases or tables, lights, signs or advertising devices in front of or in the proximity of interior and exterior windows, glass panels or glass doors providing a view into the interior of the Premises unless same shall have been first approved in writing by Lessor.

(h) To observe and perform each and all of the terms, provisions and agreements of this Lease to be observed and performed by Lessee.

ARTICLE 31.
Default by Lessee; Lessor's Remedies

31.1 **Events of Default.** Each of the following occurrences, or acts or omissions of Lessee, shall constitute an event of default by Lessee under this Lease (hereinafter called an "**Event of Default**"):

(a) Failure or refusal by Lessee to make the timely and punctual payment of any rent or other sums payable under this Lease when and as the same shall become due and payable, provided that Lessor has given Lessee three (3) days' written notice that such amount is delinquent; provided further, however, that once Lessor has given Lessee two (2) such notices during any twelve (12) month period during the term of this Lease for any one or more times that any payments are not made when due hereunder, Lessor shall not be required to give further notice or any notice at all with respect to subsequent defaults in such twelve (12) month period, and the failure or refusal by Lessee to timely make any payment thereafter due hereunder shall immediately constitute an Event of Default entitling Lessor to pursue its remedies without notice or demand (for purposes of this Lease, a monthly statement indicating any rent or other sum is "delinquent" or "past-due," or similar notation, shall constitute sufficient notice under this paragraph that such rent or other sum is delinquent for purposes hereof);; or

(b) Abandonment of all or any portion of the Premises (excluding space occupied by sublessees, if any), or taking such action as in the reasonable judgment of Lessor evidences an intent by Lessee to do so or failure by Lessee to occupy the Premises within thirty (30) days after the Commencement; or

(c) The filing or execution or occurrence of a petition in bankruptcy or other insolvency proceeding by or against Lessee; or petition or answer seeking relief under any provision of the U.S. Bankruptcy Code; or an assignment of all or a portion of Lessee's assets for the benefit of creditors; or a petition or other proceeding by or against Lessee for the appointment of a trustee, receiver or liquidator of Lessee or any of Lessee's property; or a proceeding by any governmental authority for the dissolution or liquidation of Lessee; provided, however, that if any such petition or action is an involuntary petition or action, then the same shall not constitute an Event of Default for purposes hereof unless the same remains undismissed after a period of sixty (60) days from the date of its filing; or

(d) Any assignment or sublease by Lessee (whether or not legal, valid or enforceable and whether or not rendered void by the terms hereof), or the occupation or use of the Premises (or any portion thereof) by persons other than Lessee in a manner that would be equivalent to a sublease or assignment under applicable law, unless consented to by Lessor or otherwise permitted pursuant to the provisions of Section 22 hereof; or

(e) Lessee uses the Premises or any part for any purposes other than the Permitted Use and either (i) such impermissible use continues for a period of ten (10) days after written notice of such violation is given by Lessor to Lessee or (ii) immediately and without notice or demand if such use violation is repeated or chronic (i.e., occurs after six (6) prior instances in which Lessor has given Lessee written notice of prior violations of the Permitted Use, whether or not cured on those prior occasions and whether or not the current violation is similar to the prior violations; or

(f) Lessee fails to remove or bond around any materialman's or mechanic's lien within thirty (30) days from the date Lessee receives notice of its filing from any source; or

(g) Lessee makes a material modification, alteration or improvement to the Premises (excluding painting, changes in wall-coverings or other strictly cosmetic changes, to the extent not visible from the interior of the Building Common Area) without Lessor's prior written consent as required herein; or

(h) Chronic or repeated violation of material Rules and Regulations of the Building or other provisions of this Lease which, by their nature, do not continue from day to day (i.e., immediately and without further notice if any further such violation occurs after three prior violations in the same twelve month period and if written notices of at least three such prior violations during that twelve month period have been given by Lessor to Lessee); or

(i) Lessee records this Lease or any memorandum or notation thereof in violation of the provisions of Article 38 hereof; or

(j) Lessee (A) allows Hazardous Materials on the Premises that are not allowed by the terms of this Lease, but that are not released into or on the Premises or the Building or Property, and such materials either (i) are not removed from the Premises within ten (10) days after written notice or demand by Lessor on Lessee, or (ii) are allowed on the Premises after repeated previous occasions (two or more occasions in any given 12-month period) on which Lessor gave Lessee written notice to remove such prohibited materials (whether or not such materials were removed on the prior occasions), or (B) allows or causes any release of Hazardous Materials in or upon the Premises or the Building or Property (or adjacent property) in violation of this Lease and such contamination cannot be or is not cleaned up to the satisfaction of Lessor and governmental authorities with jurisdiction within ten (10) days after written notice from Lessor to Lessee; or

(k) Lessee violates any requirement of applicable law that is Lessee's responsibility to comply with under this Lease to the extent that, as a result thereof, Lessor or its property management agent can be held liable for any fine, penalty or assessment, or be the subject to any enforcement action interfering with the operation of the Building, by or of any governmental authority or agency, or to the extent that any mortgages lienholder is entitled to accelerate the indebtedness secured by the Building or Property, and such violation is not fully remedied and cured by Lessee within ten (10) days after written notice thereof is given to Lessee by Lessor, using Lessee's best efforts; provided, however, that in any event and notwithstanding Lessee's diligent attempts to cure such default, Lessee shall be required to cure any such violation within thirty (30) calendar days after the written notice is given to Lessee by Lessor if such consequences exist and notice is given by Lessor to Lessee under this paragraph (k), rather than paragraph (l) immediately below, Lessor will specify in its notice to Lessee that notice is being given under this clause and shall specify the reason that the default by Lessee is of a nature covered by this paragraph); or

(l) Failure by Lessee in the performance or compliance with any of the agreements, terms, covenants or conditions provided in this Lease, other than those referred to in Section 31.1(a) through (k), above (unless Lessor expressly elects to proceed under this paragraph), for a period of ten (10) days after notice from Lessor to Lessee specifying the items in default; provided, however, that if the cure of such default cannot reasonably be cured by Lessee within such ten (10)-day period despite diligent commencement and diligent and continuous prosecution of such cure after receipt of notice of default from Lessor, Lessee shall have such additional time to cure as would be reasonably necessary in the exercise of prompt, diligent and continuous efforts to cure the default in question, but in no event beyond one hundred twenty (120) days from the date Lessor gave Lessee notice of such default; or

(m) Default by Lessee under any other lease made by Lessee (or any party related to or affiliated with Lessee) for any other space in the Building, or any other contractual agreement between Lessor and Lessee of any nature of kind after Lessor has given Lessee a written notice that such event of default constitutes a default hereunder and such default under such other lease remains uncured for an additional period of ten (10) days following such notice.

31.2 **Certain Lessor Remedies.** This Lease is subject to the limitation that if and whenever any Event of Default shall occur, Lessor may, at its option and without prior verbal or written notice to Lessee, in addition to all other rights and remedies given hereunder or by law or equity, continue this Lease in full force and effect and/or do any one or more of the following, automatically reserving its claims for damages as hereinafter stated:

(a) Terminate this Lease, in which event Lessee shall immediately surrender possession of the Premises to Lessor; and/or

(b) Enter upon and take possession of the Premises and expel or remove Lessee and any other occupant therefrom with or without having terminated the Lease; and/or

(c) Alter locks and other security devices at the Premises; and/or

(d) Discontinue any construction of improvements to the Premises called for in this Lease.

31.3 **No Implied Acceptance of Surrender.** Exercise by Lessor of any one or more remedies granted under Section 31.2 or otherwise available shall not be deemed to be an acceptance of surrender of the Premises by Lessee, whether by agreement or by operation of law, it being understood that such surrender can be effected only by express written notice from Lessor to Lessee that Lessor is releasing Lessee from all further obligation hereunder.

31.4 **Lessee's Liability Upon Termination.** In the event Lessor elects to terminate the Lease by reason of an Event of Default, then notwithstanding such termination, Lessee shall be liable for and shall pay to Lessor, at Lessor's address as shown in Item 2 of the Basic Lease Provisions, the sum of all rent and other indebtedness accrued to the date of such termination, and all expenses incurred by Lessor as provided in Section 31.6, plus, as damages, an amount equal to the aggregate of the rental payable hereunder for the remaining portion of the Lease Term (had such term not been terminated by Lessor prior to the stated term set forth in the Basic Lease Provisions), less the net present value (discounted at an interest rate equal to eight percent (8%)) of the fair market rental value of the Premises for the remaining portion of the Lease Term, as reasonably determined by Lessor.

31.5 **Lessee's Liability Upon Repossession.** In the event that Lessor elects to repossess the Premises without terminating the Lease, Lessee shall, at Lessor's election, be liable for and shall pay to Lessor at Lessor's address as shown in Item 2 of the Basic Lease Provisions, either of the following: (a) All rent and other indebtedness accrued to the date of such repossession, plus rent required to be paid by Lessee to Lessor during the remainder of the Lease term as stated in Item 7(b) of the Basic Lease Provisions, diminished by any net sums thereafter received by Lessor through reletting the Premises during such period (after deducting expenses incurred by Lessor as provided in Section 31.6), it being expressly agreed that re-entry by Lessor will not affect the obligations of Lessee for the unexpired term of the Lease; in no event shall Lessee be entitled to any excess of the rent obtained by reletting over and above the rent herein reserved; and actions to collect amounts due by Lessee as provided in this Section 31.5 may be brought from time to time, on one or more occasions, without the necessity of Lessor's waiting until expiration of the Lease term; or (b) The sum of all rent and other indebtedness accrued to the date of such termination, and all expenses incurred by Lessor as provided in Section 31.6, and, without prior notice to Lessee Lessor may accelerate and declare immediately due and payable all rentals payable hereunder for the remaining portion of the Lease term (had such term not been terminated by Lessor prior to the date of expiration stated in Item 7(c) of the Basic Lease Provisions); provided, however, that Lessee shall be entitled to a credit against such accelerated rentals for the net present value (discounted at an interest rate equal to eight percent (8%)) of the fair market rental value of the Premises for the remaining portion of the Lease term, as determined by Lessor.

Lessor agrees to mitigate damages on the following basis: (i) Lessor shall use reasonable efforts to mitigate, which shall not exceed such efforts as Lessor generally uses to lease other space at the Complex, and (ii) Lessor will not be deemed to have failed to mitigate if Lessor or its affiliates lease any other portions of completed office space at the Complex, before reletting all or any portion of the Premises. In recognition that the value of the property depends on the rental rates and terms of leases therein, Lessor's rejection of a prospective replacement lessee based on an offer of rentals below Lessor's published rates for new leases of comparable space at this property at the time in question, or at Lessor's option, below the rates provided in this Lease, or containing terms less favorable that those contained herein, shall not give rise to a claim by Lessee that Lessor failed to mitigate Lessor's damages.

31.6 **Other Liabilities of Lessee.** If an Event of Default occurs, Lessee shall, in addition to all amounts due under Section 31.4 and Section 31.5, be liable for and shall pay to Lessor (to the extent that any such amount is not also deducted from the credit given Lessee for rent received by Lessor from any reletting), at Lessor's address as shown in Item 2 of the Basic Lease Provisions and in addition to any sum provided to be paid elsewhere in this Article 31, any and all of the following described amounts:

(a) Broker's fees payable to Lessor or any affiliates of Lessor or any outside broker in connection with reletting the whole or any part of the Premises;

(b) The cost of removing and storing Lessee's or other occupant's property;

(c) The cost of repairing, altering, remodeling or otherwise putting the Premises into a condition acceptable to a new lessee or lessees; and

(d) All reasonable expenses incurred by Lessor in enforcing Lessor's remedies, including, but not limited to, reasonable attorney's fees. Past due rental amounts, including, but not limited to, Base Rental, Additional Rent, Additional Monthly Rent, amounts payable in accordance with Section 3.3, all late charges and other past due payments shall bear interest at the maximum rate permitted by Article 5069-1.04 of the Texas Revised Civil Statutes, as amended, from due date until paid.

31.7 **Right to Change Locks.** In the event that Lessor is entitled to change the locks or other security devices at the Premises pursuant to any of the foregoing provisions, Lessee agrees that entry may be gained for that purpose through use of a duplicate or master key or any other peaceable means, that same may be conducted out of the presence of Lessee if Lessor so elects, that no notice shall be required to be posted by the Lessor on any door to the Premises (or elsewhere) disclosing the reason for such action or any other information, and that Lessor shall not be obligated to provide a key to the changed lock or other security devices to Lessee unless Lessee shall have first:

(a) brought current all payments due to Lessor under this Lease; provided, however, that if Lessor has theretofore formally and permanently repossessed the Premises by notice pursuant to Section 31.2(b) hereof, or has terminated this Lease by notice pursuant to Section 31.2(a) hereof, then Lessor shall be under no obligation to provide a key to the new lock(s) to Lessee regardless of Lessee's payment of past due rent or other past due amounts, damages, or any other payments or amounts of any nature or kind whatsoever;

(b) fully cured and remedied to Lessee's satisfaction all other defaults of Lessee under this Lease (but if such defaults are not subject to cure, such as early abandonment of the Premises, then Lessor shall not be obligated to provide the new key to Lessee under any circumstances); and

(c) given Lessor security and assurance reasonably satisfactory to Lessor that Lessee intends to and is able to meet and comply with its future obligations under this Lease, both monetary and non-monetary.

Lessor will, upon written request by Lessee, at Lessor's convenience and upon Lessee's execution and delivery of such waivers and indemnifications as Lessor may require, at Lessor's option either (i) escort Lessee or its specifically authorized employees or agents to the Premises to retrieve personal belongings and effects of Lessee's employees (as opposed to property which is an asset of Lessee), and property of Lessee that is not subject to the Lessor's liens and security interests described in Section 33.1, below, or (ii) obtain from Lessee a list of such property described in (i), above, and arrange for

such items to be removed from the Premises and made available to Lessee at such place and at such time in or about the premises of the Building as Lessor may designate; provided, however, that if Lessor elects option (ii), then Lessee shall be required to deliver to Lessor such waivers and indemnifications as Lessor may require in connection therewith, and pay in cash in advance to Lessor (A) the estimated costs that Lessor will incur in removing such property from the Premises and making same available to Lessee at the stipulated location, and (B) all moving and/or storage charges theretofore incurred by Lessor with respect to such property. The provisions of this Section 31.7 are intended to override and supersede any conflicting provisions of the Texas Property Code (including, without limitation, Sections 93.001 et seq. thereof, as in effect on the date of this Lease, and any amendments or successor statutes thereto), and of any other law, to the maximum extent permitted by applicable law.

