

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

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

**MIRAMAR LABS, INC.**  
(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**3841**  
(Primary Standard Industrial  
Classification Code Number)

**80-0884221**  
(I.R.S. Employer  
Identification Number)

**2790 Walsh Avenue  
Santa Clara, California 95051  
(408) 579-8700**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Robert Michael Kleine  
Chief Executive Officer  
Miramar Labs, Inc.  
2790 Walsh Avenue  
Santa Clara, California 95051  
(408) 579-8700**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

*Copies to:*

**Philip H. Oettinger  
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**Robert Michael Kleine  
Miramar Labs, Inc.  
2790 Walsh Avenue  
Santa Clara, California 95051  
(408) 579-8700**

**Approximate date of commencement of proposed sale to the public:** From time to time after this registration statement becomes effective.

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

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

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

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

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

- |                         |   |                           |                                     |
|-------------------------|---|---------------------------|-------------------------------------|
| Large accelerated filer | ?   | Accelerated filer         | ?                                   |
| Non-accelerated filer   | ? (Do not check if a smaller reporting company) | Smaller reporting company | <input checked="" type="checkbox"/> |

**CALCULATION OF REGISTRATION FEE**

<b>Title of Each Class of Securities to be Registered</b>	<b>Amount to be Registered (1)</b>	<b>Proposed Maximum Offering Price per Share (2)</b>	<b>Proposed Maximum Aggregate Offering Price (2)</b>	<b>Amount of Registration Fee</b>
Common Stock, par value \$0.001 per share	9,194,674	\$5.60	\$51,490,174.40	\$5,968

- (1) Consists of (a) 1,978,567 shares of common stock issued in the Private Placement, (b) 17,504 shares of common stock issuable upon exercise of the Placement Agent Warrants, (c) 6,419,967 shares of common stock issued in exchange for the equity securities of Miramar outstanding prior to the Merger, (d) 715,000 shares of common stock held by certain of our pre-Merger security holders and (e) 63,636 shares of common stock issued to certain consultants of Miramar Labs, Inc. Pursuant to Rule 416(e) of the Securities Act of 1933, as amended, this Registration Statement shall also cover any additional shares of the Registrant's common stock that become issuable by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of the Registrant's outstanding shares of common stock.
- (2) Estimated solely for purposes of calculating the registration fee according to Rule 457(c) under the Securities Act based on the average of the bid and asked price of our common stock quoted on the OTC Markets, OTCQB tier of OTC Markets Group, Inc. on October 12, 2016.

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

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**The information in this Prospectus is not complete and may be changed. The selling stockholders may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This Prospectus is not an offer to sell these securities and the selling stockholders are not soliciting offers to buy these securities in any state where the offer or sale is not permitted.**

**PROSPECTUS (Subject to Completion) Dated October 14, 2016**

**9,194,674 Shares**



## **Common Stock**

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This Prospectus relates to the offering and resale by the selling stockholders identified herein of up to 9,194,674 shares of common stock, par value \$0.001 per share, of Miramar Labs, Inc. Of the shares being offered, 9,177,170 are presently issued and outstanding and 17,504 are issuable upon exercise of common stock purchase warrants. These shares include an aggregate of (i) 1,978,567 shares of common stock issued and sold to accredited investors in a private placement offering in a series of closings on June 7, 2016, June 30, 2016, July 21, 2016 and August 8, 2016, or the Private Placement, (ii) 715,000 shares of our common stock that were held by one of our stockholders immediately prior to the closing of our merger transaction on June 7, 2016, or the Merger, (iii) 6,419,967 shares of our common stock issued in the Merger to the former stockholders of Miramar Technologies, Inc. in connection with the closing of the Merger, (iv) 17,504 shares of common stock issuable upon exercise of common stock purchase warrants, or the Placement Agent Warrants, issued as compensation to Katalyst Securities LLC and The Benchmark Company, LLC, as co-exclusive placement agents and their designees in connection with the Private Placement, or the Placement Agents and (v) 63,636 shares of common stock issued to certain consultants of Miramar Labs, Inc. All shares of common stock issued in the Private Placement were sold at a purchase price of \$5.00 per share.

The selling stockholders (which term as used herein includes the donees, transferees or other successors in interest of any selling stockholder) may sell the shares of common stock on any national securities exchange or quotation service on which the securities may be listed or quoted at the time of sale, in the over-the-counter market, in one or more transactions otherwise than on these exchanges or systems, such as privately negotiated transactions, or using a combination of these methods, and at fixed prices, at prevailing market prices at the time of the sale, at varying prices determined at the time of sale, or at negotiated prices. See the disclosure under the heading "Plan of Distribution" elsewhere in this Prospectus for more information about how the selling stockholders may sell or otherwise dispose of their shares of common stock hereunder.

The selling stockholders may sell any, all or none of the securities offered by this Prospectus and we do not know when or in what amount the selling stockholders may sell their shares of common stock hereunder following the effective date of this registration statement.

We will not receive any proceeds from the sale of our common stock by the selling stockholders in the offering described in this Prospectus.

Our common stock is quoted on the OTCQB tier of OTC Markets Group, Inc. under the symbol "MRLB." On October 13, 2016, the last quoted sale price for our common stock as reported on the OTCQB was \$5.60 per share.

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**We are an “emerging growth company” under the U.S. federal securities laws and are subject to reduced public company reporting requirements. Investing in our common stock involves a high degree of risk. Before making any investment in our common stock, you should read and carefully consider the risks described in this Prospectus under “Risk Factors” beginning on page 7 of this Prospectus.**

**You should rely only on the information contained in this Prospectus or any prospectus supplement or amendment hereto. We have not authorized anyone to provide you with different information.**

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

*The date of this Prospectus is \_\_\_\_\_, 2016.*

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This Prospectus is part of a registration statement on Form S-1 that we filed with the Securities and Exchange Commission, or the SEC, using the “shelf” registration process. Under this process, the selling stockholders may from time to time, in one or more offerings, sell the common stock described in this Prospectus.

You should rely only on the information contained in this Prospectus or in any free writing prospectus prepared by us or on our behalf. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this Prospectus is accurate only as of the date on the front cover of this Prospectus. Our business, financial condition, results of operations and prospects may have changed since that date.

Information contained on our website is not part of this Prospectus.

“Miramar Labs,” “miraDry,” “miraDry and Design,” “Drop Design,” “miraWave,” “miraSmooth,” “miraFresh” and “ML Stylized mark” are our trademarks. Our logo and our other trade names, trademarks and service marks appearing in this Prospectus are our property. Other trade names, trademarks and service marks appearing in this Prospectus are the property of their respective owners. Solely for convenience, our trademarks and tradenames referred to in this Prospectus appear without the <sup>TM</sup> or the ® symbol, but those references are not intended

to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights, or the right of the applicable licensor to these trademarks and tradenames.

## PROSPECTUS SUMMARY

*This summary highlights information contained elsewhere in this Prospectus. This summary is not complete and does not contain all of the information you should consider in making your investment decision. You should read the following summary together with the more detailed information appearing elsewhere in this Prospectus, including "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes before deciding whether to purchase shares of our common stock from the selling stockholders.*

### MIRAMAR LABS, INC.

#### Overview

We are a medical technology company focused on developing and commercializing products utilizing our proprietary microwave technology platform.

Our first commercial product, the miraDry System, is designed to ablate axillary, or underarm, sweat glands through the precise and non-invasive delivery of energy to the region where sweat glands reside. The energy generates heat which results in thermolysis of the sweat glands. At the same time, a continuous hydro-ceramic cooling system protects the superficial dermis and keeps the heat focused at the sweat glands. Because sweat glands do not regenerate after the treatment, we believe the results are lasting. Microwaves are the ideal technology as the energy can be focused directly at the fat and dermal junction where the glands reside.

We developed the miraDry System to safely, noticeably, and measurably reduce the sweat in the underarm for patients with sweat ranging from excessive to average. In our pivotal clinical trial involving 120 patients in the United States, or the U.S., 89% of patients experienced significant reduction in their sweat with no serious adverse events reported. There have been several published clinical studies, collectively involving more than 150 patients, conducted by us and independent physicians which have evaluated the efficacy of the miraDry treatment in reducing sweat in the underarm.

We received clearance from the U.S. Food and Drug Administration, or FDA, in January 2011 and received CE mark approval in December 2013 to market the miraDry procedure for the treatment of primary axillary hyperhidrosis, or a condition characterized by abnormal sweating in excess of that required for regulation of body temperature. Additionally, we have received approval of the miraDry treatment in several other countries since our FDA clearance in 2011.

The miraDry System consists of a console and a handheld device which uses consumable single-use bioTips. We sell our miraDry System and bioTips to our customers, consisting of dermatologists, plastic surgeons, aesthetic specialists and physicians specializing in the treatment of hyperhidrosis.

Hyperhidrosis is a medical condition of varying degree in which a person sweats excessively. A study published by Strutton et al. in June 2004 in the Journal of the American Academy of Dermatology, titled "US prevalence of hyperhidrosis and impact on individuals with axillary hyperhidrosis: Results from a national survey," estimated that 2.8% of the general population has hyperhidrosis (defined as excessive or abnormal sweating in this paper), 50.8% of which has axillary hyperhidrosis. Another publication (Hornberger et al, published in the February 2004 issue of the Journal of the American Academy of Dermatology) provides a consensus guideline for the diagnosis

of hyperhidrosis that would include anyone who is bothered by their sweat. This definition expands the potential market into the aesthetic space.

We developed the miraDry treatment to provide patients with a safe, effective, non-invasive, and durable procedure to selectively ablate underarm sweat glands for both severely hyperhidrotic patients and those that are bothered by their underarm sweat. The miraDry treatment is clinically proven to significantly reduce sweat in a one or more 60-minute procedures, allowing most patients to achieve immediately noticeable and durable results without the pain, expense, downtime, or repeat visits associated with surgical and other minimally-invasive procedures. The sweat glands in the treated area are ablated through targeted heating of the tissue, and because the body does not regenerate sweat glands, we believe the results will be lasting, although some patients may need to repeat the miraDry procedure to achieve the lasting results. Due to these advantages, we believe that the miraDry treatment is appealing to a wide range of individuals seeking a lasting solution to underarm sweat.

In addition, the miraDry procedure is not technique-dependent, does not require significant training or skill for the treatment provider, and the user-interface guides the provider through each step of the procedure for each treatment. The user-friendly nature of the miraDry System allows our physician customers to easily delegate the treatment to physician assistants and nurse practitioners thereby freeing up their time for other physician-dependent procedures.

We selectively market the miraDry System to dermatologists, plastic surgeons, aesthetic specialists and those physicians specializing in the treatment of hyperhidrosis who express a willingness to position miraDry as a premium and differentiated treatment and participate in our global marketing and support programs. Aesthetic specialists are physicians who elect to offer aesthetic procedures as a significant part of their practices but are not board-certified dermatologists or plastic surgeons.

We intend to market the miraDry System to physician practice sites on a global basis. We utilize our direct sales organization to market and sell the miraDry System in our North American market, which includes the United States and Canada. In our markets located outside of North America, we market and sell the miraDry System through a network of distributors.

Physicians can market the miraDry treatment as a premium, highly-differentiated, non-surgical sweat reduction procedure. Based on our commercial data, we believe physicians can recoup their capital expenditures within 12 months on average, assuming modest use of the miraDry System. We are approved to sell the miraDry System in over 40 international markets outside of North America, including countries in Asia, Europe, the Middle East and South America.

We generate revenues from sales of our miraDry System and from the sales of bioTips which are required for use for each miraDry procedure performed. We generated revenues of \$17.2 million for the year ended December 31, 2015 and \$11.7 million for the six months ended June 30, 2016. Capital system sales comprised 54% and consumable sales comprised 42% of our revenues for the year ended December 31, 2015 and 55% and 42%, respectively, of our revenues for the six months ended June 30, 2016. We had net losses of approximately \$14.5 million and \$13.1 million for the period ending December 31, 2015 and the six months ended June 30, 2016, respectively.

We are driving growth in miraDry procedures in North America through our physician marketing programs, which provide physicians with sales training, practice marketing, and support services. After we establish a significant installed base of miraDry Systems in specific markets, we plan to use targeted consumer marketing, advertising, and promotional activities in these markets to increase demand for the miraDry System.

Our business is dependent upon the success of the miraDry treatment, and we cannot guarantee that we will be successful in significantly expanding physician demand for the miraDry System and patient demand for the miraDry treatment. In addition, we will continue to incur significant expenses for the foreseeable future as we expand our commercialization and other business activities, and as a result, we cannot guarantee that we will be able to achieve or maintain our profitability.

### **Risks Associated with our Business**

Our business is subject to numerous risks and uncertainties, including those highlighted in the section titled “Risk Factors” immediately following this Prospectus summary. These risks include, but are not limited to, the following:

- We have limited operating experience and a history of net losses, and we may never achieve or maintain profitability.
- We may not be able to generate sufficient revenue to achieve and maintain profitability.
- We may not be able to correctly estimate or control our future operating expenses, which could lead to cash shortfalls.
- It is difficult to forecast our future performance, which may cause our financial results to fluctuate unpredictably.
- We are dependent upon the success of the miraDry treatment, which has a limited commercial history. If the market acceptance for the miraDry treatment fails to grow significantly, our business and future prospects will be harmed.
- Our ability to market the miraDry treatment in the United States is limited to the treatment of sweat and hair in the underarm, and if we want to expand our marketing claims, we will need to obtain additional FDA clearances or approvals, which may not be granted.
- Our success depends on growing physician adoption and use of the miraDry System.
- If there is not sufficient patient demand for miraDry procedures, our financial results and future prospects will be harmed.
- Our success depends in part upon patient satisfaction with the effectiveness of the miraDry treatment.
- We have limited experience with our direct sales and marketing force and any failure to build and manage our direct sales and marketing force effectively could have a material adverse effect on our business.
- We depend on third-party distributors to market and sell the miraDry System in markets outside of North America and we may not be able to exercise sufficient control over these distributors.
- In order to successfully market and sell miraDry Systems in markets outside of North America, we must address many issues with which we have limited experience.
- Our inability to effectively compete with our competitors may prevent us from achieving significant market penetration or improving our operating results.

- We and our third-party manufacturing partners have limited experience in producing the miraDry System and its accessories and components, and if we are unable to manufacture our miraDry System in high-quality commercial quantities successfully and consistently to meet demand, our growth will be limited.
- We outsource the manufacturing of key elements of our miraDry System and bioTips to single-source third-party manufacturers.

### **Corporate Information**

We were incorporated in Nevada as Spacepath, Inc. on December 28, 2012, and subsequently changed our name to KTL Bamboo International Corp. on March 18, 2015. On June 7, 2016, we reincorporated in Delaware as Miramar Labs, Inc.

On June 7, 2016, our wholly-owned subsidiary, Miramar Acquisition Corp., a corporation formed in the State of Delaware on June 2, 2016, or the Acquisition Sub, merged with and into Miramar Technologies, Inc., a corporation incorporated in April 2006 in the State of Delaware originally under the name of Miramar Labs, Inc., which changed its name to Miramar Technologies Inc. on June 2, 2016, and is referred to herein as Miramar. On June 7, 2016, we entered into an Agreement and Plan of Merger and Reorganization, or the Merger Agreement, with the Acquisition Sub and Miramar. Pursuant to the terms of the Merger Agreement, Acquisition Sub merged with and into Miramar, which was the surviving corporation and thus became our wholly-owned subsidiary, or the Merger. All of the outstanding capital stock of Miramar was converted into shares of our common stock.

In connection with the Merger and pursuant to the split-off agreement and a general release agreement, or the Split-Off Agreement, we transferred our pre-Merger assets and liabilities to our pre-Merger majority stockholder, in exchange for the surrender by and cancellation of 3,603,602 shares of our common stock, or the Split-Off. Upon the closing of the Merger, we discontinued our pre-Merger business and acquired the business of Miramar and will continue the existing business operations of Miramar as a publicly-traded company under the name Miramar Labs, Inc.

On June 7, 2016, in connection with the Merger, our board of directors changed our fiscal year from a fiscal year ending on July 31 to one ending on December 31 of each year, which was the fiscal year of Miramar.

On June 7, 2016, we entered into a subscription agreement, or the Subscription Agreement, with certain accredited investors, providing for the issuance and sale to such investors of an aggregate of 1,978,567 shares of common stock issued and sold to accredited investors in a private placement offering in a series of closings on June 7, 2016, June 30, 2016, July 21, 2016 and August 8, 2016, at a purchase price per share of \$5.00 and for aggregate gross proceeds to us of approximately \$9.9 million, or the Private Placement. Katalyst Securities LLC and The Benchmark Company, LLC served as co-exclusive placement agents, or, along with their sub-agents, the Placement Agents, for the Private Placement.

The Subscription Agreement also contains certain anti-dilution provisions. Those anti-dilution provisions provide that, subject to certain exceptions, if we issue and sell Common Stock or Common Stock equivalents at a purchase price per share of lower than \$5.00 within the six month period following June 7, 2016, each investor in the Private Placement shall be entitled to receive such number of additional shares of our common stock as they would have received had such lower purchase price per share been applicable in the Private Placement.

At the closings of the Private Placement we issued to the Placement Agents and their designees, warrants, or the Placement Agent Warrants, to acquire up to 17,504 shares of our common stock at an exercise price of \$5.00 per share. Each of the Placement Agent Warrants is exercisable at any time at the option of the holder until the five-year anniversary of its date of issuance. Our authorized capital stock currently consists of 100,000,000 shares of common stock and 5,000,000 shares of blank check preferred stock. Our common stock is quoted on the OTC Markets (OTCQB) under the symbol "MRLB," which changed from "KTLC" on June 15, 2016.

Our principal executive offices are located at 2790 Walsh Avenue, Santa Clara, California 95051. Our telephone number is (408) 579-8700. Our website address is [www.miramarlabs.com](http://www.miramarlabs.com). The information contained on, or that can be accessed through, our website is not a part of this Prospectus.

We continue to be a “smaller reporting company,” as defined under the Securities Exchange Act of 1934, as amended, or the Exchange Act, following the Merger. As a result of the Merger, we have ceased to be a shell company, as such term is defined in Rule 12b-2 under the Exchange Act.

Unless otherwise stated or the context clearly indicates otherwise, the “Company,” the “Registrant,” “we,” “us,” and “our” refer to Miramar Labs, Inc., incorporated in Delaware, after giving effect to the Merger and the Split-Off.

### **Emerging Growth Company**

We are an “emerging growth company,” as defined in the JOBS Act, and may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not “emerging growth companies,” including not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, 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 because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.

We could be an emerging growth company for up to five years, although circumstances could cause us to lose that status earlier. We will remain an emerging growth company until the earlier of (1) the last day of the fiscal year (a) following the fifth anniversary of our first sale of common equity securities pursuant to an effective registration statement under the Securities Act, (b) in which we have total annual gross revenue of at least \$1.0 billion or (c) in which we are deemed to be a “large accelerated filer,” which means the market value of our common stock that is held by non-affiliates exceeds \$700 million as of the prior June 30th and (2) the date on which we have issued more than \$1.0 billion in non-convertible debt securities during the prior three-year period.

In addition, Section 102 of the JOBS Act provides that an “emerging growth company” can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act for complying with new or revised accounting standards. An “emerging growth company” can therefore delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. However, we are choosing to “opt out” of the extended transition periods available under the JOBS Act for complying with new or revised accounting standards.

For certain risks related to our status as an emerging growth company, see “Risk Factors — Risks Related to Our Common Stock and the Offering — 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.”

## THE OFFERING

Common stock outstanding prior to this offering .....	9,380,653 shares <sup>(1)</sup>
Common stock offered by the selling stockholders hereunder .....	9,194,674 shares <sup>(2)</sup>
Common stock outstanding after this offering .....	9,380,653 shares <sup>(1)</sup>
Use of proceeds .....	All of the shares of common stock being offered under this Prospectus are being sold by the selling stockholders or their pledges, donees, transferees, assignees or other successors in interest. Accordingly, we will not receive any proceeds from the sale of our common stock offered by the selling stockholders under this Prospectus. We may, however, receive proceeds from warrants exercised by selling stockholders in the event that such warrants are exercised for cash. See “Use of Proceeds” beginning on page 39 of this Prospectus.
Lock-Up Agreements.....	Selling stockholders who hold an aggregate of 9,051,804 shares of the common stock included in this offering are subject to lock-up agreements, which restrict the sale of such shares for a period of six (6) months following the consummation of the Merger. See “Market Price of and Dividends on Our Common Stock and Related Stockholder Matters — Lock-Up Agreements.”
Risk factors .....	See “Risk Factors” beginning on page 7 and other information included in this Prospectus for a discussion of factors that you should consider carefully before deciding to invest in our common stock.
OTC symbol .....	MRLB

(1) As of October 7, 2016.

(2) Includes (a) 9,177,170 shares of common stock outstanding and (b) 17,504 shares of common stock issuable upon exercise of the Placement Agent Warrants.

### **Background**

In connection with the Private Placement, we entered into a Registration Rights Agreement, pursuant to which we have agreed that promptly, but no later than 90 calendar days from the final closing of the Private Placement, we will file a registration statement with the SEC, or the Registration Statement, covering (a) the shares of common stock issued in the Private Placement, (b) the shares of common stock issuable upon exercise of the Placement Agent Warrants, (c) the shares of common stock issued in exchange for the equity securities of Miramar outstanding prior to the Merger and (d) shares of common stock held by certain of our pre-Merger security holders, collectively, the Registrable Shares. We have agreed to use our commercially reasonable efforts to ensure that such Registration Statement is declared effective within 180 calendar days after the final closing of the Private Placement.

Throughout this Prospectus, when we refer to the shares of our common stock, the offer and sale of which are being registered on behalf of the selling stockholders, we are referring to the Registrable Shares that we agreed to register pursuant to the Registration Rights Agreement described above. When we refer to the selling stockholders in this Prospectus, we are referring to the holders of the Registrable Shares and, as applicable, any donees, pledgees, transferees or other successors-in-interest selling shares received after the date of this Prospectus from the holders of the Registrable Shares as a gift or other transfer for no consideration.

## 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 in this Prospectus, including our consolidated financial statements and related notes, before investing in our common stock. If any of the following risks are realized, in whole or in part, our business, financial condition, results of operations and prospects could be materially and adversely affected. 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 and Strategy**

***We have limited operating experience and a history of net losses, and we may never achieve or maintain profitability.***

We have a limited operating history and have focused primarily on research and development, clinical trials, product engineering, building our manufacturing capabilities, and seeking regulatory clearances and approvals to market our first product, the miraDry System. We have incurred significant net losses since our inception, including net losses of approximately \$14.5 million in 2015, \$15.3 million in 2014, \$13.9 million in 2013, and \$13.1 million for the six months ended June 30, 2016. At June 30, 2016, we had an accumulated deficit of approximately \$106.5 million. As disclosed in the audit report for the year ended December 31, 2015, these factors raise substantial doubt about our ability to continue as a going concern. We will continue to incur significant expenses for the foreseeable future as we expand our sales and marketing, research and development, and clinical and regulatory activities. We may never generate sufficient revenues to achieve or sustain profitability. Even if we do achieve profitability, we may not be able to sustain or increase profitability. Further, because of our limited operating history and because the market for products that treat sweat-bothered individuals is rapidly evolving, we have limited insight into the trends or competitive products that may emerge and affect our business. We may make errors in predicting and reacting to relevant business trends, which could harm our business. Before investing, investors should consider an investment in our common stock in light of the risks, uncertainties, and difficulties frequently encountered by early-stage medical technology companies in rapidly evolving markets such as ours. We may not be able to successfully address any or all of these risks, and the failure to adequately do so could cause our business, results of operations, and financial condition to suffer.

***We may not be able to generate sufficient revenue to achieve profitability.***

Our revenue grew 7% in 2015 as compared to 2014. We generated revenue of \$17.2 million in 2015 as compared to \$16.1 million in 2014. Our revenues were \$11.7 million and \$8.0 million for the six months ended, June 30, 2016 and 2015, respectively. This represented approximately 46% increase in revenue year over year for the two quarters. We expect to generate substantially all of our revenue in the future from sales of our miraDry System and related consumable bioTip product. We may be unable to generate sufficient revenue in the United States or in other countries to generate sufficient cash for operation or to cause the price of our stock to increase. Our revenue growth is subject to various risks such as:

- difficulties in expanding our marketing efforts to develop new relationships and expand existing relationships with customers;
- difficulties in managing our current international operations;
- difficulties in receiving clearance or approval for our miraDry System in new markets or for new indications in existing markets;

- difficulties securing adequate financing that enables us to invest in and grow the business;
- increased competition in the United States and in other countries;
- the absence of reimbursement for the miraDry system and procedure through government or private health insurance;
- potential international arbitrage opportunities for our disposable bioTip products (i.e., we may choose to sell the bioTip products into certain countries at lower prices and if individuals or entities buy them in such countries and resell them at higher prices in other countries, it may reduce the amount that we sell into countries where we can charge higher prices); and
- uncertainty global economic conditions.

If we are unable to increase our revenue, we may be unable to generate enough cash to support our operations. We may be required to raise more capital and that will result in dilution for our stockholders. There can be no assurance that future capital will be available to us at all or on attractive terms. If we are unable to grow our revenue, our operations may suffer, we may need to raise more capital and our stock price may decline as a result.

***We may not be able to correctly estimate or control our future operating expenses, which could lead to cash shortfalls.***

Our operating expenses may fluctuate significantly in the future as a result of a variety of factors, many of which are outside of our control. These factors include:

- our commercialization strategy and whether the revenues from sales of our miraDry System and the sales of our disposable bioTip product will be sufficient to offset the expenses we incur in connection with our commercialization activities;
- the time, resources, and expense required to develop and conduct clinical trials and seek additional regulatory clearances and approvals for additional treatment indications for the miraDry treatment and for any additional products we develop;
- the costs of preparing, filing, prosecuting, defending, and enforcing patent claims and other patent related costs, including litigation costs and the results of such litigation;
- any product liability or other lawsuits related to our products and the costs associated with defending them or the results of such lawsuits;
- the costs to attract and retain qualified personnel;
- the costs associated with being a public company; and
- general economic, industry and market conditions.

Our budgeted expense levels are based in part on our expectations concerning future revenue from the miraDry System. We may be unable to reduce our expenditures in a timely manner to compensate for any unexpected shortfalls in revenue. Accordingly, a significant shortfall in market acceptance or demand for the miraDry treatment could have an immediate and material adverse impact on our business and financial condition.

***It is difficult to forecast our future performance, which may cause our financial results and our stock price to fluctuate unpredictably.***

Our limited operating history and the rapid evolution of the markets for medical technology products make it difficult for us to predict our future performance and our stock price. A number of factors, many of which are outside of our control, may contribute to fluctuations in our financial results, such as:

- physician demand for purchasing miraDry Systems may vary from quarter to quarter;
- the inability for physicians to obtain any necessary financing;
- changes in the length of the sales process;
- performance of our international distributors;
- positive or negative media coverage of the miraDry treatment, the procedures or products of our competitors, or our industry;
- our ability to maintain our current or obtain further regulatory clearances or approvals;
- seasonal or other variations in patient demand for procedures that treat hyperhidrosis;
- introduction of new procedures or products that compete with the miraDry treatment;
- any intellectual property infringement lawsuit or opposition, interference or cancellation proceeding in which we may become involved;
- the amount and timing of costs and expenses related to the maintenance and expansion of our business and operations;
- the hiring, training and retention of key employees, including our ability to expand our sales team; and
- adverse changes in the economy that reduce patient demand for elective procedures.

***We are dependent upon the success of the miraDry treatment, which has a limited commercial history. If the market acceptance for the miraDry treatment fails to grow significantly, our business and future prospects will be harmed.***

We commenced commercial sales of the miraDry System for the treatment of primary axillary hyperhidrosis, a condition characterized by abnormal sweating in excess of that required for regulation of body temperature, and which we refer to as being “sweat-bothered,” in the United States in 2012 and in Japan in 2011. We expect that the revenues we generate from sales of our miraDry System and bioTips will account for substantially all of our revenues for the next several years. Accordingly, our success depends on the acceptance among physicians and patients of the miraDry procedure as a preferred treatment for being sweat-bothered. Although we have received FDA clearance to market the miraDry treatment for the treatment of primary axillary hyperhidrosis in the United States and are approved or are otherwise free to market the miraDry treatment in over 40 international markets, the degree of market acceptance of the miraDry treatment by physicians and patients is unproven. We believe that market acceptance of the miraDry treatment will depend on many factors, including:

- the perceived advantages or disadvantages of the miraDry System compared to other products and

treatments;

- the safety and efficacy of the miraDry System relative to other products and alternative treatments;
- the price of the miraDry System relative to other products and alternative treatments;
- our success in expanding our sales and marketing organization;
- the effectiveness of our marketing, advertising, and commercialization initiatives;
- the development and publication of long-term clinical data in peer-reviewed journals supporting the long term efficacy of the miraDry treatment;
- our ability to obtain regulatory clearance to market miraDry for additional treatment indications in the United States and other international markets;
- education of physicians, especially general practitioners and dermatologists, regarding alternative treatments for sweat-bothered patients through key opinion leaders and product demonstrations at conferences, physician offices and webinars; and
- the success of patient education through direct-to-consumer marketing campaigns that utilize social media outlets and testimonials.

We cannot guarantee that the miraDry treatment will achieve broad market acceptance among physicians and patients. Because we expect to derive substantially all of our revenue for the foreseeable future from sales of miraDry Systems and the sale of our disposable bioTip products, any failure of this product to achieve meaningful market acceptance will harm our business and future prospects.

***Our ability to market the miraDry treatment in the United States is limited to the treatment of sweat and hair in the underarm, and if we want to expand our marketing claims, we will need to obtain additional FDA clearances or approvals, which may not be granted.***

We currently only have FDA clearance to market the miraDry treatment in the United States for the treatment of primary hyperhidrosis of the axilla, or the under arm, and for hair reduction procedures in the axilla. This clearance restricts our ability to market or advertise the miraDry treatment for other specific body areas, and other conditions such as underarm odor, which could limit physician adoption and patient demand for the miraDry treatment. We believe that future applications of the miraDry treatment could be used to treat other body areas, such as the feet and hands, where patients experience sweat-bothered symptoms. Developing and promoting these new treatment applications for our miraDry System is an element of our growth strategy, but we cannot predict when or if we will receive the clearances required to implement these additional products and applications. In addition, we will be required to conduct additional clinical trials or studies to support our applications, which may be time-consuming and expensive, and may produce results that do not result in submission of, or FDA clearances for, new treatment applications. In the event that we do not obtain additional FDA clearances, our ability to promote the miraDry treatment in the United States will be limited. Currently, we are in the process of obtaining FDA clearance to market the miraDry System for the treatment of underarm odor reduction. Because we anticipate that sales in the United States will continue to be a significant portion of our business for the foreseeable future, ongoing restrictions on our ability to market the miraDry treatment in the United States could harm our business and limit our revenue growth.

***Our success depends on growing physician adoption and use of the miraDry System.***

Our ability to increase the number of physicians willing to make a significant capital expenditure to purchase our miraDry System and make the miraDry treatment a significant part of their practices depends on the success of our sales and marketing programs. We must be able to demonstrate that the cost of our miraDry System and the revenue that a physician can derive from performing miraDry procedures are compelling, and the treatments are durable, when compared to the costs, revenues and durability of treatments associated with alternative treatments, such as Botox, that the physician may offer. Alternative treatments may be invasive, minimally-invasive, or non-invasive and we must, in some cases, overcome a bias against procedures such as miraDry for treatment of hyperhidrosis, principally from those physicians prescribing non-invasive procedures such as clinical-strength antiperspirants and Botox. In addition, we believe our marketing programs will be critical in driving demand for additional miraDry procedures, but these programs require physician commitment and involvement to succeed. If we are unable to increase physician adoption and use of miraDry, our financial performance will be adversely affected.

***If there is not sufficient patient demand for miraDry procedures, our financial results and future prospects will be harmed.***

The miraDry procedure is an elective procedure, the cost of which must be borne by the patient, and is not currently reimbursable through government or private health insurance. The decision to undergo a miraDry procedure is thus driven by patient demand, which may be influenced by a number of factors, such as:

- the success of our sales and marketing programs;
- the extent to which our physician customers recommend the miraDry treatment to their patients;
- our success in attracting consumers who have not previously sought treatment for being sweat-bothered;
- the extent to which our miraDry procedure satisfies patient expectations;
- development and publication of clinical data supporting the long-term efficacy of the miraDry procedure;
- our ability to properly train our physician customers in the use of the miraDry System such that their patients do not experience excessive discomfort during treatment or adverse side effects;
- the cost, safety, and effectiveness of the miraDry treatment versus other sweat-bothered treatments;
- consumer sentiment about the benefits and risks of procedures to treat being sweat-bothered generally and the miraDry treatment in particular;
- the success of any direct-to-consumer marketing efforts we initiate; and
- general consumer confidence, which may be impacted by economic and political conditions.

Our financial performance will be materially harmed in the event we cannot generate significant patient demand for the miraDry treatment.

***Our success depends in part upon patient satisfaction with the effectiveness of the miraDry treatment.***

In order to generate repeat and referral business, patients must be satisfied with the effectiveness of the miraDry treatment. On the whole, our clinical studies demonstrate the safety and efficacy of the miraDry procedure. Over 70,000 miraDry procedures have been performed as of June 30, 2016, and some patients have experienced side effects. The most common side effects that occur regularly are localized swelling, redness and discomfort that

typically last less than a week. Less common side effects are swelling in the arm or torso, darkening of skin in the treatment area, soreness in the shoulders and arms due to procedure positioning, numbness or tingling in the arm due to the anesthesia (lasting less than 24 hours), and a tight band under the arm. Rare side effects (less than 1% of all procedures) that have been reported are altered sweating elsewhere on the body, small blisters or rashes in the treatment area, temporary altered sensation or tingling in the forearm or fingers, weakness in the arm or fingers, pain in the arm or fingers, infections, abscesses, ulcerations and burns. These events resolve over time but sometimes need intervention (for example, antibiotics). We have not been able to confirm in all cases that all side effects completely resolve. If patients are not satisfied with the benefits of the miraDry treatment, feel that the risks do not outweigh the benefits, feel that the procedure does not provide lasting or long-term results, or is too expensive for the results obtained, our reputation and future sales will suffer.