31.8 **Intentionally Deleted.**

31.9 **Lessor's Right to Remedy.** If Lessee should fail to make any payment or cure any default under this Lease within the time period (if any) provided for in Section 31.1, above, Lessor, without being under any obligation to do so and without thereby waiving such default, may make such payment and/or remedy such other default for the account of Lessee (and enter the Premises for such purpose), and thereupon Lessee shall be obligated to, and hereby agrees to, pay Lessor, upon demand, all costs, expenses and disbursements (including, but not limited to, reasonable attorney's fees) incurred by Lessor in taking such remedial action.

31.10 **Attorney's Fees.** In the event Lessee makes default in the performance of any of the terms, covenants, agreements or conditions contained in this Lease and Lessor places the enforcement of this Lease, or any part thereof, or the collection of any rent or other amount due, or to become due hereunder, or recovery of the possession of the Premises in the hands of an attorney or collection agency, or files suit upon this Lease, Lessee agrees to pay Lessor's actual attorney's fees and costs of collection.

31.11 **Bankruptcy.** If a petition is filed by or against Lessee for relief under Title 11 of the United States Code, as amended (the "**Bankruptcy Code**"), and Lessee (including for purposes of this Section Lessee's successor in bankruptcy, whether a trustee or Lessee as debtor in possession) assumes and proposes to assign, or proposes to assume and assign, this Lease pursuant to the provisions of the Bankruptcy Code to any person or entity who has made or accepted a bona fide offer to accept an assignment of this Lease on terms acceptable to Lessee, then notice of the proposed assignment setting forth (a) the name and address of the proposed assignee, (b) all of the terms and conditions of the offer and proposed assignment, and (c) the adequate assurance to be furnished by the proposed assignee of its future performance under the Lease Agreement, shall be given to Lessor by Lessee no later than twenty (20) days after Lessee has made or received such offer, but in no event later than ten (10) days prior to the date on which Lessee applies to a court of competent jurisdiction for authority and approval to enter into the proposed assignment. Lessor shall have the prior right and option, to be exercised by notice to Lessee given at any time prior to the date on which the court order authorizing such assignment becomes final and non-appealable, to receive an assignment of this Lease upon the same terms and conditions, and for the same consideration, if any, as the proposed assignee, less any brokerage commissions which may otherwise be payable out of the consideration to be paid by the proposed assignee for the assignment of this Lease. If this Lease Agreement is assigned pursuant to the provisions of the Bankruptcy Code, Lessor: (i) may require from the assignee a deposit or other security for the performance of its obligations under the Lease in an amount substantially the same as would have been required by Lessor upon the initial leasing to a Lessee similar to the assignee; and (ii) shall receive, as additional rent, the sums and economic consideration described in Article 31.4. Any person or entity to which this Lease Agreement is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed, without further act or documentation, to have assumed all of the Lessee's obligations arising under this Lease Agreement on and after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Lessor an instrument confirming such assumption. No provision of this Lease Agreement shall be deemed a waiver of Lessor's rights or remedies under the Bankruptcy Code to oppose any assumption and/or assignment of this Lease Agreement, to require a timely performance of Lessee's obligations under this Lease Agreement, or to regain possession of the Premises if this Lease Agreement has neither been assumed on or rejected within sixty (60) days after the date of the order for relief or within such additional time as a court of competent jurisdiction may have fixed. Notwithstanding anything in this Lease Agreement to the contrary, all amounts payable by Lessee to or on behalf of Lessor under this Lease Agreement, whether or not expressly denominated as rent, shall constitute rent for the purposes of Section 502(b)(6) of the Bankruptcy Code.

ARTICLE 32.
Default by Lessor; Lessee's Remedies

32.1 **Notice to Lessor.** In the event of any default by Lessor, Lessee's exclusive remedy shall be, subject to the limitation provided in Section 19.1, an action for damages or equitable relief (Lessee hereby waiving the benefit of any laws granting Lessee a lien upon the property of the Lessor and/or upon rent due Lessor), but prior to any such action Lessee shall give Lessor written notice specifying such default with particularity, and Lessor shall thereupon have thirty (30) days (plus such additional reasonable period as may be required in the exercise by Lessor of due diligence) in which to cure any such default. Unless and until Lessor fails to so cure any default after such notice, Lessee shall not have any remedy or cause of action by reason thereof. All obligations of Lessor hereunder will be construed as covenants, not conditions; all such obligations will be binding upon Lessor only during the period of its ownership of the Building and the Complex and not thereafter. Under no circumstances whatsoever shall Lessor ever be liable hereunder for consequential damages or special damages.

32.2 **Notice to Lessor's Mortgagee(s).** If the Building and/or the Premises are at any time subject to a mortgage and/or mortgage and deed of trust, then in any instance in which Lessee gives notice to Lessor alleging default by Lessor hereunder, Lessee shall also simultaneously give a copy of such notice to each Lessor's mortgagee (provided that such mortgagee shall have furnished written notice to Lessee of such mortgagee's address), and each Lessor's mortgagee shall have the right (but not the obligation) to cure or remedy such default during the period that it is permitted to Lessor hereunder, plus an additional period of thirty (30) days, and Lessee shall accept such curative or remedial action (if any) taken by Lessor's mortgagee, with the same effect as if such action had been taken by Lessor.

ARTICLE 33.
Lien for Rent

33.1 **Lien.** In consideration of the mutual benefits arising under this Lease, Lessee hereby grants to Lessor a lien and security interest on all furniture and fixtures owned by Lessee now or hereafter placed in or upon the Premises, and such property shall be and remain subject to such lien and security interest of Lessor for payment of all rent and other sums agreed to be paid by Lessee under or with respect to this Lease. The provisions of this Section 33.1 relating to such lien and security interest shall constitute a security agreement under the Texas Uniform Commercial Code so that Lessor shall have and may enforce a security interest on all furniture and fixtures owned by Lessee now or hereafter placed in or on the Premises. Lessor may at its election at any time file a financing statement to reflect the existence of this security interest and lien. Lessor, as secured party, shall be entitled to all of the rights and remedies afforded a secured party under the Uniform Commercial Code, including, without limitation, all self-help repossession rights, which rights and remedies shall be in addition to and cumulative of the Lessor's liens and rights provided by law or by the other terms and provisions of this Lease. Lessor shall subordinate such lien to any third party financings by Lessee. Lessor’s statutory lien shall be limited to Lessee’s furniture and fixtures.

ARTICLE 34.
Non-Waiver

34.1 **Lessor Not Deemed to Waive Rights By Inaction.** Neither acceptance of rent nor any other amount due hereunder by Lessor nor failure to complain of any action, non-action or default of Lessee, whether singular or repetitive, shall constitute a waiver of any of Lessor's rights hereunder. Waiver by Lessor of any right for any Event of Default by Lessee shall not constitute a waiver of any right for either a subsequent default of the same obligation or any other default. No act or thing done by Lessor or its agents or representatives shall be deemed to be an acceptance of surrender of the Premises and no agreement to accept a surrender of the Premises shall be valid unless it is in writing and signed by a duly authorized officer or agent of Lessor.

ARTICLE 35.
Early Occupancy

35.1 **Early Occupancy by Lessee.** Lessee will not occupy or attempt to occupy the Premises or any part thereof prior to the date tendered by Lessor to Lessee pursuant to the terms hereof, except with the prior written consent of Lessor; provided, however, so long as the same does not unreasonably interfere with Lessor's completion of the Lessee Finish Improvements, Lessee may enter the Premises prior to the Commencement Date to install cabling and prepare the Premises for occupancy. If Lessee takes occupancy of any part of the Premises prior to the beginning of the Lease term for the conduct of business (and not for the purpose of preparing the Premises for occupancy as set forth above), all provisions of this Lease shall be in full force and effect commencing upon such occupancy, and Lessee shall pay rent for such period at the Base Rental rate as specified in Item 6(a) of the Basic Lease Provisions.

ARTICLE 36.
Holding Over

36.1 **Lessee Holdover.** If Lessee should remain in possession of the Premises after the expiration or termination of this Lease, without the execution by Lessor and Lessee of a new lease, then Lessee shall be deemed to be occupying the Premises as a lessee-at-sufferance subject to all the covenants and obligations of this Lease, and shall pay daily rent equal to one hundred fifty percent (150%) of the amount of the Base Rental, plus the Additional Monthly Rent then most recently in effect, for the entire holdover period. No holding over by Lessee after the term of this Lease with the written consent of Lessor shall operate to extend the Lease for a longer period than one (1) month, and any holding over with the consent of Lessor in writing (unless a different term is specified therein) shall thereafter constitute this Lease a lease from month to month.

ARTICLE 37.
Estoppel Certificate

37.1 **Lessee to Provide Certification.** Lessee agrees that at any time and from time to time upon not less than ten (10) business days' prior request by Lessor, Lessee shall accurately complete, execute and deliver to Lessor, in a form provided by Lessor, a statement (the "**Estoppel Certificate**") in writing accurately certifying the following (or, to the extent any such statement cannot be made unqualifiedly because of factual matters then existing, certifying such matter and excepting only those specific material matters that are qualifications to such certification): (a) the date upon which the term of this Lease commences and terminates; (b) the date to which Base Rental, parking rental, and any rental adjustments under Section 12 hereof have been paid; (c) the amount of any Security Deposit held by Lessor hereunder; (d) that Lessee has accepted and is occupying the Premises; (e) that the Lease is in full force and effect and has not been modified or amended; (f) that all improvements to the Premises and Building/Complex (if any) required to be constructed by Lessor or Lessee pursuant to this Lease have been satisfactorily completed; (g) that there are no defaults of Lessor under the Lease nor any existing condition upon which the giving of notice or lapse of time would constitute a default, and that Lessee is not in default under this Lease; (h) that Lessee has not entitled to any offset against rents except as stated in the Lease, if at all; (i) that Lessee has received no notice from any insurance company of any defects or inadequacies of the Premises; (j) that Lessee has no options or rights other than as set forth in the Lease; (k) Lessee's then current financial condition, and (l) such other matters that Lessor may request be addressed. Lessee's right to qualify any certification in the Estoppel Certificate because of factual matters shall not allow Lessee to make any general qualifications or exceptions (such as limiting its certifications to its knowledge or to the knowledge of a particular person) to its certification. If such statement is to be delivered to a purchaser of the Complex, it shall further include the agreement of Lessee to recognize such purchaser as Lessor under the Lease upon sale of the Complex and to thereafter pay rent to such purchaser or its designee in accordance with the terms of this Lease, and that Lessee acknowledges that any such purchaser will rely on such statement. Furthermore, if requested by Lessor, such Estoppel Certificate will contain an agreement by Lessee to contemporaneously send to the prospective purchaser a copy of any notice of default or election of any option of remedy by Lessee hereunder. Lessor, Lessor's mortgage lenders, and/or any purchasers of any portion of the Complex shall be entitled to rely upon the Estoppel Certificate executed by Lessee. Lessee's failure to deliver such Estoppel Certificate within such time shall be conclusive upon Lessee that this Lease is in full force and effect without any modification and that there are no defaults, but without waiver of Lessor's other remedies for such failure. Lessee agrees that the failure to deliver such statement shall be an Event of Default under this Lease after the expiration of applicable notice and cure periods.

ARTICLE 38.
Memorandum of Lease

38.1 **No Filing Unless Requested by Lessor.** Lessee agrees, if so requested by Lessor, at any time to execute a Memorandum of Lease in recordable form setting forth the names of the parties, the term of the Lease (stating declaration of commencement of the Lease term provided for in Section 2.1), and the description of the Premises, which Lessor may record in order to give record notice to third parties of this Lease. Except at Lessor's request pursuant hereto, Lessee shall never file in the Real Property Records or other public records of the Relevant County described in item 3 of the Basic Lease Provisions any memorandum, affidavit, notation or evidence of this Lease, and violation of this covenant by Lessee shall be an Event of Default which is not subject to any requirement of notice from Lessor or opportunity of Lessee to cure the same before Lessor pursues its remedies.

ARTICLE 39.
MISCELLANEOUS

39.1 **Intentionally Deleted**.

39.2 **Intentionally Deleted.**

39.3 **No Warranties.** LESSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE LEASED PREMISES WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

39.4 **Remedies Cumulative.** All rights and remedies of Lessor under this Lease shall be cumulative and none shall exclude any other rights or remedies allowed by law.

39.5 **Intentionally Deleted.**

39.6 **Successors.** This Lease shall be binding upon and inure to the benefit of Lessor, its successors and assigns, and shall be binding upon and inure to the benefit of Lessee, its successors and, to the extent assignment may be approved by Lessor hereunder, its assigns.

39.7 **Severability.** If any term or provision of this Lease, or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby. Each provision of this Lease shall be valid and shall be enforceable to the extent permitted by law.

39.8 **Intentionally Deleted.**

39.9 **DTPA Inapplicable (Waiver).** It is the intent of Lessor and Lessee that the provisions of the Texas Deceptive Trade Practices-Consumer Protection Act, Subchapter E of Chapter 17 of the Texas Business and Commerce Code (the "DTPA") be inapplicable to this Lease and the transaction evidenced hereby. Accordingly, Lessee hereby represents and warrants to Lessor as follows:

The total consideration paid or to be paid by Lessee over the term of this Lease exceeds [$100,000.00/$500,000.00]. Lessee is represented by legal counsel of its own choice and designation in connection with the transaction contemplated by this Lease;

Lessee's counsel was not directly or indirectly identified, suggested or selected by Lessor or an agent of Lessor; and Lessee is leasing the Leased Premises for business or commercial purposes, not for use as Lessee's residence.

[DTPA WAIVER. PURSUANT TO SECTION 17.42 OF THE TEXAS BUSINESS AND COMMERCE CODE, LESSEE WAIVES ALL RIGHTS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ., BUSINESS & COMMERCE CODE (OTHER THAN SECTION 17.555) (THE "DTPA"), A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS, WITH RESPECT TO THIS LEASE. TO INDUCE LESSOR TO ENTER INTO THIS LEASE, LESSEE REPRESENTS AND WARRANTS: (A) LESSEE IS REPRESENTED BY LEGAL COUNSEL OF ITS OWN CHOICE AND DESIGNATION IN CONNECTION WITH THE TRANSACTION CONTEMPLATED BY THIS LEASE; (B) LESSEE'S COUNSEL WAS NOT DIRECTLY OR INDIRECTLY IDENTIFIED, SUGGESTED OR SELECTED BY LESSOR OR AN AGENT OF LESSOR; (C) LESSEE IS LEASING THE LEASED PREMISES FOR BUSINESS OR COMMERCIAL PURPOSES, NOT FOR USE AS LESSEE'S RESIDENCE; (D) LESSEE HAS SUFFICIENT KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS THAT IT CAN EVALUATE THE MERITS AND RISKS OF THIS LEASE; (E) LESSEE IS NOT A SIGNIFICANTLY DISPARATE BARGAINING POSITION RELATIVE TO LESSOR WITH RESPECT TO THIS LEASE; (F) LESSEE HAS A CHOICE OTHER THAN TO ENTER INTO THIS LEASE WITH THIS DTPA WAIVER PROVISION, IN THAT IT CAN ENTER INTO A LEASE AGREEMENT WITH ANOTHER LESSOR OR PAY MORE CONSIDERATION TO ENTER INTO THIS LEASE WITHOUT THIS DTPA WAIVER PROVISION; (G) LESSEE IS KNOWINGLY AND VOLUNTARILY AGREEING TO THIS DTPA WAIVER PROVISION AND CONSIDERS IT BINDING AND ENFORCEABLE; AND (G) LESSEE ACKNOWLEDGES THAT LESSOR WOULD NOT ENTER INTO THIS LEASE FOR THE SAME CONSIDERATION OR UPON THE SAME TERMS BUT FOR THE INCLUSION OF THIS DTPA WAIVER PROVISION IN THIS LEASE.]

39.10 **Counterparts.** This Lease may be executed and delivered in any number of counterparts (including faxed or emailed electronic counterparts), each of which so executed and delivered shall be deemed an original, and all of which shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Lease by fax or email shall be effective as delivery of a manually executed counterpart of this Lease.

39.11 **Right of First refusal.** See **Exhibit "G"** attached hereto and made a part hereof for all purposes.

39.12 **Termination Option.** See **Exhibit "H"** attached hereto and made a part hereof for all purposes.

ARTICLE 40.
Tender and Delivery of Lease Instrument

40.1 **Lease Not Offer By Lessor.** Submission of this instrument for examination does not constitute an offer, reservation of or option for the Premises. This instrument becomes effective as a lease only upon execution and delivery by both Lessor and Lessee.

ARTICLE 41.
Time Is of the Essence

41.1 **Time of Essence.** In all instances where Lessee is required under the terms of this Lease to pay any sum or do any act at a particular indicated time or within an indicated period, it is understood that time is of the essence.

ARTICLE 42.
Independent Obligations; Waiver of Implied Warranties

42.1 **Independent Obligations; Waiver.** LESSEE HEREBY AGREES, AS A MATERIAL PART OF THE CONSIDERATION FOR LESSOR'S ENTERING INTO THIS LEASE, THAT LESSOR HAS MADE NO WARRANTIES TO LESSEE (OR ANY OF LESSEE'S EMPLOYEES OR AGENTS) REGARDING THE CONDITION OF THE PREMISES, EITHER EXPRESS OR IMPLIED, AND LESSOR HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY (INCLUDING ANY IMPLIED WARRANTY) THAT THE PREMISES ARE SUITABLE FOR LESSEE'S INTENDED USE THEREOF. LESSEE AGREES THAT LESSEE'S OBLIGATION TO PAY RENT HEREUNDER IS NOT DEPENDENT UPON THE CONDITION OF THE PREMISES OR THE PERFORMANCE BY LESSOR OF ITS

OBLIGATIONS HEREUNDER, BUT THAT LESSEE WILL CONTINUE TO PAY RENT WHEN DUE HEREUNDER, WITHOUT ABATEMENT, SET-OFF OR DEDUCTION, NOTWITHSTANDING ANY BREACH OR ALLEGED BREACH BY LESSOR OF ANY OF ITS EXPRESS OBLIGATIONS UNDERTAKEN IN THIS LEASE.

ARTICLE 43.
Notice

43.1 **Notices.** Any notice which may or shall be given under the terms of this Lease (except for notice of nonpayment of rent under Section 31.1(a) which may be sent by regular mail) shall be in writing and shall be either delivered by hand or sent by United States registered or certified mail, postage prepaid, return receipt requested, or delivered by nationally recognized overnight delivery service for Lessor and Lessee, to the address for notices set forth in Item 2 of the Basic Lease Provisions. Such addresses may be changed from time to time by either party by giving notice as provided above in this Section 43.1. Notice shall be deemed given and received when delivered to the Premises of the herein stipulated address of the party (if delivered by hand), or (if sent by mail) on the earlier of (i) actual receipt, or (ii) the third (3rd) business day after deposit with the United States Postal Service, or (iii) one (1) business day after deposit with an overnight delivery service. Any notice required of Lessor herein may be given, at Lessor's option, by an attorney engaged by Lessor.

ARTICLE 44.
Brokers

44.1 **Lessee's Representations and Indemnities.** Lessee hereby warrants and represents that Lessee has had no dealings with any real estate broker or agent in connection with the negotiation of this Lease and that Lessee knows of no other real estate broker(s) or agent(s) who is(are) or might be entitled to a commission in connection with this Lease. Lessee hereby agrees to indemnify, defend and hold harmless Lessor from and against any and all claims and liabilities (including attorney's fees) of any agent, broker, finder or other similar party claiming through Lessee other than the broker(s) named in Item 9 of the Basic Lease Provisions, if any, to the extent of the commissions agreed to be paid by Lessor.

ARTICLE 45.
Entire Agreement and Binding Effect

45.1 **No Other Agreements.** This Lease and any addenda or exhibits signed or initialed by the parties constitute the entire agreement between Lessor and Lessee and no prior written or prior or contemporaneous oral promises or representations shall be binding. Except as relates to changes in the Rules and Regulations provided for in Section 24.1, this Lease shall not be amended, changed or extended except by written instrument signed by both parties hereto. The provisions of this Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties, but this provision shall in no way alter the restrictions set forth in Section 22.1, in connection with assignment and subletting by Lessee.

ARTICLE 46.
Authority

46.1 **Mutual Representations and Warranties.** The parties to this Lease warrant and represent to one another that each has the power and authority to enter into this Lease in the name, title and capacity herein stated and on behalf of any entity, person, or firm represented or purported to be represented by such person, and that all formal requirements necessary or required by any state and/or federal law in order for each to enter into this Lease have been fully complied with. If Lessee is a corporation, Lessee shall be required to deliver to Lessor contemporaneously with the execution of this Lease a certified Board of Directors' resolution evidencing the authority of Lessee and the individual executing this Lease on behalf of Lessee to enter into this Lease and perform Lessee's obligations hereunder

ARTICLE 47.
Law Governing

47.1 **Texas Law Applies.** This Lease shall be governed by, and construed, enforced and interpreted in accordance with, the laws of the State of Texas. Venue shall be in Houston, Harris County, Texas.

ARTICLE 48.
Terminology

48.1 **Construction of Terms.** Whenever required by the context, as used in this Lease, the singular number shall include the plural, and the masculine gender shall include the feminine and the neuter. Titles of Articles and Sections are for convenience only, and shall neither limit nor amplify the provisions of this Lease. Any reference to an "Article" or "Section" in this Lease shall be to provisions of this Lease, unless expressly provided to the contrary.

ARTICLE 49.
Severability

49.1 **Invalidity of Certain Provisions Not Affect Others.** This Lease is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations of the State of Texas. If any provision of this Lease (other than the provisions pertaining to payment of rent by Lessor), or the application thereof to any person or circumstance, shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Lease and the application of such provision to other persons or circumstances shall not be affected thereby, but rather the remaining provisions shall be enforced to the greatest extent permitted by applicable law.

ARTICLE 50.
Waiver of Jury Trial

50.1 **Waiver of Right to Trial by Jury.** LESSEE HEREBY IRREVOCABLY WAIVES, TO THE FULL EXTENT PERMITTED BY LAW, ANY RIGHT TO HAVE A JURY IN CONNECTION WITH ANY ACTION, LEGAL PROCEEDING OR HEARING WITH RESPECT TO THIS LEASE, AND SUCH WAIVER SHALL BE EFFECTIVE WITH RESPECT TO LESSEE AND ANY PARTY THAT MAY CLAIM THROUGH LESSEE. LESSEE HAS READ THIS PARAGRAPH, HAS BEEN REPRESENTED BY COMPETENT LEGAL COUNSEL OF ITS CHOICE, AND THE WAIVERS MADE IN THIS PARAGRAPH HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY AND AS PART OF THE CONSIDERATION FOR THIS LEASE. LESSEE HAS NO KNOWLEDGE OF ANY DEFENSE THAT MAY BE MADE AGAINST ENFORCEMENT OF THIS WAIVER AND AGREEMENT.

ARTICLE 51.
No Lessor Obligation to Provide Security

51.1 **Release and Indemnity. Neither Lessor nor its property management agent shall have any liability to Lessee or any third party whomsoever, including, without limitation, Lessee's employees, officers, agents, representatives, contractors, customers, invitees or licensees, for damage, injury or loss to persons or property resulting from criminal activity occurring upon the Premises, the Complex, or adjacent thereto, whether such criminal activity is by other lessees, their employees, agents, officers, representatives, customers, invitees, licensees, contractors or others, or is by any third parties whomsoever**. Lessee shall fully insure itself, as it may deem appropriate, to protect itself from claims for any such possible injury, loss or damage to persons or property resulting from criminal activity, including claims asserted by its employees, agents, officers, representatives, customers, invitees, licensees and contractors. .

51.2 **Lessee's Provision of Security.** Subject to Lessor's prior written approval, which shall not be unreasonably withheld, Lessee may at its cost take whatever precautions may be necessary in the Premises and in the common areas of the Complex to protect its employees, officers, agents, representatives, customers, visitors, contractors, suppliers, invitees and licensees from criminal activity when on the Premises or the Complex, or in the vicinity thereof, but nothing herein

shall be deemed or construed as an undertaking or obligation enforceable against Lessee by any such third party. Lessee shall be responsible for informing itself as to the risk of crime from time to time on and in the vicinity of the Complex and Lessee shall not rely on Lessor to obtain, monitor or disseminate such crime information. Any dissemination of crime information by Lessor or its management agent shall be without obligation or liability on the part of Lessor or its management agent to do so in the future, and neither Lessor nor its management agent shall have liability or responsibility for the accuracy or completeness of any such information as the parties understand and acknowledge that such information shall be from sources the reliability of which Lessor does not undertake to verify or investigate. Lessee is in an equal position to Lessor in terms of its ability to investigate or obtain further verification of the facts surrounding any particular crime reported by Lessor or otherwise coming to the attention of Lessee.

ARTICLE 52.
Hazardous Materials

52.1 **Definitions.** As used in this Section the term "**Hazardous Materials**" shall mean any substance, material, chemical, gas, waste or other matter, which has been or in the future is classified by any federal, state or local law, code, regulation, ruling, ordinance or order as being harmful to the environment, public health or safety or the source of liability based upon the contamination of property or the environment or for the cleanup of such contamination. The term "**Environmental Law**" shall mean any law, code, regulation, ruling, ordinance or order of any federal, state or local governmental authority concerning the protection of the environment or regulating, prohibiting or imposing liability for the contamination of property, soil, water or air by Hazardous Materials, the release, movement, migration, use, handling, storage, treatment, transportation or disposal of Hazardous Materials, or the cleanup or removal thereof.

52.2 **Representation by Lessor.** Lessor represents and warrants that to the best of its knowledge, there are no Hazardous Materials located in or upon the Premises or the complex in amounts or concentrations which are in violation of any Environmental Law. If such representation and warranty is determined to be materially untrue during the term of this Lease or if any Hazardous Material which is brought onto the Premises or Complex in material amounts by Lessor, its agents, employees or contractors, or permitted to spill or leak, in violation of Environmental Law, notwithstanding anything to the contrary contained in this Lease, Lessor shall respond in such fashion in a commercially reasonable manner in compliance with applicable Environmental Law and then prevailing industry practices and standards, at Lessor’s expense.

52.3 **Lessee's Covenants.** Other than as permitted by the terms of Section 52.4, below, Lessee covenants and agrees not to store, dump, bury, or spill Hazardous Materials on, or otherwise contaminate with any Hazardous Materials, any part of the Premises or the Complex, or allow its employees, agents, representatives, contractors, invitees, sublessees or concessionaires, if any, to do so. Lessee shall be responsible for all costs incurred in complying with all Environmental Laws relating to Hazardous Materials which Lessee or its agent, employees, contractors, invitees, sublessees, or concessionaires, store, use or handle in or upon the Premises or the Complex at any time during the Lease Term. Lessee shall indemnify, defend and hold harmless Lessor from and against any and all claims, judgment, damages, penalties, fines, costs, liabilities and losses (including, without limitation, sums paid in settlement of claims, attorneys' fees and expert fees) which arise out of any contamination of the Complex or any part thereof by Lessee, its agents, employees, contractors, or invitees, or any sublessee or concessionaire put into possession of all or any part of the Premises by Lessee, **whether or not such claim is based on the negligence or alleged negligence of Lessor or any other party**.

52.4 **Limited Permitted Uses.** Provided that such Hazardous Materials are necessary for the usual operation of a business the type described in the Permitted Use provision hereof, and same are at all times stored, used and handled, and disposed of off the Premises of the Complex in compliance with all Environmental Laws, Lessee shall have the right to store, use and handle on the Premises minor quantities of generally available Hazardous Materials used for routine cleaning and maintenance of the Premises and other operational aspects of its business being conducted in compliance with the Permitted Use provisions hereof, and provided that same are at all times stored and kept leak-free in their original manufacturer's containers. Should Lessee desire to conduct any operations upon the Premises that are not contemplated by the first sentence of this Section 52.4 and that involve a material or unusually high risk of contamination of the Complex, and should Lessor in its discretion determine to permit such use, Lessor reserves the right to require Lessee to provide such environmental protection insurance coverage naming Lessor as Lessor in its sole discretion determines to be appropriate.