***We have limited experience with our direct sales and marketing force and any failure to build and manage our direct sales and marketing force effectively could have a material adverse effect on our business.***

We rely on a direct sales force to sell the miraDry System in our North American market, which includes the United States and Canada. In order to meet our anticipated sales objectives, we expect to grow our direct sales and marketing organization in these countries significantly over the next several years and intend to opportunistically build a direct sales and marketing force in certain international markets. There are significant risks involved in building and managing our sales and marketing organization, including risks related to our ability to:

- hire qualified individuals as needed;
- generate sufficient leads within our target physician group for our sales force;
- provide adequate training for the effective sale and marketing of the miraDry treatment;
- retain and motivate our direct sales and marketing professionals; and
- effectively oversee geographically dispersed sales and marketing teams.

Our failure to adequately address these risks could have a material adverse effect on our ability to increase sales and use of our miraDry Systems, which would cause our revenues to be lower than expected and harm our results of operations.

***We depend on third-party distributors to market and sell the miraDry System in markets outside of North America and we may not be able to exercise sufficient control over these distributors.***

We currently depend exclusively on third-party distributors to sell, market, and service our miraDry Systems in markets outside of North America and to train our physician customers in such markets. We may need to engage additional third-party distributors to expand in new markets outside of North America. We are subject to a number of risks associated with our dependence on these third parties, including:

- we lack day-to-day control over the activities of third-party distributors;
- third-party distributors may not commit the necessary resources to market, sell, and service the miraDry Systems to the level of our expectations;
- third-party distributors may not be as selective as we would be in choosing physicians to purchase miraDry Systems or as effective in training physicians in marketing and patient selection;

- third-party distributors may terminate their arrangements with us on limited, or no, notice or may change the terms of these arrangements in a manner unfavorable to us;
- disagreements with our distributors could require or result in costly and time-consuming litigation, arbitration or re-registrations which we could be required to conduct in jurisdictions with which we are not familiar;
- two of our distributors individually accounted for greater than 10% of our revenue for the six months ended June 30, 2016, and we may not be able to replace these sales if our relationship with either distributor is terminated; and
- we have granted favorable credit terms to certain distributors and in some cases, we may not be able to collect the entire amount owed to us if the distributor is terminated or otherwise suffers an adverse event beyond our control.

If we fail to establish and maintain satisfactory relationships with our third-party distributors, our revenues and market share may not grow as anticipated, and we could be subject to unexpected costs which would harm our results of operations and financial condition.

***In order to successfully market and sell miraDry Systems in markets outside of North America, we must address many issues with which we have limited experience.***

Sales in markets outside of North America accounted for approximately 57% of our revenue for the year ended 2015 and for the six months ended June 30, 2016. We believe that a significant percentage of our business will continue to come from sales in markets outside of North America through increased penetration in countries where we currently market and sell the miraDry System through our third-party distributor network, combined with expansion into new international markets. However, international sales are subject to a number of risks, many of which we may have limited experience with, including:

- difficulties in staffing and managing our international operations;
- increased competition as a result of more products and procedures receiving regulatory approval, or otherwise being free to market in international markets;
- longer accounts receivable payment cycles and difficulties in collecting accounts receivable;
- reduced or varied protection for intellectual property rights in some countries;
- export restrictions, trade regulations, and foreign tax laws;
- fluctuations in currency exchange rates;
- foreign certification and regulatory clearance or approval requirements;
- difficulties in developing effective marketing campaigns in unfamiliar foreign countries;
- customs clearance and shipping delays;
- political, social, and economic instability abroad, terrorist attacks, and security concerns in general; and

- the burdens of complying with a wide variety of foreign laws and different legal standards.

If one or more of these risks were realized, it could require us to dedicate significant financial and management resources and our revenue may decline.

***Our inability to effectively compete with our competitors may prevent us from achieving significant market penetration or improving our operating results.***

The medical technology products market is highly competitive and dynamic, and is characterized by rapid and substantial technological development and product innovation. Demand for the miraDry treatment could be reduced by the products and technologies offered by our competitors. The least invasive competing product is clinical strength antiperspirant. Some patients elect to have surgery to remove their sweat glands. Additionally, in the United States, the FDA has approved the marketing of Botox for the treatment of severe axillary hyperhidrosis and there are several other botulinum toxin drugs in clinical studies for the same indication. Also, the FDA has cleared the PrecisionTX laser treatment manufactured by Cynosure, Inc. for the treatment of primary axillary hyperhidrosis.

Other companies that manufacture aesthetic medical devices produce energy modulators that could be used in new products to enter this market and compete with the miraDry System.

Many of our competitors are large, experienced companies that have substantially greater resources and brand recognition than we do. Competition in the medical technology markets could result in price-cutting, reduced profit margins, and limited market share, any of which would harm our business, financial condition, and results of operations.

***We and our third-party manufacturing partners have limited experience in producing the miraDry System and its accessories and components, and if we are unable to manufacture our miraDry System in high-quality commercial quantities successfully and consistently to meet demand, our growth will be limited.***

Prior to receiving FDA clearance in 2011, we manufactured our miraDry System in limited quantities sufficient only to meet the needs of our clinical studies. We currently manufacture our miraDry System and related accessories, including the consumable bioTips, through a combination of direct manufacturing at our facility in Santa Clara, California and through third-party manufacturers. Currently, we manufacture the console and handpiece in-house and complete final assembly of the bioTips in-house. To manufacture our miraDry System in the quantities that we believe will be required to meet anticipated market demand, we and our third-party manufacturers will need to increase manufacturing capacity, which will involve significant challenges, including compliance with quality system regulations which are strictly enforced by regulatory authorities, and may require additional regulatory approvals. Neither we nor our third-party manufacturers may be able to successfully complete a required increase to existing manufacturing processes in a timely manner, or at all.

If there is a disruption to our or our third-party manufacturers' operations, we will have no other means of producing our miraDry Systems until we restore the affected facilities or develop alternative manufacturing facilities. Our systems and those of our third-party manufacturers may experience service interruptions, denial-of-service attacks and other cyber-attacks that interrupt operations and cause system failures which may result in loss of revenue and significant expenses to repair or replace damaged equipment and remedy resultant data loss or corruption. Additionally, any damage to or destruction of our or our third-party manufacturers' facilities or equipment may significantly impair our ability to manufacture miraDry Systems on a timely basis. Some of our manufacturing facilities are located in California in areas with a high risk of major earthquakes. A major earthquake could damage our operations, delay production or interrupt the supply of critical components of the miraDry System.

If we or our third-party manufacturers are unable to produce miraDry Systems in sufficient quantities to meet customer demand, our revenues, business, and financial prospects would be harmed. The lack of experience we and our manufacturing partners have in producing commercial quantities of our miraDry System may also result in quality issues, and result in product recalls. Manufacturing delays related to quality control could negatively impact our ability to bring our miraDry System and bioTips to market, harm our reputation, and decrease our revenues. Any recall could be expensive and generate negative publicity, which could impair our ability to market our miraDry System and further affect our results of operations.

***We outsource the manufacturing of key elements of our miraDry System and bioTips to single-source third-party manufacturers.***

Broadband Wireless, LLC manufactures the amplifiers used with our miraDry System in Reno, Nevada. In addition, our bioTips are manufactured by Healthcare Technology International Limited, headquartered in Hong Kong. These single source suppliers of these critical components may not be replaced without significant effort and delay in production. If the operations of these manufacturers are interrupted or if they are unable to meet our delivery requirements due to capacity limitations or other constraints, we may be limited in our ability to fulfill customer orders or to repair equipment at current customer sites. A disruption with these contract manufacturers would entail significant delay, require us to devote substantial time and resources, and could involve a period in which our products could not be produced in a timely or consistently high-quality manner, any of which could harm our reputation and results of operations.

***Our manufacturing operations and those of our key third-party manufacturers are dependent upon third-party suppliers, making us vulnerable to supply shortages and price fluctuations, which could harm our business.***

Our miraDry System contains critical components and we do not have supply agreements with many suppliers of these components beyond purchase orders. Although we maintain a safety stock of inventory for critical components equal to one to two quarters of forecasted part requirements, such forecasted amounts may be inaccurate and we may experience shortages as a result of serious supply problems with these suppliers. In addition, several other non-critical components and materials that comprise our miraDry System are currently manufactured by a limited number of suppliers. In many of these cases, we have not yet qualified alternate suppliers and rely upon purchase orders, rather than long-term supply agreements. A supply interruption or an increase in demand beyond our current suppliers' capabilities could harm our ability to manufacture our miraDry System until new sources of supply are identified and qualified. Our reliance on these suppliers subjects us to a number of risks that could harm our business, including:

- interruption of supply resulting from modifications to or discontinuation of a supplier's operations;
- delays in product shipments resulting from uncorrected defects, reliability issues, or a supplier's variation in a component;
- a lack of long-term supply arrangements for key components with our suppliers;
- inability to obtain adequate supply in a timely manner, or to obtain adequate supply on commercially reasonable terms;
- difficulty and cost associated with locating and qualifying alternative suppliers for our components in a timely manner;
- production delays related to the evaluation and testing of products from alternative suppliers, and corresponding regulatory qualifications;

- delay in delivery due to our suppliers prioritizing other customer orders over ours;
- damage to our brand reputation caused by defective components produced by our suppliers;
- increased cost of our warranty program due to product repair or replacement based upon defects in components produced by our suppliers; and
- fluctuation in delivery by our suppliers due to changes in demand from us or their other customers.

Any interruption in the supply of components or materials, or our inability to obtain substitute components or materials from alternate sources at acceptable prices in a timely manner, could impair our ability to meet the demand of our customers, which would have an adverse effect on our business.

***We forecast sales to determine requirements for components and materials used in our miraDry System and bioTips, and if our forecasts are incorrect, we may experience delays in shipments or increased inventory costs.***

We try to keep inventory on hand sufficient to support one to two quarters of miraDry System and bioTips sales. To manage our operations with our third-party manufacturers and suppliers, we forecast anticipated product orders and material requirements to predict our inventory needs and enter into purchase orders on the basis of these requirements. Several components of our miraDry System, such as those to generate microwave energy, require an order lead time of up to seven months. Our limited historical commercial experience and rapid growth may not provide us with enough data to consistently and accurately predict future demand. In the future we will need to develop processes to ensure the components received from suppliers are manufactured to specification and that if there is a component change or a component becomes unavailable that a supplier can accurately inform us in a timely manner of the change or unavailability of the component. We cannot guarantee the integrity of our supply chain and if components received are not to specification, it will negatively impact our reputation and business. If our business expands, our demand for components and materials may increase beyond our estimates and our manufacturers and suppliers may be unable to meet our demand. In addition, if we underestimate our component and material requirements, we may have inadequate inventory, which could interrupt, delay, or prevent delivery of our miraDry System to our customers. In contrast, if we overestimate our component and material requirements, we may have excess inventory, which would increase our expenses. Any of these occurrences would negatively affect our financial performance and the level of satisfaction our physician customers have with our products.

***Even though our miraDry System is marketed solely to physicians, there exists a potential for misuse, which could harm our reputation and our business.***

We and our independent distributors market and sell miraDry solely to physicians. In some cases, our physician customers directly supervise nurse practitioners, technicians, and other non-physicians, who may be allowed to perform miraDry procedures. Although we and our distributors provide training on the use of miraDry Systems, we do not supervise the procedures performed, nor can we be assured that direct physician supervision of procedures occurs according to our recommendations. The potential misuse of our miraDry System by physicians and non-physicians may result in adverse treatment outcomes and adverse patient events, which could harm our reputation and expose us to costly product liability litigation. For example, doctors may misuse our products by utilizing a single application bioTip on multiple patients, which decreases efficacy of the bioTip and exposes other patients to bodily fluids and related biological hazards which creates safety risks for the patients. We could become involved in litigation in the future as a result of physician misuse and any such litigation would consume resources and negatively impact our financial results and harm our results of operations.

***Product liability suits could be brought against us due to defective design, labeling, material, or workmanship, or misuse of our miraDry System, and could result in expensive and time-consuming litigation, payment of substantial damages, an increase in our insurance rates and substantial harm to our reputation.***

If our miraDry System is defectively designed, manufactured, or labeled, contains defective components, or is misused, we may become subject to substantial and costly litigation by our physician customers or their patients. Misusing our miraDry System or failing to adhere to operating guidelines can cause skin damage and underlying tissue damage and, if our operating guidelines are found to be inadequate, we may be subject to liability. Furthermore, if a patient is injured in an unexpected manner or suffers unanticipated adverse events after undergoing a miraDry procedure, even if the procedure was performed in accordance with our operating guidelines, we may be subject to product liability claims. Product liability claims could divert management's attention from our core business, be expensive to defend, and result in sizable damage awards against us. We currently have product liability insurance, but it may not be adequate to cover us against potential liability. In addition, we may not be able to maintain 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, could harm our reputation, 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 reducing our operating results.

***Third parties may attempt to produce counterfeit versions of our products and may harm our ability realize revenue, negatively affect our reputation, or harm patients and subject us to product liability.***

The bioTip is designed to be a single-use product and produce individual revenue for each miraDry procedure performed. Third parties may seek to develop counterfeit miraDry Systems, components and bioTips and make them available to practitioners at lower prices than our own. If security features incorporated into the design of our miraDry System are unable to prevent the introduction of counterfeit components, we may not be able to monitor the number of procedures performed using our miraDry System. We have taken certain measures to design our miraDry console to only recognize our bioTip product and not those designed by counterfeiters, but there can be no guarantee that this design feature will prevent such misuse. We plan to use patent enforcement and physician education to decrease the impact of counterfeit products on our business and reputation, but all such efforts may be inadequate or unsuccessful. In addition, if counterfeit products are used with or in place of our own, we could be subject to product liability lawsuits resulting from the use of damaged or defective goods and suffer damage to our reputation.

***We depend on personnel that are skilled, experienced and uniquely educated and trained in the disciplines of microwave technologies to operate our business effectively. If we are unable to recruit, hire, and retain these employees, our ability to manage and expand our business will be harmed, which would impair our future revenue and profitability.***

Our success largely depends on the skills, experience, and efforts of our executive officers and other key employees. We do not have employment contracts with any of our executive officers or other key employees that require these officers to stay with us for any period of time. Any of our executive officers and other key employees may terminate their employment with us at any time. The loss of any of our executive officers and other key employees could weaken our management expertise and harm our business operations. We only maintain key man insurance for our chief executive officer.

In addition, our ability to retain our skilled employees and our success in attracting and hiring new skilled employees will be a critical factor in determining whether we will be successful in the future. We may not be able to meet our future hiring needs or retain our existing employees. We will face significant challenges and risks in hiring, training, managing, and retaining sales and marketing, product development, financial reporting, and

regulatory compliance employees, many of whom are geographically dispersed. Failure to attract and retain personnel, particularly our sales and marketing, product development, financial reporting, and regulatory compliance personnel, would materially harm our ability to compete effectively and grow our business.

***We may need to raise additional funds in the future, and such funds may not be available on a timely basis, or at all.***

Until such time, if ever, as we can generate substantial revenues from sales of our miraDry System and sales of our disposable bioTip products, we will be required to finance our operations with our cash resources. We may need to raise additional funds in the future to support our operations. We cannot be certain that additional capital will be available as needed or on acceptable terms, or at all. If we require additional capital at a time when investment in our Company, in medical technology companies or the marketplace in general is limited, we may not be able to raise such funds at the time that we desire, or at all. If we do raise additional funds through the issuance of equity or convertible securities, the percentage ownership of holders of our common stock could be significantly diluted and these newly issued securities may have rights, preferences, or privileges senior to those of holders of our common stock. If we obtain debt financing, a substantial portion of our operating cash flow may be dedicated to the payment of principal and interest on such indebtedness, and the terms of the debt securities issued could impose significant restrictions on our operations. If we raise additional funds through collaborations and licensing arrangements, we could be required to relinquish significant rights to our technologies, and products or grant licenses on terms that are not favorable to us.

***Our ability to use net operating losses and tax credit carryforwards to offset future tax liabilities may be limited.***

As of December 31, 2015, we had net operating loss carryforwards, or NOLs, to offset future taxable income of approximately \$82.6 million, and \$66.8 million for federal and state income taxes, which expire in various years beginning in 2026, if not utilized. We also have state and federal tax credit carryforwards that will begin to expire in 2026. A lack of future taxable income would adversely affect our ability to utilize these NOLs and tax credit carryforwards. In addition, under Section 382 of the U.S. Internal Revenue Code, or the Code, a corporation that experiences a more-than 50% ownership change over a three-year testing period is subject to limitations on its ability to utilize its pre-change NOLs and tax credit carryforwards to offset future taxable income. If we have undergone an ownership change in the past or undergo an ownership change in connection with or after the Offering, our ability to utilize NOLs and tax credit carryforwards could be further limited by Section 382 of the Code. Future changes in our stock ownership, many of the causes of which are outside of our control, could result in an ownership change under Section 382 of the Code. Our NOLs and tax credit carryforwards may also be impaired under state law. As a result of these limitations, we may not be able to utilize a material portion of our NOLs and tax credit carryforwards.

***Our loan and security agreement with Oxford Finance LLC, or Oxford, and Silicon Valley Bank, together with Oxford, the Lenders, contain covenants that may restrict our business and financing activities.***

As of June 30, 2016, we had approximately \$10 million in outstanding debt to the Lenders. Borrowings under our loan and security agreement with the Lenders are secured by substantially all of our assets (other than our intellectual property) including a pledge of the equity securities of certain of our subsidiaries, in each case, subject to certain exceptions and limitations. The agreement contains a subjective acceleration clause which set forth circumstances under which the lender could accelerate repayment, including upon the lender's good faith judgment that (i) we will not be able to satisfy its payment obligations as they become due, (ii) none of our principal investors intends to fund such amounts as may be necessary to enable us to satisfy our payment obligations, or (iii) there is a material impairment in the perfection or priority of the lender's security interest in the collateral subject to the loan

agreement. These may result in the acceleration of payment terms on all outstanding principal and interest plus a prepayment fee.

Our loan and security agreement restricts our ability to, among other things:

- grant liens on our assets;
- dispose of our assets;
- merge with or acquire other entities or assets;
- make loans and investments;
- incur indebtedness;
- enter into transactions with affiliates;
- pay dividends;
- pay off subordinated indebtedness; and
- permit the aggregate value of the assets held by one of our subsidiaries from exceeding 10% of our and our subsidiaries' total assets.

The covenants in our loan and security agreement, as well as in any future financing agreements into which we may enter, may restrict our ability to finance our operations and engage in, expand or otherwise pursue our business activities and strategies. Our ability to comply with these covenants may be affected by events beyond our control, and future breaches of any of these covenants could result in a default under our loan and security agreement. If not waived, future defaults could cause all of the outstanding indebtedness under our loan and security agreement to become immediately due and payable and terminate all 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 face risks related to the current global economic environment, which could delay or prevent our customers from purchasing miraDry Systems, which could harm our business, financial condition and results of operations.***

The state of the global economy continues to be uncertain. The current global economic conditions and uncertain credit markets and concerns regarding the availability of credit pose a risk that could impact customer and patient demand for the miraDry System, as well as our ability to manage normal commercial relationships with our customers, suppliers and creditors, including financial institutions. If the current global economic environment deteriorates, our business could be negatively affected.

### **Risks Related to Regulation**

***The regulatory clearance and approval process is expensive, time-consuming, and uncertain, and the failure to obtain and maintain required regulatory clearances and approvals could prevent us from***

***commercializing our miraDry System and any future products we develop.***

We are investing in the research and development of new products and procedures based on our proprietary technology platform. Our products are subject to 510(k) clearance by the FDA prior to their marketing for commercial use in the United States, and to any approvals required by foreign governmental entities prior to their marketing outside the United States. In addition, if we make any changes or modifications to our miraDry System that could significantly affect its safety or effectiveness, or would constitute a change in its intended use, we would be required to obtain new regulatory clearance or approvals. For example, we will be required to submit new 510(k) applications to expand our ability to market the miraDry treatment for use on other areas of the body.

The 510(k) clearance processes, as well as the process for obtaining foreign approvals, can be expensive, time-consuming, and uncertain. We anticipate that the direct clinical study costs to support a 510(k) application for a new indication for the miraDry treatment will range from \$0.5 million to \$2.0 million. In addition to the time required to conduct clinical trials, it generally takes from four to twelve months from submission of an application to obtain 510(k) clearance; however, it may take longer, and 510(k) clearance may never be obtained.

Outside of the United States, the regulatory process can be complex and requires enlisting local resources to help obtain regulatory clearance and approvals. For example, in Brazil, Canada, China, the European Union, Israel, Korea and Taiwan, we rely on third party agents to apply for and hold the license for our products. In Australia, Chile, Colombia, Peru, the Philippines, Singapore, Switzerland, Thailand, Turkey and other Middle Eastern countries, we rely on distributors to obtain the necessary approvals to market and sell our products. In Japan, we rely on physicians to import our products and the Japanese government could require that we obtain additional approvals. In the process of obtaining regulatory approvals in many different countries we need to understand many different laws, rules and regulations and if we are unable to navigate the regulatory regime outside the United States successfully, we may not obtain the necessary regulatory approvals to market and sell our products or our product approval may be revoked.

Delays in receipt of, or failure to obtain, clearances or approvals for any product enhancements or new products we develop would result in delayed, or no, realization of revenues from such product enhancements or new products and in substantial additional costs which could decrease our profitability.

In addition, we are required to continue to comply with applicable FDA and other regulatory requirements once we have obtained clearance or approval for a product. There can be no assurance that we will successfully maintain the clearances or approvals we have received or may receive in the future. Our clearances can be revoked if safety or effectiveness problems develop. Any failure to maintain compliance with FDA and applicable international regulatory requirements could harm our business, financial condition, and results of operations.

***We will be subject to significant liability if we are found to have improperly promoted the miraDry treatment for off-label uses.***

The FDA strictly regulates the promotional claims that companies make for FDA-cleared products. In particular, a product may not be promoted for any uses that are not cleared by the FDA as reflected in the product's approved labeling. Our current FDA clearance only permits marketing of the miraDry treatment in the United States to people 18 years or older for the treatment of primary hyperhidrosis of the axilla, or the under arm, and for underarm hair reduction. We are aware that the miraDry System is used by our physician customers on other parts of the body and on younger patients. If we are found to have inappropriately marketed for such off-label uses, we may become subject to significant liability. Regulators in the United States have levied large civil and criminal fines against companies for alleged improper promotion and entered agreements with several companies that require cumbersome reporting and oversight of sales and marketing practices. The FDA has also requested that companies enter into consent decrees or permanent injunctions under which specified promotional conduct is changed or curtailed.

Our miraDry System is not FDA-cleared or approved for use in areas outside of the axilla. Our sales force does not promote the use of our products for off-label indications, and our U.S. instructions for use specify that our miraDry System is not intended for use in areas outside of the axilla. However, we cannot prevent a physician from using our miraDry System for off-label applications, such as treatment of a patient's groin, hands or back.

***The miraDry treatment may cause or contribute to adverse medical events that we are required to report to the FDA, and if we fail to do so, we could be subject to sanctions that would materially harm our business.***

FDA regulations require that we timely file a Medical Device Report, or MDR, to report certain information about adverse medical events if our medical devices may have caused or contributed to those adverse events. The timing of our obligation to report is triggered by the date we become aware of the adverse event as well as the nature of the event. We may fail to report adverse events we become aware of within the prescribed timeframe. We may also fail to appreciate that we have become aware of a reportable adverse event, especially if it is not reported to us as an adverse event or if it is an adverse event that is unexpected or removed in time from the use of our products. If we fail to comply with our reporting obligations, the FDA could take enforcement action against us including issuing a Warning Letter that could generate adverse publicity, the imposition of civil monetary penalties, revocation of our device clearance or approval, seizure of our products, criminal prosecution or delay in approval or clearance of future products.

From inception to October 7, 2016, we have filed a total of 147 MDRs. In a recent inspection report from the FDA, there were two observations regarding a deficiency in reporting of adverse events. To correct these observations, we revised our internal operating procedures and re-trained our personnel. We reviewed all adverse medical events that have been reported to us and filed more MDRs with the FDA. The FDA will review the new procedures and our corrective actions at the time of the next inspection. Our corrective actions may not be adequate to address the FDA's observations, and the FDA could take action including criminal prosecution, the imposition of civil monetary penalties, revocation of our device clearance or approval, seizure of our products, or delay in approval or clearance of future products.

***We are currently, and in the future our contract manufacturers may be, subject to various governmental regulations related to the manufacturing of the miraDry System and bioTips, and we may incur significant expenses to comply with, experience delays in our product commercialization as a result of, and be subject to material sanctions if we or our contract manufacturers violate these regulations.***

Our manufacturing processes and facilities are required to comply with the FDA's Quality System Regulation, or the QSR, which covers the procedures and documentation of the design, testing, production, control, quality assurance, labeling, packaging, sterilization, storage, and shipping of our devices. Although we believe we are compliant with the QSRs, the FDA enforces the QSR through periodic announced or unannounced inspections of manufacturing facilities. We have been, and anticipate in the future being, subject to such inspections, as well as to inspections by other federal and state regulatory agencies. We are required to register our manufacturing facility with the FDA and list all devices that are manufactured. We are also required to have a valid license with the California Food and Drug Branch. We also are an ISO 13485 certified facility and annual audits are required to maintain that certification. The suppliers of our components are also required to comply with the QSR and are subject to inspections. We have limited ability to ensure that any such third-party manufacturers will take the necessary steps to comply with applicable regulations, which could cause delays in the delivery of our products. Failure to comply with applicable FDA requirements, or later discovery of previously unknown problems with our products or manufacturing processes, including our failure or the failure of one of our third-party manufacturers to take satisfactory corrective action in response to an adverse QSR inspection, can result in, among other things:

- administrative or judicially-imposed sanctions;

- injunctions or the imposition of civil penalties;
- recall or seizure of our products;
- total or partial suspension of production or distribution;
- the FDA's refusal to grant future clearance or pre-market approval for our products;
- withdrawal or suspension of marketing clearances or approvals;
- clinical holds;
- warning letters;
- refusal to permit the import or export of our products; and
- criminal prosecution of us or our employees.

Any of these actions, in combination or alone, could prevent us from marketing, distributing, or selling our products and would likely harm our business.

In addition, a product defect or regulatory violation could lead to a government-mandated or voluntary recall by us. Regulatory agencies in other countries have similar authority to recall devices because of material deficiencies or defects in design or manufacture that could endanger health. Any recall would divert management attention and financial resources, could expose us to product liability or other claims, including contractual claims from parties to whom we sold products and harm our reputation with customers. A recall involving our miraDry System would be particularly harmful to our business and financial results and, even if we remedied a particular problem, would have a lasting negative effect on our reputation and demand for our products.

As a corrective action from a recent FDA inspection of our facility, we conducted a Class II recall, commonly called a field correction, in which we have provided a revised user manual to all customers in the United States. The revision in the manual includes a new warning about the type of skin lubricant that must be used when performing a miraDry procedure. We were required to conduct a similar field correction in certain countries, such as Taiwan, where our distributors sell the miraDry System. In certain other countries, such as the European Union and Canada, we were required to notify the regulatory agency of the update to the manual.

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

From time to time, legislation is drafted and introduced in the U.S. Congress that could significantly change the statutory provisions governing the regulatory clearance or approval, manufacture, and marketing of regulated products or the reimbursement thereof. In addition, FDA regulations and guidance are often revised or reinterpreted by the FDA in ways that may significantly affect our business and our products. For example, in the future, the FDA may require more burdensome premarket approval of our procedures rather than the 510(k) clearance process we have used to date and anticipate primarily using in the future. Our miraDry System is also subject to state regulations which are, in many instances, in flux. Any new regulations or revisions or reinterpretations of existing regulations may impose additional costs or lengthen review times of our products. We cannot determine what effect changes in regulations, statutes, legal interpretation or policies, when and if promulgated, enacted or adopted may have on our business. Such changes could, among other things, require:

- changes to manufacturing methods;
- recall, replacement, or discontinuance of certain products; and
- additional record keeping.

Each of these would likely entail substantial time and cost and could materially harm our financial results. In addition, delays in receipt of, or failure to receive, regulatory clearances or approvals for our new products would harm our business, financial condition, and results of operations.

Federal and state governments in the United States are also undertaking efforts to control growing health care costs through legislation, regulation, and voluntary agreements with medical care providers, and third-party payors. Congress enacted comprehensive health care reform legislation known as the Patient Protection and Affordable Care Act of 2010, or the PPACA. While the PPACA primarily involves expanding coverage to more individuals, it also includes new regulatory mandates and other measures designed to constrain medical costs.

***We may be subject to various federal and state laws pertaining to health care fraud and abuse, including anti-kickback, self-referral, false claims, and fraud laws, and any violations by us of such laws could result in fines or other penalties.***

Our commercial, research, and other financial relationships with healthcare providers and institutions may be subject to various laws intended to prevent health care fraud and abuse. Broad federal and state anti-kickback laws prohibits the offer, receipt, or payment of remuneration in exchange for or to induce the referral of patients or the use of products or services that would be paid for in whole or part by federal and state health care programs or private payors. Remuneration has been broadly defined to include anything of value, including cash, improper discounts, and free or reduced price items and services. Violations of these broad laws can result in substantial civil and criminal penalties.

Regulatory authorities have aggressively targeted medical technology companies for alleged violations of these anti-fraud statutes, based on improper research or consulting contracts with doctors, certain marketing arrangements that rely on volume-based pricing, off-label marketing schemes, and other improper promotional practices. Companies targeted in such prosecutions have paid substantial fines in the hundreds of millions of dollars or more, have been forced to implement extensive corrective action plans, and have often become subject to consent decrees severely restricting the manner in which they conduct their business. If we become the target of such an investigation or prosecution based on our contractual relationships with providers or institutions, or our marketing and promotional practices, we could face similar sanctions which would materially harm our business.

Also, the U.S. Foreign Corrupt Practices Act and similar anti-bribery laws of other countries generally prohibit companies and their intermediaries from making improper payments to foreign government officials for the purpose of obtaining or retaining business. Some of our distribution partners are located in parts of the world that have experienced governmental corruption to some degree and, in certain circumstances, strict compliance with anti-bribery laws may conflict with local customs and practices. We cannot guarantee that our internal control policies and procedures will protect us from reckless or negligent acts committed by our employees, distributors, partners, or agents. Violations of these laws, or allegations of such violations, could result in fines, penalties, or prosecution and have a negative impact on our business, results of operations and reputation.

***We are subject to numerous environmental, health and safety laws and regulations, and must maintain licenses or permits, and non-compliance with these laws, regulations, licenses, or permits may expose us to significant costs or liabilities.***

We are subject to numerous foreign, federal, state, and local environmental, health and safety laws and regulations relating to, among other matters, safe working conditions and environmental protection, including those governing the generation, storage, handling, use, transportation, and disposal of hazardous or potentially hazardous materials. Some of these laws and regulations require us to obtain licenses or permits to conduct our operations. Environmental laws and regulations are complex, change frequently and have tended to become more stringent over time. If we violate or fail to comply with these laws, regulations, licenses, or permits, we could be fined or otherwise sanctioned by regulators. We cannot predict the impact on our business of new or amended laws or regulations or any changes in the way existing and future laws and regulations are interpreted or enforced, nor can we ensure we will be able to obtain or maintain any required licenses or permits.

## **Risks Related to Our Intellectual Property**

***If we are unable to obtain, maintain, and enforce intellectual property protection covering our miraDry System and bioTips, others may be able to make, use, or sell products substantially the same as ours, which could adversely affect our ability to compete in the market.***

Our commercial success is dependent in part on obtaining, maintaining, and enforcing our intellectual property rights, including our patents. If we are unable to obtain, maintain, and enforce intellectual property protection covering our miraDry System and bioTips, others may be able to make, use, or sell products that are substantially the same as ours without incurring the sizeable development and licensing costs that we have incurred, which would adversely affect our ability to compete in the market.

We intend to obtain and maintain patents and other intellectual property rights to restrict the ability of others to market products that compete with our products. As of June 30, 2016, our patent portfolio is comprised of 20 issued U.S. patents, 50 issued foreign counterpart patents, 10 pending U.S. patent applications, 39 pending foreign counterpart patent applications, and one pending patent applications under the Patent Cooperation Treaty (PCT), each of which we own directly. However, patents may not be issued on any pending or future patent applications we file and, moreover, issued patents owned or licensed to us now or in the future may be found by a court to be invalid or otherwise unenforceable. Also, even if our patents are determined by a court to be valid and enforceable, they may not be drafted or interpreted sufficiently broadly to prevent others from marketing products and services similar to ours or designing around our patents, and they may not provide us with freedom to operate unimpeded by the patent rights of others.

We have a number of foreign patents and applications, and expect to continue to pursue patent protection in the jurisdictions in which we do or intend to do business. However, the laws of some foreign jurisdictions do not protect intellectual property rights to the same extent as laws in the U.S., and many companies have encountered significant difficulties in obtaining, protecting, and defending such rights in foreign jurisdictions. If we encounter such difficulties or we are otherwise precluded from effectively protecting our intellectual property rights in foreign jurisdictions, our business prospects could be substantially harmed. The patent positions of medical technology companies can be highly uncertain and involve complex legal and factual questions for which important legal principles remain unresolved. No consistent policy regarding the breadth of claims allowed in patents in these fields has emerged to date in the U.S. or in many foreign jurisdictions. Both the U.S. Supreme Court and the Court of Appeals for the Federal Circuit have made, and will likely continue to make, changes in how the patent laws of the U.S. 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. In addition, the U.S. Congress is currently considering legislation that would change provisions of the patent law. We cannot predict future changes U.S. and foreign courts may make in the interpretation of patent laws or changes to patent laws which might be enacted into law by U.S. and foreign legislative bodies. Those changes may materially affect our patents, our ability to obtain patents or the patents and applications of our collaborators and licensors.