52.5 **This Section Supersedes any Conflicting Provision.** The provision in this Article 52 shall supersede any other provisions in this Lease regarding the use, maintenance, repair, construction, remodeling or reconstruction of the Premises or Common Areas of the Complex, or any part thereof, to the extent inconsistent with the provisions hereof. The representations, warranties and agreements of the parties set forth herein shall survive the expiration of the Lease Term or the termination of this Lease for any other reason whatsoever.

ARTICLE 53.
Intentionally Deleted.

ARTICLE 54.
Mold

54.1 **Mold.** Upon Lessee's discovery of mold or any conditions that reasonably can be expected to give rise to mold, such as by way of example but not limitation, water damage, mold growth, repeated complaints of respiratory ailments or eye irritation by persons occupying the Premises or any notice from a governmental authority of complaints regarding indoor air quality at the Premises, Lessee, at its sole cost and expense, will immediately notify Lessor and monitor the Premises as reasonably necessary for the presence of mold. If Lessee discovers the existence of any mold referred to above, Lessee will immediately notify Lessor and, if requested by Lessor, retain an industrial hygienist or other professional mold consultant to conduct an inspection and prepare a report for Lessee and Lessor. If the inspection report concludes that mold is present in the Premises due to Lessee's negligence, willful misconduct or failure to perform its obligations pursuant to this Lease, Lessee, at its sole cost and expense, will hire a contractor that specializes in mold remediation to prepare and conduct a remediation plan for the Premises. In such event, Lessee will be responsible for the cost of such inspection and the reasonable cost of remediation. If the presence of mold is not due to Lessee's negligence, willful misconduct or failure to perform its obligations pursuant to this Lease, Lessor will be responsible for the cost of such inspection and the reasonable cost of remediation and will reimburse Lessee for all costs previously incurred by Lessee for the same. In the event Lessee is responsible for such remediation, any remediation plan and the contractor to prepare and conduct the remediation plan will be subject to the approval of Lessor, which approval will not be unreasonably withheld or delayed. Subject to compliance with other applicable provisions of this Lease, upon Lessor's approval of the plan, the contractor will promptly carry out the work contemplated in the plan in accordance with applicable laws, ordinances and regulations. To the extent required by applicable state or local health or safety requirements, occupants and visitors to the Premises will be notified of the conditions and the schedule for the remediation. Lessor will have a reasonable opportunity to inspect the remediated portion of the Premises after completion of the remediation. The contractor performing the remediation will provide a written certification to Lessor and Lessee that the remediation has been completed in accordance with applicable laws. **TO THE FULLEST EXTENT ALLOWABLE UNDER LAW, LESSEE RELEASES AND WILL INDEMNIFY, PROTECT, DEFEND (WITH COUNSEL REASONABLY ACCEPTABLE TO LESSOR) AND HOLD HARMLESS LESSOR, ALL LESSOR RELATED PARTIES, LESSOR'S MANAGING AGENT, ANY MORTGAGEE AND GROUND LESSOR OF THE BUILDING OR THE LESSOR'S PREMISES, AND ANY OFFICER, DIRECTOR, STOCKHOLDER, PARTNER, MEMBER, TRUSTEE, BENEFICIARY, EMPLOYEE, AGENT OR CONTRACTOR OF LESSOR'S MANAGING AGENT AND ANY MORTGAGEE AND GROUND LESSOR OF THE BUILDING OR THE LESSOR'S PREMISES, FROM AND AGAINST ANY CLAIMS IN ANY MANNER RELATING TO OR ARISING OUT OF ANY MOLD IN OR ON THE PREMISES OR IN OR ON THE LESSOR'S PREMISES TO THE EXTENT RESULTING FROM THE NEGLIGENCE, ACTS OF FAILURE TO PERFORM ANY OBLIGATIONS OF LESSEE PURSUANT TO THIS LEASE OR ANY WORK PERFORMED, MATERIALS FURNISHED OR OBLIGATIONS INCURRED BY OR FOR LESSEE OR ANY PERSON OR ENTITY CLAIMING BY, THROUGH OR UNDER LESSEE IN CONNECTION WITH THE REMEDIATION OF ANY MOLD ON THE PREMISES.**

54.2 **This Section Supersedes any Conflicting Provision.** The provision in this Article 54 shall supersede any other provisions in this Lease with regard to mold, to the extent inconsistent with the provisions hereof. The representations, warranties and agreements of the parties set forth herein shall survive the expiration of the Lease Term or the termination of this Lease for any other reason whatsoever for a period of six (6) months following said expiration of the Lease Term or the termination of this Lease.

ARTICLE 55.
Intentionally Deleted

NOTICE: NO PERSON OTHER THAN THE INDIVIDUAL SIGNING BELOW AS THE AUTHORIZED REPRESENTATIVE OF LESSOR MAY BIND THE LESSOR TO ANY AGREEMENT WHATSOEVER, ANDANY ORAL OR VERBAL REPRESENTATIONS, STATEMENTS, PROMISES OR AGREEMENTS OF ANY OTHER PERSON (REGARDLESS OF WHETHER PURPORTING TO REPRESENT OR APPARENTLY REPRESENTING THE LESSOR) SHALL NOT BE BINDING ON LESSOR UNLESS EXPRESSLY CONTAINED IN THIS LEASE.

EXECUTED in multiple counterparts, each of which shall have the force and effect of an original, as of the date and year first set forth above.

LESSOR:

RADLER LIMITED PARTNERSHIP,
a Texas limited partnership

By:Radler Enterprises, Inc.,
a Texas corporation,
its managing general partner

By: _____
Mishael H. Radom, President

Date: _____, 2017

LESSEE:

IRHYTHM TECHNOLOGIES, INC.,
a Delaware corporation

By:_____

Printed Name: _____

Title: _____

Date: _____, 2017

EXHIBIT "A"
DESCRIPTION OF THE LAND

Tract 1

All that certain 9.298 acres of land, in the W.C.R.R. Company Survey, A-1265, Harris County, Texas, being a portion of BELTWAY LAKES OFFICE PARK SEC 1, according to the plat thereof recorded under Film Code Number 641021 of the Harris County Map Records, the 8.8438 acre tract described as Tract 1 and the 25.0042 acre tract described as Tract 3 both described in the deed from SHT/Northwestgreen, Ltd. to Radler Limited Partnership, recorded under File No. 20060108690, in the Official Public Records of Real Property of Harris County, Texas, and the 1.4804 acre tract (Hiltonview Road) abandoned by the Commissioners Court of Harris County, Texas, recorded under File No. 20070112835, in the Official Public Records of Real Property of Harris County, Texas, and more particularly described by metes and bounds as follows: (All bearings based on the Texas Coordinate System of 1983, South Central Zone)

COMMENCING at a 5/8 inch iron rod found for the northwest corner of said BELTWAY LAKES OFFICE PARK SEC 1, common to the northeast corner of the 60,000 square foot tract described in the deed from Motiva Enterprises, LLC. to Aspri Investments, LLC., recorded under File No. Y161740, in the Official Public Records of Real Property of Harris County, Texas, in the south right-of-way line of Beltway 8 (R.O.W. Varies);

THENCE North 84° 36' 02" East – 42.86 feet, along said south right-of-way line, to a found Texas Department of Transportation (TXDOT) monument;

THENCE North 88° 19' 33" East – 578.21 feet, continuing along said south right-of-way line, to the northwest corner and **POINT OF BEGINNING** of the herein described tract;

THENCE North 88° 19' 33" East – 619.58 feet, continuing along said south right-of-way line, to the northeast corner of the herein described tract;

THENCE South 01° 59' 29" East – 664.08 feet to the southeast corner of the herein described tract;

THENCE South 88° 00' 31" West – 609.91 feet to the southwest corner of the herein described tract;

THENCE North 02° 01' 37" West – 335.53 feet to an angle corner of the herein described tract;

THENCE North 87° 59' 26" East – 36.91 feet to an angle corner of the herein described tract;

THENCE North 02° 00' 34" West – 61.99 feet to an angle corner of the herein described tract;

THENCE South 87° 59' 26" West – 31.21 feet to the Point of Curvature of a curve to the right;

THENCE along said curve to the right, in an northwesterly direction, having a central angle of 87° 49' 46", a chord bearing and distance of North 48° 05' 40" West – 6.94 feet, a radius of 5.00 feet, and an arc distance of 7.66 feet, to the end of curve;

THENCE North 04° 10' 47" West – 265.38 feet to the **POINT OF BEGINNING** of the herein described tract and containing 9.298 acres of land.

Tract 2

Those certain non-exclusive and perpetual easements on, over and across the Access Parcel, on, over, and across the Parking Garage Parcel, and over and across the Recycling Center Parcel, all as set forth and defined in the Declaration of Covenants, Easements and Restrictions recorded under Harris County Clerk's File No. 20120306032.

EXHIBIT "B"
DESCRIPTION OF THE PREMISES

- Building: Beltway Lakes III, 5775 North Sam Houston Parkway West, Houston, Harris County, Texas 77086
- Floor and Suite: Floor 2; further described as Suite 200
- Premises Size: Approximately ~~20,000~~ 20,276 rentable square feet
- Floor Plan:

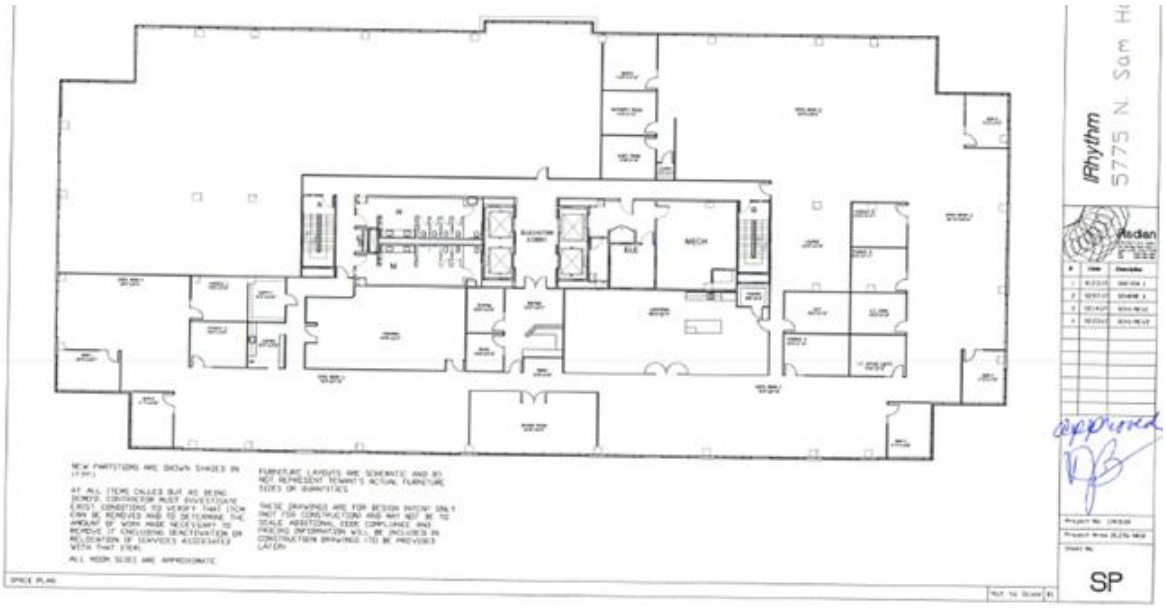


EXHIBIT "C"
CONSTRUCTION WORK LETTER RIDER

This Construction Work Letter Rider (this **"Rider"**) is attached to and forms a part of that certain Lease Agreement (the "**Lease**") dated _____, 2017, between **Radler Limited Partnership,** as "**Lessor**" (herein so called) and **iRhythm Technologies, Inc.**, as "**Lessee**" (herein so called), relating to the lease of space known as **Suite 200** in **Beltway Lakes III**, an office building project located at **5775 North Sam Houston Parkway West, Houston, Harris County, Texas 77086**.

This Rider is incorporated into the Lease as if set forth therein verbatim, and all capitalized terms not otherwise set forth herein shall have the same meaning when used herein as given in the Lease.

I. **Lessor's Own Work**

For purposes of this Rider, Lessor remains responsible only for those improvements described in approved turn-key plans.

II. **Lessor's Construction of Improvements for Lessee; Construction Allowance**

All improvements relating to Lessee's occupancy of the Premises that are not Lessor's responsibility under Paragraph I, above, are herein called the "**Lessee Finish Improvements**" and shall be constructed and paid for as follows:

Lessor agrees to provide the following Lessee Finish Improvements per the Approved General Plans (i.e., the preapproved Space and Improvements Plan attached hereto as **Exhibit "C-1** (which the parties agree shall reflect Lessor's sole obligation). This is called the "**Turn-Key Option**."

All finishes and materials provided above shall be the building standard quantity, grade, type, and quality specified by Lessor as building standard for the Building, and Lessee shall pay any net increased cost for design or completion of changes, upgrades or substitutes as a result of Change Requests, in the amount set forth in approved Change Impact Notices (collectively, the "**Excess Costs**"), and any delay in Substantial Completion resulting from ordering of such changes, upgrades or substitutes in the amount set forth in the approved Change Impact Notices will be added to the Construction Completion Date but shall not delay the Commencement Date. Lessor is responsible as part of the turn-key costs for construction and materials that are specifically identified on the Approved General Plans even if such specifically shown items are non-Building standard materials or construction. Any Excess Costs shall be paid by Lessee to Lessor in cash prior to commencement of construction or implementation of the change in the case of an approved Change Request resulting in Excess Costs. Also under the Turn-Key Option, in each provision hereof referencing the Construction Cost Estimate, the estimate shall instead refer to the Excess Costs, in their entirety (after deducting any savings from any change), all of which are to be paid for by Lessee hereunder. Under no circumstances shall Lessor have any obligation under the Turn-Key Option to pay for the design or construction of any improvements not specifically set forth in the Approved General Plans (as qualified above by Building standard limitations where no specific quality or type is specified or in excess of applicable allowances stated therein for items identified in the Approved General Plans as an item for which Lessor is providing a stipulated aggregate or per unit dollar allowance).

III. **Lessor's Lessee Finish Work**

A. **Approval of Plans and Specifications; Estimated Construction Cost**. Lessor has already paid for the cost of up to two (2) test fit revisions to be prepared by Lessor's architect. If Lessor and Lessee have already prepared and agreed on construction drawings and specifications for the Lessee Finish Improvements, an **Exhibit "C-1"** is attached hereto and incorporated herein by this reference which identifies such approved final plans and specifications, and which has been initialed by Lessor and Lessee, which shall be the "**Final Plans and Specifications**" for all purposes hereof, and the plans and specifications so initialed shall be the Final Plans and Specifications for all purposes hereof. If a listing of plans and specifications is attached hereto as **Exhibit "C-1"**, then such plans shall also constitute the "**Approved General Plans**" notwithstanding that they may be final and complete construction plans.