Future protection for our proprietary rights is uncertain because legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep our competitive advantage, which could adversely affect our financial condition and results of operations. For example:

- others may be able to make systems or devices that are similar to ours but that are not covered by the claims of our patents;
- our pending patent applications may not result in issued patents;
- our issued patents may not provide us with any competitive advantages or may be held invalid or unenforceable as a result of legal challenges by third parties;
- the claims of our issued patents, or patent applications when issued, may not cover our miraDry System or the future products we develop;
- there may be dominating patents relevant to our technology of which we are not aware;
- there may be prior public disclosures that could invalidate our inventions, or parts of our inventions, of which we are not aware;
- the laws of foreign countries may not protect our proprietary rights to the same extent as the laws of the U.S.; and
- we may not develop additional proprietary technologies that are patentable.

From time to time, we analyze our competitors' products and services, and may in the future seek to enforce our patents or other rights to counter perceived infringement. However, infringement claims can be expensive and time-consuming. In addition, in an infringement proceeding, a court may decide that the patent we seek to enforce is invalid or unenforceable, or may refuse to stop the other party from using the technology at issue on the grounds that the patent in question does not cover the competitor's technology. An adverse result in any litigation could put one or more of our patents at risk of being invalidated or interpreted narrowly. Similarly, some of our competitors may be able to devote significantly more resources to intellectual property litigation, and may have significantly broader patent portfolios to assert against us if we assert our rights against them. Finally, because of the substantial discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be disclosed or otherwise compromised during this type of litigation.

***If we are unable to protect the confidentiality of our proprietary information and know-how, the value of our technology and products could be adversely affected.***

We rely on trade-secret protection to protect our interests in proprietary know-how and processes for which patents are difficult or impossible to obtain or enforce. For example, there are trade secrets related to the manufacturing of certain portions of our disposable bioTip products, the assembly and programming on the amplifier in our miraDry console and the tuning of certain components of our handpiece. We may not be able to protect our trade secrets adequately. We have limited control over the protection of trade secrets used by our third-party manufacturers and suppliers. Although we use reasonable efforts to protect our trade secrets, our employees, consultants, contractors and outside scientific advisors may unintentionally or willfully disclose our information to competitors. Enforcing a claim that a third party illegally obtained and is using any of our trade secrets is expensive and time consuming, and the outcome is unpredictable. In addition, courts outside the U.S. are sometimes less willing to protect trade secrets. We rely, in part, on non-disclosure and confidentiality agreements with our employees, consultants and other parties to protect our trade secrets and other proprietary technology. These agreements may be breached and we

may not have adequate remedies for any breach. We may now or in the future incorporate open source software in our products' firmware. Open source software licenses can be ambiguous, and there is a risk that these licenses could be construed to require us to disclose or publish, in source code form, some or all of our proprietary firmware code. Any disclosure of confidential information into the public domain or to third parties could allow our competitors to learn our trade secrets and use the information in competition against us, which could adversely affect our competitive advantage.

***Our miraDry System and any future products or services we develop could be alleged to infringe patent rights of others, which may require costly litigation and, if we are not successful, could cause us to pay substantial damages or limit our ability to commercialize our products.***

Our commercial success depends on our ability to develop, manufacture, and market our miraDry System without infringing the patents and other proprietary rights of third parties. As the medical technology industry expands and more patents are issued, the risk increases that there may be patents issued to third parties that relate to our products and technology of which we are not aware or that we must challenge to continue our operations as currently contemplated. Our products may infringe or may be alleged to infringe these patents.

In addition, because patent applications in the U.S. and many foreign jurisdictions are typically not published until eighteen months after filing (or, in some cases, are not published until they issue as patents) and because publications in the scientific literature often lag behind actual discoveries, we cannot be certain that others have not filed patent applications for technology covered by our issued patents or our pending applications. Another party may have filed, and may in the future file, patent applications covering our products or technology similar to ours. Any such patent application may have priority over our patent applications or patents, which could further require us to obtain rights to issued patents covering such technologies. If another party has filed a U.S. patent application on inventions similar to ours, we may have to participate in an interference proceeding declared by the Patent and Trademark Office, or PTO, to determine priority of invention in the U.S. The costs of these proceedings could be substantial, and it is possible that such efforts would be unsuccessful if the other party had independently arrived at the same or similar invention prior to our own invention, resulting in a loss of our U.S. patent position with respect to such inventions.

There is substantial litigation involving patent and other intellectual property rights in the medical technology industry generally. If a third party claims that we infringe its intellectual property rights, we may face a number of issues, including, but not limited to:

- infringement and other intellectual property claims which, regardless of merit, may be expensive and time-consuming to litigate and may divert our management's attention from our core business;
- substantial damages for infringement, which we may have to pay if a court decides that the product at issue infringes on or violates the third party's rights, and if the court finds that the infringement was willful, we could be ordered to pay treble damages and the patent owner's attorneys' fees;
- a court prohibiting us from selling or licensing our products unless the third party licenses its product rights to us, which it is not required to do at a commercially reasonable price, or at all;
- if a license is available from a third party, we may have to pay substantial royalties, upfront fees or grant cross-licenses to intellectual property rights for our products; and
- redesigning our products or processes so they do not infringe, which may not be possible, or may require substantial monetary expenditures and time, during which our products may not be available for sale.

Some of our competitors may be able to sustain the costs of complex patent litigation more effectively than we can because they have substantially greater resources. Even if resolved in our favor, litigation or other legal proceedings relating to intellectual property claims may cause us to incur significant expenses, and could distract our technical and management personnel from their normal responsibilities. In addition, there could be public announcements of the results of hearings, motions or other interim proceedings or developments and if securities analysts or investors perceive these results to be negative, it could have a substantial adverse effect on the price of our common stock. Finally, any uncertainties resulting from the initiation and continuation of any litigation could have a material adverse effect on our ability to raise the funds necessary to continue our operations.

### **Risks Related to Our Common Stock and the Offering**

***There is not now, and there may never be, an active, liquid and orderly trading market for our common stock, which may make it difficult to sell shares of our common stock.***

Our common stock is quoted on the OTC Markets Group Inc.'s over-the-counter inter-dealer quotation system, known as OTC Markets, and there is not now, nor has there been since our inception, any significant trading activity in our common stock or a market for shares of our common stock, and an active trading market for our shares may never develop or be sustained. As a result, investors in our common stock must bear the economic risk of holding those shares for an indefinite period of time. We do not now, and may not in the future, meet the initial listing standards of any national securities exchange, and our common stock may be quoted on the OTC Market's or another over-the-counter quotation system for the foreseeable future. In these marketplaces, our stockholders may find it difficult to obtain accurate quotations as to the market value of their shares of our common stock, and may find few buyers to purchase their stock and few market makers to support its price. As a result of these and other factors, investors may be unable to resell shares of our common stock at or above the price for which they purchased them, at or near quoted bid prices, or at all. Further, an inactive market may also impair our ability to raise capital by selling additional equity in the future, and may impair our ability to enter into strategic partnerships or acquire companies or products by using shares of our common stock as consideration.

***Our stock price may be volatile and investors may lose all or a part of their investment.***

The trading price of our common stock has been volatile and is likely to continue to be volatile. Among the factors that may cause the market price of our common stock to fluctuate are the risks described in this "Risk Factors" section and other factors, including:

- fluctuations in our operating results or the operating results of our competitors;
- changes in estimates of our financial results or recommendations or cessation of coverage by securities analysts;
- changes in the estimates of the future size and growth rate of our market opportunity;
- changes in accounting principles or changes in interpretations of existing principles, which could affect our financial results;
- conditions and trends in the markets we serve;
- adverse regulatory decisions;
- changes in general economic, industry, and market conditions;

- success of competitive technologies and procedures;
- changes in our pricing policies;
- announcements of significant new technologies, procedures, or acquisitions by us or our competitors;
- changes in legislation or regulatory policies, practices or actions;
- the commencement or outcome of litigation involving us, our general industry or both;
- recruitment or departure of our executives and other key employees;
- changes in our capital structure, such as future issuances of securities or the incurrence of debt;
- actual or expected sales of our common stock by the holders of our common stock; and
- the trading volume of our common stock.

In addition, the stock market in general, and the market for medical technology companies in particular, may experience a loss of investor confidence. A loss of investor confidence may result in extreme price and volume fluctuations in our common stock that are unrelated or disproportionate to the operating performance of our business, financial condition or results of operations. These broad market and industry factors may materially harm the market price of our common stock and expose us to securities class-action litigation. Class-action litigation, even if unsuccessful, could be costly to defend and divert management's attention and resources, which could further materially harm our financial condition and results of operations.

***Our common stock may be subject to the “penny stock” rules of the SEC, and the trading market in our common stock is limited, which makes transactions cumbersome and may reduce the value of an investment in the stock.***

Rule 15g-9 under the Securities Exchange Act of 1934, as amended, or the Exchange Act, establishes the definition of a “penny stock” for the purposes relevant to us, as any equity security that has a market price of less than \$5.00 per share or with an exercise price of less than \$5.00 per share, subject to certain exceptions. For any transaction involving a penny stock, unless exempt, the rules require: (i) that a broker or dealer approve a person's account for transactions in penny stocks in accordance with the provisions of Rule 15g-9; and (ii) the broker or dealer receive from the investor a written agreement to the transaction, setting forth the identity and quantity of the penny stock to be purchased, provided that any such purchase shall not be effected less than two business days after the broker or dealer sends such written agreement to the investor.

In order to approve a person's account for transactions in penny stocks, the broker or dealer must: (i) obtain financial information, investment experience and investment objectives of the person; and (ii) make a reasonable determination that the transactions in penny stocks are suitable for that person and the person has sufficient knowledge and experience in financial matters to be reasonably expected to be capable of evaluating the risks of transactions in penny stocks.

The broker or dealer must also deliver, prior to any transaction in a penny stock, a disclosure schedule prescribed by the SEC relating to the penny stock market, which: (i) sets forth the basis on which the broker or dealer made the suitability determination; and (ii) in highlight form, confirms that the broker or dealer received a signed, written agreement from the investor prior to the transaction. Generally, brokers may be less willing to execute

transactions in securities subject to the “penny stock” rules. This may make it more difficult for investors to dispose of our common stock and cause a decline in the market value of our common stock.

Disclosure also has to be made about the risks of investing in penny stocks in both public offerings and in secondary trading, the commissions payable to both the broker or dealer and the registered representative, current quotations for the securities and the rights and remedies available to an investor in cases of fraud in penny stock transactions. Finally, monthly statements must be sent disclosing recent price information for the penny stock held in the account and information regarding the limited market in penny stocks. As a result, if our common stock becomes subject to the “penny stock” rules, it may be more difficult to execute trades of our common stock which may have an adverse effect on the liquidity of our common stock.

***FINRA sales practice requirements may limit a stockholder’s ability to buy and sell our stock.***

The Financial Industry Regulatory Authority, or FINRA, has adopted rules requiring that, in recommending an investment to a customer, a broker-dealer must have reasonable grounds for believing that the investment is suitable for that customer. Prior to recommending speculative or low-priced securities to their non-institutional customers, broker-dealers must make reasonable efforts to obtain information about the customer’s financial status, tax status, investment objectives and other information. Under interpretations of these rules, FINRA has indicated its belief that there is a high probability that speculative or low-priced securities will not be suitable for at least some customers. These FINRA requirements may make it more difficult for broker-dealers to recommend that at least some of their customers buy our common stock, which may limit the ability of our stockholders to buy and sell our common stock and could have an adverse effect on the market for and the price of our common stock.

***If securities or industry analysts do not publish, or cease publishing, research, or publish inaccurate or unfavorable research about our business or our market, or if they change their recommendations regarding our stock adversely, our stock price and any trading volume could decline.***

Any trading market for our common stock that may develop will depend in part on the research and reports that securities or industry analysts publish about us or our business, markets or competitors. Securities and industry analysts do not currently, and may never, publish research on us or our business. If no securities or industry analysts commence coverage of us, the trading price for our stock would be negatively affected. If securities or industry analysts initiate coverage, and one or more of those analysts downgrade our stock or publish inaccurate or unfavorable research about our business or our market, our stock price would likely decline. If one or more of these analysts cease coverage of us or fail to publish reports on us regularly, demand for our stock could decrease, which might cause our stock price and any trading volume to decline.

***We may have material liabilities that were not discovered before, and have not been discovered since, the closing of the Merger.***

As a result of the Merger, the prior business plan and management relating to KTL Bamboo International Corp. was abandoned and replaced with the business and management team of Miramar. Prior to the Merger, there were no relationships or other connections among the businesses or individuals associated with the two pre-Merger entities. As a result, we may have material liabilities based on activities before the Merger that have not been discovered or asserted. We could experience losses as a result of any such undisclosed liabilities that are discovered in the future, which could materially harm our business and financial condition. Although the agreement entered into in connection with the Merger contains customary representations and warranties from KTL Bamboo International Corp. concerning its assets, liabilities, financial condition and affairs, there may be limited or no recourse against the pre-Merger stockholders or principals in the event those representations prove to be untrue. As a result, our current and future stockholders will bear some, or all, of the risks relating to any such unknown or undisclosed liabilities.

***We may be exposed to additional risks as a result of “going public” by means of a reverse acquisition transaction.***

We may be exposed to additional risks because the prior business operations of Miramar have become a public company through a “reverse acquisition” transaction. There has been increased focus by government agencies on transactions structured similarly to the Merger in recent years, and we may be subject to increased scrutiny by the SEC and other government agencies and holders of our securities as a result of the Merger. Further, as a result of our existence as a “shell company” under applicable rules of the SEC, prior to the closing of the Merger, we are subject to certain restrictions and limitations for certain specified periods of time relating to potential future issuances of our securities and compliance with applicable SEC rules and regulations. Additionally, our “going public” by means of a reverse acquisition transaction may make it more difficult for us to obtain coverage from securities analysts of major brokerage firms because of the perceived risk to those brokerage firms of recommending the purchase of our common stock. Further, investment banks may be less likely to agree to underwrite secondary offerings on our behalf than they might if we became a public reporting company by means of an initial public offering, or IPO, because they may be less familiar with us as a result of more limited coverage by analysts and the media, and because we became public at an early stage in our development. The failure to receive research coverage or support in the market for our shares will have an adverse effect on our ability to develop a liquid market for our common stock. The occurrence of any such event could cause our business or stock price to suffer.

***If we fail to implement and maintain proper and effective internal controls, our ability to produce accurate and timely financial statements could be impaired, which could harm our operating results, our ability to operate our business and investors’ views of us.***

We are required to comply with Section 404 of the Sarbanes-Oxley Act of 2002, as amended, or the Sarbanes-Oxley Act, subject to certain exceptions. Section 404 of the Sarbanes-Oxley Act requires public companies to conduct an annual review and evaluation of their internal controls and to obtain attestations of the effectiveness of internal controls by independent auditors. However, as discussed in detail below, as an emerging growth company and a smaller reporting company, we are not required to obtain an auditor attestation. As a private company, Miramar was not subject to requirements to establish, and did not establish, internal control over financial reporting and disclosure controls and procedures consistent with those of a public company. Our management team and board of directors will need to devote significant efforts to implementing and maintaining adequate and effective disclosure controls and procedures and internal control over financial reporting in order to comply with applicable regulations, which may include hiring additional legal, financial reporting and other finance and accounting staff. Any of our efforts to improve our internal controls and design, implement and maintain an adequate system of disclosure controls may not be successful and will require that we expend significant cash and other resources.

Under the Jumpstart Our Business Startups Act of 2012, or the JOBS Act, issuers that qualify as “emerging growth companies” under the JOBS Act are not required to provide an auditor’s attestation report on internal controls for so long as the issuer qualifies as an emerging growth company or a smaller reporting company. We currently qualify as an emerging growth company under the JOBS Act, and we may choose not to provide an auditor’s attestation report on internal controls. However, if we cannot favorably assess the effectiveness of our internal control over financial reporting, or if we require an attestation report from our independent registered public accounting firm in the future and that firm is unable to provide an unqualified attestation report on the effectiveness of our internal controls over financial reporting, investor confidence and, in turn, our stock price could be materially adversely affected.

Ensuring that we have adequate internal financial and accounting controls and procedures in place so that we can produce accurate financial statements on a timely basis is a costly and time-consuming effort that will need to be evaluated frequently. Our failure to maintain the effectiveness of our internal controls in accordance with the

requirements of the Sarbanes-Oxley Act could have a material adverse effect on the tradability of our common stock, which in turn would negatively impact our business. We could lose investor confidence in the accuracy and completeness of our financial reports, which could have an adverse effect on the price of our common stock. In addition, if our efforts to comply with new or changed laws, regulations, and standards differ from the activities intended by regulatory or governing bodies due to ambiguities related to practice, regulatory authorities may initiate legal proceedings against us and our business may be harmed.

We currently have a small team with primary responsibility for performing most of our accounting and financial reporting duties. As a result, certain aspects of internal accounting control which require adequate segregation of duties are missing. We believe we do not currently have sufficient accounting and supervisory personnel with the appropriate level of technical accounting experience and training necessary or adequate accounting policies, processes and procedures, particularly in the areas of revenue recognition, equity related transactions and other complex, judgmental areas for U.S. generally accepted accounting principles, or GAAP, financial reporting and SEC reporting purposes and consequently, we must rely on third party consultants. These deficiencies represent a material weakness (as defined under the Exchange Act) in our internal control over financial reporting in both design and operation. We may identify additional material weaknesses in the future. Under the Exchange Act, a material weakness is defined as a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of a company's annual or interim financial statements will not be prevented or detected on a timely basis by the company's internal controls. We are currently developing a plan to design, review, implement and refine internal control over financial reporting. However, we may identify deficiencies and weaknesses or fail to remediate previously identified deficiencies in our internal controls. If material weaknesses or deficiencies in our internal controls exist and go undetected or unremediated, our financial statements could contain material misstatements that, when discovered in the future, could cause us to fail to meet our future reporting obligations and cause the price of our common stock to decline.

***Being a public company is expensive and administratively burdensome.***

The costs of preparing and filing annual and quarterly reports, proxy statements and other information with the SEC and furnishing audited reports to stockholders are much greater than those of a privately-held company, and compliance with these rules and regulations will require us to hire additional financial reporting, internal controls and other finance personnel, and will involve a material increase in regulatory, legal and accounting expenses and the attention of management. There can be no assurance that we will be able to comply with the applicable regulations in a timely manner, if at all. In addition, being a public company makes it more expensive for us to obtain director and officer liability insurance. In the future, we may be required to accept reduced coverage or incur substantially higher costs to obtain this coverage. These factors could also make it more difficult for us to attract and retain qualified executives and members of our board of directors, particularly directors willing to serve on an audit committee.

***We are not subject to compliance with rules requiring the adoption of certain corporate governance measures and as a result our stockholders have limited protections against interested director transactions, conflicts of interest and similar matters.***

The Sarbanes-Oxley Act, as well as resulting rule changes enacted by the SEC, the New York Stock Exchange and the NASDAQ Stock Market, require the implementation of various measures relating to corporate governance. These measures are designed to enhance the integrity of corporate management and the securities markets and apply to securities which are listed on those exchanges. Because we are not listed on the NASDAQ Stock Market or the New York Stock Exchange, we are not presently required to comply with many of the corporate governance provisions and we have not yet adopted certain of these measures. Until we comply with such corporate governance measures, regardless of whether such compliance is required, the absence of such standards of corporate governance may leave

our stockholders without protections against interested director transactions, conflicts of interest and similar matters.

***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 are an “emerging growth company,” as defined in the JOBS Act, and may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not “emerging growth companies,” including not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, 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 because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.

We could be an emerging growth company for up to five years, although circumstances could cause us to lose that status earlier. We will remain an emerging growth company until the earlier of (1) the last day of the fiscal year (a) following the fifth anniversary of our first sale of common equity securities pursuant to an effective registration statement under the Securities Act, (b) in which we have total annual gross revenue of at least \$1.0 billion or (c) in which we are deemed to be a “large accelerated filer,” which means the market value of our common stock that is held by non-affiliates exceeds \$700 million as of the prior June 30th and (2) the date on which we have issued more than \$1.0 billion in non-convertible debt securities during the prior three-year period. We cannot predict if investors will find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may suffer or be more volatile.

In addition, Section 102 of the JOBS Act also provides that an “emerging growth company” can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act for complying with new or revised accounting standards. An “emerging growth company” can therefore delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. However, we are choosing to “opt out” of such extended transition period, and as a result, we will comply with new or revised accounting standards on the relevant dates on which adoption of such standards is required for non-emerging growth companies. Section 107 of the JOBS Act provides that our decision to opt out of the extended transition period for complying with new or revised accounting standards is irrevocable.

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

We are currently a “smaller reporting company,” meaning that we are not an investment company, an asset-backed issuer, or a majority-owned subsidiary of a parent company that is not a smaller reporting company and have a public float of less than \$75 million and annual revenues of less than \$50 million during the most recently completed fiscal year. In the event that we are still considered a “smaller reporting company” at such time we cease being an “emerging growth company,” we will be required to provide additional disclosure in our SEC filings. However, similar to “emerging growth companies,” “smaller reporting companies” are able to provide simplified executive compensation disclosures in their filings; are exempt from the provisions of Section 404(b) of the Sarbanes-Oxley Act requiring that independent registered public accounting firms provide an attestation report on the effectiveness of internal control over financial reporting; and have certain other decreased disclosure obligations in their SEC filings, including, among other things, only being required to provide two years of audited financial statements in annual reports and in a registration statement under the Exchange Act on Form 10. Decreased disclosures in our

SEC filings due to our status as a “smaller reporting company” may make it harder for investors to analyze our results of operations and financial prospects.

***We do not have a class of our securities registered under Section 12 of the Exchange Act. Until we do, or we become subject to Section 15(d) of the Exchange Act, we will be a “voluntary filer.”***

We are not currently required under Section 13 or Section 15(d) of the Exchange Act to file periodic reports with the SEC. We have in the past voluntarily elected to file some or all of these reports to ensure that sufficient information about us and our operations is publicly available to our stockholders and potential investors. Until we become subject to the reporting requirements under the Exchange Act, we are a “voluntary filer” and we are currently considered a non-reporting issuer under the Exchange Act. Until we become subject to the reporting requirements under either Section 13(a) or 15(d) of the Exchange Act, we are not subject to the SEC’s proxy rules, and large holders of our capital stock will not be subject to beneficial ownership reporting requirements under Sections 13 or 16 of the Exchange Act and their related rules. As a result, our stockholders and potential investors may not have available to them as much or as robust information as they may have if and when we become subject to those requirements. In addition, if we do not register under Section 12 of the Exchange Act, and remain a “voluntary filer,” we could cease filing annual, quarterly or current reports under the Exchange Act.

***Shares of our common stock that have not been registered under federal securities laws are subject to resale restrictions imposed by Rule 144, including those set forth in Rule 144(i) which apply to a former “shell company.”***

Prior to the closing of the Merger, we were deemed a “shell company” under applicable SEC rules and regulations because we had no or nominal operations and either no or nominal assets, assets consisting solely of cash and cash equivalents, or assets consisting of any amount of cash and cash equivalents and nominal other assets. Pursuant to Rule 144 promulgated under the Securities Act, sales of the securities of a former shell company, such as us, under that rule are not permitted (i) until at least 12 months have elapsed from the date on which our Current Report on Form 8-K reflecting our status as a non-shell company, was filed with the SEC; (ii) unless at the time of a proposed sale, we are subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act and have filed all reports and other materials required to be filed by Section 13 or 15(d) of the Exchange Act, as applicable, during the preceding 12 months, other than Form 8-K reports; or (iii) until the effectiveness of a registration statement under the Securities Act relating to our common stock. We are currently a “voluntary filer,” and upon effectiveness of a registration statement, or upon our becoming subject to the reporting rules under the Exchange Act, we will not be subject to the reporting requirements under the Exchange Act. Therefore, unless we register such shares of common stock for sale under the Securities Act, most of our stockholders will be forced to hold their shares of our common stock for at least that 12-month period before they are eligible to sell those shares, and even after that 12-month period, sales may not be made under Rule 144 unless we and the stockholders who plan to sell such shares are in compliance with other requirements of Rule 144. Further, it will be more difficult for us to raise funding to support our operations through the sale of debt or equity securities unless we agree to register such securities under the Securities Act, which could cause us to expend significant time and cash resources. Additionally, our previous status as a shell company could also limit our use of our securities to pay for any acquisitions we may seek to pursue in the future (although none are currently planned). The lack of liquidity of our securities as a result of the inability to sell under Rule 144 for a longer period of time than a non-former shell company could cause the market price of our securities to decline.

***Investors may experience dilution of their ownership interests because of the future issuance of additional shares of our common or preferred stock or other securities that are convertible into or exercisable for our common or preferred stock.***

In the future, we may issue our authorized but previously unissued equity securities, resulting in the dilution of the ownership interests of our existing stockholders. We are authorized to issue an aggregate of 100 million shares of common stock and 5 million shares of “blank check” preferred stock. We may issue additional shares of common stock or other securities that are convertible into or exercisable for common stock in connection with hiring or retaining employees, future acquisitions, future sales of our securities for capital raising purposes, or for other business purposes. The future issuance of any such additional shares of our common stock may create downward pressure on the trading price of the common stock. We may need to raise additional capital in the near future to meet our working capital needs, and there can be no assurance that we will not be required to issue additional shares, warrants or other convertible securities in the future in conjunction with these capital raising efforts.

Furthermore, in connection with the Private Placement, we entered into agreements containing certain anti-dilution provisions. Those anti-dilution provisions provide that, subject to certain exceptions, if we issue and sell common stock and common stock equivalents at a purchase price per share of lower than \$5.00 within the six month period following June 7, 2016, each investor in the Private Placement shall be entitled to receive such number of additional shares of our common stock as they would have received had such lower purchase price per share been applicable in the Private Placement, which could result in additional dilution and cause the market price of our securities to decline.

***Future sales of our common stock or securities convertible or exchangeable for our common stock, or the perception that such sales might occur, may cause our stock price to decline and may dilute your voting power and your ownership interest in us.***

If our existing stockholders or option holders sell, or indicate an intention to sell, substantial amounts of our common stock in the public market after the lock-up and legal restrictions on resale lapse, the price of our common stock could decline. The perception in the market that these sales may occur could also cause the price of our common stock to decline. We have entered into Registration Rights Agreement to register for resale under the Securities Act 1,978,567 shares of common stock, which we issued and sold in the Private Placement, 715,000 shares of our common stock that were held by one of our stockholders immediately prior to the closing of the Merger, 6,419,967 shares of our common stock, which we issued to former stockholders of Miramar Technologies, Inc. in connection with the closing of the Merger, and 17,504 shares of common stock issuable to holders of the warrants issued to placement agents in connection with the Private Placement. Such shares represent approximately 98% of the outstanding shares of common stock as of October 7, 2016. Upon the effectiveness of any such registration statement, or other registration statement we could elect to file with respect to any other outstanding shares of common stock, any sales of those shares or any perception in the market that such sales may occur could cause the trading price of our common stock to decline. As of the date of effectiveness of such registration statement, such shares registered for resale will be freely tradable without restriction, except for 9,051,804 shares of our common stock, which will become freely tradable upon the expiration of certain lock-up restrictions applicable to those shares, which prohibit their sale, disposition or other transfer for a period of six months following June 7, 2016; however, in the case of certain of our former shareholders, the lock-up restrictions prohibit the sale, disposition or other transfer of approximately 80% of such shareholder’s shares.

In addition, based on the number of shares subject to outstanding awards under our 2006 Stock Plan, or 2006 Plan, or available for issuance thereunder, at June 30, 2016, 1,482,249 shares of common stock that are either subject to outstanding options, outstanding but subject to vesting or reserved for future issuance under the 2006 Plan will become eligible for sale in the public market to the extent permitted by the provisions of various vesting schedules, the lock-up agreements and Rule 144 and Rule 701 under the Securities Act. As further described elsewhere in our Current Report on Form 8-K filed on June 13, 2016, as amended on June 14, 2016, we also plan to file a registration statement permitting shares of common stock issued in the future pursuant to the 2006 Plan to be freely resold by plan participants in the public market, subject to the lock-up agreements, applicable vesting schedules and, for shares held by directors, executive officers and other affiliates, volume limitations under Rule 144 under the Securities Act.

If the shares we may issue from time to time under the 2006 Plan are sold, or if it is perceived that they will be sold, by the award recipients in the public market, the price of our common stock could decline.

Holders of our common stock, including shares issuable upon exercise of our common stock warrants, are entitled to rights with respect to the registration of their shares under the Securities Act. Registration of these shares under the Securities Act would result in the shares becoming freely tradable without restriction under the Securities Act, except for shares purchased by affiliates, subject to the lock-up agreements described above in the section entitled “Market Price of and Dividends on Common Equity and Related Stockholder Matters — Lock-up Agreements.” Sales of such shares could also cause the price of our common stock to decline.

***We do not currently intend to pay dividends on our common stock and, consequently, investors’ ability to achieve a return on their investment will depend on appreciation in the price of our common stock.***

We have never paid cash dividends on our common stock and do not anticipate paying cash dividends on our common stock in the foreseeable future. We currently intend to invest our future earnings, if any, to fund the development and growth of our business. The payment of dividends will be at the discretion of our board of directors and will depend on our results of operations, capital requirements, financial condition, future prospects, restrictions imposed by applicable law, any limitations on payments of dividends present in any debt agreements we may enter into and other factors our board of directors may deem relevant. If we do not pay dividends, investors’ ability to achieve a return on their investment in us will depend on any future appreciation in the market price of our common stock. There is no guarantee that our common stock will appreciate in value or even maintain the price at which investors have purchased their common stock.

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

Our directors, executive officers and each of our stockholders who, as of October 7, 2016, owned greater than 5% of our outstanding common stock beneficially own approximately 94.76% of our common stock. Accordingly, these stockholders will continue to have significant influence over the outcome of corporate actions requiring stockholder approval, including the election of directors, merger, consolidation or sale of all or substantially all of our assets or any other significant corporate transaction. The interests of these stockholders may not be the same as or may even conflict with investors’ interests. For example, these stockholders could delay or prevent a change in control of us, even if such a change in control would benefit our other stockholders, which could deprive our stockholders of an opportunity to receive a premium for their common stock as part of a sale of the Company or our assets and might affect the prevailing price of our common stock. The significant concentration of stock ownership may negatively impact the price of our common stock due to investors’ perception that conflicts of interest may exist or arise.

***Anti-takeover provisions in our charter documents and under Delaware law could make an acquisition of us more difficult, limit attempts by our stockholders to replace or remove our current directors and management team, and limit the market price of our common stock.***

Our amended and restated certificate of incorporation and amended and restated bylaws contain provisions that may delay or prevent a change of control, discourage bids at a premium over the market price of our common stock, and adversely affect the market price of our common stock and the voting and other rights of the holders of our common stock. These provisions include:

- dividing our board into three classes, with each class serving a staggered three-year term;
- prohibiting our stockholders from calling a special meeting of stockholders or acting by written consent;

- permitting our board of directors to issue additional shares of our preferred stock, with such rights, preferences and privileges as they may designate, including the right to approve an acquisition or other changes in control;
- establishing an advance notice procedure for stockholder proposals to be brought before an annual meeting, including proposed nominations to our board of directors;
- providing that our directors may be removed only for cause;
- providing that vacancies on our board of directors may be filled only by a majority of directors then in office, even though less than a quorum; and
- requiring the approval of our board of directors or the holders of a supermajority of our outstanding shares of capital stock to amend our bylaws and certain provisions of our certificate of incorporation.

Although we believe these provisions collectively provide for an opportunity to receive higher bids by requiring potential acquirers to negotiate with our board of directors, they would apply even if the offer may be considered beneficial by some stockholders. In addition, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management team by making it more difficult for stockholders to replace members of our board, which is responsible for appointing the members of our management.

Moreover, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which prohibits a person who owns in excess of 15% of our outstanding voting stock from merging or combining with us for a period of three years after the date of the transaction in which the person acquired in excess of 15% of our outstanding voting stock, unless the merger or combination is approved in a prescribed manner. The restrictions contained in Section 203 are not applicable to any of our existing stockholders that will own 15% or more of our outstanding voting stock upon the closing of the Offering.

## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Prospectus contains forward-looking statements, including, without limitation, in the sections captioned “Description of Business,” “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Plan of Operations,” and elsewhere. Any and all statements contained in this Prospectus that are not statements of historical fact may be deemed forward-looking statements. Terms such as “may,” “might,” “would,” “should,” “could,” “project,” “estimate,” “pro-forma,” “predict,” “potential,” “strategy,” “anticipate,” “attempt,” “develop,” “plan,” “help,” “believe,” “continue,” “intend,” “expect,” “future” and terms of similar import (including the negative of any of the foregoing) may be intended to identify forward-looking statements. However, not all forward-looking statements may contain one or more of these identifying terms. Forward-looking statements in this Prospectus may include, without limitation, statements regarding (i) the plans and objectives of management for future operations, including plans or objectives relating to the development of our miraDry System, (ii) a projection of income (including income/loss), earnings (including earnings/loss) per share, capital expenditures, dividends, capital structure or other financial items, (iii) our future financial performance, including any such statement contained in a discussion and analysis of financial condition by management or in the results of operations included pursuant to the rules and regulations of the Securities and Exchange Commission, or the SEC, and (iv) the assumptions underlying or relating to any statement described in points (i), (ii) or (iii) above.

The forward-looking statements are not meant to predict or guarantee actual results, performance, events or circumstances and may not be realized because they are based upon our current projections, plans, objectives, beliefs, expectations, estimates and assumptions and are subject to a number of risks and uncertainties and other influences, many of which we have no control over. Actual results and the timing of certain events and circumstances may differ materially from those described by the forward-looking statements as a result of these risks and uncertainties. Factors that may influence or contribute to the inaccuracy of the forward-looking statements or cause actual results to differ materially from expected or desired results may include, without limitation:

- market acceptance of the miraDry energy based treatment;
- the benefits of the miraDry treatment versus other solutions;
- our ability to successfully sell and market the miraDry System in our existing and expanded geographies;
- the performance of the miraDry System in clinical settings;
- competition from existing technologies or products or new technologies and products that may emerge;
- the implementation of our business model and strategic plans for our business and the miraDry System;
- the scope of protection we are able to establish and maintain for intellectual property rights covering the miraDry System;
- our ability to obtain regulatory approval in targeted markets for the miraDry System;
- estimates of our future revenue, expenses, capital requirements and our need for additional financing;
- our financial performance;
- developments relating to our competitors and the healthcare industry; and
- other risks and uncertainties, including those listed under the section titled “Risk Factors.”

Readers are cautioned not to place undue reliance on forward-looking statements because of the risks and uncertainties related to them and to the risk factors. We disclaim any obligation to update the forward-looking statements contained in this Prospectus to reflect any new information or future events or circumstances or otherwise, except as required by law.

Readers should read this Prospectus in conjunction with the discussion under the caption “Risk Factors,” our financial statements and the related notes thereto in this Prospectus, and other documents which we may file from time to time with the SEC.

## **USE OF PROCEEDS**

We are registering the shares of common stock issued or issuable to the selling stockholders to permit the resale of these shares of common stock by the selling stockholders from time to time after the date of this Prospectus. We will not receive any proceeds from the sale of our common stock offered by the selling stockholders under this Prospectus. The selling stockholders will receive all of the proceeds from this offering, if any. We may, however, receive proceeds from warrants exercised by selling stockholders in the event that such warrants are exercised for cash.

We will bear all fees and expenses incident to our obligation to register the shares of our common stock being offered for resale hereunder by the selling stockholders.

## **MARKET PRICE OF AND DIVIDENDS ON COMMON EQUITY AND RELATED STOCKHOLDER MATTERS**

Our common stock is quoted on the OTC Markets (OTCQB) under the symbol “MRLB,” which changed from “KTLC” on June 15, 2016.

Our common stock is currently eligible for quotation for trading on OTC Markets, OTCQB tier of OTC Markets Group, Inc. under the ticker symbol “MRLB.” To date, there has been very limited trading for our common stock on the OTC Markets. For the quarter ended June 30, 2016, the high and low closing bid quotations for our common stock, as reported by the OTC Markets, was both \$5.00. On October 13, 2016, the last quoted sale price for our common stock as reported on the OTCQB tier was \$5.60 per share. As of October 7, 2016, there are: (i) outstanding options to purchase 1,369,277 shares of our common stock; (ii) outstanding warrants to purchase 84,428 shares of our common stock; and (iii) 9,380,653 outstanding shares of our common stock, 6,419,967 of which were issued to former stockholders of Miramar Technologies, Inc. in connection with the Merger, and 1,978,567 of which were issued and sold in the Private Placement.

As of October 7, 2016, we have 9,380,653 shares of common stock outstanding held by 53 stockholders of record.

### **Dividend Policy**

We have never paid any cash dividends on our capital stock and do not anticipate paying any cash dividends on our common stock in the foreseeable future. We intend to retain future earnings to fund ongoing operations and future capital requirements. Any future determination to pay cash dividends will be at the discretion of our board of directors and will be dependent upon financial condition, results of operations, capital requirements and such other factors as the board of directors deems relevant.

### **Shares Eligible for Future Sale**

Future sales of our common stock, including shares issued upon the exercise of outstanding options or warrants, in the public market, or the perception that those sales may occur, could cause the prevailing price for our common stock to fall or impair our ability to raise equity capital in the future. As described below, only a limited number of shares of our common stock is currently available for sale in the public market due to contractual and legal restrictions on resale described below. Future sales of our common stock in the public market either before (to the extent permitted) or after restrictions lapse, or the perception that those sales may occur, could adversely affect the prevailing price of our common stock at such time and our ability to raise equity capital at a time and price we deem appropriate.

As of October 7, 2016, we had 9,380,653 shares of common stock outstanding, of which our directors and executive officers beneficially own an aggregate of 8,086,884 shares. All shares issued in connection with the Merger and the Private Placement were issued as restricted securities, and as such none of those shares can be publicly sold unless and until they become eligible for sale under Rule 144 promulgated under the Securities Act or they are registered for resale under an effective registration statement under the Securities Act. We are registering under the registration statement for which this Prospectus forms a part the shares issued in connection with the Merger and the Private Placement.

### **Lock-up Agreements**

In connection with the Merger, holders of 9,051,804 of our common stock have agreed, subject to certain exceptions, not to dispose of or hedge any shares of common stock or securities convertible into or exchangeable

for shares of common stock during the period from the date of the lock-up agreement continuing through the date six months after the date of the closing of the Merger, subject to earlier termination (a) upon listing of the common stock on a securities exchange or (b) with the prior written consent of the lead underwriter of any underwritten public offering of our securities for gross proceeds of at least \$25 million.

The foregoing description of the lock-up agreement does not purport to be complete, and is qualified in its entirety by the complete form of lock-up agreement included as an exhibit to the Securities Purchase Agreement entered in connection with the Private Placement attached as an exhibit to this Prospectus.

#### **Rule 144**

Pursuant to Rule 144 promulgated under the Securities Act, sales of the securities of a former shell company, such as us, are not permitted (i) until at least 12 months have elapsed from the date on which we filed our Current Report on Form 8-K on June 13, 2016, reflecting our status as a non-shell company, is filed with the SEC and (ii) unless at the time of a proposed sale, we are subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act and have filed all reports and other materials required to be filed by Section 13 or 15(d) of the Exchange Act, as applicable, during the preceding 12 months, other than Form 8-K reports. We intend to register shares of our common stock under the Securities Act, but are currently a “voluntary filer” and are not subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act. As a result, unless we register such shares for sale under the Securities Act, most of our stockholders will be forced to hold their shares of our common stock for at least that 12-month period before they are eligible to sell those shares, and even after that 12-month period, sales may not be made under Rule 144 unless we and the stockholders who plan to sell are in compliance with other requirements of Rule 144.

In general, Rule 144 provides that (i) any of our non-affiliates that has held restricted common stock for at least 12 months is thereafter entitled to sell its restricted stock freely and without restriction, provided that we remain compliant and current with our SEC reporting obligations, and (ii) any of our affiliates, which includes our directors, executive officers and other person in control of us, that has held restricted common stock for at least 12 months is thereafter entitled to sell its restricted stock subject to the following restrictions: (a) we are compliant and current with our SEC reporting obligations, (b) certain manner of sale provisions are satisfied, (c) a Form 144 is filed with the SEC, and (d) certain volume limitations are satisfied, which limit the sale of shares within any three-month period to a number of shares that does not exceed the greater of 1% of the total number of outstanding shares. A person who has ceased to be an affiliate at least three months immediately preceding the sale and who has owned such shares of common stock for at least one year is entitled to sell the shares under Rule 144 without regard to any of the limitations described above.

#### **Regulation S**

Regulation S under the Securities Act provides that shares owned by any person may be sold without registration in the U.S., provided that the sale is effected in an offshore transaction and no directed selling efforts are made in the U.S. (as these terms are defined in Regulation S), subject to certain other conditions. In general, this means that our shares of common stock may be sold in some other manner outside the U.S. without requiring registration in the U.S.

#### **Rule 701**

In general, under Rule 701 as currently in effect, any of our employees, directors, officers, consultants or advisors who acquired common stock from us in connection with a written compensatory stock or option plan or other written agreement, in compliance with Rule 701 under the Securities Act, before the effective date of the Merger (to the extent such common stock is not subject to a lock-up agreement) is entitled to rely on Rule 701 to resell such

shares beginning 90 days after we become subject to the public company reporting requirements of the Exchange Act in reliance on Rule 144, but without compliance with the holding period requirements contained in Rule 144. Accordingly, subject to any applicable lock-up agreements, beginning 90 days after we become subject to the public company reporting requirements of the Exchange Act, under Rule 701, persons who are not our “affiliates,” as defined in Rule 144, may resell those shares without complying with the minimum holding period or public information requirements of Rule 144, and persons who are our “affiliates” may resell those shares without compliance with Rule 144’s minimum holding period requirements (subject to the terms of the lock-up agreement referred to above, if applicable).

### **Registration Rights**

Certain holders of shares of our common stock are entitled to various rights with respect to the registration of such shares under the Securities Act. Registration of these shares under the Securities Act would result in these shares becoming fully tradable without restriction under the Securities Act immediately upon the effectiveness of the registration, except for shares purchased by affiliates. See “Description of Capital Stock — Registration Rights” for additional information.

### **Securities Authorized for Issuance under 2006 Stock Plan**

Miramar’s board of directors adopted, and Miramar’s stockholders approved the Miramar Labs, Inc. 2006 Stock Plan, or the 2006 Plan, in April 2006. The 2006 Plan was most recently amended in June 2016 and our board of directors assumed the 2006 Plan in connection with the Merger. The 2006 Plan allows for the grant of incentive stock options, within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended, to our employees and our parent and subsidiary corporations’ employees, and for the grant of nonstatutory stock options and restricted stock purchase rights to our employees, directors and consultants and our parent and subsidiary corporations’ employees, directors and consultants. See “Executive Compensation — Employee Benefit and Stock Plans.”

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*The following management's discussion and analysis should be read in conjunction with the historical financial statements and the related notes thereto contained in this Prospectus. The management's discussion and analysis contains forward-looking statements, such as statements of our plans, objectives, expectations and intentions. Any statements that are not statements of historical fact are forward-looking statements. When used, the words "believe," "plan," "intend," "anticipate," "target," "estimate," "expect" and the like, and/or future tense or conditional constructions ("will," "may," "could," "should," etc.), or similar expressions, identify certain of these forward-looking statements. These forward-looking statements are subject to risks and uncertainties, including those under "Risk Factors" in this Prospectus that could cause actual results or events to differ materially from those expressed or implied by the forward-looking statements. Our actual results and the timing of events could differ materially from those anticipated in these forward-looking statements as a result of several factors. We do not undertake any obligation to update forward-looking statements to reflect events or circumstances occurring after the date of this Prospectus.*

As a result of the Merger and the Split-Off, we discontinued our pre-Merger business and acquired the business of Miramar and will continue the existing business operations of Miramar as a publicly-traded company under the name Miramar Labs, Inc. See "Merger" below for more information on the Merger and Split-Off.

As the result of the Merger and the change in our business and operations, a discussion of our past financial results is not pertinent, and under applicable accounting principles, the historical financial results of Miramar, the accounting acquirer, prior to the Merger are considered our historical financial results.

The following discussion highlights Miramar's results of operations and the principal factors that have affected our financial condition as well as our liquidity and capital resources for the periods described, and provides information that management believes is relevant for an assessment and understanding of the statements of financial condition and results of operations presented herein. The following discussion and analysis are based on Miramar's audited and unaudited financial statements contained in this Prospectus, which we have prepared in accordance with GAAP. You should read the discussion and analysis together with such financial statements and the related notes thereto.

## **Basis of Presentation**

The audited consolidated financial statements of Miramar for the fiscal years ended December 31, 2015 and 2014, and the unaudited consolidated condensed financial statements of Miramar for the six months ended June 30, 2016 and 2015, contained herein include a summary of our significant accounting policies and should be read in conjunction with the discussion below. In the opinion of management, all material adjustments necessary to present fairly the results of operations for such unaudited interim periods have been included in these unaudited financial statements. All such adjustments are of a normal recurring nature.

## **Company Overview**

We are a medical technology company focused on developing and commercializing products utilizing our proprietary microwave technology platform.

Our first commercial product, the miraDry System, is designed to ablate axillary, or underarm, sweat glands through the precise and non-invasive delivery of energy to the region where sweat glands reside. The energy generates heat which results in thermolysis of the sweat glands. At the same time, a continuous hydro-ceramic cooling system protects the superficial dermis and keeps the heat focused at the sweat glands. Because sweat glands do not regenerate after the treatment, we believe the results are lasting. Microwaves are the ideal technology as the energy can be focused directly at the fat and dermal junction where the glands reside.

We received clearance from the FDA in January 2011 and received CE mark approval in December 2013 to market miraDry for the treatment of primary axillary hyperhidrosis and for axillary hair removal in June 2015. We sell our miraDry System to dermatologists, plastic surgeons, aesthetic specialists and physicians specializing in the treatment of hyperhidrosis. We generate revenue from sales of our miraDry System and the sale of consumables to our customers who are required to use a new consumable for each patient they treat.

As of June 30, 2016, we had an installed base of approximately 800 miraDry Systems worldwide and over 70,000 miraDry procedures have been performed. We generated revenues of \$17.2 million for the year ended December 31, 2015, \$11.7 million, and \$8.0 million for the six months ended June 30, 2016 and 2015, respectively. We had net losses of \$14.5 million, \$13.1 million and \$8.0 million, respectively, for the same periods. The net losses in 2016 included a non-cash charge of \$8.0 million for the loss associated with the debt conversion as part of the Merger.

We utilize our direct sales organization to selectively market and sell miraDry in our North American market, which includes the U.S. and Canada. In our markets located outside of North America, we market and sell miraDry through a network of distributors. Our sales force and distributors primarily target dermatologists, plastic surgeons, aesthetic specialists and physicians specializing in the treatment of hyperhidrosis who express a willingness to position miraDry as a premium and differentiated treatment and to participate in our global marketing and support programs.

Revenues from markets outside of North America comprised 57% of our total revenues for the year ended December 31, 2015 and 57% for the six months ended June 30, 2016. We are approved to sell our miraDry system in over 40 international markets outside of North America in Asia, Europe, the Middle East and South America.

We are driving growth in miraDry procedures through our physician marketing programs, which provide physicians with sales training, practice marketing, and support services through our direct selling in North America. For sales outside of North America, we are working with our distributors by sharing our marketing materials and programs that may be applicable to certain markets in addition to investing in marketing support in each of these markets. After we establish a significant installed base of miraDry Systems in specific markets, we plan to use targeted consumer marketing, advertising, and promotional activities in these markets to increase demand for miraDry.

Our business is dependent upon the success of miraDry, and we cannot guarantee that we will be successful in significantly expanding physician and patient demand for miraDry procedures. In addition, we will continue to incur significant expenses for the foreseeable future as we expand our commercialization and other business activities, and as a result, we cannot guarantee that we will be able to achieve or maintain our profitability.

We expect to continue to incur significant expenses and operating losses for the foreseeable future. We expect our expenses will increase in connection with our ongoing activities as we:

- increase sales and marketing personnel to support our targeted sales growth particularly in the U.S. and expansion in Asia;
- add personnel and outside services to support our product development and clinical efforts;
- seek regulatory approval of new products and indications in the U.S. and in foreign countries;
- scale our manufacturing operations; and
- operate as a public company.

Accordingly, we may seek to fund our operations through public or private equity financings, debt financings or other sources. However, we may be unable to raise additional funds or enter into such other arrangements when needed on favorable terms, if at all. Our failure to raise capital or enter into such other arrangements as and when needed would have a negative impact on our financial condition and our ability to develop enhancements to and integrate new applications into our miraDry System.

### ***Merger***

On June 7, 2016, we entered into an Agreement and Plan of Merger and Reorganization, or the Merger Agreement with the Acquisition Sub and Miramar. Pursuant to the Merger Agreement, the Acquisition Sub merged with and into Miramar and Miramar became the surviving corporation and thus became our wholly-owned subsidiary. On June 7, 2016, we adopted the Amended and Restated Certificate of Incorporation by filing our Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware and adopted our Amended and Restated Bylaws. Upon effectiveness of the Amended and Restated Certificate of Incorporation, we decreased our authorized capital stock from 300 million shares of common stock, par value \$0.001 per share, and 10 million shares of “blank check” preferred stock, par value \$0.001 per share, to 100 million shares of common stock, par value \$0.001 per share, and 5 million shares of “blank check” preferred stock, par value \$0.001 per share.

Immediately prior to the closing of the Merger, under the terms of the Split-Off Agreement, dated June 7, 2016, we transferred all of our pre-Merger operating assets and liabilities to our wholly-owned special-purpose subsidiary and thereafter, transferred all of the outstanding shares of capital stock of the special-purpose subsidiary to the pre-Merger majority stockholder, and our former sole officer and director in exchange for the surrender and cancellation of an aggregate of 3,603,602 shares of our common stock (which were cancelled and will resume the status of authorized but unissued shares of our common stock).

At June 7, 2016, each of the shares of Miramar’s common stock and preferred stock issued and outstanding immediately prior to the closing of the Merger was converted into shares of our common stock at a ratio of 1:0.07393. Additionally, warrants to purchase shares of Miramar’s preferred stock issued and outstanding immediately prior to the closing of the Merger were converted into warrants to purchase shares of our common stock at the same ratio. As a result, an aggregate of 6,486,891 shares of our common stock and warrants to purchase our common stock were issued to the holders of Miramar’s capital stock and warrants which included shares resulting from the conversion

of certain existing convertible promissory notes. Finally, 11,603,764 options to purchase shares of Miramar's common stock issued and outstanding immediately prior to the closing of the Merger were assumed and converted into 857,634 options to purchase shares of our common stock, after taking into account the above conversion ratio.

### ***Private Placement***

On June 7, 2016, June 30, 2016, July 21, 2016 and August 8, 2016, we conducted a private placement offering, or the Private Placement, of our securities for approximately \$9.9 million through the sale of 1,978,567 shares of our common stock, at an offering price of \$5.00 per share before deducting placement agent fees and expenses of the offerings. Existing Miramar investors purchased \$8.5 million of shares in the Private Placement. Certain shareholders of KTL Bamboo International Corp. retained, after giving effect to the Split-Off, 900,000 shares of our common stock upon the Private Placement.

## **Components of Statements of Operations**

### ***Revenue***

Product revenue consists of sales of miraDry Systems, as well as consumables (referred to as bioTips), accessories, warranty, service and freight charges, net of returns, discounts and allowances. Once a sales order is negotiated and received by customer service, the product can be shipped generally at the time the order is received or when the financial considerations are met. Installation and training are coordinated with customers in accordance with their availability but generally completed within a week or two of the shipment.

Standard warranties are offered at no cost to customers to cover parts, labor and maintenance for up to two years for product defects. In addition, we offer extended warranty or post-installation service and support contracts that provide various levels of service support, which enables our customers to select the level of on-going support services, including parts and labor, which they require. These post-installation contracts are for a period of one to two years. Revenue for extended warranty and service contracts is recognized on a straight-line basis over the term during which the contracted services are provided.

### ***Cost of Revenue***

Product cost of revenue primarily consists of the cost of materials, labor and overhead associated with the manufacture of the miraDry Systems and bioTips, as well as variable manufacturing costs and royalty payments to The Foundry, LLC, or The Foundry, who has assigned and licensed certain patents and technology relating to the field of energy-based health treatments to us.

We expect our cost of revenue per unit to decrease as we continue to scale our operations, improve product designs and work with our third-party suppliers to lower costs.

### ***Operating Expenses***

#### ***Research and Development***

Research and development, or R&D expenses consist primarily of compensation and related costs for personnel, including stock-based compensation and employee benefits. Other significant R&D costs include third-party consulting services, laboratory supplies, research materials and supplies, and depreciation and amortization of medical and computer equipment and software. We expense R&D expenses as incurred. As we continue to invest in improving the miraDry System and developing our technology for new products, we expect R&D expenses to increase in absolute dollars but to decline as a percent of revenue.

### *Sales and Marketing*

Sales and marketing expenses consist primarily of compensation and related costs for personnel, including stock-based compensation, employee benefits and travel associated with our direct sales force, practice development managers, sales management and our marketing personnel. Sales and marketing expenses also include costs associated with our support of business development efforts with distributors in Europe and Asia, and costs related to trade shows and marketing programs. Marketing programs include reimbursement to customers for qualified submissions of marketing expenses with a separately identifiable benefit, and where they provide us evidence of payment. We expense sales and marketing costs as incurred. We expect sales and marketing expenses to increase in future periods as we grow revenue and expand our sales force and our marketing organization, in addition to increased participation in global trade shows and marketing programs, including consumer marketing.

### *General and Administrative*

Our general and administrative expenses consist primarily of compensation and related costs for personnel, including stock-based compensation, employee benefits and travel. In addition, general and administrative expenses include the medical device tax fee (through December 2015), third-party consulting (including legal, audit, accounting and tax services), and allocations of overhead costs, such as rent, facilities and information technology. We expect general and administrative expenses to increase in absolute dollars due to additional legal, accounting, insurance, investor relations and other costs associated with being a public company, as well as other costs associated with growing our business.

### *Interest Income*

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

### *Interest Expense*

Interest expense consists primarily of interest and amortization of related costs associated with the senior debt with Silicon Valley Bank Financial Group and Oxford Finance, or together, SVB/Oxford. Additionally it includes interest expense associated with financing leases for certain equipment in our business, short term financing agreements for insurance premiums, bridge loan financing and royalty payables with The Foundry.

### *Loss on Debt Conversion*

The loss on debt conversion consists of losses incurred upon the conversion of convertible promissory notes into common stock in conjunction with the Merger in June 2016.

### *Other Income, Net*

Other income (expense), net consists primarily of the re-measurement of outstanding convertible preferred stock warrants at each balance sheet date. Additionally, it includes gains and losses from the disposal of fixed assets and foreign currency exchange gains and losses.

## **Results of Operations**

The following tables set forth our results of operations for the periods presented:

	Six Months Ended June 30,		Years Ended December 31,	
	2016	2015	2015	2014
	(Unaudited)			
<b>Revenue</b>	\$ 11,732,031	\$ 8,029,079	\$ 17,199,511	\$ 16,065,185
<b>Cost of revenue</b>	5,423,339	4,002,941	8,257,048	8,757,950
Gross margin	6,308,692	4,026,138	8,942,463	7,307,235
<b>Operating expenses:</b>				
Research and development	1,744,993	2,749,340	4,974,120	5,293,804
Sales and marketing	6,526,272	6,244,210	11,757,734	11,214,027
General and administrative	2,845,252	2,594,387	5,468,916	5,465,970
Total operating expenses:	11,116,517	11,587,937	22,200,770	21,973,801
Loss from operations	(4,807,825)	(7,561,799)	(13,258,307)	(14,666,566)
Interest income	3,729	3,787	5,931	12,383
Interest expense	(663,047)	(543,818)	(1,295,930)	(992,970)
Loss on debt conversion	(8,062,001)	—	—	—
Other income, net	448,076	76,852	62,780	309,560
Loss before provision for income taxes	(13,081,068)	(8,024,978)	(14,485,526)	(15,337,593)
Provision for income taxes	(1,525)	(1,425)	(8,722)	(10,344)
Net and comprehensive loss	(13,082,593)	(8,026,403)	(14,494,248)	(15,347,937)
Accretion of redeemable convertible preferred stock	—	(43,117)	(3,117)	(324,937)
Net loss attributable to common stockholders	\$ (13,082,593)	\$ (8,069,520)	\$ (14,497,365)	\$ (15,672,874)
Net loss per share attributable to common stockholders, basic and diluted	\$ (9.42)	\$ (20.95)	\$ (37.33)	\$ (41.29)

### Comparison of the Six Months Ended June 30, 2016 and 2015

#### Revenue

	Six Months Ended June 30,		
	2016	2015	Change
Capital systems	\$ 6,459,435	\$ 4,216,415	\$ 2,243,020
Consumable	4,945,005	3,559,282	1,385,723
Other	327,591	253,382	74,209
Total revenue	\$ 11,732,031	\$ 8,029,079	\$ 3,702,952

Total revenue during the six months ended June 30, 2016 increased by \$3.7 million compared to the six months ended June 30, 2015. Sales of capital systems increased by \$2.2 million for the six months ended June 30, 2016 over the same period in the prior year. North America capital systems sales increased by \$0.7 million for the six months ended June 30, 2016 as compared to the same period for 2015 as we continued to see gains in system sales as a result of increased market awareness. Asia capital sales increased by \$1.6 million for the six months ended June 30, 2016 as compared to the same period for 2015, primarily due to shipments to China. Sales of consumables increased by \$1.4 million for the six months ended June 30, 2016 as compared to the same period for 2015, primarily due to increased utilization in North America and Europe and the increase in our installed base. Other revenue, which primarily consists of revenue from extended warranty agreements and service contracts,

reflected growth of 29.3% for the six months ended June 30, 2016 as compared to the same period for 2015 due to an increasing number of capital systems in the field beyond their original warranty period for which customers had to extend warranty agreements or service contracts, or pay for servicing of their systems as the original warranty period had expired already.

### ***Cost of Revenue/Gross Margin***

	Six Months Ended June 30,		
	2016	2015	Change
Capital systems cost of revenue	\$ 4,606,034	\$ 3,543,426	\$ 1,062,608
Consumable cost of revenue	473,561	227,341	246,220
Royalty	343,744	232,174	111,570
Total cost of revenue	<u>\$ 5,423,339</u>	<u>\$ 4,002,941</u>	<u>\$ 1,420,398</u>
Gross margin %	53.8%	50.1%	3.7%

Cost of revenue increased by \$1.4 million during the six months ended June 30, 2016 compared to the six months ended June 30, 2015. Gross margin percentage for the six months ended June 30, 2016 was 53.8%, reflecting an increase over the same period in the prior year of 3.7%. The increase in gross margin for both the second quarter and year-to-date is primarily attributable to a higher percentage of sales for North America and Asia in 2016, where we have higher selling prices, as well as lower cost of revenue per unit of our capital systems due to higher production volumes and favorable labor efficiencies in 2016 as compared to 2015. We currently expect that cost of revenue on current orders will show improvements from historic costs due to scaling of our operation closer to the optimal capacity of our facilities, introducing cost improvements from R&D, and increasing our production efficiencies.

### ***Operating Expenses***

	Six Months Ended June 30,		
	2016	2015	Change
Research and development	\$ 1,744,993	\$ 2,749,340	\$ (1,004,347)
Sales and marketing	6,526,272	6,244,210	282,062
General and administrative	2,845,252	2,594,387	250,865
Total operating expenses	<u>\$ 11,116,517</u>	<u>\$ 11,587,937</u>	<u>\$ (471,420)</u>

*Research and Development.* R&D expenses during the six months ended June 30, 2016 totaled \$1.7 million. This reflects a decrease of \$1.0 million compared to the six months ended June 30, 2015. This decrease was primarily attributable to lower headcount and lower compensation, outside services and supplies due to reduced clinical studies.

*Sales and Marketing.* Sales and marketing expenses during the six months ended June 30, 2016 totaled \$6.5 million. This reflects an increase of \$0.3 million, compared to the six months ended June 30, 2015. This increase was primarily attributable to an increase in compensation, travel and entertainment and marketing expenses associated with higher sales.

*General and Administrative.* General and administrative expenses during the six months ended June 30, 2016 totaled \$2.8 million. This represents an increase of \$0.3 million, compared to the six months ended June 30, 2015. This increase was primarily due to increased outside contractor and support costs related to our Merger.

### *Interest Expense*

	Six Months Ended June 30,		
	2016	2015	Change
Interest expense	\$ 663,047	\$ 543,818	\$ 119,229

Interest expense increased by \$0.1 million during the six months ended June 30, 2016 compared to the six months ended June 30, 2015, which was primarily due to funds borrowed from convertible note agreements with current investors from December 2015 through June 2016, which were converted in June 2016 to common stock in conjunction with the Merger.

### *Other Income, Net*

	Six Months Ended June 30,		
	2016	2015	Change
Other income, net	\$ 448,076	\$ 76,852	\$ 371,224
Loss on debt conversion	(8,062,001)	—	(8,062,001)

Other income, net, increased by \$0.4 million during the six months ended June 30, 2016 compared to the six months ended June 30, 2015, primarily due to the revaluation of the convertible preferred stock warrants in conjunction with the Merger in June 2016. In the six months ended June 30, 2016, we also recorded a non-recurring non-cash charge for the loss on the conversion of debt to equity as part of our Merger that was completed in June 2016.

### **Comparison of the Years Ended December 31, 2015 and 2014**

#### *Revenue*

	Years Ended December 31,		
	2015	2014	Change
Capital systems	\$ 9,343,283	\$ 10,822,235	\$ (1,478,952)
Consumable	7,300,078	4,959,033	2,341,045
Other	556,150	283,917	272,233
Total Revenue	\$ 17,199,511	\$ 16,065,185	\$ 1,134,326

Total revenue in 2015 increased by \$1.1 million compared to 2014, primarily due to an increase in consumable revenue of \$2.3 million that offset a decrease in capital revenue of \$1.5 million. The unfavorable capital revenue was primarily due to weaker sales in Japan and Korea due to the replacement of distributors and lower sales in Taiwan. Consumable revenue reflected strong growth across all regions with particularly strong utilization in Europe and the Middle East with growth of 123%.

#### *Cost of Revenue/Gross Margin*

	Years Ended December 31		
	2015	2014	Change
Capital systems cost of revenue	\$ 7,255,809	\$ 7,884,156	\$ (628,347)
Consumable cost of revenue	505,421	403,558	101,863
Royalty	495,818	470,236	25,582
Total cost of revenue	\$ 8,257,048	\$ 8,757,950	\$ (500,902)
Gross Margin %	52.0%	45.5%	(6.5)%

Gross margin was 52.0% and 45.5% for the periods ending December 31, 2015 and 2014, respectively. The 6.5% improvement in gross margin was primarily driven by product mix. The percentage of revenue for lower gross margin capital systems comprised 73% in 2015 as compared to 83% in 2014. Higher gross margin consumable revenue comprised 27% of total revenue in 2015 as compared to 17% in 2014.

### ***Operating Expenses***

	Years Ended December 31,		
	2015	2014	Change
Research and development	\$ 4,974,120	\$ 5,293,804	\$ (319,684)
Sales and marketing	11,757,734	11,214,027	543,707
General and administrative	5,468,916	5,465,970	2,946
Total operating expenses	<u>\$ 22,200,770</u>	<u>\$ 21,973,801</u>	<u>\$ 226,969</u>

*Research and Development.* R&D expenses in 2015 decreased by \$0.3 million as compared to 2014. This decrease was primarily attributable to lower headcount, decreases in compensation, outside services and materials and supplies due to reduced clinical studies.

*Sales and Marketing.* Sales and marketing expenses in 2015 increased by \$0.5 million as compared to 2014. This increase was primarily attributable to an increase in travel, trade show and depreciation of sales and marketing equipment related expenses.

*General and Administrative.* General and administrative expenses in 2015 were essentially unchanged as compared to the expenses in 2014. Higher outside service expenses of \$0.7 million in 2015, primarily associated with increased legal expenses and the restatement of legal expenses related to financing efforts in 2015, were offset by lower compensation expenses, and lower facilities costs due to our new facility.

### ***Interest Expense***

	Years Ended December 31,		
	2015	2014	Change
Interest expense	\$ (1,295,930)	\$ (992,970)	\$ (302,960)

Interest expense increased by \$0.3 million in 2015, which was primarily due to the increase in long-term debt from \$5.0 million to \$10.0 million, which was incurred in April 2014.

### ***Other Expense, Net***

	Years Ended December 31,		Change
	2015	2014	
Other expense, net	\$ 62,780	\$ 309,560	\$ (246,780)

Other expense, net for the year ended 2015 and 2014 consisted primarily of the revaluation of the warrant liability and gains and losses on the disposal of property and equipment. Warrants were issued with the increase in our debt in April 2014.

### **Liquidity and Capital Resources**

Since our inception in 2006 as a Delaware corporation, we have incurred significant net losses and negative cash flows from operations. During 2015 and the six months ended June 30, 2016, we had net losses of \$14.5 million and \$13.1 million, respectively. At June 30, 2016, we had an accumulated deficit of \$106.5 million.

As discussed in the audit report for the year ended December 31, 2015, these factors raise substantial doubt about our ability to continue as a going concern. At June 30, 2016, we had cash and cash equivalents of \$8.7 million. To date, we have financed our operations principally through private placements of our preferred stock, issuances of senior secured debt and receipts of customer deposits for new orders and payments from customers for systems sold. Through June 30, 2016, we have received net proceeds of \$86.3 million from the issuance of shares of our preferred and common stock. We expect to use the proceeds from the Private Placements to enable us to execute our business plans in a manner that allows us to get to our next financing milestone. Based on the amount raised in subsequent private placement offerings, we may need to conduct one or more equity or debt financings within the next 12 months.

We could potentially need financial resources sooner than we currently expect, and we may incur additional indebtedness to meet future financing needs. Adequate additional funding may not be available to us on acceptable terms or at all. In addition, although we anticipate being able to obtain additional financing through non-dilutive means, we may be unable to do so. Our failure to raise capital as and when needed could have significant negative consequences for our business, financial condition and results of operations. Our future capital requirements and the adequacy of available funds will depend on many factors, including those identified in “Risk Factors” in this Prospectus.

### ***Loan and Security Agreement***

On August 7, 2015, we restructured our loan agreement from June 2014, and entered into a new loan and security agreement, or the Loan Agreement among us, Oxford Finance LLC, as collateral agent and a lender, the other lenders from time to time a party thereto and Silicon Valley Bank. The Loan Agreement provides for a \$20 million secured term loan facility split into three tranches as follows: (i) \$10 million in term loans, or the Term Loan A, (ii) \$5 million in term loans, or the Term Loan B and (iii) \$5 million in term loans, or the Term Loan C. The Term Loan A was drawn on August 7, 2015. The Term Loan B and the Term Loan C are available to be drawn when we meet certain revenue targets, and Term Loan C additionally requires an equity investment of \$15 million or greater. Proceeds of the term loans made under the Loan Agreement may be used by us for working capital and to fund general business requirements. No additional borrowing is currently available.