B. **Completion of Construction by Lessor**. Lessor will use good faith efforts to prosecute the construction

of the Lessee Finish Improvements to "Substantial Completion" as herein defined on or before July 15, 2017 (if and as extended as provided elsewhere herein, the "**Construction Completion Date**"). For purposes hereof, "**Substantial Completion**" of the Lessee Finish Improvements shall mean that the Lessee Finish Improvements have been completed to the extent that (i) substantial completion has been achieved, and (ii) the only remaining incomplete items or items requiring correction, adjustment or repair are of a punch-list nature and will not materially interfere with Lessee's use and occupancy of the Premises for their intended purposes, as conclusively certified in good faith in writing by Lessor's project architect. The date on which Substantial Completion is achieved shall be the "**Date of Substantial Completion**" for all purposes hereof; provided, however, that should Lessee Delay occur, then the Date of Substantial Completion shall be the date on which Lessor in good faith projects that Substantial Completion of the Lessee Finish Improvements would have occurred but for the existence of the Lessee Delay.

C. **Change Orders**. After the Final Plans and Specifications are prepared and approved or deemed approved by Lessee, any changes requested thereto by Lessee shall be submitted to Lessor in writing in the form of sufficient detail to allow Lessor's architect and engineer to prepare revised construction drawings and specifications thereof (a "**Change Request**"). Thereupon, Lessor may stop or delay any work that would be affected by the change and the Construction Completion Date will be extended by the time delay resulting therefrom. Lessor shall promptly price the costs effect of Lessee's requested changes, and the estimated dollar impact on the Construction Cost Estimate (including collateral cost impact on soft-cost items), and shall submit the added cost estimate to Lessee together with the amount of delay in Substantial Completion that will be caused thereby with respect to the Construction Completion Date (a "**Change Impact Notice**"), but it is agreed that the time delay in Substantial Completion resulting from such change shall be Lessee Delay for purposes hereof to the extent set forth in the approved Change Impact Notice. Lessee shall notify Lessor in writing of its election to proceed with the change within five (5) days after receipt of Lessor's Change Impact Notice, or Lessor may presume Lessee is withdrawing the Change Request. If Lessee timely notifies Lessor that it desires to proceed with the Change Request, Lessor shall make the appropriate changes to the Final Plans and Specifications, and the Construction Cost Estimate will be deemed revised in accordance with Lessor's Change Impact Notice, and Lessee will, within three (3) business days thereafter, either (i) fund the cost of the change in advance out of its own funds, or Lessor may thereafter refuse to make the requested change, or (ii) waive the requirement for the changes called for in the Change Request. Lessee shall be deemed to have elected option (ii) if it fails to timely give notice of election.

D. **Tendering Upon Substantial Completion**. Unless otherwise specified to the contrary in the Lease, the Lessee Finish Improvement and the Premises will be deemed "substantially complete and ready for occupancy" by Lessee for purposes of Section 2.2 of the Lease on the Date of Substantial Completion as defined herein. Lessor will notify Lessee in writing of Substantial Completion of the Lessee Finish Improvements and Lessor's tendering of possession of the Premises to Lessee, accompanied by Lessor's project architect's certification of the items described in clauses (i)-(ii) in Paragraph III.B. hereof (the "**Completion Notice**"); provided, however, that if Lessee Delay has occurred Lessor may give Lessee notice of a deemed Date of Substantial Completion based on the provisions of Paragraph III.B. hereof for purposes of establishing the Commencement Date of the Lease without any requirement for such certificate of Lessor's architect, and the architect's certificate shall accompany the Completion Notice that is given to notify Lessee of its right to occupy the Premises.

E. **Lessor Completion of Punch List**. Lessee shall have ten (10) business days after receipt of a Completion Notice within which to inspect the Lessee Finish Improvements and notify Lessor in writing of any punch list items apparent on visual inspection or testing of the operation of mechanical, electrical and plumbing systems and equipment that require completion, adjustment or correction (the "**Punch List**"). Lessee must notify Lessor at least three (3) business days before Lessee's inspection for Punch List of the time for such inspection so that Lessor may have a representative present during such inspection. The time granted for Lessee's inspection of the Premises for Punch List items or for Lessor's completion of Punch List items shall not extend the commencement date of the Lease. After Lessor's receipt of the Punch List, Lessor shall proceed with reasonable diligence to complete the Punch List repairs. All items not identified on such Punch List and that are reasonably observable by Lessee shall be conclusively deemed complete and satisfactory for purposes of Lessor's obligations hereunder. Lessee shall be entitled to surrender the Lessee Finish Improvements upon the termination of the Lease.

F. **No Lessee Delay; Obligations During Construction**. During Lessor's construction of the Lessee Finish Improvements, Lessee shall not be entitled to occupy or enter the improvements, except for entries made for inspection purposes under safety conditions reasonably established by Lessor or its contractor(s) and not interfering with the prosecution of Lessor's work on the Lessee Finish Improvements. Any delay in completing the Lessee Finish Improvements caused by interference by Lessee or its employees, agents, contractors or consultants entering onto the Land during Lessor's construction (to the extent such interference persists for one (1) day following written notice from Lessor to Lessee of such interference), as well as any delay caused by Lessee failing to timely deliver information or make elections required of it under this Exhibit, and any delays resulting from Lessee Change Requests (to the extent set forth in an approved Change Impact Notice), shall be deemed "**Lessee Delay**" for all purpose of this Lease. Lessee Delay shall operate to extend the Construction Completion Date day for day for each day of Lessee Delay.

G. **Final Adjustment**. Upon final completion of the Lessee Finish Improvements, Lessor will deliver to Lessee a final Construction Cost statement showing the actual Construction Cost for the Lessee Finish Improvements. So long as the final Construction Cost does not exceed the Construction Cost Estimate as last approved or deemed approved by Lessee (including as modified by approved Change Requests) by more than ten percent (10%), excluding any increased caused by Lessee interference, the final adjustment shall be made between Lessor and Lessee based on the final Construction Cost statement. If the final Construction Cost exceeded the final Construction Cost Estimate by more than ten percent (10%) (excluding any add-on cost caused by Lessee interference), then the final adjustments shall be made between Lessor and Lessee based on 110% of the final Construction Cost Estimate (plus add-on costs caused by Lessee interference). Whichever of the foregoing is the appropriate maximum allowed Construction Cost is herein called the "**Allowed Construction Cost**." If Lessee over-deposited Construction Costs with Lessor, Lessor shall refund the overage to Lessee within thirty (30) days of the final completion of the Lessee Finish Improvements, and if Lessee under-deposited funds with Lessor for the Lessee Finish Improvements so that the amount deposited by Lessee did not cover the amount by which the allowed Construction Cost exceeded the Construction Allowance, Lessee shall pay the shortfall to Lessor hereunder, as additional rent, within thirty (30) days after receipt of Lessor's final Construction Cost statement. If the Turn-Key Option has been selected under Paragraph II hereof, then the above analysis and payment adjustment shall be made in relation to the Excess Costs, and the final approved estimates of Excess Costs, and Lessee's overpayment or underpayment toward such Excess Costs.

H. **Lessee's Work**. Any consent by Lessor to Lessee's performance of additional work through its own contractors is conditioned upon Lessee and Lessee's contractors and their subcontractors complying with the provisions of the Lease and with the Contractor and Subcontractor Rules and Regulations set forth in **Attachment C-2** hereto. Notwithstanding the foregoing to the contrary, Lessee must use the Lessor's building mechanical, electrical, plumbing, fire suppression and fire alarm subcontractors, but Lessor does not represent or warrant their respective workmanship and shall not be liable for any acts or omissions by such subcontractors. In the event of noncompliance with the Lease, this consent may be withdrawn by Lessor upon twenty-four (24) hours written notice to Lessee. Lessor shall not be liable in any way for any injury, loss, or damage which may occur on account of or as a result of any such work being performed by Lessee or Lessee's contractors, their subcontractors and employees, the same being solely at Lessee's risk.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

The parties have executed this Construction Work Letter Rider on the date and year of the attached and foregoing Lease.

LESSOR:

RADLER LIMITED PARTNERSHIP,
a Texas limited partnership

By: Radler Enterprises, Inc.,
a Texas corporation,
its managing general partner

By: _____
Mishael H. Radom, President

Date: _____, 2017

LESSEE:

IRHYTHM TECHNOLOGIES, INC.,
a Delaware corporation

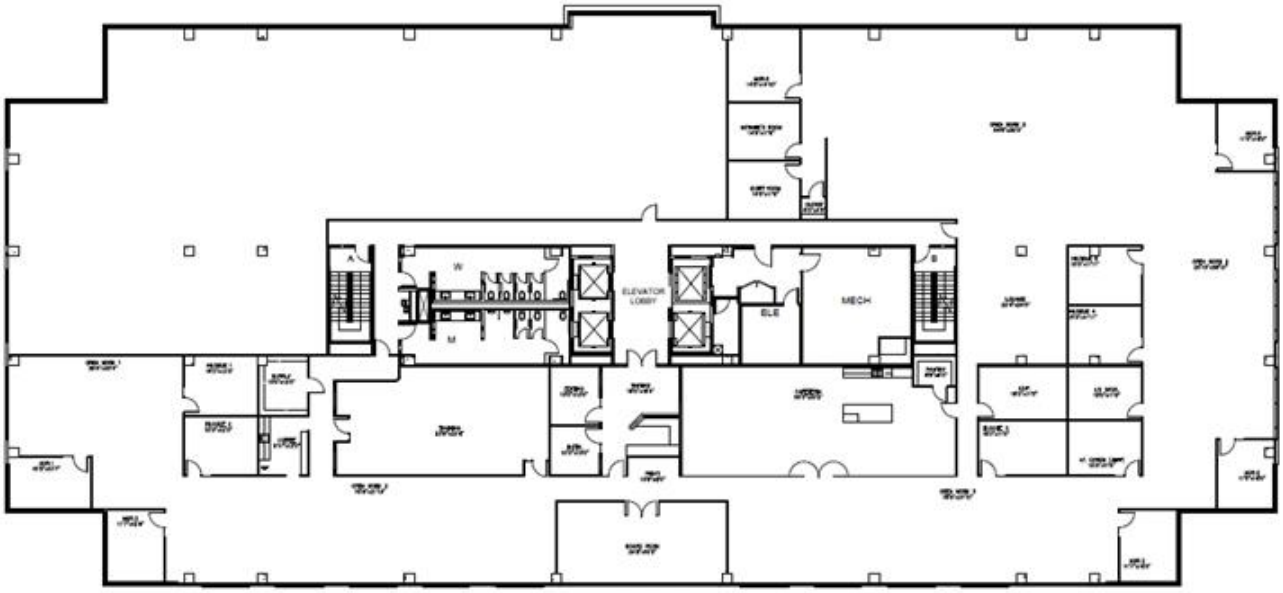
By: _____

Printed Name: _____

Title: _____

Date: _____, 2017

ATTACHMENT C-1
SPACE AND IMPROVEMENTS PLAN



ATTACHMENT C-2

CONTRACTOR AND SUBCONTRACTOR RULES AND REGULATIONS

CONTRACTOR RULES AND REGULATIONS

The following standards shall be observed by contractors for the mutual safety, cleanliness and convenience of the lessees of the Property. These rules are subject to change from time to time.

- ANY CONTRACTORS OR EMPLOYEES OF COMPANIES NOT ADHERING TO THESE RULES AND REGULATIONS MAY NOT BE ALLOWED TO ENTER THE PREMISES OR MAY BE REQUIRED TO DISCONTINUE WORK AND LEAVE THE PROPERTY.

- Prior to commencement of the Work, the Property Manager and Owner is to be provided with names of supervisors and (24) hour contact numbers for the Contractor and all subcontractors. All Contractors and their employees shall sign in with the Property Manager and identify their company name and scope before beginning work.

- The use of illegal substances, consumption of alcoholic beverages, possession of firearms/weapons and the use of profane language on the work site are strictly prohibited.

- Smoking is prohibited inside the building, connector walkway and parking garage. Contractors that wish to smoke must use only the designated smoking area shown on the attached Delivery/Parking diagram.

- Any alteration or work performed relating to the systems below shall be approved and coordinated in advance with the Owner and/or Property Manager:
  - Life Safety Systems
  - Electrical Systems
  - HVAC Systems
  - Plumbing Systems
  - Irrigation Systems
  - Elevators

- Workers:
  - Will adhere to strictly professional behavior when in contact with Property lessees and staff and may not use any abusive or offensive language.
  - Maintain a clean and orderly work area at all times, including elevators, walkways, corridors and restrooms. Always dispose of trash and food.
  - Must coordinate the flushing/washing of paints, adhesives and other toxic chemicals through the Property Manager.
  - Are allowed only on the floors they are contracted to work on. Contractors and their employees are not allowed to loiter in the lobby areas including sitting in occupied lobbies or using furniture designed for lessee and their visitors' use. In addition, all contractors and their employees must have valid identification.

- Deliveries and Parking:
  - ALL deliveries must be authorized by and arranged in advance through the Property Manager. Deliveries are to be through the designated delivery entrance only.
  - The delivery drive aisle and loading ramp must be kept clear at all times.
  - All delivery equipment must be equipped with rubber wheels or tires to prevent damage to flooring. Wheels should be clean to prevent soiling.

- All delivery vehicles have a 30 minute parking limit. Those who abuse the privilege are subject to being towed at their expense. Delivery of large quantities of material shall be scheduled after normal building hours as required by Lessor.
- Floor and wall protection consisting of plastic sheeting covered with masonite board or equivalent must be used for all deliveries.
- Use of any stairwell or elevator for deliveries must be authorized and coordinated in advance with the Property Manager.

- Use of Designated Freight Elevator:
  - Property Manager will designate one (1) protected elevator cab as the Freight Elevator.
  - When the freight elevator is in operation, no construction personnel or materials will be allowed on any passenger car for any reason. Violators' companies will be assessed One Hundred and No/100 Dollars ($100.00) per occurrence by Property Manager to be used for cleaning the elevators.
  - Any individuals caught on the passenger car will be asked to leave the project, If the freight elevator is out of service, please contact Property Manager.