The term loans bear interest at a fixed rate, determined on the funding date, equal to the greater of (i) 7.80% and (ii) the rate published by The Wall Street Journal as the “Prime Rate” in the U.S. plus 4.55%. Interest is due and payable monthly in arrears. A default interest rate shall apply during any event of default under the Loan Agreement at a rate per annum equal to 5.00% above the applicable interest rate.

The term loans are payable in equal monthly installments amortizing over either 33 months or 27 months depending on when we meet certain revenue targets. Any remaining outstanding amounts of principal and/or interest are payable on September 1, 2019, the maturity date, together with a final payment equal to 2.25% multiplied by the original principal amount of the term loans, or the Final Payment.

We may prepay the term loans in whole, not in part, at any time, provided that such payment is accompanied by an amount equal to the sum of (i) the principal amount of the term loans prepaid multiplied by: (A) 2.00% for any prepayment made on or prior to the second anniversary of the funding date of such term loans and (B) 1.00% for any prepayment made after the second anniversary of the funding date of such term loans and (ii) the Final Payment. We are also obligated to pay customary fees for a loan facility of this size and type.

The term loans are subject to financial covenants and are collateralized by substantially all of our assets (other than our intellectual property) and limits the our ability with respect to additional indebtedness, investments or dividends, among other things, subject to customary exceptions. The Loan Agreement includes customary events of default and a subjective acceleration clause. Failure to comply with the loan covenants may result in the acceleration of payment terms on all outstanding principal and interest amounts plus a prepayment fee.

The following table summarizes our cash flows for the periods presented:

	Six Months Ended June 30,		Years Ended December 31,	
	2016	2015	2015	2014
Cash used in operating activities	\$ (5,378,523)	\$ (6,838,136)	\$ (11,871,054)	\$ (15,382,344)
Cash used in investing activities	(142,031)	(117,897)	(223,703)	(1,179,335)
Cash provided by (used in) financing activities	11,531,272	(1,560,845)	1,252,526	20,698,803

### ***Operating Activities***

We have historically experienced negative cash outflows as we developed our miraDry and miraWave technology, and continued to expand our business. Our net cash used in operating activities primarily results from our net loss adjusted for non-cash expenses and changes in working capital components as we have grown our business, and is influenced by the timing of cash payments for inventory purchases and cash receipts from our customers. Our primary source of cash flow from operating activities is cash receipts from customers including sales of miraDry Systems. Our primary uses of cash from operating activities are employee-related expenditures and amounts due to vendors for purchased inventory components. Our cash flows from operating activities will continue to be affected principally by our working capital requirements, and the extent to which we build up our inventory balances and increase spending on personnel and other operating activities as our business grows.

During the six months ended June 30, 2016, operating activities used \$5.4 million in cash, a decrease of \$1.5 million from cash used in the six months ended June 30, 2015 of \$6.8 million. The decrease was primarily attributable to lower operating net losses due to an increase in revenue and gross margin from prior periods. During the year ended December 31, 2015, operating activities used \$11.9 million in cash, a decrease of \$3.5 million from cash used in the year ended December 31, 2014. The reduction in cash used in operations was primarily due to a lower net loss of \$0.9 million, and lower cash usage in accounts receivable and inventory. The decrease was primarily a result of an increase in cash collections and reductions in operating expenses.

### ***Investing Activities***

Cash used in investing activities was \$0.1 million for both the six months ended June 30, 2016 and 2015. This was primarily for purchases of capital equipment used for operations and production. For the years ended December 31, 2015 and 2014, cash used in investing activities was \$0.2 million and \$1.2 million respectively which was primarily for purchases of capital equipment used for operations and production. The decrease was mainly due to leasehold improvements we made to our new corporate facilities in 2014 in the amount of \$0.8 million.

### ***Financing Activities***

During the six months ended June 30, 2016, \$11.5 million of cash provided by financing activities was primarily from the issuance of bridge notes and proceeds from the private placement.

In 2015, the refinancing of the outstanding balance of the \$10 million SVB/Oxford loan, was offset by principal payments on the previous SVB/Oxford loan and outstanding insurance premium loans and equipment capital leases.

In 2014, \$16 million was raised from the sale of the preferred stock and \$5 million was borrowed from SVB/Oxford.

Under the terms of our senior debt agreement with SVB/Oxford, we have access to \$10.0 million of additional borrowing capacity, in two \$5.0 million tranches, once we have (i) achieved trailing six months consolidated revenue of at least \$15.0 million in any fiscal month and (ii) received net cash proceeds after the effective date of the Loan Agreement from the sale and issuance of equity securities of at least \$15.0 million from investors on terms and conditions reasonably acceptable to the collateral agent. None of this additional financing is currently available.

### **Off-Balance Sheet Arrangements**

During the six months ended June 30, 2016 and 2015 and years ended December 31, 2015 and 2014, we did not have any off-balance sheet arrangements as defined by applicable SEC regulations.

### **Critical Accounting Policies and Estimates**

Our financial statements are prepared in accordance with GAAP. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, expenses and related disclosures. We evaluate our estimates and assumptions on an ongoing basis. Our estimates are based on historical experience and various other assumptions that we believe to be reasonable under the circumstances. Our actual results could differ from these estimates.

We believe that the assumptions and estimates have the greatest potential impact on our financial statements. Therefore, we consider these to be our critical accounting policies and estimates. For further information on all of our significant accounting policies, see the notes to our financial statements contained in this Prospectus.

### ***Inventories***

Inventories are stated at lower of cost or market value and consist of raw materials, work in process, and finished goods. Cost is determined using standard costs, which approximates actual cost on a first-in, first-out basis. Market value is determined as the lower of replacement cost or net realizable value. We write down its inventory for estimated excess or obsolete inventory equal to the difference between the cost and the estimated market value based upon assumptions about future demands and market conditions.

### ***Revenue Recognition***

Our revenue is derived from the sale of our miraDry system, related consumables and accessories, and separately priced extended warranties and service plans. We recognize revenue in accordance with Financial Accounting Standards Board, or FASB, Accounting Standards Codification 605, *Revenue Recognition*, or ASC 605. Under ASC 605, revenue is recognized when persuasive evidence of an arrangement exists, title and risk of loss has transferred to the customer, the sales price is fixed or determinable, and collectability is reasonably assured. Revenue recognition generally occurs for sales of product upon shipment and over the covered term for extended warranties and service plans.

We have distributor agreements with several international distributors. Certain distributor agreements contained required product repurchase provisions. We deferred revenue for our potential exposures for product repurchases. We currently do not have any distributor agreements with required product repurchase provisions.

We provide marketing development funds as part of certain customer purchase agreements and qualification through marketing rewards programs. The programs generally provide for reimbursement of qualifying marketing expenditures that promote our products and brand. In order to qualify for the reimbursement, the customer must (1) have pre-approval from our practice development team to ascertain that the marketing adheres to the established guidelines and only feature miraDry Systems and the customer's practice and (2) submit proof of payment and invoice for the marketing expenses. Through this review, we ensure that the fair value of the separately identifiable benefit received is equal to or greater than the amount being reimbursed. Our reimbursement of marketing expenditures under these programs is recorded in sales and marketing expenses in the accompanying Consolidated Statements of Operations and Comprehensive Loss.

### ***Product Warranty***

We provide product warranties for our miraDry System for a period of one to two years, depending on the territory. We accrue for warranty costs at the time of sale based on an estimate of total repair costs for all miraDry Systems under the warranty period. An extended warranty may be purchased for additional fees.

### ***Allowance for Doubtful Accounts***

We regularly review accounts receivable balances, including an analysis of customers' payment history and information regarding the customers' creditworthiness, and records an allowance for doubtful accounts based upon this evaluation. We write off accounts against the allowance when all attempts at collection have been exhausted.

### ***Freestanding Preferred Stock Warrants***

Freestanding warrants and other similar instruments related to shares that are redeemable are accounted for in accordance with ASC 480, "*Distinguishing Liabilities from Equity*." The freestanding warrants are exercisable into our convertible preferred stock and are classified as liabilities on the balance sheet. The warrants are subject to re-measurement at each balance sheet date and the change in fair value, if any, is recognized as other income (expense). We will continue to adjust the liability for changes in fair value until the earlier of (i) exercise of the warrants, (ii) conversion into warrants to purchase common stock (upon conversion of the preferred stock to common), or (iii) expiration of the warrants.

### ***Income Taxes***

We account for income taxes under the liability method, whereby deferred tax assets and liabilities are recorded for the difference between the financial statement and tax bases of assets and liabilities and for net operating loss and tax credit carryforwards using the enacted tax rates in effect for the year in which the differences are expected

to affect taxable income. A valuation allowance is established when necessary to reduce deferred tax assets to the amounts expected to be realized.

We adhere to the provisions of ASC 740-10, “*Accounting for Uncertainty in Income Taxes*.” ASC 740-10 prescribes a comprehensive model for the recognition, measurement, presentation and disclosure in financial statements of any uncertain tax positions that have been taken or expected to be taken on a tax return.

It is our policy to include penalties and interest expense related to income taxes as a component of other expense, net, as necessary.

### ***Stock-Based Compensation***

We account for stock-based compensation in accordance with ASC 718, “*Compensation - Stock Compensation*.” ASC 718 requires the recognition of compensation expense, using a fair-value based method, for costs related to all share-based payments including stock options. ASC 718 requires companies to estimate the fair value of all share-based payment awards on the date of grant using an option pricing model. All option grants valued since inception are expensed on a straight-line basis over the requisite service period.

We account for equity instruments issued to non-employees in accordance with ASC 505-50, “*Accounting for Equity Instruments that are Issued to Other than Employees for Acquiring, or in Conjunction with Selling Goods or Services*.” Equity instruments issued to non-employees are recorded at their fair value on the measurement date and are subject to periodic adjustments as the underlying equity instruments vest.

### ***Preferred Stock***

Preferred shares subject to mandatory redemption (if any) are classified as liability instruments and are measured at fair value. We classify conditionally redeemable preferred shares, which includes preferred shares that feature redemption rights that are either within the control of the holder or subject to redemption upon the occurrence of uncertain events not solely within our control, as temporary equity. At all other times, we classify our preferred shares in stockholders’ equity.

### **JOBS Act Accounting Election**

We are an “emerging growth company” within the meaning of the JOBS Act. Section 107 of the JOBS Act provides that an emerging growth company can take advantage of the extended transition period provided in Section 7 (a)(2)(B) of the Securities Act for complying with new or revised accounting standards. Thus, an emerging growth company can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have irrevocably elected not to avail ourselves of this extended transition period and, as a result, we will adopt new or revised accounting standards on the relevant dates on which adoption of such standards is required for other public companies that are not emerging growth companies.

### **Recently Issued and Adopted Accounting Pronouncements**

In May 2014, the FASB issued Accounting Standards Update, or ASU, No. 2014-09, “*Revenue from Contracts with Customers (Topic 606)*.” This ASU provides guidance on revenue recognition and requires companies to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The core principle of this update provides guidance to identify the performance obligations under the contract(s) with a customer and how to allocate the transaction price to the performance obligations in the contract. It further provides guidance to recognize revenue when (or as) the entity satisfies a performance obligation. ASU 2014-09 is effective for public entities for annual

and interim periods beginning after December 15, 2016. In August 2015, the FASB issued ASU 2015-14 which deferred the effective date of ASU 2014-09 one year, making it effective for annual reporting periods beginning after December 15, 2017. In March 2016, the FASB issued ASU 2016-08, “*Revenue from Contracts with Customers (Topic 606): Principal versus Agent Considerations*”; in April 2016, the FASB issued ASU 2016-10, “*Revenue from Contracts with Customers (Topic 606): Identifying Performance Obligations and Licensing*”; and in May 2016, the FASB issued ASU 2016-12, “*Revenue from Contracts with Customers (Topic 606): Narrow-Scope Improvements and Practical Expedients*.” ASU 2016-08, ASU 2016-10 and ASU 2016-12 all update and clarify the guidance previously issued in ASU 2014-09. ASU 2014-09, as amended, allows for two methods of adoption, a full retrospective method or a modified retrospective approach with the cumulative effect recognized at the date of initial application. We are currently evaluating the effect that the standard will have on the consolidated financial statements and our method of adoption.

In August 2014, the FASB issued ASU No. 2014-15, “*Presentation of Financial Statements - Going Concern (Subtopic 205-40): Disclosure of Uncertainties about an Entity’s Ability to Continue as a Going Concern*.” The update sets forth a requirement for management to evaluate whether there are conditions and events that raise substantial doubt about an entity’s ability to continue as a going concern, a responsibility that did not previously exist in GAAP. The amendments included in this update require management to assess an entity’s ability to continue as a going concern by incorporating and expanding upon certain principles that are currently used in the U.S. auditing standards. Specifically, the amendments (1) provide a definition of the term substantial doubt, (2) require an evaluation every reporting period, including interim periods, (3) provide principles for considering the mitigating effect of management’s plans, (4) require certain disclosures when substantial doubt is alleviated as a result of consideration of management’s plans, (5) require an express statement and other disclosures when substantial doubt is not alleviated, and (6) require an assessment for a period of one year after the date that the financial statements are issued (or available to be issued). ASU 2014-15 is effective for us in fiscal year 2016 for our annual financial statements. We are currently assessing the future impact of this update on our financial statements.

In April 2015, the FASB issued ASU No. 2015-03, “*Interest - Imputation of Interest (Subtopic 835-30): Simplifying the Presentation of Debt Issuance Costs*.” This ASU requires that debt issuance costs related to a recognized debt liability be presented in the balance sheet as a direct deduction from the carrying amount of that debt liability, consistent with debt discounts. ASU 2015-03 is effective for annual and interim reporting periods of public entities beginning after December 15, 2015, and early adoption is permitted. We have adopted this standard and has accordingly classified all debt issuance costs as a deduction of notes payable.

In July 2015, the FASB issued ASU 2015-11, “*Inventory (Topic 330): Simplifying the Measurement of Inventory*.” This update requires inventory that is recorded using the first-in, first-out (FIFO) or average cost method to be measured at the lower of cost or net realizable value (defined as the estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal and transportation), as opposed to the existing requirement to measure such inventory at the lower of cost or market value. This update is effective for annual periods beginning after December 15, 2016, and interim periods within those years, with early adoption permitted. We do not believe adoption will have any significant impact on the consolidated financial statements.

In February 2016, the FASB issued ASU 2016-02, “*Leases (Topic 842)*.” The guidance in this update supersedes the leasing guidance in “*Leases (Topic 840)*.” Under the new guidance, lessees are required to recognize lease assets and lease liabilities on the balance sheet for all leases with terms longer than 12 months. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the income statement. For public entities, the new standard is effective for annual periods beginning after December 15, 2018, including interim periods within those fiscal years. A modified retrospective transition approach is required for lessees for capital and operating leases existing at, or entered into after, the beginning of the earliest comparative

period presented in the financial statements, with certain practical expedients available. We are currently evaluating the effect that the standard will have on our consolidated financial statements.

In March 2016, the FASB issued ASU 2016-09, “*Compensation – Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting.*” This update will require all income tax effects of awards to be recognized in the income statement when the awards vest or are settled. It will also allow an employer to repurchase more of an employee’s shares than it can today for tax withholding purposes without triggering liability accounting and to make a policy election to account for forfeitures as they occur. For public entities, the new standard is effective for annual periods beginning after December 15, 2016, and early adoption is permitted. We are currently evaluating the effect that the standard will have on our consolidated financial statements.

## BUSINESS

### Corporate Information

We were incorporated in Nevada as Spacepath, Inc. on December 28, 2012 and subsequently changed our name to KTL Bamboo International Corp. on March 18, 2015, and reincorporated in Delaware as Miramar Labs, Inc. on June 7, 2016. Our original business involved the distribution of water filtration systems produced in China. Prior to the Merger, our board of directors determined to discontinue operations in this area and seek a new business opportunity. As a result of the Merger, we have acquired the business of Miramar. Miramar commenced operations as a Delaware corporation in April 2006 under the name Miramar Labs, Inc., and subsequently changed its name to Miramar Technologies, Inc. on June 2, 2016.

Our authorized capital stock currently consists of 100 million shares of common stock and 5 million shares of the preferred stock. Our common stock was quoted on the OTC Markets under the symbol “KTLC,” and on June 15, 2016, our symbol changed to “MRLB.”

Our principal executive office is located at 2790 Walsh Avenue, Santa Clara, California 95051. Our telephone number is (408) 579-8700. Our website address is [www.miramarlabs.com](http://www.miramarlabs.com). The information contained on, or that can be accessed through, our website is not a part of this Prospectus.

### Company Overview

We are a medical technology company focused on developing and commercializing products utilizing our proprietary microwave technology platform.

Our first commercial product, the miraDry System, is designed to ablate axillary, or underarm, sweat glands through the precise and non-invasive delivery of energy to the region where sweat glands reside. The energy generates heat which results in thermolysis of the sweat glands. At the same time, a continuous hydro-ceramic cooling system protects the superficial dermis and keeps the heat focused at the sweat glands. Because sweat glands do not regenerate after the treatment, we believe the results are lasting. Microwaves are the ideal technology as the energy can be focused directly at the fat and dermal junction where the glands reside.

We developed the miraDry System to safely, noticeably, and measurably reduce the sweat in the underarm for patients with sweat ranging from excessive to average. In our pivotal U.S. clinical trial involving 120 patients, 89% of patients experienced significant reduction in their sweat with no serious adverse events reported. There have been several published clinical studies, collectively involving more than 150 patients, conducted by us and independent physicians which have evaluated the efficacy of the miraDry treatment in reducing sweat in the underarm.

We received clearance from the U.S. Food and Drug Administration, or FDA, in January 2011 and received CE mark approval in December 2013 to market the miraDry procedure for the treatment of primary axillary hyperhidrosis, or a condition characterized by abnormal sweating in excess of that required for regulation of body temperature. Additionally, we have received approval of the miraDry treatment in several other countries since our FDA clearance in 2011.

The miraDry System consists of a console and a handheld device which uses consumable single-use bioTips. We sell our miraDry System and bioTips to our customers, consisting of dermatologists, plastic surgeons, aesthetic specialists and physicians specializing in the treatment of hyperhidrosis.

Hyperhidrosis is a medical condition of varying degree in which a person sweats excessively. A study published by Strutton et al. in June 2004 in the *Journal of the American Academy of Dermatology*, titled “US

prevalence of hyperhidrosis and impact on individuals with axillary hyperhidrosis: Results from a national survey,” estimated that 2.8% of the general population has hyperhidrosis (in this paper defined as excessive or abnormal sweating) with 50.8% thereof having axillary hyperhidrosis. Another publication (Hornberger et al, published in the February 2004 issue of the *Journal of the American Academy of Dermatology*) provides a consensus guideline for the diagnosis of hyperhidrosis that would include anyone who is bothered by their sweat. This definition expands the potential market into the aesthetic space.

We developed the miraDry treatment to provide patients with a safe, effective, non-invasive, and durable procedure to selectively ablate underarm sweat glands for both severely hyperhidrotic patients and those that are bothered by their underarm sweat. The miraDry treatment is clinically proven to significantly reduce sweat in a one or more 60-minute procedures, allowing most patients to achieve immediately noticeable and durable results without the pain, expense, downtime, or repeat visits associated with surgical and other minimally-invasive procedures. The sweat glands in the treated area are ablated through targeted heating of the tissue, and because the body does not regenerate sweat glands, we believe the results will be lasting, although some patients may need to repeat the miraDry procedure to achieve the lasting results. Due to these advantages, we believe that the miraDry treatment is appealing to a wide range of individuals seeking a lasting solution to underarm sweat.

In addition, the miraDry procedure is not technique-dependent, does not require significant training or skill for the treatment provider, and the user-interface guides the provider through each step of the procedure for each treatment. The user-friendly nature of the miraDry System allows our physician customers to easily delegate the treatment to physician assistants and nurse practitioners thereby freeing up their time for other physician-dependent procedures.

We selectively market the miraDry System to dermatologists, plastic surgeons, aesthetic specialists and those physicians specializing in the treatment of hyperhidrosis who express a willingness to position miraDry as a premium and differentiated treatment and participate in our global marketing and support programs. Aesthetic specialists are physicians who elect to offer aesthetic procedures as a significant part of their practices but are not board-certified dermatologists or plastic surgeons.

We intend to market the miraDry System to physician practice sites on a global basis. We utilize our direct sales organization to market and sell the miraDry System in our North American market, which includes the U.S. and Canada. In our markets located outside of North America, we market and sell the miraDry System through a network of distributors.

Physicians can market the miraDry treatment as a premium, highly-differentiated, non-surgical sweat reduction procedure. Based on our commercial data, we believe physicians can recoup their capital expenditures within 12 months on average, assuming modest use of the miraDry System. We have sold the miraDry System in over 40 international markets outside of North America, including placements in Asia, Europe, the Middle East and South America.

We generate revenues from sales of our miraDry System and from the sales of bioTips which are required for use for each miraDry procedure performed. We generated revenues of \$17.2 million for the year ended December 31, 2015 and \$11.7 million for the six months ended June 30, 2016. Capital system sales comprised 54% and consumable sales comprised 42% of our revenues for the year ended December 31, 2015 and 55% and 42%, respectively, of our revenues for the six months ended June 30, 2016. We had net losses of approximately \$14.5 million and \$13.1 million, respectively, for the same periods.

We are driving growth in miraDry procedures in North America through our physician marketing programs, which provide physicians with sales training, practice marketing, and support services. After we establish a significant

installed base of miraDry Systems in specific markets, we plan to use targeted consumer marketing, advertising, and promotional activities in these markets to increase demand for the miraDry System.

Our business is dependent upon the success of the miraDry treatment, and we cannot guarantee that we will be successful in significantly expanding physician demand for the miraDry System and patient demand for the miraDry treatment. In addition, we will continue to incur significant expenses for the foreseeable future as we expand our commercialization and other business activities, and as a result, we cannot guarantee that we will be able to achieve or maintain our profitability.

## **Market Overview**

The prevalence of hyperhidrosis in the U.S. is significant. A study published by Strutton et al. in the June 2004 issue of the *Journal of the American Academy of Dermatology*, or AAD, titled “US prevalence of hyperhidrosis and impact on individuals with axillary hyperhidrosis: Results from a national survey,” estimated that 2.8% of the general population has hyperhidrosis (in this study defined as excessive or abnormal sweating) with 50.8% thereof having axillary hyperhidrosis. Another publication by Hornberger et al was published in the February 2004 issue of the *Journal of the American Academy of Dermatology* provides a consensus guideline for the diagnosis of hyperhidrosis that would include anyone is bothered by their sweat. This definition expands the potential market for the miraDry treatment into the aesthetic space.

In June 2015, the miraDry System received clearance from the FDA for the additional indication of axillary hair reduction of all colors. This allows our U.S. customers to promote a premium procedure that reduces underarm sweat and hair.

The global market for aesthetic procedures is significant and growing. In the U.S. alone, the American Society for Aesthetic Plastic Surgery, or the ASAPS, estimates that consumers spent more than \$13 billion on aesthetic procedures in 2015. Laser and light-based hair removal continues to be the largest volume among non-invasive and non-injectable procedures. As an emerging market, energy-based procedures for sweat and odor reduction are not currently tracked by ASAPS data.

## ***Limitations of Existing Hyperhidrosis Procedures***

Treatments for sweat reduction on the body span from over-the-counter topical antiperspirants to invasive surgeries. The following discussion outlines the benefits of these existing procedures, as well as our opinion of their inherent limitations as compared to the miraDry treatment.

***Antiperspirants.*** Most individuals have applied an antiperspirant to their underarms at some point and a significant majority of the population applies them every day. Stronger antiperspirants (clinical-strength) have been developed to reduce sweat more efficiently, and stronger prescription antiperspirants are considered first-line treatment for patients with severe hyperhidrosis. While antiperspirants are commonplace, they produce non-lasting results and are limited in their efficacy as evidenced by the fact that the FDA requires only 20% reduction in sweat among half of the treated patients for a product to be labeled as an antiperspirant and 30% reduction to be labeled as a clinical-strength antiperspirant.

***Invasive and Minimally-Invasive Procedures.*** Physicians currently perform a number of invasive surgical procedures for patients with hyperhidrosis, including Endoscopic Thoracic Sympathectomy, or ETS, as well as minimally invasive procedures such as the injection of neurotoxins into the affected area. Although such procedures are effective at reducing sweat to varying degrees, these invasive and minimally-invasive procedures present limitations such as surgical risks, risk of producing undesired results, being dependent on physician skills and techniques and high cost.

## Our Solution

The miraDry procedure is a treatment of hyperhidrosis that is clinically proven to be safe and effective and provides most patients with immediate and measureable results. The miraDry System utilizes our proprietary microwave technology to selectively ablate sweat glands in the axilla. As of June 30, 2016, over 70,000 miraDry procedures have been performed.

We designed our miraDry System to address the concerns of individuals who are seeking long-term solutions to their excessive underarm sweating and the concerns of sweat-bothered individuals (with less severe hyperhidrosis) who want to eliminate the daily bother of applying antiperspirants to their underarms. We offer training to our physician customers to better enable them to identify those patients who will benefit from the miraDry procedure.

We believe the miraDry treatment provides the following benefits to our physician customers and their patients:

- ***Clinically proven, consistent, and durable results.*** Clinical studies involving more than 150 patients demonstrate that one or two miraDry procedures can noticeably and measurably reduce the amount of sweat from the axilla, or underarm. In our study involving 120 subjects, 89% of patients that received treatment experienced significant reduction in their sweat with no serious adverse events reported. In a second study involving 31 patients intended to measure the long-term efficacy, patients reported an average of 82% sweat reduction at 12 months and 100% of patients reported as being no longer bothered by their hyperhidrosis at 24 months. We believe that the results obtained from a miraDry treatment will be durable, as sweat glands that are completely ablated do not regenerate.
- ***Safety profile.*** The miraDry treatment is designed to concentrate heat at the interface between the skin and fat, where the sweat glands reside. The treatment parameters have been optimized to ablate the sweat glands and protect any nearby structures (e.g. the upper part of the skin). The most common reported side effects that occur regularly are localized swelling, redness and discomfort that typically last less than a week. Less common side effects are swelling in the arm or torso, darkening of skin in the treatment area, soreness in the shoulders and arms due to procedure positioning, numbness or tingling in the arm due to the anesthesia (lasting less than 24 hours), and a tight band under the arm. Rare side effects (less than 1% of all procedures) that have been reported are altered sweating elsewhere on the body, small blisters or rashes in the treatment area, temporary altered sensation or tingling in the forearm or fingers, weakness in the arm or fingers, pain in the arm or fingers, infections, abscesses, ulcerations or burns.
- ***Minimal discomfort.*** Our physicians and their nurse practitioners are trained to use a high-volume anesthesia protocol in the axilla. This provides complete numbness of the treated area while protecting any underlying structures for maximum treatment safety.
- ***Results not technique-dependent.*** The miraDry procedure was designed so that users are systematically guided step-by-step regarding the placement of the handpiece for optimal treatment results. Every patient first receives a temporary tattoo-like grid on the axilla. The grid is replicated on the treatment screen and directs the practitioner in the accurate and precise placement of energy designed for optimal results. During the treatment, which takes approximately an hour, the practitioner simply needs to follow the guide to place the handpiece and no other adjustments are needed during the treatment.

## Technology Platform

Our miraWave technology platform utilizes microwave energy to create heat within the skin or subcutaneous

locations to create a therapeutic effect. Microwave energy has been used in various medical specialties for heating tissue for decades. In the dermatologic field, it is important that heating is confined to a very precise location, which the miraWave technology platform is designed to do. Due to its proprietary handpiece designs and using appropriate energy parameters, the miraDry System can heat dermatologic tissue in a precise and controlled manner.

### ***miraDry Technology***

Our miraDry System utilizes microwave energy to deliver heat to the location of the skin where most underarm sweat glands reside – at or just below the skin-fat interface. We designed a proprietary handpiece that automatically focuses the energy at the skin-fat interface, regardless of skin thickness. When the physician or nurse practitioner places the handpiece to a specific area of the underarm as instructed by the graphic user interface, the energy is delivered automatically to the target tissue. The heat generated in the tissue exceeds the threshold for cellular necrosis, thereby ablating the sweat glands where the energy is focused. Surface cooling prevents the heat from damaging the superficial tissue above the skin-fat interface. In the underarm, many of the hair follicles are in the same relative location as the sweat glands. Therefore, the heating will also cause destruction and elimination of the hair follicles in those areas.

Our miraDry treatment has been clinically demonstrated to significantly reduce sweat and hair from the underarm without causing significant injury to critical surrounding structures. The surface cooling protects the epidermis and the majority of the dermis from damaging heat. The deeper underlying structures are protected by two mechanisms. First, our anesthesia protocol calls for creating a distance barrier between the underlying structures and the surface of the skin where the handpiece is positioned. A significant volume of anesthesia fluid is administered between the skin (and target tissue) and the underlying structures, which causes a separation of the target tissue from the underlying structure. As the handpiece is positioned just outside the skin, the underlying structures are further away from the handpiece, keeping them safe from damaging heat. Second, we employ a vacuum suction system in the handpiece where the skin is pulled up into a vacuum chamber within the handpiece. Typically, the underlying structures either remain stationary or move slightly with the vacuum action, thereby creating further distance between the handpiece and the underlying structures.

### **The miraDry System and bioTips**

We generate revenues from sales of our miraDry System and single-use bioTips. Our proprietary consumable, the bioTip, is designed such that each bioTip is encoded to be used only with our proprietary system and expires within a set time and cannot be reused. We generate a recurring revenue stream from bioTips that are required for each patient treatment.

## *The miraDry System*

The miraDry System consists of the miraDry console and the miraDry handpiece. The miraDry console contains a simple user interface with touchscreen software, power management and control functions, and chiller unit that is responsible for the hydro-ceramic constant cooling. Our miraDry System also contains software that tracks and collects data on each procedure performed and any error messages that may be generated during the procedure. We collect and analyze this information to help physicians better understand their usage patterns and improve their marketing plans, utilization, and profitability.



- The color touch screen on the miraDry console provides operators with clear step-by-step visual instructions that guide the user through a miraDry procedure, providing continuous status updates and easy to follow notifications or corrective actions in the rare event of a procedure interruption.
- The miraDry handpiece is used to apply the microwave energy while maintaining constant contact cooling of the skin during treatment. The handpiece also displays the heating and cooling cycles during each pulse. The handpiece is detachable to enable future product upgrades.
- The unit is mobile, allowing a physician to easily transfer the miraDry System between treatment rooms.
- Vents are built into the miraDry System control unit to provide airflow and reduce heat build-up. Our miraDry System can be used in a standard physician treatment room without any special ventilation requirements or room modifications.

## *Single-use bioTips*

Our miraDry bioTips facilitate the proper suctioning of the skin to maintain constant contact of the skin with the handpiece during the treatment. Also, the bioTips facilitate the pay-per-procedure feature of our miraDry System. Our bioTips are typically shipped with branded gel packs for patients to apply after treatment.



A bioTip is required to use the miraDry System. Each bioTip is preprogrammed with enabling software that permits the miraDry System to perform a single patient treatment for a fixed duration of time. Each bioTip is programmed with an encrypted security certificate that prevents the performance of a miraDry procedure unless the bioTip is recognized and authenticated by the specific miraDry System. The security certificate is designed to ensure that physicians pay for each patient treated and prevent the use of counterfeit bioTips.

## **The miraDry Experience**

The miraDry treatment is a non-invasive procedure, which takes approximately an hour that is clinically proven to be safe and effective and provides patients with immediate and durable results. The first step of the miraDry process is a patient consultation. We train our physician customers to properly explain to their patients the results they should expect from a miraDry procedure. Then the underarm is first sized using a sizing template. The appropriately sized temporary treatment grid is then selected and applied to the underarm to guide treatment. The patient's underarm is then anesthetized for maximum comfort. After anesthesia has taken effect, the miraDry handpiece is applied step-by-step using the grid markings as guides to treat the entire axilla. During each application of microwave energy, the skin is first cooled, energy is applied, and then more cooling is applied to the skin's surface providing constant temperature control of the tissue for the patient's safety and comfort. Following treatment, the patient is given post-treatment instructions.

Our surveys indicate that most patients find the miraDry procedure easy to tolerate. Due to the underarm being fully anesthetized prior to treatment, patients typically only report feeling a tugging sensation from the suction created when the handpiece is placed on the treatment area but otherwise report no sensation.

Although most miraDry patients generally do not experience any significant adverse side-effects, the most common side effects that occur regularly are localized swelling, redness and discomfort that typically lasts less than a week. Less common side effects are swelling in the arm or torso, darkening of skin in the treatment area, soreness in the shoulders and arms due to procedure positioning, numbness or tingling in the arm due to the anesthesia (lasting less than 24 hours), and a tight band under the arm. Rare side effects (less than 1% of all procedures) that have been reported are altered sweating elsewhere on the body, small blisters or rashes in the treatment area, temporary altered sensation or tingling in the forearm or fingers, weakness in the arm or fingers, pain in the arm or fingers, and infections, abscesses, ulcerations or burns. These events resolve over time but sometimes need intervention (for example, antibiotics).

## **Sales and Marketing**

In North America, we utilize our direct sales force to sell the miraDry System to our target physicians. We market and sell our miraDry System to dermatologists, plastic surgeons, aesthetic specialists and other physician customers with aesthetically focused and hyperhidrotic focused practices.

In our international markets, we sell the miraDry System through a network of distributors. Our distributor in Japan accounted for more than 10% of sales for the year ended December 31, 2015, and our distributors in Japan and China each accounted for more than 10% of sales for the six months ended June 30, 2016. We have a team of employees focused on business development and supporting our network of distributors. We intend to increase our penetration into the international markets in which we currently distribute, as well as expand into new markets through the identification and training of qualified distributors specializing in medical device distribution. We require our international distributors to provide ongoing training and support of their physician customers and invest in the marketing support of practices to expand the market and demand for the miraDry System for physicians and patients. We also require our distributors to invest in industry trade shows and maintain working relationships with key physicians to expand their markets.

We enter into distribution agreements with our distributors outside of North America. Our distribution agreements generally provide the exclusive right to distribute our products within a designated territory.

## ***Physician Marketing and Support Programs***

We intend to increase demand for the miraDry treatment through our targeted marketing and practice support

programs. In North America, we provide physicians and their staff product training and sales, marketing, and support services to help them make the miraDry treatment a key component of their practices. In other markets, we have our business development team work to train our distributors and their staff who in turn are responsible for training their customers.

In 2015, we hired and trained a group of Practice Development Managers, or PDMs, who are focused on implementing our marketing programs in North America. Our PDMs provide all initial trainings for our miraDry System to our physician customers and their staff following the delivery of the system to the practice. Following this initial training, our PDMs, also educate our physician customers on current best practices and provide physicians and their staff with sales and marketing training and support to help them increase patient demand for the miraDry treatment. Also in North America, we provide all new customers with the option to qualify for marketing development funds programs to increase patient awareness and demand in their practice. We review marketing expenditures under these programs to ensure that the fair value of the separately identifiable benefit received is equal to or greater than the amount being reimbursed by ascertaining that the marketing adheres to the established guidelines and requiring customers to submit proof of payment and invoice for the marketing expenses.

We also participate in industry tradeshows, clinical workshops, and conferences with expert panelists.

### ***Direct-to-Consumer Marketing***

As we grow our installed base of miraDry Systems, we intend to utilize a targeted and strategic direct-to-consumer marketing program globally to create awareness of the miraDry treatment among consumers. We have an active public relations campaign and have been highlighted on national broadcasts as well as numerous local news programs. We also intend to continue our active media presence and our social media programming, such as Facebook, Twitter, YouTube, and through search engine marketing, testimonials, and video presentations.

### ***Customer Support***

We provide our physician customers and authorized distributors with customer support.

In the event of a technical issue with a miraDry System in North America, one of our Customer Care personnel will call the physician and determine whether the technical issue may be resolved over the telephone or whether the issue requires an intervention. If the issue cannot be resolved by telephone, our Customer Care personnel will request our third-party logistics provider to visit the physician and provide on-site technical support. If the service provider determines that a replacement system is required, our logistics provider will deliver the replacement miraDry System or module into the physician's office, set it up and ensure that the miraDry System is working properly.

In markets outside of North America, our miraDry System is serviced and supported through our independent distributors and certified third-party service providers. We require our distributors to maintain adequate inventory of miraDry Systems and components to facilitate quick response time to service events and to maximize customer "up time."

We provide a standard warranty that ranges from 15 to 24 months on our miraDry Systems. In addition to these product warranties, we offer extended service agreements to our customers which provide protection of their system and handpiece against breakage. We do not obtain a material portion of our revenue from our service contracts.

### ***Competition***

The medical technology and aesthetic product markets are highly competitive and dynamic, and are characterized by rapid and substantial technological development and product innovations. Demand for the miraDry

treatment could be limited by the products and technologies offered now or in the future by our competitors. We designed the miraDry treatment to address the concerns of individuals who seek a durable solution to their axillary sweat. Therefore, we compete both directly and indirectly with those companies marketing botulinum toxin and other medical device companies. To a lesser extent, we indirectly compete with antiperspirants. We expect aesthetic medical device companies to pursue technological advances in the treatment of sweat and hair removal that will continue to alter the competitive environment.

In the U.S., our major competitor in the treatment of sweat is Allergan, which manufactures Botox; Botox is approved for the treatment of severe primary axillary hyperhidrosis. Cynosure also has recently received FDA clearance to market PrecisionTX for the treatment of primary axillary hyperhidrosis. These competitors have more resources than us and may prevent our miraDry System from gaining widespread market acceptance.

Due to less stringent regulatory requirements, there are many more aesthetic products and procedures available for use in international markets than are approved or cleared for use in the U.S. There are also fewer limitations on the claims our competitors in international markets can make about the effectiveness of their products and the manner in which they can market them. As a result, we face more competition in these markets than in the U.S. For example, a radiofrequency-based device called SweatX is sold by Alma Lasers Ltd.

Due to the limited capital expenditure budgets of our physician customers, we also generally compete against aesthetic device companies, including those offering products and technologies unrelated to sweat reduction. Some of our competitors have a broad range of product offerings, large direct sales forces, and long-term customer relationships, which could inhibit our market penetration efforts. Our potential customers also may need to recoup the cost of expensive products that they have already purchased from our competitors, and thus they may decide to delay or not to purchase our miraDry System.

## **Manufacturing**

We occupy an approximately 29,000 square foot facility located in Santa Clara, California. About 4,200 square feet of this space is dedicated to manufacturing and service activities. We manufacture, distribute, and service miraDry Systems and accessories from this facility.

All final assembly, calibration and testing of our miraDry Systems are performed at our Santa Clara facility. The consumable bioTip is manufactured by a contract manufacturer, Healthcare Technology International Limited (HTI), at their facility in Dongguan, China. Consumables are tested and packaged at our Santa Clara facility, then sent to Dravon Medical Inc., or Dravon, for ethylene oxide sterilization. We are in the process of validating a second sterilization provider.

A critical component of our miraDry System is the custom microwave power amplifier contained in the miraDry console. The amplifier is manufactured by a single source manufacturer, Broadband Wireless, LLC, in Reno, Nevada (a subsidiary of United States Technologies, Inc.), or Broadband. We fully own the design and manufacturing process for this amplifier.

Manufacturing facilities that produce finished medical devices intended for distribution in the U.S. and internationally are subject to regulation and periodic unannounced inspection by the FDA and other domestic and international regulatory agencies. In the U.S., we are required to manufacture our products in compliance with the FDA's Quality System Regulation, or QSR, which cover the methods and documentation of the design, testing, control, manufacturing, labeling, quality assurance, packaging, storage, and shipping of our products. The FDA most recently inspected our facility in August 2015 and at the conclusion of such routine audit, a Form 483 was issued with four observations. The FDA acknowledged receipt of periodic status reports documenting the completion of corrections and corrective actions taken by us to address each of the four observations. The FDA will verify

acceptability of the actions taken during its next routine audit. No further actions are required at this time. In international markets, we are required to obtain and maintain various quality assurance and quality management certifications. We have obtained the following international certifications: ISO 13485:2003 Quality Management Systems Requirements for regulatory purposes and ISO 13485:2003 under CMDCAS (Canada). Our notified body, NSAI, most recently audited our facility in June 2015.

HTI, our disposables manufacturer, and Dravon, our sterilization service provider comply with the FDA's QSR and are registered in good standing with the FDA. Additionally, we have procedures in place designed to ensure that all other purchased products and materials conform to specified requirements, including evaluation of suppliers, and where required, qualification of the components supplied.

## **Intellectual Property**

We rely on a combination of patent, copyright, trademark, and trade-secret laws, as well as confidentiality provisions in our contracts to establish and protect our proprietary technologies and products. The protection for miraDry Systems, components, new technologies, processes, and know-how is important to our business. We have implemented a patent strategy designed to protect our technology and facilitate commercialization of our current and future products. We continue to review new technological developments in our system and in the field as a whole in order to make decisions about the most appropriate filings for us.

As of June 30, 2016, our patent portfolio comprises 20 issued U.S. patents, 50 issued foreign counterpart patents, 10 pending U.S. patent applications, 39 pending foreign counterpart patent applications, and one pending Patent Cooperation Treaty (PCT), patent application, each of which we own directly.

Our portfolio includes patents and patent applications directed to system-wide aspects of the miraDry System and related products, and to key aspects of the miraDry System subsystems, components, and methods of use. The patents for our core technology are directed to systems and methods for the treatment of sweat glands with microwave energy to reduce or eliminate excessive sweating.

We also protect our brand through trademark rights. As of June 30, 2016, we owned worldwide 86 registered trademarks, and 42 pending trademark applications. Miramar Labs®, miraDry®, miraDry and Design®, Drop Design® and miraWave® are registered trademarks that we own in the U.S. and certain foreign countries. miraSmooth™ and miraFresh™ are trademarks for which we own applications for registration in the U.S. We also own the ML Stylized mark in the U.S., European Union and Korea, as well an International Registration through World Intellectual Property Organization. Application for registration of Miramar Labs™ is also pending in India. In order to supplement protection of our brand, we have also registered several key Internet domain names.

In addition to our patents and trademarks discussed above, we also rely upon trade secrets, know-how, trademarks, copyright protection, and continuing technological opportunities to develop and maintain our competitive position. We have periodically monitored and continue to monitor the activities of our competitors and other third parties with respect to their use of intellectual property. We require our employees, consultants, and third party collaborators to execute confidentiality and invention assignment agreements upon commencing employment or consulting relationships with us.

## **Research and Development**

Our ongoing research and development activities are focused on products and procedure enhancements and development of products for new indications. Product and procedure enhancements include changes to improve efficacy of the therapy, the patient experience, and the physician/operator experience. As for products for new indications, we will leverage our miraWave microwave energy platform to develop products to serve additional needs in dermatology and plastic surgery. The goal is to be able to treat multiple indications with the existing miraDry console using different handpieces and custom software. Our research and development group is comprised of engineers, microwave scientists and technicians. Our research and development expenses amounted to approximately \$4.97 million and \$5.29 million in 2015 and 2014, respectively.

## **Government Regulation**

The design, development, manufacture, testing and sale of our products are subject to regulations by numerous governmental authorities, principally the FDA, and corresponding state and foreign regulatory agencies.

### ***Regulations by the FDA***

In the U.S., the Federal Food, Drug, and Cosmetic Act, or FD&C Act, the FDA regulations and other federal and state statutes and regulations govern, among other things, medical device design and development, preclinical and clinical testing, premarket clearance or approval, registration and listing, manufacturing, labeling, storage, advertising and promotion, sales and distribution, export and import, and post-market surveillance. The FDA regulates the design, manufacturing, servicing, sale, and distribution of medical devices, including aesthetic devices. Failure to comply with applicable U.S. requirements may subject a company to a variety of administrative or judicial sanctions, such as warning letters, product recalls, product seizures, total or partial suspension of production or distribution, injunctions, fines, civil penalties, and criminal prosecution. The FDA can also refuse to approve pending applications.

Each medical device we wish to distribute commercially in the U.S. will require marketing authorization from the FDA prior to distribution. The two primary types of FDA marketing authorization applicable to a device are premarket notification, also called 510(k) clearance, and premarket approval, also called PMA approval. The type of marketing authorization is generally linked to the classification of the device. The FDA classifies medical devices into one of three classes (Class I, II, or III) based on the degree of risk the FDA determines to be associated with a device and the level of regulatory control deemed necessary to ensure the device's safety and effectiveness. Devices requiring fewer controls because they are deemed to pose lower risk are placed in Class I or II. Class I devices are deemed to pose the least amount of risk and are subject only to general controls applicable to all devices, such as requirements for device labeling, premarket notification, and adherence to the FDA's current Good Manufacturing Practices, or cGMP, and its Quality System Regulation, or QSR. Class II devices are intermediate risk devices that are subject to general controls and may also be subject to special controls such as performance standards, product-specific guidance documents, special labeling requirements, patient registries, and post market surveillance. Class III devices are those for which insufficient information exists to assure safety and effectiveness solely through general or special controls and include life-sustaining, life-supporting or implantable devices, devices of substantial importance in preventing impairment of human health, or which present a potential, unreasonable risk of illness or injury.

Most Class I devices and some Class II devices are exempt from the 510(k) clearance requirement and can be marketed without prior authorization from the FDA. Some Class I devices that have not been so exempted and most Class II devices are eligible for marketing by obtaining 510(k) clearance. By contrast, devices placed in Class III generally require PMA approval or 510(k) de novo clearance prior to commercial marketing. The PMA approval process is more stringent, time-consuming, and expensive than the 510(k) clearance process; however, the 510(k) clearance process has also become increasingly more stringent and expensive.

The miraDry System is currently regulated as a Class II (special controls) device that requires 510(k) clearance.

**510(k) clearance.** To obtain 510(k) clearance for a medical device, an applicant must submit a user fee and then a premarket notification to the FDA demonstrating that the device is “*substantially equivalent*” to a device legally marketed in the U.S. that is not subject to PMA approval, commonly known as the “*predicate device*.” A device is substantially equivalent if, with respect to the predicate device, it has the same intended use and has either (i) the same technological characteristics or (ii) different technological characteristics and the information submitted demonstrates that the device is as safe and effective as a legally marketed device and does not raise different questions of safety or effectiveness. A showing of substantial equivalence sometimes, but not always, requires clinical data. Generally, the 510(k) clearance process takes more than 90 days and may extend to a year or more.

After a device has received 510(k) clearance for a specific intended use, any change or modification that significantly affects its safety or effectiveness, such as a significant change in the design, materials, method of manufacture or intended use, may require a new 510(k) clearance or PMA approval and payment of an FDA user fee. The determination as to whether or not a modification could significantly affect the device’s safety or effectiveness is initially left to the manufacturer using available FDA guidance; however, the FDA may review this determination to evaluate the regulatory status of the modified product at any time and may require the manufacturer to cease marketing and recall the modified device until 510(k) clearance or PMA approval is obtained. The manufacturer may also be subject to significant regulatory fines or penalties.

In general before a manufacturer submits a medical device for 510(k) clearance, it must perform a series of generally short studies over several months, including method comparison, reproducibility, electromagnetic interference and stability studies to ensure that users can use the device successfully. Some of these studies may take place in clinical environments, but are not usually considered clinical trials. For PMA submissions, we are generally required to conduct a longer clinical trial over several years that supports the clinical utility of the device and how the device will be used.

We received initial 510(k) marketing clearance from the FDA for the treatment of axillary sweat reduction in January 2011, clearance for minor modifications to comply with new electrical safety requirements in October 2013 (no changes to the fundamental scientific technology, intended use, safety, or efficacy of the device), and for permanent reduction of axillary hair of all colors in June 2015. Since then, we have not made any modifications to the miraDry System or accessories that requires new 510(k) clearance. We have filed a 510(k) to secure expanded labeling for odor. We are awaiting response from the FDA.

**PMA approval.** A PMA application requires the payment of significant user fees and must be supported by valid scientific evidence, which typically requires extensive data, including technical, preclinical, clinical, and manufacturing data, to demonstrate to the FDA’s satisfaction the safety and effectiveness of the device. A PMA application must also include, among other things, a complete description of the device and its components, a detailed description of the methods, facilities and controls used to manufacture the device, and proposed labeling.

The miraDry System is not currently approved under a PMA approval, and we have no plans for any indication or system improvements or extensions that we believe would require a PMA.

### ***Regulation after FDA Clearance or Approval***

Any devices we manufacture or distribute pursuant to clearance or approval by the FDA are subject to pervasive and continuing regulation by the FDA and certain state agencies. We are required to adhere to applicable regulations setting forth detailed cGMP requirements, as set forth in the QSR, which include, among other things, testing, control and documentation requirements. Non-compliance with these standards can result in, among other

things, fines, injunctions, civil penalties, recalls or seizures of products, total or partial suspension of production, refusal of the government to grant 510(k) clearance or PMA approval of devices, withdrawal of marketing approvals and criminal prosecutions. We have designed and implemented our manufacturing facilities under the FDA's QSR requirements.

Because we are a manufacturer of medical devices, we must also comply with medical device reporting requirements by reviewing and reporting to the FDA whenever there is evidence that reasonably suggests that one of our products may have caused or contributed to a death or serious injury. We must also report any incident in which our product has malfunctioned if that malfunction would likely cause or contribute to death or serious injury if it were to recur. Labeling and promotional activities are subject to scrutiny by the FDA and, in certain circumstances, by the Federal Trade Commission. Medical devices approved or cleared by the FDA may be promoted only for uses set forth in FDA-approved labeling and may not be promoted for unapproved or uncleared uses, otherwise known as "off-label" promotion. The FDA and other agencies actively enforce the laws and regulations prohibiting the promotion of off-label uses, and a company that is found to have improperly promoted off-label uses may be subject to significant liability, including substantial monetary penalties and criminal prosecution.

### ***Food and Drug Administration Amendments Act of 2007***

The Food and Drug Administration Amendments Act, or FDAAA, expanded the federal government's clinical trial registry and results databank maintained by the National Institutes of Health, the NIH, to include all (with limited exceptions) medical device trials. In particular, it requires certain information about device trials, including a description of the trial, participation criteria, location of trial sites, and contact information, to be sent to the NIH for inclusion in a publicly accessible database. In addition, the results of clinical trials that form the primary basis for efficacy claims or are conducted after a device is approved or cleared must be posted to the results databank. Under the FDAAA, companies that violate these and other provisions of the law are subject to substantial civil monetary penalties. We are in compliance with FDAAA's clinical registry requirements.

### ***Foreign Government Regulation***

The regulatory review process for medical devices varies from country to country, and many countries also impose product standards, packaging requirements, environmental requirements, labeling requirements and import restrictions on devices. Each country has its own tariff regulations, duties, and tax requirements. Failure to comply with applicable foreign regulatory requirements may subject a company to fines, suspension or withdrawal of regulatory approvals, product recalls, seizure of products, operating restrictions, criminal prosecution, or other consequences.

### ***Fraud and Abuse Regulations***

We may be subject to numerous health care anti-fraud laws that are intended to reduce waste, fraud, and abuse in the health care industry. These laws are broad and subject to evolving interpretations. They prohibit many arrangements and practices that are lawful in industries other than health care, including certain payments for consulting and other personal services, some discounting arrangements, the provision of gifts and business courtesies, the furnishing of free supplies and services, and waivers of payments. Many states have enacted or are considering laws that limit arrangements between medical device manufacturers and physicians and other health care providers and require significant public disclosure concerning permitted arrangements. These laws are vigorously enforced against medical device manufacturers and have resulted in manufacturers paying significant fines and penalties and being subject to stringent corrective action plans and reporting obligations. We must operate our business within the requirements of these laws and, if we were accused of violating them, could be forced to expend significant resources on investigation, remediation, and monetary penalties. Companies targeted in such prosecutions have paid substantial fines, have been forced to implement extensive corrective action plans, can be excluded from health care

programs and become subject to substantial civil and criminal penalties, and have often become subject to consent decrees severely restricting the manner in which they conduct their business.

Because we have commercial operations overseas, we are subject to the Foreign Corrupt Practices Act, or the FCPA, and other countries' anti-corruption/anti-bribery regimes, such as the U.K. Bribery Act. The FCPA prohibits improper payments or offers of payments to foreign governments and their officials for the purpose of obtaining or retaining business. Safeguards we implement to discourage improper payments or offers of payments by our employees, consultants, sales agents or distributors may be ineffective, and violations of the FCPA and similar laws may result in severe criminal or civil sanctions, or other liabilities or proceedings against us, any of which would likely harm our reputation, business, financial condition and result of operations.

### ***Patient Protection and Affordable Care Act***

Our operations will also be impacted by the federal Patient Protection and Affordable Care Act of 2010, as modified by the Health Care and Education Reconciliation Act of 2010, which we refer to as the Affordable Care Act, or the ACA. The ACA imposed a 2.3% excise tax on sales of medical devices by manufacturers applicable to sales in the U.S. only. Taxable devices include any medical device defined in Section 201(h) of the FDCA and intended for use by humans, with limited exclusions for devices purchased by the general public at retail for individual use. There was no exemption for small companies. In December 2015, Congress voted to suspend this excise tax for 2 years through December 2017.

### ***Environmental Regulation***

We are subject to numerous foreign, federal, state, and local environmental, health and safety laws and regulations relating to, among other matters, safe working conditions, product stewardship and end-of-life handling or disposition of products, and environmental protection, including those governing the generation, storage, handling, use, transportation and disposal of hazardous or potentially hazardous materials. Some of these laws and regulations require us to obtain licenses or permits to conduct our operations. Environmental laws and regulations are complex, change frequently and have tended to become more stringent over time. Although the costs to comply with applicable laws and regulations, including requirements in the European Union relating to the restriction of use of hazardous substances in products, have not been material, we cannot predict the impact on our business of new or amended laws or regulations or any changes in the way existing and future laws and regulations are interpreted or enforced, nor can we ensure we will be able to obtain or maintain any required licenses or permits.

### **Employees**

As of June 30, 2016, we had 79 full-time employees. Within our workforce as of such date, 30 employees were engaged in global marketing, sales and business development, 15 employees were engaged in research and development, 24 employees were engaged in manufacturing, and 10 employees were engaged in general management and administration. We have no collective bargaining agreements with our employees, and we have not experienced any work stoppages. We consider our relations with our employees to be good.

### **Facilities**

Our corporate headquarters are located in Santa Clara, California, where we lease and occupy approximately 29,000 square feet of office, manufacturing and research and development space. The current term of our Santa Clara lease expires on May 31, 2019, with no option to extend the term of the lease. We also maintain a small office in Hong Kong. In connection with our Santa Clara, California lease, we entered into a standby letter of credit with Silicon Valley Bank for \$0.3 million, which was still outstanding as of June 30, 2016. We believe that our existing facilities are adequate for our current needs.

## **Legal Proceedings**

On July 20, 2015, a lawsuit alleging product liability, breach of warranty and negligence was filed against us in the Orange County Superior Court. The plaintiff alleged, among other things, that we are liable to plaintiff for injuries suffered due to defects in a certain miraDry device. We believe that there is no merit to the claims against us and we intend to vigorously defend the lawsuit, but the outcome of any potential litigation matter is uncertain.

We have received a demand from an attorney in Japan who represents a terminated employee claiming wrongful termination. We have retained a legal counsel in Japan who will advise on this matter and, if necessary, defend our interests in a formal legal proceeding. We believe that there is no merit to the claims against us and we intend to vigorously defend the lawsuit, but the outcome of any potential litigation matter is uncertain.

Other than the foregoing, we are currently not aware of any pending legal proceedings to which we are a party or of which any of our property is the subject, nor are we aware of any such proceedings that are contemplated by any governmental authority. Occasionally, we may be involved in claims and legal proceedings arising from the ordinary course of business. However, litigation is subject to inherent uncertainties, and an adverse result in these or other matters may arise from time to time that may harm our business. Regardless of the outcome, litigation can have an adverse impact on us because of defense and settlement costs, diversion of management resources and other factors.

## MANAGEMENT

### Directors and Executive Officers

Below are the names of and certain information regarding our executive officers and directors as of October 7, 2016. Information regarding the positions held and term of office with us prior to the Merger refer to such executive officer or director's employment or service with Miramar.

Name	Age	Position
Robert Michael Kleine.....	62	Chief Executive Officer, President and Director
Brigid A. Makes.....	61	Chief Financial Officer
Steven Kim .....	47	Chief Technology Officer
Mark E. Deem <sup>(2)(3)</sup> .....	49	Director
Hanson S. Gifford III <sup>(1)</sup> .....	55	Director
Maxim Gorbachev <sup>(1)</sup> .....	41	Director
Henry A. Plain, Jr. <sup>(2)</sup> .....	58	Director
Stacey D. Seltzer <sup>(2)(3)</sup> .....	40	Director
Brian H. Dovey <sup>(1)(3)</sup> .....	74	Director
Patrick F. Williams <sup>(1)</sup> .....	44	Director

- (1) Member of audit committee
- (2) Member of compensation committee
- (3) Member of nominating and governance committee

**Robert Michael Kleine** has served as a member of our board of directors since December 2013 and as our President and Chief Executive Officer since January 2014. From 2011 to 2014, Mr. Kleine served as Chief Executive Officer of EndoGastric Solutions, Inc., a biomedical company working on the development of products and procedures for the treatment of gastroesophageal reflux disease. From 2008 to 2010, Mr. Kleine served as President, Chief Executive Officer and Executive Board Member of Biosensors International Group, Ltd., a medical device company that specializes in developing interventional cardiology technology. Mr. Kleine was President and Chief Executive Officer of MicroVention, Inc., a neurovascular medical device company, from 2002 to 2006, and continued as the President, Chairman and CEO after it was acquired Terumo Medical Corporation, a biomedical company, from 2006 to 2008. Mr. Kleine serves on the board of directors of Cardica, Inc. and Sequent Medical. Mr. Kleine holds a Master's Degree from Webster University and a Bachelor of Arts in Biological Science from Missouri Valley College.

We believe Mr. Kleine is qualified to serve as a member of our board of directors because of his extensive experience managing companies at multiple stages of growth in the healthcare and life sciences industries.

**Brigid A. Makes** has served as our Chief Financial Officer since September 2011. From 2006 to 2011, Ms. Makes served as Senior Vice President and Chief Financial Officer of AGA Medical, a medical device company specializing in the treatment of cardiovascular defects, which was acquired by St. Jude Medical, another medical device company, in November 2010. Prior to AGA Medical, from 1999 to 2006, Ms. Makes served in a variety of executive positions, including as Chief Financial Officer, for Nektar Therapeutics (formerly Inhale Therapeutics), a biopharmaceutical company. Ms. Makes also served as Chief Financial Officer for Oravax, a biopharmaceutical company, from 1998 to 1999 and for Haemonetics Corp, a company specializing in the management of blood supplies, from 1995 to 1998. Ms. Makes holds a Bachelor's degree in Finance and International Business from McGill University and an M.B.A. from Bentley University.

**Steven Kim** is one of our founders and has served as our Chief Technology Officer since 2007. From October 2006 to October 2007, Mr. Kim served as an Entrepreneur in Residence at The Foundry, Inc., a medical device company incubator. In 2006, Mr. Kim served as Project Architect for ExploraMed, a medical device incubator. From 1999 to 2005, Mr. Kim served in various management positions for Vivant Medical, an oncology-focused medical device company, which was acquired by Tyco Healthcare, a technology company. Prior to Vivant Medical, from 1996 to 1999, Mr. Kim served as Program Manager for TransVascular, Inc., a medical device company working on treatment of vascular conditions, which was subsequently acquired by Medtronic, a provider of medical technology, services and solutions, including medical devices. Mr. Kim holds a B.S. degree in Mechanical Engineering from California Polytechnic State University and a M.S. degree in Mechanical Engineering from Stanford University.

**Mark E. Deem** is one of our founders and has served as the Chairman of our board of directors since December 2008 and as a member of our board of directors since August 2007. Mr. Deem serves as a Managing Partner of The Foundry, LLC, a medical device company incubator, which he joined in 1998. Since November 2013, Mr. Deem has served as a Venture Partner at Lightstone Ventures, a venture capital firm specializing in investing in life sciences companies. Mr. Deem is also a founder of ForSight Labs, an ophthalmic device incubator which has started six companies. From August 2007 to November 2008, Mr. Deem served as our Interim Chief Executive Officer. Mr. Deem currently serves on the board of directors of Holaira Inc., FIRE1, Ltd., Cala Health, Inc. and as a Board Observer for Aerin Medical, Inc. and Coteria, Inc. Mr. Deem holds a B.S. degree in Biomedical Engineering from Boston University.

We believe Mr. Deem is qualified to serve as a member of our board of directors because of his familiarity with us, medical device companies in general and his experience working with regulators and other stakeholders in the life sciences industry.

**Hanson S. Gifford III** has served as a member of our board of directors since April 2006. Mr. Gifford also serves as a Managing Partner of The Foundry, Inc., a medical device company incubator, which he co-founded in 1998. Since November 2013, Mr. Gifford has served as a Venture Partner at Lightstone Ventures, a venture capital firm specializing in investing in life sciences companies. Mr. Gifford is also a founder of ForSight Labs, an ophthalmic device incubator which has started six companies. Mr. Gifford also serves on the boards of Coteria, FIRE1, Forsight Vision 4, and Ocular Dynamics. Mr. Gifford is an inventor of over 250 issued U.S. patents. Mr. Gifford holds a B.S. degree in Mechanical Engineering from Cornell University.

We believe Mr. Gifford is qualified to serve as a member of our board of directors because of his extensive knowledge of medical device company operations, and his experience working with companies, regulators and other stakeholders in the medical device industry.

**Maxim Gorbachev** has served as a member of our board of directors since December 2013. Since March 2013, Mr. Gorbachev has served as the Managing Partner at RMI Partners, LLC, the management company of RusnanoMedInvest LLC, or RMI LLC, a Russian-based life sciences venture capital firm, founded by RUSNANO State Corporation, which invests in funds and companies supporting innovation in nanotechnologies. Prior to joining RMI Partners, from March 2012 to September 2012, Mr. Gorbachev served as Associate Director, Business Planning at JSC Sukhoi Civil Aircraft, an aircraft manufacturer. From July 2009 to February 2012, Mr. Gorbachev served as Director of Finance and Administration at UCB Pharma LLC., a pharmaceutical company. Mr. Gorbachev currently serves on the board of directors of Atlas Genetics, Neothetics and Celtaxsys. Mr. Gorbachev holds a M.S. degree in Applied Mathematics from Lomonosov Moscow State University, a M.S. degree in Financial Management from the Finance University and an M.B.A. from Vlerick Business School.

We believe Mr. Gorbachev is qualified to serve as a member of our board of directors because of his extensive experience in a wide range of industries, including life sciences companies.

**Henry A. Plain, Jr.** has served as a member of our board of directors since April 2006. Mr. Plain has also served as a General Partner of Lightstone Ventures since 2013 and Morgenthaler Ventures since 2007, both of which are venture capital firms. From 1993 to 2000, Mr. Plain served as the President and Chief Executive Officer at Perclose, Inc., a medical device company. Prior to joining Morgenthaler, Mr. Plain founded several medical device companies. Mr. Plain serves on the board of directors of Claret Medical, Inc., Earlens Corporation, and Setpoint Medical Corporation and also serves as Vice Chairman of The Foundry, LLC. Mr. Plain holds a B.S. degree in Finance from the University of Missouri, Columbia.

We believe Mr. Plain is qualified to serve as a member of our board of directors because of his experience in the life sciences industry and as a founder of multiple medical device companies.

**Stacey D. Seltzer** has served as a member of our board of directors since November 2012. Ms. Seltzer is an employee of Aisling Capital LLC, a healthcare investment firm, which she joined in September 2008. Previously, Ms. Seltzer served as an Associate Director at Schering-Plough, a pharmaceutical company. Prior to her position at Schering-Plough, Ms. Seltzer served as Director of Business Development at Akceli, a biomedical company focusing on the development of new drugs and as a Management Consultant at McKinsey & Company, a consulting firm. Ms. Seltzer serves on the board of directors of Promentis Pharmaceuticals and Aimmune Therapeutics. Ms. Seltzer holds B.S. and M.S. degrees from Yale University in Molecular Biophysics and Biochemistry and a M.B.A. from The Wharton School at the University of Pennsylvania.

We believe Ms. Seltzer is qualified to serve as a member of our board of directors because of her extensive operating and management experience in the biomedical industry.

**Brian H. Dovey** has served on our board of directors since May 2016. Mr. Dovey has been a Partner of Domain Associates, L.L.C., a private venture capital management firm focused on life sciences, since 1988. Prior to joining Domain Associates, L.L.C., Mr. Dovey spent six years at Rorer Group, Inc. (now part of Sanofi-Aventis), a pharmaceutical company, including as President from 1986 to 1988. Mr. Dovey serves on the board of directors of Orexigen Therapeutics, Inc. and REVA Medical, Inc. Mr. Dovey was former chairman and currently serves on the board of directors of both the Center for Venture Education (Kauffman Fellows Program) and the Wistar Institute, a leader in preclinical bio-medical research in the non-profit sector. He is also a member of the Board of Trustees of the La Jolla Playhouse. Mr. Dovey holds a B.A degree from Colgate University and an M.B.A from the Harvard Business School.

We believe Mr. Dovey is qualified to serve on our board of directors because of his experience serving as a director on over 35 private and public companies' board of directors over the years, his experience with life science companies, and his extensive experience at a healthcare venture capital firm.

**Patrick F. Williams** has served on our board of directors since August 2016. Mr. Williams currently serves as a consultant for ZELTIQ Aesthetics, Inc., a medical device company focused on developing and commercializing products utilizing its proprietary controlled-cooling technology platform for the aesthetic market, and served as Chief Financial Officer and Senior Vice President at ZELTIQ from November 2012 to April 2016. From June 2007 to November 2012, Mr. Williams held several positions at NuVasive, Inc., a medical device company focused on developing minimally disruptive surgical products and procedurally integrated solutions for the spine, most recently as Vice President of Strategy and Investor Relations and previously as Vice President of Finance and Investor Relations. Mr. Williams holds an MBA in Finance and Management from San Diego State University and a Bachelor of Arts in Economics from University of California, San Diego.

We believe Mr. Williams is qualified to serve as a member of our board of directors because of his extensive experience in the medical device industry.

## **Board of Directors and Director Independence**

Our board of directors currently consists of eight members. We are not currently subject to listing requirements of any national securities exchange that has requirements that a majority of the board of directors be “independent.” Nevertheless, our board of directors has determined that all of our directors, other than Mr. Kleine, Mr. Deem, Mr. Gifford, and Mr. Plain, qualify as “independent” directors in accordance with listing requirements of The NASDAQ Stock Market, or NASDAQ. Mr. Kleine is not considered independent because he is an employee of Miramar. Mr. Deem, Mr. Gifford and Mr. Plain are not considered independent because they are entitled to receive the accrued royalty payments payable to The Foundry, LLC. The NASDAQ independence definition includes a series of objective tests, such as that the director is not, and has not been for at least three years, one of our employees and that neither the director nor any of his family members has engaged in various types of business dealings with us. In addition, as required by NASDAQ rules, our board of directors has made a subjective determination as to each independent director that no relationships exist, which, in the opinion of our board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. In making these determinations, our board of directors reviewed and discussed information provided by the directors and us with regard to each director’s business and personal activities and relationships as they may relate to us and our management. There are no family relationships among any of our directors or executive officers.