- Protection of the "delivery path" shall include wall and floors and ceilings for large materials.

- Any on-site storage arrangements for Contractor's material must be made in advance and authorized by the Property Manager.

- The Contractor is responsible for the adherence of the policies by its employees and subcontractors and will be held financially responsible for damage caused by its employees and its subcontractors.

- The use of any common area restrooms or facilities by Contractors is strictly prohibited. Contractors are not allowed to enter or use any restroom in the building. It shall be the Contractor's responsibility to furnish, maintain and remove temporary restroom facilities for use during construction. Delivery, servicing and removal of temporary restroom facilities must be coordinated through and authorized by the Property Manager.

- Contractors are responsible at all times for keeping the premises and adjacent areas including hallways and elevator lobbies free from accumulations of waste material or rubbish caused by their sub-contractors, workmen, or suppliers. Contractors are also responsible for the final clean-up which shall include, but is not limited to, light fixtures, interior windows and sill, entries and public space affected by the work.

- Any and all work creating noise that could cause a nuisance to others must be done before 7:00 a.m. or after 6:00 p.m. Monday through Friday and after 12:00 p.m. on Saturday. All such work is subject to being postponed to after 6:00 p.m. if lessee complaints are received. All demolition must be done after-hours subject to approval.

- All concrete anchors protruding from the floor slab must be removed by cutting at the finished floor and leveled with a grinder. Anchors shall not be struck to force down into floor. Striking objects on topside of concrete slabs can cause damage to underside and create potentially dangerous conditions to personnel on the floor below.

- All construction must conform to all governmental regulations including the then current building and life safety codes, expressly including, without limitation, the Harris County Fire Code adopted by the Harris County Commissioners Court, the International Fire Code 2006, with amendments, as well as chapters 2 through 10 of the International Building Code 2006, and must be properly permitted. General Contractor shall be responsible for sealing all penetrations with an approved fire rated material.

- Contractor is responsible for covering smoke detectors and removing covers from smoke detectors each day before leaving job site. If contractor fails to remove covers, he will be required to send someone to remove covers immediately upon notification or be assessed a $250 per occurrence for removal.

- Contractors are responsible to supply their own bin and ensure the regular removal of all garbage from their worksite. All dumpster deliveries for removal of debris must be approved by Property Management and removed from the premises before 6:00 a.m. Monday through Friday.

- Contractor will be responsible, at its sole cost, for any and all central heating and air conditioning service required by Contractor during the construction of the Lessee Improvements. Any HVAC service provided to Contractor shall be at Lessor's then prevailing rate.

- During construction the Contractors working on HVAC-related items are responsible for providing and installing temporary filter media equal to or better than MERV-8 on the SWP Units. Mechanical contractor must have air balance or comfort balance checked by Beltway Lakes building engineer. A sign off by the building engineer is required.

- No sign(s), or advertisement for Contractor shall be displayed, in or on any part of the outside or inside of the Property without prior written consent of Owner or Property Manager.

- Owner/Property Manager will not be responsible for any lost or stolen personal property or equipment of Contractor from the premises or public areas, regardless of whether such loss occurs when the area is locked against entry or not.

- The following dates shall constitute "holidays": New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas.

- Contractor shall give immediate notice to the Property Manager in case of accidents on the Property or of defects therein or in any fixtures or equipment, or of any known emergency on the Property.

- Owner and Manager reserve the right to rescind any of these Rules and Regulations of the Property, and to make such other and further rules and regulations as in its judgment shall from time to time be needed for the safety, protection, care and cleanliness of the Property, the garage, the operation thereof, the preservation of good order therein and the protection and comfort of the other lessees in the Property.

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EXHIBIT "D"
Rules and Regulations

The following Rules and Regulations are hereby made by LESSOR and accepted by LESSEE:

1. LESSEE, its agents, representatives and employees shall not block or obstruct any of the entries, passages, doors, elevators, elevator doors, hallways or stairways of the Building, amenity center, or garage, or place, empty or throw any rubbish, litter, trash or material of any nature into such areas, or permit such areas to be used at any time except for ingress or egress of LESSEE, its agents, representatives, employees, visitors or invitees.

2. The movement of furniture, equipment, merchandise or materials within, into or out of the Building or garage facilities shall be restricted to time, method and routing of movement as determined by LESSOR upon request from LESSEE and LESSEE shall assume all liability and risk to property, the Premises and the Building in such movement. Safes and other heavy equipment shall be moved into the Building and the Premises only with LESSOR's written consent and placed where directed by LESSOR.

3. No sign, door plaque, advertisement or notice shall be displayed, painted or affixed by LESSEE, its agents, representatives or employees in or on any part of the outside or inside of the Building, garage facilities or the Premises without the prior written consent of LESSOR and then only such color, size, character, style and material and in such places as shall be approved and designated in writing by LESSOR. Signs on doors and entrances to the Premises shall be placed thereon by a contractor designated by LESSOR.

4. LESSEE shall not tamper with or attempt to replace or modify its listing on the Building directory.

5. LESSOR shall not be responsible for lost or stolen personal property, equipment, money or any article taken from the Premises, the Building, amenity center, or garage facilities regardless of how or when any such loss occurs.

6. LESSEE, its agents, representatives and employees shall not install or operate any refrigerating, heating or air conditioning apparatus or carry on any mechanical operation or bring into the Premises, the Building or the garage facilities any flammable fluids or explosives without the prior written consent of LESSOR.

7. LESSEE, its agents, representatives or employees shall not use the Building, the Premises or the garage facilities for housing, lodging or sleeping purposes, or for the cooking or preparation of food without the prior written consent of LESSOR.

8. LESSEE, its agents, representatives or employees shall not bring into the Complex, garage facilities, the Building or the Premises or keep on the Premises any dog, bird or animal. LESSEE, its agents, representatives or employees shall not bring into the garage facilities or the Building or keep on the Premises any bicycle or other vehicle without the prior written consent of LESSOR.

9. No additional locks or security devices shall be placed on any door in the Building without the prior written consent of LESSOR. LESSOR shall furnish the Allotted Number of keys specified in item 13 of the Basic Lease Provisions and LESSOR, upon request of LESSEE, shall provide replacement keys and activation at LESSEE's expense. LESSOR may at all times keep a passkey to the Premises. All keys shall be returned to LESSOR promptly upon termination of this Lease.

10. LESSEE, its agents, representatives or employees shall do no painting or decorating in the Premises; or mark, paint or cut into, drive nails or screw into or any way deface any part of the Premises or the Building without the prior written consent of LESSOR. If LESSEE desires signal, communication, alarm or other utility or service connection installed or changed, such work shall be done at expense of LESSEE, with the approval and under the direction of LESSOR.

11. LESSOR reserves the right to close the Building at 6:00 p.m.; subject, however, to LESSEE's right to admittance under regulations prescribed by LESSOR, to require all persons entering the Building after 6:00 p.m. to identify themselves to a watchman and establish their right to enter or leave the Building; and to have access to all mail chutes according to rules of the United States Postal Service.

12. LESSEE, its agents, representatives and employees shall not permit the operation of any musical or sound producing instrument or any type of instrument or device which may be heard outside the Premises, exercise center or conference room center, the Building or the garage facilities, or which may emanate electrical waves which will impair radio or television broadcasting or reception from or in the Building.

13. LESSEE, its agents, representatives and employees shall, before leaving the Premises, exercise center or conference room center unattended, close and lock all doors and shut off all utilities; damage resulting from failure to do so shall be paid by LESSEE.

14. All plate and other glass now in the Premises which is broken through cause attributable to LESSEE, its agents, representatives or employees, shall be replaced by LESSOR at the expense of LESSEE.

15. LESSEE shall give LESSOR prompt notice of all accidents to or defects in air conditioning equipment, plumbing, electric facilities or any part or appurtenance of the Premises.

16. In the event LESSEE is expressly granted rights and/or privileges in and to parking areas or facilities under this Lease, the following shall apply: LESSEE and LESSEE's employees shall park their cars only in those portions of the parking garage and areas that are from time to time designated for that purpose by LESSOR. LESSOR shall have the right from time to time to relocate parking areas for use by LESSEE, its officers, agents, employees, invitees, licensees and customers. LESSEE shall furnish LESSOR in writing, the make, model, color and state automobile license number (automobile license numbers to be submitted on a yearly basis) assigned to LESSEE's car or cars and cars of LESSEE's employees, agents and licensees within ten (10) days after taking possession of the Premises and shall thereafter notify LESSOR in writing of any changes thereof, including, but not limited to, the dismissal and/or addition of employees, agents and/or licensees within five(5) days after such changes occur. In the event LESSEE, its employees, agents and/or licensees fail to park their cars in the parking areas so designated from time to time by LESSOR, then LESSOR at its option shall have the right to charge LESSEE Ten and No/100 Dollars ($10.00) per car per day parked in any area other than that so designated and/or tow such vehicle away at LESSEE's cost and expense. In the event LESSOR should exercise such option, the money due LESSOR under the provisions of this Paragraph 16 shall be deemed additional rental due under the Lease and such amount shall be subject to all of those provisions in this Lease pertaining to the payment of rental.

17. The plumbing facilities shall not be used for any other purpose than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from a violation of this provision by LESSEE or its employees, agents or invitees shall be borne by LESSEE.

18. All contractors and/or technicians performing work for LESSEE within the Building or garage facilities shall be referred to LESSOR for approval before performing such work. This provision shall apply to all work including, but not limited to, installation of telephones, telegraph equipment, electrical devices and attachments and all installations affecting floors, walls, windows, doors, ceilings, equipment or any other physical feature of the Building. None of such work shall be done by LESSEE without LESSOR's prior written approval.

19. Should LESSEE desire to place in the Building or garage facilities any unusually heavy equipment, including, but not limited to, large files, safes and electronic data processing equipment, LESSEE shall first obtain written

approval of LESSOR for the use of the Building elevators and of the proposed location in which such equipment is to be installed. Maximum live floor loads (excluding partitioning only) shall not exceed fifty(50) pounds per square foot.

20. No showcases or other articles shall be put in front of or affixed to any part of the exterior of the Building, nor placed in the halls, corridors or vestibules without the prior written consent of LESSOR.

21. No space in the Building or garage facilities shall be used for manufacturing, public sales, for the storage of merchandise, or for the sale of merchandise, goods or property of any kind or auction.

22. Canvassing, soliciting and peddling in the Building or garage facilities is prohibited and each LESSEE shall cooperate to prevent the same.

23. There shall not be used in any space, or in the public halls of any Building, either by any LESSEE or by jobbers or others, in the delivery or receipt of merchandise, any hand trucks, except those equipped with rubber tires and side guards.

24. LESSEE shall not permit any portion of the Premises to be used as an office for a public stenographer or typewriter, for the sale of food, drink, liquor or tobacco, for a barber or manicure shop, for retail sales to the general public, for an employment bureau, or for auctions or sales of personal property and chattels.

25. No person or contractor not employed by LESSOR shall be used to perform janitor work, window washing, cleaning, decorating, repair or other work in the Premises. LESSOR's janitors shall not be hindered by LESSEE after 5:30 p.m.

26. In the event LESSEE must dispose of crates, boxes or other articles which will not fit into office wastepaper baskets, it shall be the responsibility of LESSEE to dispose of such articles. In no event shall LESSEE set such items in the public hallways or other areas of the Building or garage, excepting LESSEE's own Premises for disposal.

27. LESSEE is cautioned in purchasing furniture that the size is limited to such as can be placed on the elevator and will pass through the doors of the offices. Large pieces should be made in parts and set up in the offices. LESSOR reserves the right to refuse to allow to be placed in the Building any furniture or fittings of any description which do not comply with the above conditions.

28. LESSEE shall be responsible for any damage to carpeting and flooring as a result of rust or corrosion of file cabinets, pot holders, roller chairs and metal objects.

29. Glass panel doors that reflect or admit light into the passageways or into any place in the Building shall not be covered or obstructed by LESSEE.

30. If LESSEE employs laborers or others outside of the Building, LESSEE shall not have such employees paid in the Building, but shall arrange to pay their payrolls elsewhere.

31. No firearms are permitted in the Complex and Premises.

32. The conference room center, which is part of the amenity center in the Building, may be used by Lessee on a non-exclusive basis during Normal Building Operating Hours. The conference room center must be reserved in advance through the property management office and the property management office shall reasonably determine the amount of time, the days, and the number of rooms that Lessee may reserve in the conference room center. Reservations for the conference room center shall be made through the property management office on a “first come, first served basis”. Lessee shall not exceed the stated capacity of the conference room center or rooms therein. The fee for the conference room center shall be Fifty and No/100 Dollars ($50.00) per day or partial day, per room, or at Lessor’s then prevailing rate during the term of the Lease. Lessee shall be billed the fee for the use of the conference room center (even if the conference room

center is not used) with the next Base Rent installment due under the Lease and Lessee shall pay such fee with the next payment of Base Rent due under this Lease. The conference room center may only be used by Lessee Related Parties for Lessee purposes. Lessee shall return the conference room center to Lessor in the same condition it was originally delivered to Lessee. Lessee shall use the conference room center in such a manner as to not disturb any other parties using other portions of the conference room center. Lessor shall not be liable for any items left in the conference room center, and such items may be discarded by Lessor after the conference room center is no longer being used by Lessee. No tacks or nails shall be used in the walls of the conference room center. Violation of any of the above rules in this paragraph shall entitle Lessor to withhold access to the conference room center by Lessee.

33. Lessee, at no additional cost, may use the exercise center which is part of the amenity center in the Building on a non-exclusive basis during Normal Building Operating Hours. Lessee agrees to use the exercise center at its sole risk and Lessee herein acknowledges that it shall specifically inform each of its employees before using the exercise center that their use of the exercise center is at their sole risk. Only Lessee's employees are permitted to use the exercise center. The bathroom and locker room for the exercise center shall only be used by persons using the exercise equipment. The lockers may only be used when a person is using the exercise center. Lessor shall not be liable for any items left in the exercise center, and such items may be discarded by Lessor after the exercise center is no longer being used by any party. Conduct in and use of the exercise center must be respectful, civil, and courteous at all times. Workout attire and footwear must be appropriate for an exercise center in a Class A office building. A cloth towel or gym wipes must be used to wipe down all machines after use. There will be a thirty (30) minute limit on use of the cardio equipment during peak hours. Violation of any of the above rules in this paragraph shall entitle Lessor to withhold access to the exercise center by Lessee.