### **Classified Board of Directors**

In accordance with our amended and restated certificate of incorporation, our board of directors is divided into three classes with staggered three-year terms. Our first annual meeting of stockholders will be in 2017. At each annual meeting of stockholders, the successors to directors whose terms then expire will be elected to serve from the time of election and qualification until the third annual meeting following election or until their earlier death, resignation or removal. Our directors have been divided among the three classes as follows:

- The Class I directors are Maxim Gorbachev and Henry A. Plain Jr., and their terms will expire at our annual meeting of stockholders to be held in 2017;
- The Class II directors are Mark E. Deem, Hanson S. Gifford III and Patrick F. Williams, and their terms will expire at our annual meeting of stockholders to be held in 2018; and
- The Class III directors are Robert Michael Kleine, Stacey D. Seltzer and Brian H. Dovey and their terms will expire at our annual meeting of stockholders to be held in 2019.

Our amended and restated certificate of incorporation and amended and restated bylaws authorize only our board of directors to fill vacant directorships, including newly created seats. In addition, the number of directors constituting our board of directors will be permitted to be set only by a resolution adopted by our board of directors. These provisions would prevent a stockholder from increasing the size of our board of directors and then gaining control of our board of directors by filling the resulting vacancies with its own nominees. This makes it more difficult to change the composition of our board of directors but promotes continuity of management.

### **Board Committees**

Our board of directors has established a standing audit committee, a compensation committee, and a nominating and governance committee.

***Audit Committee.*** Mr. Gifford, Mr. Gorbachev, Mr. Dovey and Mr. Williams serve on our audit committee. Mr. Williams serves as the chair of the audit committee. Mr. Gorbachev and Mr. Williams meet the requirements for financial literacy under the applicable rules and regulations of the SEC and NASDAQ. Our board of directors

has determined that Mr. Gorbachev and Mr. Williams are audit committee financial experts as defined under the applicable rules of the SEC and has the requisite financial sophistication as defined under the applicable rules and regulations of NASDAQ. Under the rules of the SEC, members of the audit committee must also meet heightened independence standards. Our board of directors has determined that each of Mr. Gorbachev, Mr. Dovey and Mr. Williams is independent under the applicable rules of NASDAQ and also meets the heightened independence standards under the rules of the SEC. The audit committee operates under a written charter that satisfies the applicable standards of the SEC and NASDAQ. The audit committee's primary responsibilities include:

- appointing, approving the compensation of, and assessing the qualifications and independence of our independent registered public accounting firm, which currently is SingerLewak LLP;
- reviewing and discussing with management and our independent registered public accounting firm our annual and quarterly financial statements and related disclosures;
- preparing the audit committee report required by SEC rules to be included in our annual proxy statements;
- monitoring our internal control over financial reporting, disclosure controls and procedures;
- reviewing our risk management status;
- establishing policies regarding hiring employees from our independent registered public accounting firm and procedures for the receipt and retention of accounting related complaints and concerns;
- meeting independently with our independent registered public accounting firm and management; and
- monitoring compliance with the code of business conduct and ethics for financial management.

All audit and non-audit services must be approved in advance by the audit committee. Our board of directors has adopted a written charter for the audit committee which is available on our website at [www.miramarlabs.com](http://www.miramarlabs.com).

**Compensation Committee.** Mr. Deem, Mr. Plain, and Ms. Seltzer serve on our compensation committee, and Ms. Seltzer satisfies the requirements for independence under the applicable rules and regulations of the SEC and listing standards of the NASDAQ Stock Market. Mr. Deem serves as the chair of the compensation committee. Each member of our compensation committee is also a non-employee director, as defined pursuant to Rule 16b-3 promulgated under the Exchange Act, and an outside director, as defined pursuant to Section 162(m) of the Internal Revenue Code. The compensation committee's responsibilities include:

- annually reviewing and approving corporate goals and objectives relevant to compensation of our chief executive officer and our other executive officers;
- determining the compensation of our chief executive officer and our other executive officers;
- reviewing and making recommendations to our board of directors with respect to director compensation; and
- overseeing and administering our equity incentive plans.

Our chief executive officer and chief financial officer make compensation recommendations for our other executive officers. From time to time, the compensation committee may use outside compensation consultants to assist it in analyzing our compensation programs and in determining appropriate levels of compensation and benefits.

We have recently engaged Compensia to advise us on compensation philosophy as we have become a publicly - traded company. We expect Compensia to help us select a group of peer companies to use for compensation benchmarking purposes and cash and equity compensation levels for our directors, executives and other employees based on current market practices. Our board of directors has adopted a written charter for the compensation committee which is available on our website at [www.miramarlabs.com](http://www.miramarlabs.com).

***Nominating and Governance Committee.*** Mr. Deem, Ms. Seltzer and Mr. Dovey serve on our nominating and governance committee, and Ms. Seltzer and Mr. Dovey satisfy the requirements for independence under the applicable rules and regulations of the SEC and listing standards of the NASDAQ Stock Market. Ms. Seltzer serves as the chair of the nominating and governance committee. The nominating and governance committee's responsibilities include:

- identifying individuals qualified to become members of our board of directors;
- recommending to our board of directors the persons to be nominated for election as directors and to each of our board's committees;
- reviewing and making recommendations to our board of directors with respect to management succession planning;
- developing, updating and recommending to our board of directors corporate governance principles and policies; and
- overseeing the evaluation of our board of directors and committees.

Our board of directors has adopted a written charter for the nominating and governance committee which is available on our website at [www.miramarlabs.com](http://www.miramarlabs.com).

### **Compensation Committee Interlocks and Insider Participation**

None of the members of our compensation committee has been one of our officers or employees during 2015. None of our executive officers currently serves, or in the past year has served, as a member of the board of directors or compensation committee of any entity that has one or more executive officers on our board of directors or compensation committee.

### **Code of Business Conduct and Ethics**

We have adopted a code of business conduct and ethics that applies to all of our employees, officers and directors, including those officers responsible for financial reporting. The code of business conduct and ethics is available on our website at [www.miramarlabs.com](http://www.miramarlabs.com). We expect that any amendments to the code, or any waivers of its requirements, will be disclosed on our website. The reference to our web address does not constitute incorporation by reference of the information contained at or available through our website.

### **Limitation on Liability and Indemnification Matters**

Our certificate of incorporation contains provisions that limit the liability of our directors for monetary damages to the fullest extent permitted by Delaware law. Consequently, our directors will not be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duties as directors, except liability for:

- any breach of the director's duty of loyalty to us or our stockholders;

- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law; or
- any transaction from which the director derived an improper personal benefit.

Our certificate of incorporation and bylaws provide that we are required to indemnify our directors and officers, in each case to the fullest extent permitted by Delaware law. Our bylaws also provide that we are obligated to advance expenses incurred by a director or officer in advance of the final disposition of any action or proceeding, and permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his, her or its actions in that capacity regardless of whether we would otherwise be permitted to indemnify him, her or it under Delaware law.

In addition to the indemnification required in our certificate of incorporation and bylaws, we have entered into indemnification agreements with each of our directors and certain other officers. These agreements will provide for the indemnification of our directors, officers and certain other employees for all reasonable expenses and liabilities incurred in connection with any action or proceeding brought against them by reason of the fact that they are or were our agents. We believe that these provisions in our certificate of incorporation, bylaws and indemnification agreements are necessary to attract and retain qualified persons as directors and officers.

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

## **Director Compensation**

From our inception to the date of this Prospectus, no compensation was earned or paid to Andrey Zasoryn, who was our sole director. Andrey Zasoryn resigned as our sole director, Chief Executive Officer and President, effective as of June 7, 2016 in connection with the Merger.

Miramar became our wholly owned subsidiary upon closing of the Merger on June 7, 2016. We pay The Foundry, LLC \$5,000 per month for services provided by Mark E. Deem as chairman of the board plus reasonable expenses incurred in attending board, committee and other company related meetings. Except for this payment to Mr. Deem, we have not paid our other directors additional compensation for being members of our board of directors in the fiscal year ended December 31, 2015.

On July 14, 2016, we approved a compensation policy for our non-employee directors, or the Director Compensation Program. Pursuant to the Director Compensation Program, our non-employee directors will receive cash compensation, paid yearly in arrears, as follows:

- Each non-employee director will receive an annual cash retainer in the amount of \$35,000 per year.

- Any non-employee Chairman will receive an additional annual cash retainer in the amount of \$22,500 per year.
- The chairperson of the audit committee will receive additional annual cash compensation in the amount of \$15,500 per year for such chairperson's service on the audit committee. Each non-chairperson member of the audit committee will receive additional annual cash compensation in the amount of \$6,000 per year for such member's service on the audit committee.
- The chairperson of the compensation committee will receive additional annual cash compensation in the amount of \$10,000 per year for such chairperson's service on the compensation committee. Each non-chairperson member of the compensation committee will receive additional annual cash compensation in the amount of \$5,000 per year for such member's service on the compensation committee.
- The chairperson of the nominating and corporate governance committee will receive additional annual cash compensation in the amount of \$7,000 per year for such chairperson's service on the nominating and corporate governance committee. Each non-chairperson member of the nominating and corporate governance committee will receive additional annual cash compensation in the amount of \$4,000 per year for such member's service on the nominating and corporate governance committee.

Under the Director Compensation Program, upon the director's initial appointment or election to our board of directors, each non-employee director will receive an option, or the Initial Grant, to purchase that number of shares of our common stock such that the award has an aggregate grant date fair value (as defined below) equal to \$90,000 pursuant to our 2006 Stock Plan. In addition, each non-employee director who has been serving as a director and will continue to serve as a director immediately following each annual stockholder meeting, will be automatically granted, on the date of such annual stockholder meeting, an option, or the Annual Grant, to purchase that number of shares of our common stock such that the award has an aggregate grant date fair value equal to \$45,000 pursuant to the 2006 Stock Plan. For purposes of the Initial Grant and the Annual Grant, "grant date fair value" will mean the fair value of an award as of the date of grant as determined in accordance with ASC Topic 718, "Share-Based Payment," using the Black-Scholes pricing model and the valuation assumptions used by us in accounting for options as of such date of grant. The Initial Grant will vest as to 1/48th of the shares subject to Initial Grant on each monthly anniversary of the applicable grant date, subject to continued service through each applicable vesting date, and the Annual Grant will vest as to 1/12th of the shares subject to the Annual Grant on each month anniversary of the applicable grant date, subject to continued service through such vesting date.

On August 25, 2016, pursuant to the Director Compensation Program, we granted each of Mr. Deem, Mr. Gifford, Mr. Gorbachev, Mr. Plain, Mr. Dovey, Ms. Seltzer and Mr. Williams, an option to purchase 16,093 shares of our common stock at an exercise price per share equal to \$5.5925. The options vest and become exercisable in substantially equal monthly installments over the 48 months following the grant date, subject to the individual continuing to provide services to us through the applicable vesting date. Until we complete our next financing, all the non-employee directors, except for Mr. Williams, have agreed to forgo any cash compensation.

## EXECUTIVE COMPENSATION

### Summary Compensation Table

This discussion contains forward looking statements that are based on our current plans, considerations, expectations and determinations regarding future compensation programs. Actual compensation programs that we adopt may differ materially from currently planned programs as summarized in this discussion. As an “emerging growth company” as defined in the JOBS Act and a smaller reporting company we are not required to include a Compensation Discussion and Analysis section and have elected to comply with the scaled disclosure requirements applicable to emerging growth companies and smaller reporting companies.

From our inception to the date of this Prospectus, no compensation was earned or paid to Andrey Zasoryn, who was our sole director. Andrey Zasoryn resigned as our sole director, Chief Executive Officer and President, effective as of June 7, 2016 in connection with the Merger.

Miramar became our wholly owned subsidiary upon closing of the Merger on June 7, 2016. The following table provides information regarding the total compensation for services rendered in all capacities that was earned in Miramar’s fiscal year ended December 31, 2015 by each individual who served as Miramar’s principal executive officer at any time in 2015, and Miramar’s two other most highly compensated executive officers who were serving as executive officers as of December 31, 2015, had Miramar been a reporting company on December 31, 2015. These individuals were our named executive officers for 2015.

Name and Principal Position	Year	Salary (\$)	Option Awards (\$) <sup>(1)</sup>	Non-Equity Incentive Plan Compensation (\$) <sup>(2)</sup>	All Other Compensation (\$)	Total (\$)
Robert Michael Kleine <i>President and Chief Executive Officer</i>	2015	437,333	221,866	136,300	60,000 <sup>(3)</sup>	855,499
Brigid A. Makes <i>Senior Vice President and Chief Financial Officer</i>	2015	331,083	46,952	82,800	—	460,835
Steven Kim <i>Founder and Chief Technology Officer</i>	2015	299,250	109,114	37,400	—	445,764

(1) The amounts reported represent the aggregate grant-date fair value of the stock options awarded to the named executive officer in 2015, calculated in accordance with ASC Topic 718. Such grant-date fair value does not take into account any estimated forfeitures related to service-vesting conditions. The assumptions used in calculating the grant-date fair value of the options reported in this column are set forth in the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Critical Accounting Policies and Estimates — Stock-Based Compensation.”

(2) The amounts reported in the Non-Equity Incentive Plan Compensation column represent the annual cash performance-based bonuses pursuant to the achievement of certain stated objectives as set forth in our Non-Equity Incentive Plan, subject to discretion of our compensation committee and subsequent approval by the board of directors.

(3) The amounts reported represent reimbursement of up to \$5,000 per month for temporary living expenses pursuant to Mr. Kleine’s employment offer letter.

### Executive Officer Employment Agreements and Offer Letters

### ***Robert Michael Kleine***

Miramar entered into an employment offer letter in November 2013 with Robert Michael Kleine, our President and Chief Executive Officer. The letter has no specific term and provides for at-will employment. The letter also provides that Mr. Kleine is eligible to receive an annual bonus of up to 40% of his annual salary based on the achievement of certain goals mutually agreed upon by him and our board of directors. Mr. Kleine's annual base salary for 2015 was \$437,333.

Pursuant to Mr. Kleine's employment offer letter, if, within one year following a "Change of Control," we terminate Mr. Kleine's employment without "Cause," or Mr. Kleine resigns for "Good Reason" (as such terms are defined in Mr. Kleine's employment offer letter), Mr. Kleine will receive immediate vesting of any remaining unvested stock options. The letter provides that Mr. Kleine may receive reimbursements from us for up to \$5,000 monthly as a housing allowance. We entered into an amended and restated employment agreement in May 2016 with Mr. Kleine, which contains the same terms and conditions of Mr. Kleine's employment as set forth above.

### ***Brigid A. Makes***

Miramar entered into an employment agreement in September 2011 with Brigid A. Makes, our Senior Vice President and Chief Financial Officer. The agreement has no specific term and provides for at-will employment. The agreement did not provide for any bonus. Ms. Makes's annual base salary for 2015 was \$331,083.

Pursuant to Ms. Makes's employment agreement, if, prior to a "Change of Control" or within one year following a "Change of Control," Ms. Makes's employment is terminated by us other than for "Cause," death or disability, or by Ms. Makes for "Good Reason" (as such terms are defined in Ms. Makes's employment agreement), Ms. Makes will receive (i) continuing payments of her base salary as then in effect for a period of 9 months, payable pursuant to our regular payroll procedures, (ii) immediate vesting of any remaining unvested equity awards including stock options and (iii) reimbursements for premiums paid for continued health benefits under COBRA for Ms. Makes and any eligible dependents until the earlier of 9 months or the date upon which Ms. Makes and/or any eligible dependents loses eligibility for COBRA.

### ***Steven Kim***

Miramar entered into an employment offer letter in October 2006 with Steven Kim, our Chief Technology Officer. The letter has no specific term and provides for at-will employment. The letter does not provide for any bonus. Mr. Kim's annual base salary for 2015 was \$299,250.

### **Pension Benefits and Nonqualified Deferred Compensation**

We do not provide a pension plan for our employees, and none of our named executive officers participated in a nonqualified deferred compensation plan in 2015.

### **Outstanding Equity Awards at 2015 Year-End**

The following table sets forth information regarding outstanding stock options and stock awards held by our named executive officers as of December 31, 2015. These options were converted into options to purchase our common stock in connection with the Merger, and the table below reflects all outstanding options as of December 31, 2015 as if they had been granted by us.

Name	Grant Date(1)	Option Awards			
		Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price (\$)(2)	Option Expiration Date
Robert Michael Kleine.....	7/17/2014(3)	23,880	25,957	\$6.63	7/17/2024
	7/17/2014(4)	81,314	88,384	\$6.63	7/17/2024
	10/9/2014(5)	12,067	29,306	\$6.63	10/9/2024
Brigid A. Makes .....	10/6/2011(6)	40,662	-	\$7.44	10/6/2021
	6/20/2013(7)	970	360	\$8.66	6/20/2023
	7/17/2014(8)	1,239	1,347	\$6.63	7/17/2024
	7/15/2015(9)	1,948	6,553	\$7.57	7/15/2025
Steven Kim.....	11/1/2006(10)	18,483	-	\$1.35	11/1/2016
	12/18/2008(11)	3,770	-	\$6.36	12/18/2018
	1/27/2009(12)	5,745	-	\$6.36	1/27/2019
	12/9/2009(13)	2,525	-	\$4.33	12/9/2019
	2/24/2010(14)	8,087	-	\$4.33	2/24/2020
	10/6/2011(15)	2,070	-	\$7.44	10/6/2021
	4/5/2012(16)	6,730	292	\$7.44	4/5/2022
	7/31/2012(17)	6,777	1,355	\$8.66	7/31/2022
	6/20/2013(18)	1,309	539	\$8.66	6/20/2023
	7/17/2014(19)	5,997	7,088	\$6.63	7/17/2024
4/15/2015(20)	19,768	98,843	\$7.57	4/15/2025	

## Employee Benefit and Stock Plans

### 2006 Stock Plan, as Amended

Miramar's board of directors adopted, and Miramar's stockholders approved, the 2006 Plan in April 2006. The 2006 Plan was most recently amended in April 2015. The 2006 Plan allows for the grant of incentive stock options, within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended, to our employees and our parent and subsidiary corporations' employees, and for the grant of nonstatutory stock options and restricted stock purchase rights to our employees, directors and consultants and our parent and subsidiary corporations' employees, directors and consultants.

*Authorized Shares.* The 2006 Plan and all outstanding awards thereunder were assumed by us in connection with the closing of the Merger. In the event that an outstanding option or other right for any reason expires or is canceled, the shares allocable to the unexercised portion of such option or other right shall be added to the number of shares then available for issuance under the 2006 Plan. However, shares that have actually been issued under the 2006 Plan upon exercise of either an option or other right shall not become available for future distribution under the 2006 Plan.

*Plan Administration.* Our board of directors or a committee of our board (the administrator) administers the 2006 Plan. Subject to the provisions of the 2006 Plan, the administrator has the full authority and discretion to take any actions it deems necessary or advisable for the administration of the 2006 Plan. All decisions, interpretations and other actions of the administrator are final and binding on all participants in the 2006 Plan.

*Options.* Stock options may be granted under the 2006 Plan. The exercise price per share of incentive stock options and nonstatutory stock options must equal at least 100% and 85%, respectively, of the fair market value per share of our common stock on the date of grant, as determined by the administrator. The term of a stock option may

not exceed 10 years. With respect to any participant who owns 10% of the voting power of all classes of our outstanding stock as of the grant date, the term of an incentive stock option granted to such participant must not exceed five years and the exercise price per share of such incentive stock option must equal at least 110% of the fair market value per share of our common stock on the date of grant, as determined by the administrator. The 2006 Plan administrator determines the terms and conditions of options.

After termination of an optionee's service as an employee, director or consultant, the optionee may exercise the vested shares subject to his or her option as of the date of such termination for at least 30 days, or such longer period of time as specified in the option agreement. If termination is due to death or disability, the option will remain exercisable for at least 6 months, or such longer period of time as specified in the option agreement. In all other cases, the option will remain exercisable for at least thirty days, or such longer period of time as specified in the option agreement. However, an option generally may not be exercised later than the expiration of its term.

*Restricted Shares.* Restricted shares may be granted under the 2006 Plan as a purchasable award. Restricted shares are shares of our common stock that vest in accordance with the terms and conditions established by the administrator, provided that with respect to recipients of restricted shares who are not officers, directors, or consultants, restricted shares will vest at a rate no slower than 20% per year over five years starting on the date of grant of the award or sale of the underlying shares. The administrator will determine the number of shares of restricted stock granted to any employee, director or consultant and, subject to the provisions of the 2006 Plan, will determine the terms and conditions of such awards. Recipients of restricted stock awards generally will have voting and dividend rights with respect to such shares upon grant without regard to the restriction, unless the administrator provides otherwise. Shares of restricted stock as to which the restrictions have not lapsed are subject to our right of repurchase or forfeiture.

*Transferability of Awards.* The 2006 Plan generally does not allow for the transfer or assignment of awards, except by will or by the laws of descent and distribution. However, to the extent permitted by our board of directors in its sole discretion, awards may be transferred to family members by gift or domestic relations orders to the extent permitted by applicable securities laws. Restricted shares and shares issued upon exercise of an option will be subject to such special forfeiture conditions, rights of repurchase, rights of first refusal, and other transfer restrictions as the administrator may determine.

*Certain Adjustments.* In the event of any dividend or other distribution (whether in the form of cash, shares, other securities, or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, or exchange of our shares or other securities, or other change in our corporate structure affecting the shares occurs, our board of directors will make appropriate adjustments to the number of shares under the 2006 Plan available for future awards, the number of shares covered by each outstanding option, the exercise price under each outstanding option, or the price of shares subject to our right of repurchase.

*Merger or Change in Control.* The 2006 Plan provides that, in the event of a merger or change in control, all outstanding awards will be assumed or an equivalent option substituted by the successor corporation or its parent or subsidiary. In the event the successor corporation refuses to assume or substitute for the award, then the optionee will fully vest in and have the right to exercise the award as to all of the shares as to which it would not otherwise be vested or exercisable. If an award becomes fully vested and exercisable in lieu of assumption or substitution in the event of a merger or change in control, the administrator will notify the award's optionee in writing or electronically that the award shall be fully exercisable for a period of time as determined by the administrator, and the award shall terminate upon expiration of such period (to the extent unexercised).

*Amendment; Termination.* Our board of directors may amend, suspend or terminate the 2006 Plan at any

time, provided that such action does not adversely affect a participant's rights under outstanding awards granted under the 2006 Plan without such participant's written consent.

## CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

SEC rules require us to disclose any transaction or currently proposed transaction in which we are a participant and in which any related person has or will have a direct or indirect material interest involving the lesser of \$120,000 or 1% of the average of our total assets as of the end of last two completed fiscal years. A related person is any executive officer, director, nominee for director, or holder of 5% or more of our common stock, or an immediate family member of any of those persons.

The following is a description of transactions since January 1, 2014 to which we have been a party, in which the amount involved exceeded or will exceed \$120,000, and in which any of our directors, executive officers or holders of more than 5% of Miramar's pre-Merger capital stock, or an affiliate or immediate family member thereof, had or will have a direct or indirect material interest, other than compensation and other arrangements that are described in the section titled "Executive Compensation." The following descriptions are historical and have not been adjusted to give effect to the Merger or the share conversion ratio pursuant to the Merger Agreement.

### Sales and Purchases of Securities

#### *Convertible Promissory Note Purchase Agreement*

In December 2015, February 2016 and May 2016, Miramar issued convertible promissory notes for an aggregate principal amount of \$4,850,000 to nine accredited investors. The table below sets forth the principal amount of the convertible promissory notes sold to our directors, executive officers or holders of more than 5% of Miramar's pre-Merger capital stock, or an affiliate or immediate family member thereof.

Name	Aggregate Principal Price(\$)
Domain Partners VII, L.P. (1)	1,977,395
Morgenthaler Partners VIII, L.P. (2)	939,311
Aisling Capital III, LP (3)	1,397,922
RMI Investments, S.a.r.l. (4)	619,748

- (1) Brian H. Dovey, a member of our board of directors, is a Managing Member of One Palmer Square Associates VII, LLC, the general partner of Domain Partners VII, L.P. and Domain Partners VII Associates, L.P. He disclaims beneficial ownership of the shares held by Domain Partners VII, L.P.'s and Domain Partners VII Associates, L.P.'s investment in Miramar.
- (2) Henry A. Plain, Jr., a member of our board of directors, is a General Partner of Morgenthaler Ventures, LLC, an affiliate of Morgenthaler Partners VIII, L.P. He disclaims beneficial ownership of Morgenthaler Partners VIII, L.P.'s investment in Miramar.
- (3) Stacey D. Seltzer, a member of our board of directors, is a Partner of Aisling Capital Partners III, LP, which is the general partner of Aisling Capital III, LP. She disclaims beneficial ownership of Aisling Capital III, LP's investment in Miramar.
- (4) Maxim Gorbachev, a member of our board of directors, is the Managing Partner of RMI Partners, LLC, an affiliate of RMI Investments S.A. R.L. He disclaims beneficial ownership of RMI Investments S.A. R.L.'s investment in Miramar.

#### *Series D Preferred Stock Financing*

In December 2013 and September 2014, Miramar issued an aggregate of 16,255,133 shares of Series D Preferred Stock at a price per share of \$1.60, for aggregate gross consideration of \$26.0 million to seven accredited investors. The table below sets forth the number of shares of Series D Preferred Stock sold to our directors, executive

officers or holders of more than 5% of Miramar’s pre-Merger capital stock, or an affiliate or immediate family member thereof.

Name	Number of Shares of Series D Preferred Stock	Aggregate Purchase Price(\$)
RMI Investments S.A.R.L. (1).....	7,812,500	\$12,500,000
Domain Partners VII, L.P. (2).....	3,651,946	5,843,114
Morgenthaler Partners VIII, L.P. (3).....	2,257,918	3,612,669
Aisling Capital III, LP (4).....	2,232,125	3,571,400

- (1) Maxim Gorbachev, a member of our board of directors, is the Managing Partner of RMI Partners, LLC, an affiliate of RMI Investments S.A.R.L. He disclaims beneficial ownership of RMI Investments S.A.R.L.’s investment in Miramar.
- (2) Brian H. Dovey, a member of our board of directors, is a Managing Member of One Palmer Square Associates VII, LLC, the general partner of Domain Partners VII, L.P. and Domain Partners VII Associates, L.P. He disclaims beneficial ownership of the shares held by Domain Partners VII, L.P. and Domain Partners VII Associates, L.P.
- (3) Henry A. Plain, Jr., a member of our board of directors, is a General Partner of Morgenthaler Ventures, LLC, an affiliate of Morgenthaler Partners VIII, L.P. He disclaims beneficial ownership of Morgenthaler Partners VIII, L.P.’s investment in Miramar.
- (4) Stacey D. Seltzer, a member of our board of directors, is a Partner of Aisling Capital Partners III, LP, which is the general partner of Aisling Capital III, LP. She disclaims beneficial ownership of Aisling Capital III, LP’s investment in Miramar.

***Participation in the Private Placement***

Certain of our existing institutional investors, including investors affiliated with certain of our directors, have purchased an aggregate of 1,634,808 of shares of our common stock in the Private Placement, for an aggregate purchase price of approximately \$8.5 million based on the offering price of \$5.00 per share. The purchase price was paid partially in cash and partially through the conversion of certain existing convertible promissory notes as discussed above. See the footnotes to the beneficial ownership table in “Security Ownership of Certain Beneficial Owners and Management” for more details.

Mark Tompkins, who beneficially owned approximately 8.69% of the our common stock as of October 7, 2016, participated in the Private Placement, purchasing 100,000 shares of our common stock for an aggregate purchase price of \$500,000. Mr. Tompkins is also a party to the Registration Rights Agreement with respect to all of his shares. See the footnotes to the beneficial ownership table in “Security Ownership of Certain Beneficial Owners and Management” and “Description of Capital Stock — Registration Rights” for more details.

**Relationship and License Agreement with The Foundry**

Miramar Technologies, Inc. was formed at an incubator, The Foundry, LLC, a company which provides seed capital and management services to its investees. Certain employees of The Foundry serve as members of our board of directors and own shares of our common stock. The total amount reimbursed to The Foundry for services provided as members of the board of directors was \$31,785 for the six months ended June 30, 2016 and \$62,267 and \$62,180 for the years ended December 31, 2015 and 2014, respectively.

In December 2008, The Foundry assigned to us certain patents and technology relating to the field of energy-based health treatments. The Foundry also granted us a license under certain technology to develop and commercialize products within such field. In consideration for such assignment and license, we granted The Foundry a non-exclusive license under certain patent applications to develop and commercialize products outside such field, subject to a right

of first negotiation and option, and an exclusive license within the field of ultrasonic energy-based health treatments. We further agreed to pay The Foundry a compensation payment up to \$30 million, payable quarterly at a royalty rate of three percent (3%) of net sales of products. As of June 30, 2016, approximately \$1.6 million in royalties has accrued under the assignment and license agreement. The amount of royalties accrued for the years ended 2014 and 2015 was \$0.7 million and \$1.2 million, respectively. The agreement will be effective until the compensation payment has been fully paid or the expiration of the last-to-expire assigned patent, whichever is later. As the Managing Partners of The Foundry, Hanson S. Gifford III and Mark E. Deem, each a member of our board of directors, are entitled to receive 31.01% and 22.82%, respectively, of the royalty payments we pay to The Foundry. Henry A. Plain, Jr, also a member of our board of directors, is entitled to receive 20.00% of the royalty payments we pay to The Foundry.

### **Indemnification Agreements and Directors' and Officers' Liability Insurance**

We have entered into indemnification agreements with each of our directors and executive officers. These agreements, among other things, require us to indemnify each director and executive officer to the fullest extent permitted by Delaware law, including indemnification of expenses such as attorneys' fees, judgments, fines and settlement amounts incurred by the director or executive officer in any action or proceeding, including any action or proceeding by or in right of us, arising out of the person's services as a director or executive officer.

### **Registration Rights Agreement**

In connection with the Private Placement, we entered into a Registration Rights Agreement dated as of June 7, 2016, among us and certain of our stockholders who are signatories thereto. Under the terms of the agreement, the holders of Registrable Shares, including the selling stockholders, have certain registration rights, including the right to request that their shares of common stock be covered by a registration statement that we are otherwise filing. The related parties that have registration rights pursuant to the rights agreement are Morgenthaler Partners VIII, L.P., Domain Partners VII, L.P., RMI Investments S.A.R.L., and Aisling Capital III, LP. For a more detailed description of these registration rights, see "Description of Capital Stock—Registration Rights."

### **Policies and Procedures for Related Party Transactions**

Our board of directors has adopted a policy that our executive officers, directors, nominees for election as a director, beneficial owners of more than 5% of any class of our common stock and any members of the immediate family of any of the foregoing persons are not permitted to enter into a related person transaction with us without the prior consent of our audit committee. Any request for us to enter into a transaction with an executive officer, director, nominee for election as a director, beneficial owner of more than 5% of any class of our common stock or any member of the immediate family of any of the foregoing persons in which the amount involved exceeds \$120,000 and such person would have a direct or indirect interest must first be presented to our audit committee for review, consideration and approval. In approving or rejecting any such proposal, our audit committee is to consider the material facts of the transaction, including, but not limited to, whether the transaction is on terms no less favorable than terms generally available to an unaffiliated third party under the same or similar circumstances and the extent of the related person's interest in the transaction. We did not have a formal review and approval policy for related party transactions at the time of any of the transactions described above. However, all of the transactions described above were entered into after presentation, consideration and approval by our board of directors and/or our audit committee.

## SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth information with respect to the beneficial ownership of our common stock at October 7, 2016, by:

- each stockholder known by us to be the beneficial owner of more than 5% of our common stock (our only classes of voting securities);
- each of our directors and executive officers; and
- all of our directors and executive officers as a group.

The number of shares beneficially owned by each entity, person, director or executive officer is determined in accordance with the rules of the SEC, and the information is not necessarily indicative of beneficial ownership for any other purpose. Under such rules, beneficial ownership includes any shares over which the individual has sole or shared voting power or investment power as well as any shares that the individual has the right to acquire within 60 days of October 7, 2016 through the exercise of any stock option, warrants or other rights. Except as otherwise indicated, and subject to applicable community property laws, the persons named in the table have sole voting and investment power with respect to all shares of common stock held by such person.

The percentage of shares beneficially owned is computed on the basis of 9,380,653 share of common stock outstanding at October 7, 2016. Shares of common stock that a person has the right to acquire within 60 days of October 7, 2016 are deemed outstanding for purposes of computing the percentage ownership of the person holding such rights, but are not deemed outstanding for purposes of computing the percentage ownership of any other person, except with respect to the percentage ownership of all directors and executive officers as a group.

Unless otherwise indicated in the following table, the address for each person named in the table is c/o Miramar Labs, Inc., 2790 Walsh Avenue, Santa Clara, CA 95051.