EXHIBIT "E"
FORM OF ACKNOWLEDGMENT OF COMMENCEMENT DATE

Radler Limited Partnership, a Texas limited partnership, as Lessor, and **iRhythm Technologies, Inc.**, as Lessee, executed that certain Lease Agreement dated as of _____, 201__ (the "Lease"), relating to the lease of space known as **Suite 200** in **Beltway Lakes III**, an office building project located at **5775 North Sam Houston Parkway West, Houston, Harris County, Texas 77086**.

The Lease contemplates that upon satisfaction of certain conditions Lessor and Lessee would agree and stipulate as to certain provisions of the Lease. All such conditions precedent to those stipulations have been satisfied.

Therefore, Lessor and Lessee mutually acknowledge the following:

1. The Commencement Date of the Lease is_____. All rent commences as of the Commencement Date.

2. The Termination Date of the Lease is_____.

3. The Premises consist of_____square feet of Net Rentable Area.

4. Base Monthly Rental for the Premises is as follows:

_____ through _____; $_____ per month;
_____ through _____; $_____ per month;
_____ through _____; $_____ per month;
_____ through _____; $_____ per month; and
_____ through _____; $_____ per month.

5. The Initial Monthly Estimated Additional Rent Payment for Building Operating Expenses is $_____.

6. "Lessee's Building Expense Percentage" is_____ Percent (_____%) for all purposes of the Lease.

7. Substantial Completion of all construction to be performed by Lessor under the Lease has occurred.

IN WITNESS WHEREOF, the parties have caused this Acknowledgment to be duly executed as of _____, 20____.

LESSOR:

RADLER LIMITED PARTNERSHIP,
a Texas limited partnership

By:Radler Enterprises, Inc.,
a Texas corporation,
its managing general partner

By: _____
Mishael H. Radom, President

Date: _____, 2017

LESSEE:

IRYTHM TECHNOLOGIES INC.,
a Delaware corporation

By:_____
Printed Name: _____
Title: _____

Date: _____, 2017

LESSOR'S INITIALS: _____

LESSOR'S INITIALS: _____

EXHIBIT "F"
Renewal Option

(a) Lessee shall have the option (the "Renewal Option") to renew and extend the term of this Lease for two (2) additional periods of five (5) years (the "Renewal Term"). The Renewal Option may only be exercised by Lessee giving written notice ("Renewal Notice") thereof no more than fifteen (15) months nor less than twelve (12) months prior to the expiration of the initial Term of this Lease or first (1st) Renewal Term, as applicable. If Lessee fails to give the Renewal Notice within such specified time period, the Renewal Option shall be deemed waived and of no further force and effect, and this Lease shall terminate upon the expiration of the initial Lease Term or first (1st) Renewal Term, as applicable. Notwithstanding anything contained to the contrary, the Renewal Option for the second (2nd) Renewal Term may only be exercised if the first (1st) Renewal Term occurred.

(b) Lessee's right to renew this Lease as provided for herein can be exercised only if, at the time of Lessee's exercise of the Renewal Option and upon the commencement of the respective Renewal Term, (i) no Event of Default then exists under this Lease, and (ii) Lessee or Lessee's Affiliate or Successor is in possession of at least the original Premises (unless Lessor, in its sole discretion, elects to waive such condition(s)). If either of such conditions are not satisfied or waived by Lessor, the Renewal Option shall be terminated and of no further force and effect, any purported exercise thereof shall be null and void, and this Lease shall terminate upon the expiration of the initial Lease Term or first (1st) Renewal Term, as applicable.

(c) If Lessee exercises the Renewal Option (in accordance with and subject to the provisions of this **Exhibit "F"**), all of the terms, covenants and conditions provided in this Lease shall continue to apply during the respective Renewal Term, except that (i) the Base Rental during the respective Renewal Term shall be the then Market Base Rental Rate (as defined below) for the Premises and (ii) any terms, covenants and conditions that are expressly or by their nature inapplicable to the respective Renewal Term (including, without limitation, this Exhibit) shall be deemed void and of no further force and effect.

(d) As used herein, the term "Market Base Rental Rate" means the annual amount per square foot of Net Rentable Area that a willing Lessee would pay and a willing Lessor would accept in arm's length, bona fide negotiations for a renewal of the Premises to be executed at the time of determination and to commence at the beginning of the respective Renewal Term, as reasonably determined by Lessor in good faith based upon comparable lease transactions made in the Building and in other comparable Class A high-rise buildings within the Complex and in the West Belt/Northwest office lease submarket to Houston, Texas within the previous one (1)-year period, taking into consideration the location, quality and age of the building, floor level, use and size of the Premises, parking ratio and parking charges, extent of leasehold improvements to be provided, rental abatements, lease takeovers or assumptions, relocation allowances, moving expenses and other concessions, level of LEED certification, length of term, extent of services to be provided, distinction between "gross" and "net" lease, base year or amount allowed by Lessor for payment of building operating expenses (expense stop) for the applicable Renewal Term, the time the particular rental rate under consideration became or is to become effective, credit standing and financial stature of the Lessee or sublessee, any other adjustments (including by way of indexes) to base rental, or any other relevant term or condition. Notwithstanding the foregoing, in no event shall the Market Base Rental Rate be less than the average effective rate accepted by Lessor for comparable space elsewhere in the Building, Lessor and Lessee hereby agreeing that the best comparable for determining the Market Base Rental Rate shall be similar leases that Lessor has executed or will be executing in the Building. Within thirty (30) days after receipt of Lessee's notice of exercise of the Renewal Option, Lessor will notify Lessee in writing of its determination of the Market Base Rental Rate for the Premises for the respective Renewal Term. If Lessee does not approve of Lessor's determination of Market Base Rental Rate, Lessee may withdraw its exercise of the Renewal Option by delivering Lessor written notice thereof within ten (10) business days after receipt of Lessor's determination.

EXHIBIT "G"
Right of First Refusal

(a) Subject to and upon the terms, provisions and conditions set forth in this Lease and subject to the existing rights of other tenants already in possession, Lessee shall have, and is hereby granted, an ongoing right of first refusal (the "Right of First Refusal") during the Term of this Lease to lease any adjoining rentable square feet to the Premises located on the second (2nd) floor in the Building (the "ROFR Premises").

(b) Lessee may exercise a Right of First Refusal only if, at the time of such exercise and at the time of Lessor's delivery of the ROFR Premises to Lessee, (i) no Event of Default exists, and (ii) Lessee or Lessee's Affiliate or Successor is in possession the entire original Premises (unless Lessor, in its sole discretion, elects to waive such condition(s)). If such condition(s) are not satisfied or waived by Lessor, any purported exercise of the Right of First Refusal shall be null and void. Other than Lessee's Affiliates or Successors, no assignee of Lessee or sublessee of the Premises may exercise a Right of First Refusal.

(c) If Lessor receives a third-party proposal ("Third Party Proposal") to lease any of the ROFR Premises that Lessor desires to accept (including a proposal from the existing lessee that currently occupies the ROFR Premises), Lessor will promptly notify ("Notice") Lessee to determine if Lessee desires to lease the applicable ROFR Premises upon the terms contained in the Notice and otherwise on the terms of this **Exhibit "G"**. Lessee shall have a period of five (5) business days after receipt of the Notice to irrevocably and unconditionally exercise its Right of First Refusal to lease the applicable ROFR Premises upon the terms in this **Exhibit "G"** by providing written notice to Lessor. If Lessee does not exercise a Right of First Refusal within such five (5) business day period, the Right of First Refusal shall be waived with respect to such space as to such Notice. Any purported conditional or qualified exercise of a Right of First Refusal shall be null and void.

(d) If Lessee does not exercise the Right of First Refusal or Lessor does not receive written notice from Lessee of its exercise of the Right of First Refusal within said five (5) business day period, Lessor shall have a period of one hundred twenty (120) days thereafter to lease the applicable ROFR Premises for an effective rental rate not less than ninety-five percent (95%) of the effective rental rate reflected by the Third Party Proposal, and without material change to the other terms and conditions set forth therein. If Lessor does not lease such ROFR Premises within said one hundred twenty (120) day period, Lessee shall have a Right of First Refusal on any subsequent leasing thereof on the terms set forth above (including a proposal from the existing lessee that currently occupies the ROFR Premises), however, if the applicable ROFR Premises is timely leased within such one hundred twenty (120) day period on the terms and conditions set forth above, then this Right of First Refusal shall apply to the ROFR Premises on any subsequent leasing thereof.

(e) Upon Lessee's exercise of the Right of First Refusal, Lessor and Lessee shall negotiate an amendment to the Lease evidencing same, but an otherwise valid exercise of a Right of First Refusal shall be fully effective, whether or not such amendment is executed. The amendment shall provide the provisions that may be applicable as a result of Lessee exercising its Right of First Refusal as modified to take into account the remaining unexpired Term of the Lease.

EXHIBIT "H"
Lessee Termination Option

Provided no Event of Default has occurred hereunder and is continuing, Lessee shall have a one (1) time right to terminate the Lease ("Termination Option") as to the entirety of the Premises at the end of the eighty-seventh (87th) month after the Commencement Date ("Early Termination Date"), upon advance written notice delivered to Lessor no later than the end of the seventy-fifth (75th) month after the Commencement Date ("Termination Notice") accompanied with Lessee's payment to Lessor of $_____, which is an amount equal to the sum of the unamortized transaction costs calculated using a return on capital factor of 6% per annum, including all lessee leasehold improvement allowances, rent and parking abatement, if any, and brokerage commissions funded by Lessor, plus three (3) months of the Base Rental otherwise to be in effect in the applicable months following the Early Termination Date. Lessee's right to exercise the Termination Option shall be conditioned upon Lessee's timely and proper exercise of the Termination Option and payment of the amounts described above to Lessor.

Until the Early Termination Date, Lessee shall continue to perform all of its obligations and liabilities under this Lease including, but not limited to, the payment of all monetary obligations thereunder, and all such unsatisfied Lessee obligations existing on the Early Termination Date shall survive such termination until fully satisfied. The Termination Option is personal to Lessee and Lessee's Affiliates and Successors and shall terminate upon assignment of the Lease subletting of all or any part of the Premises, other than an assignment as to which no consent of Lessor is required pursuant to the Lease

EXHIBIT "I"

Intentionally Omitted.

EXHIBIT "J"

Intentionally Omitted.

EXHIBIT "K"

Intentionally Omitted.

EXHIBIT "L"
GREEN HOUSEKEEPING PROGRAM

BELTWAY LAKES

GREEN HOUSEKEEPING PROGRAM
PHASE II

Nightly Cleaning Scope

- Vacuum all carpeted areas
- Dust all desktops / counters / cabinets / blinds
- Dust and vacuum all offices
- Clean and sanitize common area restrooms
- Clean all mirrors, fixtures and fountains
- Clean elevator landing and common corridor
- Check and re-supply paper products and soap in restrooms
- Wet mop and sanitize all stone / tile / linoleum floors
- Dispose of all trash

Non-standard Cleaning Scope

- Cleaning of glass partitions / sidelights
- Polishing of specialty metal finishes
- Use of specialty solvents and removers
- Stripping / re-finishing of specialty flooring
- Stain removal / re-sealing on specialty flooring
- Cleaning services requested during business hours

1.

EXHIBIT "M"
GUARANTY OF LEASE AGREEMENT

FOR VALUE RECEIVED, and in consideration for, and as an inducement to RADLER LIMITED PARTNERSHIP ("LESSOR") to enter into the foregoing lease dated **January _____, 2017** (the "Lease"), relating to LESSOR's lease of Suite ____ on the ____ floor of the Building known as Beltway Lakes III located at 5775 North Sam Houston Parkway West, Houston, Texas 77086, to _____, a _____ corporation ("LESSEE"), the undersigned hereby [jointly, severally] and unconditionally guarantees to Lessor (and Lessor's successors or assigns) the full, prompt and faithful performance of each and every obligation of Lessee under the Lease, including, without limitation, the full and punctual payment (in the manner and at the times prescribed in the Lease) of all sums due and owing or to become due and owing by Lessee under the Lease (whether as Base Rental, Additional Rent, court costs, attorneys' fees and any and all such other sums as may be payable by Lessee to Lessor under the Lease) (the "Guaranteed Obligations"). A true and correct copy of the Lease is attached hereto as **EXHIBIT A**. All capitalized terms used in this Guaranty and not defined in this Guaranty shall have the meaning given to such terms in the Lease.

1. Term. The obligations of Guarantor as to the Guaranteed Obligations shall continue in full force and effect against Guarantor until all Guaranteed Obligations are unconditionally and irrevocably paid in full. This Guaranty covers any and all of the Guaranteed Obligations, whether presently outstanding or arising subsequent to the date hereof. This Guaranty is binding upon and enforceable against Guarantor and its successors and assigns.

2. Benefit to Guarantor. Guarantor hereby represents and warrants to Lessor that it [is a principal of] [the sole shareholder of] Lessee, and accordingly will receive direct benefit from the making of this Guaranty.

3. Waiver of Rights. Guarantor hereby waives (a) notice of acceptance hereof (which acceptance is conclusively presumed by delivery to Lessor); (b) grace, demand, presentment and protest with respect to the Guaranteed Obligations or to any instrument, agreement or document evidencing or creating same; (c) notice of grace, demand, presentment protest, non-payment or other defaults; (d) notice of and/or any right to consent or object to the assignment of any interest in the Lease or the Guaranteed Obligations; (e) the renewal, extension, amendment and/or modification of any of the terms and provisions of the Lease; (f) filing of suit and diligence by Lessor in collection or enforcement of the Guaranteed Obligations; and (g) any other notice regarding the Guaranteed Obligations. Guarantor specifically waives any requirements imposed by Chapter 34 of the Texas Business and Commerce Code.

4. Primary Liability of Guarantor. This is an absolute, unconditional, irrevocable, absolute and continuing guaranty of payment, and constitutes a primary obligation of Guarantor. If for any reason Lessee defaults in the payment of any rents or fails to continuing pay any other amounts (including damages) payable pursuant to the Lease, Guarantor will immediately pay such sums at the place and to the person entitled thereto pursuant to the Lease. Guarantor agrees that Lessor is not required, as a condition to establishing Guarantor's liability hereunder, to proceed against any person (including, without limitation, Lessee or any other guarantor). Guarantor hereby expressly waives any right or claim to force Lessor to proceed first against Lessee or any other guarantor as to any of the Guaranteed Obligations or other obligations of Lessee, and agrees that no delay or refusal of Lessor to exercise any right or privilege which Lessor has or may have against Lessee, whether arising from any documents executed by Lessee, any common law, applicable statute or otherwise, shall operate to impair the liability of Guarantor hereunder. The obligations of the Guarantor hereunder shall not be reduced, impaired or in any way affected by: (a) receivership, insolvency, bankruptcy or other proceedings affecting the Lessee or any of the Lessee's assets; (b) receivership, insolvency, bankruptcy or other proceedings affecting Guarantor or any of Guarantor's assets; (c) any allegation of fraud, usury, failure of consideration, forgery or other defense, whether or not known to Lessor (even though rendering all or any part of the Guaranteed Obligations void or unenforceable or uncollectible as against Lessee or any other guarantor); or (d) the release or discharge of Lessee from the Lease or any of the Guaranteed Obligations or any other indebtedness of the Lessee to Lessor or from the performance of any obligation contained in the Lease or other instrument issued in connection with, evidencing or securing any indebtedness guaranteed by this instrument, whether occurring by reason of law or any other cause, whether similar or dissimilar to the foregoing. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the

Guaranteed Obligations is rescinded or must otherwise be returned by Lessor upon the insolvency, bankruptcy or reorganization of Lessee or otherwise. The obligations and undertakings of the Guarantor under this Guaranty shall not be affected or impaired by reason of the happening from time to time of any of the following with respect to the Lease or this Guaranty or any assignment of the rights of Lessor hereunder (even if without notice to or the further consent of the Guarantor): (a) any assignment, subletting or mortgaging or the purported assignment, subletting or mortgaging of all or any part of the interest of Lessee in the Lease or in the Leased Premises (as defined in the Lease); (b) unless binding on Lessor as a waiver enforceable by Lessee, the waiver by Lessor of the observance or performance by Lessee or by the Guarantor of any of the obligations or undertakings contained in any of such instruments; (c) the extension of the time for payment by Lessee or the Guarantor of any rents or other payments, tenders or securities or any other sums or any part thereof owing or payable under any of such instruments, or the extension or the renewal of any thereof; (d) the modification or amendment (whether material or otherwise) of any obligation or undertaking of Lessee set forth in any of such instruments, including the Lease (provided the Guarantor's guaranty shall thereafter guarantee Lessee's obligations as so modified and amended); (e) the taking or the omission of any of the actions referred to in any of such instruments; (f) any failure, omission, delay or lack on the part of Lessor to enforce, assert or exercise any right, power or remedy conferred on Lessor in any such instruments or any action on the part of Lessor granting indulgency or extension in any form; (g) the release, substitution or replacement (whether or not in accordance with the terms of the Lease) of the Leased Premises or any portion thereof; or (h) the receipt and acceptance by Lessor of notes, checks or other instruments for the payment of money made by Lessee and extensions and renewals thereof. In the event that any Guaranteed Obligation is paid by Lessee, and thereafter all or part of such payment is recovered from the party to whom it is paid as a preferential or fraudulent transfer under the Federal Bankruptcy Code, and/or applicable State insolvency laws, or any other similar federal or state law now or hereinafter in effect, Guarantor agrees that the liability of Guarantor under this Guaranty in respect to such Guaranteed Obligations so paid and recovered shall continue and remain in full force and effect as if and to the extent such payment had not been made. The Guarantor's obligations under this Guaranty are independent of any obligation of Lessee, and will not be released or affected in any way because of the invalidity, ineffectiveness or unenforceability of any of the Guaranteed Obligations or the Lease.

5. Subordination and Waiver of Subrogation. Guarantor hereby fully subordinates the payment of all indebtedness owing to such Guarantor by Lessee (including principal and interest) to the prior payment of all indebtedness of Lessee to Lessor (including, without limitation, interest accruing on any such indebtedness after any insolvency or reorganization proceeding as to Lessee) and agrees not to accept any payment on the same until payment in full of the Guaranteed Obligations, and not to attempt to set off or reduce any obligations hereunder because of such indebtedness. Until all of the Guaranteed Obligations shall have been paid or performed in full, Guarantor shall have no right of subrogation or any other right to enforce any remedy which Lessor now has or may hereafter have against Lessee.

6. Attorneys' Fees. If it becomes necessary for Lessor to enforce this Guaranty by legal action, Guarantor hereby waives the right to be sued in the county or state of such Guarantor's residence and agrees to submit to the jurisdiction and venue of the appropriate federal, state or other governmental court in such county and state of Lessor's office or principal place of business. The Guarantor hereby irrevocably waives any objection, including, without limitation, any objection to the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any such action or proceeding in such respective jurisdictions and consents to the granting of such legal or equitable relief as is deemed appropriate by the court. Guarantor unconditionally agrees to pay Lessor collection expenses (including court costs and reasonable attorneys' fees) if enforcement hereof is placed in the hands of an attorney, including, but expressly not limited to, enforcement by suit or through probate, bankruptcy or any judicial proceedings.

7. Cumulative Rights. All rights of Lessor hereunder or otherwise arising under any documents executed in connection with the Guaranteed Obligations are separate and cumulative and may be pursued separately, successively, cumulatively or concurrently, or not pursued, without affecting or limiting any other right of Lessor and without affecting or impairing the liability of Guarantor. Guarantor agrees that repeated and successive demands may be made, and recovers may be had, hereunder as and when, from time to time, Lessee shall fail to pay or perform a Guaranteed Obligation when due and that notwithstanding the recovery hereunder for or in respect of any given failure by Lessee under the Lease, this Guaranty shall remain in full force and effect and shall apply to each and every subsequent such failure.

8. Applicable Law. This Guaranty shall be governed by and construed in accordance with the laws of the United States of America and the State of Texas, and is intended to be performed in accordance with and as permitted by such laws. This Guaranty cannot be changed or terminated orally.

9. Lessor's Assigns. This Guaranty is intended for and shall inure to the benefit of Lessor and each and every person who shall from time to time be or become the owner or holder of all or any part of the Lease and/or the Guaranteed Obligations, and each and every reference herein to "Lessor" shall include and refer to each and every successor or assignee of Lessor at any time holding or owning any part of or interest in any part of the Lease and/or the Guaranteed Obligations.

10. Representations and Warranties. The Guarantor hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel, represents and warrants to the Lessor, on and as of the date hereof:

(a) The Guarantor has all requisite power and authority to enter into and perform its obligation under this Guaranty;

(b) No governmental action is required to be taken, given or obtained, as the case may be, by or from any governmental authority and no filing, recording, publication or registration in any public office or any other place, is necessary to authorize the execution, delivery and performance by the Guarantor of this Guaranty or for the legality, validity, binding effect or enforceability hereof;

(c) The execution and delivery of this Guaranty by the Guarantor and the performance of its obligation hereunder will not contravene any applicable law, or any judgment or order applicable to or binding on it, or contravene or result in any breach of, or constitute any default under, its articles of incorporation or any indenture, mortgage, contract, agreement or instrument to which the Guarantor is a party or by which any of its properties may be bound;

(d) The execution, delivery and performance of this Guaranty by the Guarantor has been duly authorized by all necessary corporate action; this Guaranty has been duly executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, liquidation or similar laws affecting creditors' rights generally and by general principles of equity;

(e) submits to personal jurisdiction in the United States of America and the state of Texas over any suit, action or proceeding by any person arising from or relating to the Lease or this Guaranty;

(f) agrees that any such action, suit or proceeding may be brought in any state or federal court of competent jurisdiction presiding over Harris County, Texas;

(g) submits to the jurisdiction of such courts in Harris County, Texas;

(h) to the fullest extent permitted by law, agrees that it will not bring any action, suit or proceeding arising out of the Lease or this Guaranty in any other forum;

(i) agrees that all payments owed under the Lease or this Guaranty shall be dominated in the lawful currency of the United States of America and payable in Harris County, Texas;

(j) consents and agrees to service of any summons, citation, complaint or other legal process in any such suit, action or proceeding by notice to Guarantor at the address for notices described in Item 2 of the Basic Lease Provisions hereof or to _____ (together with any successor process agents, the "**Process Agent**");

(k) hereby irrevocably appoints the Process Agent as its true and lawful agent and attorney in fact in its name, place and stead to accept such service of any and all writs, process and summonses;

(h) agrees to maintain at all times agents in Harris county, Texas, for the purpose of acting as such an agent and attorney in fact;

(j) agrees that the failure of the Process Agent to give any notice of any such service of process to Guarantor shall not impair or affect the validity of such service or of any judgment based thereon; and

(k) consents and agrees that such service shall constitute in every respect valid and effective service (but nothing herein shall affect the validity or effectiveness of process served in any other manner permitted by law).

11. [Joint and Several Liability. The obligations of each individual comprising Guarantor hereunder shall be joint and several.]

12. Entire Agreement. This Guaranty constitutes the entire agreement of the parties with respect to the subject matter hereof, and all prior correspondence, memoranda, agreements or understandings (written or oral) with respect hereto are merged into and superseded by this Guaranty.

13. Notices. Notices required to be given to the Guarantor shall be in writing and shall be deemed given when placed in a depository of the United States Postal Service, postage prepaid, addressed to the Guarantor at the respective addresses shown below (or such other address as the Guarantor may designate in writing to Lessor).

_____
_____
_____
Attention: _____

A copy of any notice also shall be mailed to the Guarantor at the address to which notices are then to be given to Lessee under the Lease.

14. Multiple Originals. This Guaranty may be executed in multiple counterparts each of which shall constitute an original agreement as to the party signing same, but all of which shall constitute a single agreement.

Each signatory hereto shall be individually bound by the terms of this Guaranty whether or not any other party or person has executed the same. If LESSOR at any time is compelled to take any action or proceeding in court or otherwise to enforce or compel compliance with the terms of this Guaranty, the undersigned shall, in addition to any other rights or remedies to which LESSOR may be entitled to under the Lease or as a matter of law or in equity, be obligated to pay all costs, including attorney's fees, incurred or expended by LESSOR in connection therewith. Further, the undersigned hereby covenant(s) and agree(s) to assume the Lease and to perform all of the terms and conditions thereunder for the balance of the original term should the Lease be disaffirmed by the Trustee in bankruptcy for LESSEE. All obligations and liabilities of the undersigned pursuant to this Guaranty shall be binding upon the heirs, legal representatives, successors and assigns of the undersigned. This Guaranty shall be governed by and construed in accordance with the laws of the State of Texas.

EXHIBIT "N"
FORM OF LETTER OF CREDIT

Radler Limited Partnership
5825 N. Sam Houston Parkway West, Suite 100
Houston, Texas 77086
Attention: _____

RE: Irrevocable Letter of Credit No. _____

Gentlemen:

We hereby open our unconditional irrevocable clean Letter of Credit No. _____ in your favor available by your draft(s) at sight for an amount not to exceed in the aggregate _____ and No/100 Dollars ($_____) effective immediately.

All drafts so drawn must be marked "Drawn Under Irrevocable Letter of Credit of **[Issuing Bank]**, No. _____, dated _____, 200____."

This Letter of Credit is issued, presentable and payable at our office at _____, _____ or such other office in _____, as we may designate by written notice to you, and expires with our close of business on _____. It is a condition of this Letter of Credit that it shall be automatically extended for additional twelve (12) month periods through _____ **[the expiration of fifth (5th) year of the Lease term]**, unless we inform you in writing by registered mail dispatched by us at least thirty (30) days prior to the then expiration date that this Letter of Credit shall not be extended. In the event this Letter of Credit is not extended for an additional period as provided above, you may draw hereunder. Such drawing is to be made by means of a draft on us at sight which must be presented to us before the then expiration date of this Letter of Credit. This Letter of Credit cannot be modified or revoked without your consent. This Letter of Credit is payable in multiple drafts and shall be transferable by you without additional charge to you.

[OPTIONAL: After the first year of the term hereof, the amount of this Letter of Credit shall be reduced as follows: (i) $_____ applicable during the second (2nd) year of the term; (ii) $_____ applicable during the third (3rd) year of the term; (iii) $_____ applicable during the fourth (4th) year of the term; and (iv) $_____ applicable during the fifth (5th) year of the term.] We hereby do undertake to promptly honor your sight draft or drafts drawn on us, indicating our Letter of Credit No. _____ for the amount available to be drawn on this Letter of Credit upon presentation of your sight draft in the form of **Exhibit A** attached hereto drawn on us at our offices specified above during our usual business hours on or before the expiration date hereof.

Except as expressly stated herein, this undertaking is not subject to any agreements, requirements or qualification. Our obligation under this Letter of Credit is our individual obligation and is in no way contingent upon reimbursement with respect thereto or upon our ability to perfect any lien, security interest or any other reimbursement.

This Letter of Credit is subject to the International Standby Practices, ICC Publication No. 590 (the "ISP98"), and shall be deemed to be a contract made under, and as to matters not governed by the ISP98, shall be governed by and construed in accordance with the laws of the State of Texas and applicable U.S. law.

[ISSUER OF LETTER OF CREDIT]

_____

EXHIBIT A
TO LETTER OF CREDIT

For Value Received

Pay at sight by wire transfer in immediately available funds to _____ the sum of. _____ and No/100 U.S. Dollars ($_____) drawn under Irrevocable Letter of Credit No. _____ dated _____, 20___ issued by _____.

To: Issuer of Letter of Credit
_____ (Address)
_____
_____

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, Kevin M. King, 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)) for the registrant and we 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. 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

    c. 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 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/ Kevin M. King

Kevin M. King
President, Chief Executive Officer and Director
(Principal Executive Officer)

Date: August 4, 2017

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, Matthew C. Garrett, 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)) for the registrant and we 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. 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

    c. 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 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/ Matthew C. Garrett

Matthew C. Garrett
Chief Financial Officer
(Principal Financial and Accounting Officer)

Date: August 4, 2017

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, 2017, as filed with the Securities and Exchange Commission (the "Report"), Kevin M. King, as Chief Executive Officer of the Company, and Matthew Garrett, 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/ Kevin M. King

Kevin M. King
President, Chief Executive Officer and Director
(Principal Executive Officer)

Date: August 4, 2017

/s/ Matthew C. Garrett

Matthew C. Garrett
Chief Financial Officer
(Principal Financial and Accounting Officer)

Date: August 4, 2017

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.