Name and Address of Beneficial Owner	Number of Shares Beneficially Owned	Percentage of Beneficial Ownership (%)
<b>5% and Greater Stockholders</b>		
Entities affiliated with Domain Partners VII, L.P. (1).	2,619,193	27.87
Morgenthaler Partners VIII, L.P. (2)	1,878,796	20.00
Aisling Capital III, L.P. (3)	1,851,643	19.74
RMI Investments S.A.R.L. (4).	1,132,064	12.07
Mark Tompkins (5)	815,000	8.69
<b>Named Executive Officers and Directors</b>		
Robert Michael Kleine (6)	173,578	1.82
Brigid A. Makes (7)	61,388	*
Steve Kim (8)	121,689	1.28
Mark E. Deem (9)	74,938	*
Hanson S. Gifford III (10)	104,511	1.11
Maxim Gorbachev (4)	1,133,070	12.08
Henry A. Plain, Jr. (11)	1,944,862	20.70
Stacey D. Seltzer (3)	1,852,649	19.75
Brian H. Dovey (1)	2,620,199	27.87
Patrick F. Williams (12)	1,006	*
All current directors and executive officers as a group (10 persons)	8,086,884	86.08

\*Represents ownership of less than 1%

- (1) Consists of (i) 2,585,055 shares and 18,313 shares that may be acquired pursuant to the exercise of warrants held of record by Domain Partners VII, L.P., a Delaware limited partnership (“DP VII”) and (ii) 15,513 shares and 312 shares that may be acquired pursuant to the exercise of warrants held of record by DP VII Associates, L.P., a Delaware limited partnership (“DP VII-A”). One Palmer Square Associates VIII, L.L.C., a Delaware limited liability company (“OPSA VIII”), is the general partner of DP VII and DP VII-A and owns no shares directly. Brian Dovey, a member of our board of directors, is a managing member of OPSA VIII. Mr. Dovey disclaims beneficial ownership in the shares held by these entities, except to the extent of his respective pecuniary interest therein. The address for such entities is c/o Domain Associates, One Palmer Square, Princeton, New Jersey 08542.
- (2) Consists of 1,866,379 shares and 12,417 shares that may be acquired pursuant to the exercise of warrants held of record by Morgenthaler Partners VIII, L.P. (“MP LP”). Henry A. Plain, Jr., a member of our board of directors, is a General Partner of Morgenthaler Ventures, LLC, an affiliate of MP LP. Mr. Plain disclaims beneficial ownership in the shares held by these entities, except to the extent of his respective pecuniary interest therein. The address for MP LP is 2710 Sand Hill Road, Suite 100, Menlo Park, CA 94025.
- (3) Consists of 1,851,643 shares held of record by Aisling Capital III, L.P. (“AC LP”). These shares of common stock are owned directly by Aisling Capital III, L.P. (“Aisling”) and held indirectly by Aisling Capital Partners III, LP (“Aisling GP”), as general partner of Aisling, Aisling Capital Partners III LLC (“Aisling Partners”), as general partner of Aisling GP, and each of the individual managing members of Aisling Partners. The individual managing members (collectively, the “Managers”) of Aisling Partners are Dennis Purcell, Dr. Andrew Schiff and Steve Elms. Aisling GP, Aisling Partners and the Managers share voting and dispositive power over the shares directly held by Aisling. Each of Aisling GP, Aisling Partners and the Managers may be deemed to be the beneficial owner of the securities listed above only to the extent of its pecuniary interest therein. The above information shall not be deemed an admission that any of Aisling GP, Aisling Partners or any of the Managers is the beneficial owner of any securities reported herein in excess of such amount. The address for AC III is 888 Seventh Avenue, 29th Floor, New York, NY 10016.
- (4) Consists of 1,132,064 shares held of record by RMI Investments S.A.R.L. (“RMI”). Maxim Gorbachev, a member of our board of directors, is the Managing Partner of RMI Partners, LLC, an affiliate of RMI. Mr. Gorbachev disclaims beneficial ownership in the shares held by these entities, except to the extent of his respective pecuniary interest therein. The mailing address of RMI is 7, Rue Robert Stumper, L-2557, Luxembourg.
- (5) Consists of 815,000 shares held of record by Mark Tompkins, including 100,000 shares he purchased in the Offering. The mailing address of Mr. Tompkins is Via Guidino, APP 1, Lugano-Paradiso, 236900, Switzerland.
- (6) Consists of 132,636 shares issuable pursuant to stock options exercisable within 60 days of October 7, 2016.
- (7) Consists of 44,418 shares issuable pursuant to stock options exercisable within 60 days of October 7, 2016.
- (8) Consists of (i) 27,724 shares held of record by Mr. Kim and (ii) 77,361 shares issuable pursuant to stock options exercisable within 60 days of October 7, 2016.
- (9) Consists of (i) 73,932 shares held of record by the Deem Family Trust u/t/a dated September 1, 2004 for which Mr. Deem and his spouse serve as trustees and (ii) 1,006 shares issuable pursuant to stock options exercisable within 60 days of October 7, 2016.
- (10) Consists of (i) 103,505 shares held of record by the Gifford Family Trust dated July 21, 2006, for which Mr. Gifford and Alexandra Stitt Gifford serve as trustees and (ii) 1,006 shares issuable pursuant to stock options exercisable within 60 days of October 7, 2016.
- (11) Consists of (i) 65,060 shares held of record by Henry A. Plain, Jr. and Lisa M. Plain, Trustees of The Plain Family Trust U/D/T dated September 7, 1994 for which Mr. Plain and his spouse serve as trustees and (ii) 1,866,379 shares and 12,417 shares that may be acquired pursuant to the exercise of warrants held of record by MP LP. See footnote 2 above regarding Mr. Plain’s relationship with entities affiliated with MP LP.
- (12) Consists of 1,006 shares issuable pursuant to stock options exercisable within 60 days of October 7, 2016.

## SELLING STOCKHOLDERS

This Prospectus covers the resale from time to time by the selling stockholders identified in the table below of up to an aggregate of 9,194,674 shares of our common stock, which includes (i) 1,978,567 shares of our common stock issued and sold to investors in the Private Placement, (ii) 715,000 shares of our common stock that were held by certain of our stockholders immediately prior to the closing of the Merger, (iii) 6,419,967 shares of our common stock, issued in the Merger to the former stockholders of Miramar Technologies, Inc. in connection with the closing of the Merger, (iv) 17,504 shares of our common stock issuable upon exercise of common stock warrants by the holders of the Placement Agent Warrants issued as compensation in connection with the Private Placement and (v) 63,636 shares of common stock issued to certain consultants.

Pursuant to the Registration Rights Agreement entered into with each of the investors in the Private Placement, we have filed with the SEC the registration statement of which this Prospectus forms a part in order to register such resales of our common stock under the Securities Act. We have also agreed to cause this registration statement to become effective and to keep such registration statement effective within and for the time periods set forth in the Registration Rights Agreement. Our failure to satisfy the filing or effectiveness deadlines set forth in the Registration Rights Agreement may subject us to payment of certain monetary penalties pursuant to the terms of the Registration Rights Agreement. See “Description of Capital Stock — Registration Rights” for more information.

The selling stockholders identified in the table below may from time to time offer and sell under this Prospectus any or all of the shares of common stock described under the column “Shares of Common Stock Being Offered in this offering” in the table below. The table below has been prepared based upon information furnished to us by the selling stockholders. The selling stockholders identified below may have sold, transferred or otherwise disposed of some or all of their shares since the date on which the information in the following table is presented in transactions exempt from or not subject to the registration requirements of the Securities Act. Information concerning the selling stockholders may change from time to time and, if necessary, we will amend or supplement this Prospectus accordingly and as required.

We have been advised, as noted in the footnotes in the table below, that certain of the selling stockholders are broker-dealers, affiliates of a broker-dealer and/or underwriter. Those selling stockholders have informed us that they bought our securities in the ordinary course of business, and that none of these selling stockholders had, at the time of their purchase of our securities, any agreements or understandings, directly or indirectly, with any person to distribute such securities.

The following table and footnote disclosure following the table sets forth the name of each selling stockholder, the nature of any position, office or other material relationship, if any, that the selling stockholder has had within the past three years with us or with any of our predecessors or affiliates, and the number of shares of our common stock beneficially owned by the selling stockholder as of October 7, 2016, except as described in the notes to such table. The number of shares reflected are those beneficially owned, as determined under applicable rules of the SEC, and the information is not necessarily indicative of beneficial ownership for any other purpose. Applicable percentage ownership prior to this offering is based on 9,380,653 shares of common stock outstanding as of October 7, 2016. Under applicable SEC rules, beneficial ownership includes any shares of common stock as to which a person has sole or shared voting power or investment power and any shares of common stock which the person has the right to acquire within 60 days after October 7, 2016 through the exercise of any option, warrant or right or through the conversion of any convertible security. However, we did not deem such shares outstanding for the purpose of computing the percentage ownership of any other person. Unless otherwise indicated in the footnotes to the table below and subject to community property laws where applicable, we believe, based on information furnished to us that each of the selling stockholders named in this table has sole voting and investment power with respect to the shares indicated as beneficially owned.

We have assumed that all shares of common stock reflected in the table as being offered in the offering covered by this Prospectus will be sold from time to time in this offering. We cannot provide an estimate as to the number of shares of common stock that will be held by the selling stockholders upon termination of the offering covered by this Prospectus because the selling stockholders may offer some, all or none of their shares of common stock being offered in the offering. See “Plan of Distribution.” For purposes of the table below, we assume that the selling stockholders

will sell all their shares of common stock covered by this Prospectus. In addition, the selling stockholders named in the table below may transfer any of their shares of common stock to their assignees and/or successors in interest, who may subsequently offer and sell such shares pursuant to this Prospectus. For purposes of this Prospectus, “selling stockholders” shall include any such assignees and/or successors in interest.

Unless otherwise indicated, the address of each beneficial owner listed in the table below is c/o Miramar Labs, Inc., 2790 Walsh Avenue, Santa Clara, California 95051.

Selling Stockholder (1)	Broker-Dealer or Broker-Dealer Affiliate	Footnote, if any	Shares of Common Stock Beneficially Owned Before this Offering	Percentage of Common Stock Beneficially Owned Before this Offering (2)	Shares of Common Stock Being Offered in this Offering	Shares of Common Stock Beneficially Owned Upon Completion of this Offering (3)	Percentage of Outstanding Common Stock Beneficially Owned Upon Completion of this Offering (2)(3)
Agbaje, Kola	§	4	1,378	*	1,378	—	*
Aisling Capital III, LP		5	1,851,643	16.48%	1,851,643	—	*
Alex Partners, LLC		6	25,455	*	25,455	—	*
Caswell, Robert		—	10,800	*	10,800	—	*
Cray, Julene		—	369	*	369	—	*
Cross Creek Capital Employees’ Fund, L.P.		7	22,089	*	22,089	—	*
Cross Creek Capital, L.P.		8	224,793	2.34%	224,793	—	*
Mark and Laura Deem, Trustees of the Deem Family Trust u/t/a dated September 1, 2004		9	73,932	*	73,932	—	*
The Del Mar Consulting Group, Inc.		10	38,181	*	38,181	—	*
DP VII Associates, L.P.		11	15,825	*	15,513	312	*
Domain Partners VII, L.P.		11	2,603,368	21.72%	2,585,055	18,313	*
EFD CAPITAL INC.			1,104	*	1,104	—	*
F&M Star Alliance, Inc.		13	7,900	*	7,900	—	*
Fawcett, Lawrence	§	14	1,378	*	1,378	—	*
Hanson S. Gifford, III & Alexandra Stitt Gifford, Trustees of the Gifford Family Trust dated July 21		15	103,505	1.09%	103,505	—	*
Gottenborg, Mary		—	686	*	686	—	*
Hailey, Charles A.		—	6,100	*	6,100	—	*
Hallock, Daniel		—	13,240	*	13,240	—	*
Janssen, Morgan	§	16	480	*	480	—	*

Selling Stockholder (1)	Broker- Dealer or Broker- Dealer Affiliate	Footnote, if any	Shares of Common Stock Beneficially Owned Before this Offering	Percentage of Common Stock Beneficially Owned Before this Offering (2)	Shares of Common Stock Being Offered in this Offering	Shares of Common Stock Beneficially Owned Upon Completion of this Offering (3)	Percentage of Outstanding Common Stock Beneficially Owned Upon Completion of this Offering (2)(3)
Johnathan & Gina Blatt			5,000	*	5,000	—	*
Johnson, William		—	3,296	*	3,296	—	*
Jonathan & Gina Blatt Childrens' Trust U/A Dtd. 02-20-02		17	3,000	*	3,000	—	*
Michael S. Kaminer 2004 Revocable Trust dtd. Nov 17, 2004		18	2,832	*	2,813	19	*
Kaminer, Michael		19	12,079	*	6,535	5,563	*
Kim, Steven		20	103,206	1.09%	9,241	93,965	*
Leffel, Darnell		—	38,000	*	38,000	—	*
Liebig, Kara		—	14,786	*	14,786	—	*
Livson, Roman	§	21	474	*	474	—	*
MacFarlane, K. Angela		—	38,444	*	38,444	—	*
POLYCOMP TRUST COMPANY CUST FBO J. CASEY MCGLYNN IRA, A/C#CMJ1500		22	2,824	*	2,806	18	*
McGurk, Jr., Thomas A.		—	2,000	*	2,000	—	*
Morgenthaler Partners VIII, L.P.		23	1,878,796	16.69%	1,866,379	12,417	*
Naga, Karun		—	1,478	*	1,478	—	*
Henry A. Plain, Jr. and Lisa M. Plain, Trustees of The Plain Family Trust U/D/T dated September 7, 1		24	65,060	*	65,060	—	*
Renaud, Stephen	§	—	6,967	*	6,967	—	*
RMI Investments, S.à r.l.		26	1,132,064	10.77%	1,132,064	—	*
Ross, Lisa		—	739	*	739	—	*
Shay, Bernard E.		27	24,839	*	11,089	13,750	*
Shepard, Michael		—	369	*	369	—	*
Silverman, Michael	§	28	6,967	*	6,967	—	*
Split Rock Partners, L.P.		29	45,796	*	45,796	—	*
Struve, Clayton A.		—	10,000	*	10,000	—	*
Tompkins, Mark		—	815,000	7.99%	815,000	—	*

Selling Stockholder (1)	Broker-Dealer or Broker-Dealer Affiliate	Footnote, if any	Shares of Common Stock Beneficially Owned Before this Offering	Percentage of Common Stock Beneficially Owned Before this Offering (2)	Shares of Common Stock Being Offered in this Offering	Shares of Common Stock Beneficially Owned Upon Completion of this Offering (3)	Percentage of Outstanding Common Stock Beneficially Owned Upon Completion of this Offering (2)(3)
Veronica Marano and Thomas M. Volckering		—	10,000	*	10,000	—	*
Vignola, William		—	14,000	*	14,000	—	*
WS Investment Company LLC (2008A)		30	2,218	*	2,218	—	*
WS Investment Company (2008C)		30	1,108	*	1,108	—	*
WS Investment Company LLC (2015A)		30	7,380	*	7,380	—	*
WS Investment Company LLC (2010A)		30	626	*	546	80	*
WS Investment Company, LLC (2011A)		30	2,310	*	2,310	—	*
WS Investment Company LLC (2016A)		30	7,000	*	7,000	—	*
Zahavi, Thomas		—	5,000	*	5,000	—	*
Zhu, Ruomu		—	162	*	162	—	*
Zimmerman, Michael		—	3,000	*	3,000	—	*
Zoromski, Darrell		—	7,290	*	7,290	—	*
All other selling stockholders		31	62,756	*	62,756	—	*

\* Less than 1%.

§ The selling stockholder is an affiliate of a broker-dealer.

- All information regarding investors in the Private Placement is provided as of October 7, 2016.
- Percentage ownership is based on a denominator equal to the sum of (i) 9,380,653 shares of common stock outstanding as of October 7, 2016, and (ii) the number of shares of common stock issuable upon exercise or conversion of convertible securities beneficially owned by the applicable selling stockholder.
- Assumes that all shares of common stock being registered under the registration statement of which this Prospectus forms a part are sold in this offering, and that none of the selling stockholders acquire additional shares of our common stock after the date of this Prospectus and prior to completion of this offering.
- Includes 1,378 shares the selling stockholder has the right to acquire through the exercise of common stock warrants. The selling stockholder is an affiliate of a broker-dealer that acted as a sub-placement agent in the Private Placement.
- These shares of common stock are owned directly by Aisling Capital III, L.P. (“Aisling”) and held indirectly by Aisling Capital Partners III, LP (“Aisling GP”), as general partner of Aisling, Aisling Capital Partners III LLC (“Aisling Partners”), as general partner of Aisling GP, and each of the individual managing members of Aisling Partners. The individual managing members (collectively, the “Managers”) of Aisling Partners are Dennis Purcell, Dr. Andrew Schiff and Steve Elms. Aisling GP, Aisling Partners and the Managers share voting and dispositive power over the shares directly held by Aisling. Each of Aisling GP, Aisling Partners and the Managers may be deemed to be the beneficial owner of the securities listed above only to the extent of its pecuniary interest therein. The above information shall not be deemed an admission that any of Aisling GP, Aisling Partners or any of the Managers is the beneficial owner of any securities reported herein in excess of such amount. The address for AC III is 888 Seventh Avenue, 29th Floor, New York, NY 10016.

6. Scott Wilfong is the sole member of Alex Partners, LLC, a Washington limited liability company (“AP LLC”) and by virtue of this relationship, may be deemed to have voting and investment power over the shares held by the AP LLC. The mailing address of AP LLC is 6427 Lake Washington Blvd NE, Kirkland, WA 98033.
7. Cross Creek Capital GP, L.P., a Delaware limited liability company (“CCC GP”) is the general partner of Cross Creek Capital Employees’ Fund, L.P. (“CCCEF”) and has the sole voting and dispositive power with respect to the shares held by the selling stockholder. Karey Barker, Tyler Christenson, and Peter Jarman are the ultimate beneficial owners of and ultimately control CCC GP. By virtue of these relationships, Ms. Barker, Mr. Christenson, and Mr. Jarman may be deemed to have voting and investment power over the shares held by the CCCEF. Each of Ms. Barker, Mr. Christenson, and Mr. Jarman disclaim beneficial ownership of these shares, except to the extent of their respective pecuniary interests therein. The mailing address of CCCEF is 505 Wakara Way, Suite 215, Salt Lake City, UT 84108.
8. Cross Creek Capital GP, L.P., a Delaware limited liability company (“CCC GP”), is the general partner of Cross Creek Capital, L.P. (“Cross Creek”) and has the sole voting and dispositive power with respect to the shares held by the selling stockholder. Karey Barker, Tyler Christenson, and Peter Jarman are the ultimate beneficial owners of and ultimately control CCC GP. By virtue of these relationships, Ms. Barker, Mr. Christenson, and Mr. Jarman may be deemed to have voting and investment power over the shares held by the Cross Creek. Each of Ms. Barker, Mr. Christenson, and Mr. Jarman disclaim beneficial ownership of these shares, except to the extent of their respective pecuniary interests therein. The mailing address of Cross Creek is 505 Wakara Way, Suite 215, Salt Lake City, UT 84108.
9. Mark Deem and Laura Deem, trustees of the selling stockholder, have the power to vote or dispose of the shares held of record by the selling stockholder and may be deemed to beneficially own those securities.
10. Robert B. Prag is the President of The Del Mar Consulting Group, Inc. (“DCG”) and may be deemed to have voting and investment power over the shares held by DCG by virtue of this relationship. The mailing address of DCG is 2455 El Amigo Road, Del Mar, CA 92014.
11. Includes (i) 18,313 shares of common stock underlying a warrant held by Domain Partners VII, L.P., a Delaware limited partnership (“DP VII”) and (ii) 312 shares of common stock underlying a warrant held by DP VII Associates, L.P., a Delaware limited partnership (“DP VII-A”) that are not being offered in this offering. One Palmer Square Associates VII, L.L.C., a Delaware limited liability company (“OPSA VII”), is the general partner of DP VII and DP VII-A. The managing members of OPSA VII share voting and dispositive power with respect to the shares held by the two entities. The managing members of OPSA VII are Brian H. Dovey, James C. Blair, Jesse I. Treu, Nicole Vitullo and Brian K. Halak. Mr. Dovey, a member of our board of directors, disclaims beneficial ownership in the shares held by these entities except to the extent of his respective pecuniary interest therein. Nimesh S. Shah, a former member of our board of directors, is a member of OPSA VII. Mr. Shah has no voting or dispositive power with respect to the shares held by these entities and disclaims beneficial ownership in the shares held by these entities, except to the extent of his respective pecuniary interest therein. The address for the entities is c/o Domain Associates, One Palmer Square, Princeton, New Jersey 08542.
12. Includes 1,104 shares the selling stockholder has the right to acquire through the exercise of common stock warrants. Barbara J. Glenss, President of the selling stockholder, has the power to vote or dispose of the securities held of record by the selling stockholder and may be deemed to beneficially own those securities.
13. Roman Ryzhkov is a President of F&M and by virtue of this relationship, may be deemed to have voting and investment power over the shares held by F&M Star Alliance, Inc., a Delaware corporation (“F&M”). Mr. Ryzhkov disclaims beneficial ownership in the shares held by F&M, except to the extent of his respective pecuniary interest therein. The mailing address of F&M is 556 Main Street, Hunkins Plaza, Charlestown, Nevis, West Indies.
14. Includes 1,378 shares the selling stockholder has the right to acquire through the exercise of common stock warrants. The selling stockholder is an affiliate of a broker-dealer that acted as a sub-placement agent in the Private Placement.
15. Hanson S. Gifford, III and Alexandra Stitt Gifford, trustees of the selling stockholder, have the power to vote or dispose of the shares held of record by the selling stockholder and may be deemed to beneficially own those securities.
16. Includes 480 shares the selling stockholder has the right to acquire through the exercise of common stock warrants. The selling stockholder is an affiliate of a broker-dealer that acted as a sub-placement agent in the Private Placement.
17. Jonathan Blatt and Gina Blatt, trustees of the selling stockholder, have the power to vote or dispose of the shares held of record by the selling stockholder and may be deemed to beneficially own those securities.
18. Includes 19 shares of our common stock underlying a warrant held by the selling stockholder that are not being offered in this offering. Michael S. Kaminer, trustee of the selling stockholder, has the power to vote or dispose of the shares held of record by the selling stockholder and may be deemed to beneficially own those securities.
19. Includes 5,544 shares of our common stock underlying an option and exercisable on or within 60 days following October 7, 2016 that are not being offered in this offering.

20. Includes 93,965 shares of our common stock underlying an option held by the selling stockholder and exercisable on or within 60 days following October 7, 2016 that are not being offered in this offering. The selling stockholder is our Founder and Chief Technology Officer.
21. Includes 474 shares the selling stockholder has the right to acquire through the exercise of common stock warrants. The selling stockholder is an affiliate of a broker-dealer that acted as a sub-placement agent in the Private Placement.
22. Polycomp Trust Company (“PTC”) is the directed custodian of J. Casey McGlynn’s IRA and as such, is the registered owner of the shares held in Mr. McGlynn’s IRA. Mr. McGlynn has the sole power to direct PTC as custodian to vote or dispose of the shares held of record by Mr. McGlynn and may be deemed to beneficially own those securities. Includes 18 shares the selling stockholder has the right to acquire through the exercise of common stock warrants that are not being offered in this offering.
23. Includes 12,417 shares of common stock underlying a warrant held by Morgenthaler Partners VIII, L.P (“MP VIII”) that are not being offered in this offering. Morgenthaler Management Partners VIII, LLC (“MMP VIII”), the general partner of MP VIII, has sole voting and dispositive power with respect to the shares held by MP VIII. The individual managing members of MMP VIII are Robert D. Pavey, John D. Lutsi, and Gary J. Morgenthaler. By virtue of these relationships, the managing members may be deemed to have voting and investment power over the shares held by MP VIII. Henry A. Plain, Jr., a member of our board of directors, is a General Partner of MMP VIII, an affiliate of MP VIII. Mr. Plain disclaims beneficial ownership in the shares held by these entities, except to the extent of his respective pecuniary interest therein. The address for MP VIII is 3200 Alpine Road, Portola Valley, CA 94028.
24. Henry A. Plain, Jr. and Lisa M. Plain, trustees of the selling stockholder, have the power to vote or dispose of the shares held of record by the selling stockholder and may be deemed to beneficially own those securities.
25. Includes 4,967 shares of common stock underlying a warrant held by the selling stockholder. The selling stockholder is an affiliate of a broker-dealer that acted as a sub-placement agent in the Private Placement.
26. Maxim Gorbachev, a member of our board of directors, is the Managing Partner of RMI Partners, LLC, an affiliate of RMI Investments S.A.R.L. (“RMI”). Mr. Gorbachev disclaims beneficial ownership in the shares held by these entities, except to the extent of his respective pecuniary interest therein. The mailing address of RMI is 7, rue Robert Stumper, L-2557, Luxembourg.
27. Includes 13,750 shares of our common stock underlying an option held by the selling stockholder and exercisable on or within 60 days following October 7, 2016 that are not being offered in this offering.
28. Includes 4,967 shares of common stock underlying a warrant held by the selling stockholder. The selling stockholder is an affiliate of a broker-dealer that acted as a sub-placement agent in the Private Placement.
29. Split Rock Partners Management, LLC, a Delaware limited liability company (“SRPM”) and the general partner of Split Rock Partners, LP, a Delaware limited partnership (“SRP”), has the sole voting and dispositive power over the shares held by SRP. SRPM has delegated voting and investment power to three individuals, Michael Gorman, James Simons and David Stassen, who require a two-thirds vote to act. SRPM disclaims beneficial ownership of the shares except to the extent of any pecuniary interest therein. The mailing address of SRP is 10400 Viking Drive, Suite 250, Eden Prairie, MN 55344.
30. Includes 80 shares of common stock underlying a warrant held by WS Investment Company, LLC, a Delaware limited liability company (“WS”) that are not being offered in this offering. WS Investment Management Company, a California corporation (“WSIMCo.”) is the Manager of WS and has the sole voting and dispositive power with respect to the shares held by the WS. The managing members of WSIMCo. are Mario Rosati, Robert Latta, Donald Bradley and James Terranova. By virtue of these relationships, the managing members may be deemed to have voting and investment power over the shares held by WS. The mailing address of WS is 650 Page Mill Road, Palo Alto, CA 94304.
31. Includes 60,000 shares of common stock and 2,756 shares of common stock underlying a warrant held by the “other selling stockholders” described above.

## DESCRIPTION OF SECURITIES

We have authorized capital stock consisting of 100 million shares of common stock and 5 million shares of preferred stock. As of October 7, 2016, we had 9,380,653 shares of common stock issued and outstanding, and no shares of preferred stock issued and outstanding.

### **Common Stock**

#### ***Voting Rights***

Each holder of our common stock is entitled to one vote for each share on all matters submitted to a vote of the stockholders, including the election of directors. Our stockholders do not have cumulative voting rights in the election of directors. Our amended and restated certificate of incorporation establishes a classified board of directors that is divided into three classes with staggered three-year terms. Only the directors in one class will be subject to election by a plurality of the votes cast at each annual meeting of our stockholders, with the directors in the other classes continuing for the remainder of their respective three-year terms.

#### ***Dividends***

Subject to preferences that may be applicable to any then outstanding preferred stock, holders of our common stock are entitled to receive dividends, if any, as may be declared from time to time by our board of directors out of legally available funds. We do not have any plans to pay dividends to our stockholders. See section titled “Market Price of and Dividends on Common Equity and Related Stockholder Matters — Dividend Policy” for more information.

#### ***Liquidation***

In the event of our liquidation, dissolution or winding up, holders of our common stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of our debts and other liabilities and the satisfaction of any liquidation preference granted to the holders of any then outstanding shares of preferred stock.

#### ***Rights and Preferences***

Holders of our common stock have no preemptive, conversion, subscription or other rights, and there are no redemption or sinking fund provisions applicable to our common stock. The rights, preferences and privileges of the holders of our common stock are subject to and may be adversely affected by the rights of the holders of shares of any series of our preferred stock that we may designate in the future.

#### ***Fully Paid and Nonassessable***

All of our outstanding shares of common stock are, and the shares of common stock to be issued in the Offering will be, fully paid and nonassessable.

### **Preferred Stock**

Shares of preferred stock may be issued from time to time in one or more series, each of which will have such distinctive designation or title as shall be determined by our board of directors prior to the issuance of any shares thereof. Our board of directors may designate the rights, preferences, privileges and restrictions of the preferred stock, including dividend rights, conversion rights, voting rights, redemption rights, liquidation preference, sinking

fund terms, and the number of shares constituting any series or the designation of any series. The number of authorized shares of preferred stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of all the then outstanding shares of our capital stock entitled to vote generally in the election of the directors, voting together as a single class, without a separate vote of the holders of the preferred stock, or any series thereof, unless a vote of any such holders is required pursuant to any preferred stock designation. The issuance of preferred stock could have the effect of restricting dividends on our common stock, diluting the voting power of our common stock, impairing the liquidation rights of our common stock, or delaying, deterring, or preventing a change in control. Such issuance could have the effect of decreasing the market price of our common stock. We currently have no plans to issue any shares of preferred stock.

## Warrants

As of October 7, 2016, the Placement Agent Warrants entitle their holders to purchase 17,504 shares of common stock, with a term of five years and an exercise price of \$5.00 per share.

The Placement Agent Warrants contain “weighted average” anti-dilution protection in the event that we issue common stock or securities convertible into or exercisable for shares of common stock at a price lower than the subject warrant’s exercise price, subject to certain customary exceptions, as well as customary provisions for adjustment in the event of stock splits, subdivision or combination, mergers, etc.

As of October 7, 2016, other warrants entitle their holders to purchase 66,924 shares of common stock. The following table sets forth information about our other warrants.

Class of Stock Underlying Warrant	Number of Shares of Preferred Stock Exercisable Prior to this Offering	Number of Shares of Common Stock Underlying Warrants on an As-Converted Basis	Exercise Price Per Share Prior to this Offering	Exercise Price Per Share on an As-Converted Basis	Expiration Date
Series A convertible preferred stock, par value \$0.001.....	1,109	1,109	\$13.53	\$13.53	December 6, 2016
Series C convertible preferred stock, par value \$0.001.....	12,117	12,117	\$21.64	\$21.64	November 19, 2017
Series C convertible preferred stock, par value \$0.001.....	19,041	19,041	\$21.64	\$21.64	January 7, 2018
Series C convertible preferred stock, par value \$0.001.....	9,242	9,242	\$21.64	\$21.64	June 27, 2023
Series C convertible preferred stock, par value \$0.001.....	9,242	9,242	\$21.64	\$21.64	April 29, 2024
Series D convertible preferred stock, par value \$0.001.....	16,173	16,173	\$21.64	\$21.64	August 7, 2025
<b>Total.....</b>	<b>66,924</b>	<b>66,924</b>			

## **Options**

In June 2016, the Board approved repricing of outstanding stock options to current employee and consultant option holders. In exchange for extending the vesting of options for an additional six months, the price of the outstanding stock grants was amended to \$5.00 per share. The offer expired on July 12, 2016. Outstanding option shares of 744,133, ranging in grant prices from \$6.36 to \$8.66, were approved by the Board on July 14, 2016 and were repriced as part of the program. As of October 7, 2016, there were options to purchase 1,369,277 shares of our common stock with a weighted average exercise price of \$5.2148 per share.

## **Registration Rights**

Following the effectiveness of the registration statement of which this Prospectus forms a part, the holders of (a) the shares of common stock issued in the Private Placement, (b) the shares of common stock issuable upon exercise of the Placement Agent Warrants, (c) the shares of common stock issued in exchange for the equity securities of Miramar outstanding prior to the Merger, and (d) shares of common stock held by certain of our pre-Merger security holders, or collectively, the Registrable Shares, will be entitled to rights with respect to the registration of the Registrable Shares under the Securities Act. These rights are provided under the terms of a Registration Rights Agreement entered into in connection with the Private Placement. These rights will terminate upon the earlier of (i) two years from the date it is declared effective by the SEC and (ii) the date Rule 144 is available to the holders of Registrable Shares with respect to all of their Registrable Shares without volume or other limitations.

Under such Registration Rights Agreement, in addition to the filing and effectiveness of the registration statement of which this Prospectus forms a part, we must keep such registration statement effective until the earlier of (i) two years from the date it is declared effective by the SEC and (ii) the date Rule 144 is available to the holders of Registrable Shares with respect to all of their Registrable Shares without volume or other limitations. If we fail to maintain the effectiveness of the registration statement of which this Prospectus forms a part as to all Registrable Shares included in such registration statement in accordance with the Registration Rights Agreement or the Registrable Shares are not listed on an approved market or if trading of the common stock on such market is suspended or halted for more than three full consecutive trading days, we will make payments to each holder of Registrable Shares as monetary penalties at a rate equal to 12% of the offering price in the Private Placement per annum for each share affected during the period; provided, however, that in no event will the aggregate of any such penalties exceed 8% of the offering price per share in the Private Placement.

In addition, following the effectiveness of the registration statement of which this Prospectus forms a part, the holders of Registrable Shares and our stockholders prior to the Merger (but not holders of the shares issued to the stockholders of Miramar in consideration for the Merger) will have “piggyback” registration rights for such Registrable Shares with respect to any registration statement filed by us that would permit the inclusion of such shares, subject to customary cutback in an underwritten offering, which would be pro rata.

We will pay all expenses in connection with any registration obligation provided in the Registration Rights Agreement, including, without limitation, all registration, filing, stock exchange fees, printing expenses, all fees and expenses of complying with applicable securities laws, and the fees and disbursements of our counsel and of our independent accountants. Each investor will be responsible for its own sales commissions, if any, transfer taxes and the expenses of any attorney or other advisor such investor decides to employ.

## **Anti-Takeover Effects or Provisions of our Amended and Restated Certificate of Incorporation, our Amended and Restated Bylaws and Delaware Law**

Some provisions of Delaware law and our amended and restated certificate of incorporation and our amended and restated bylaws contain provisions that could make the following transactions more difficult: acquisition of us

by means of a tender offer; acquisition of us by means of a proxy contest or otherwise; or removal of our incumbent officers and directors. It is possible that these provisions could make it more difficult to accomplish or could deter transactions that stockholders may otherwise consider to be in their best interest or in our best interests, including transactions that might result in a premium over the market price for our shares.

These provisions, summarized below, are expected to discourage coercive takeover practices and inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors. We believe that the benefits of increased protection of our potential ability to negotiate with the proponent of a non-friendly or unsolicited proposal to acquire or restructure us outweigh the disadvantages of discouraging these proposals because negotiation of these proposals could result in an improvement of their terms.

### ***Delaware Anti-Takeover Statute***

We are subject to Section 203 of the General Corporation Law of the State of Delaware, which prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years after the date that such stockholder became an interested stockholder, with the following exceptions:

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

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

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

In general, Section 203 defines interested stockholder as an entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation or any entity or person affiliated with or controlling or controlled by such entity or person.

### ***Undesignated Preferred Stock***

The ability to authorize undesignated preferred stock makes it possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to acquire us. These and other provisions may have the effect of deterring hostile takeovers or delaying changes in control or management of the Company.

### ***Special Stockholder Meetings***

Our amended and restated bylaws provide that a special meeting of stockholders may be called only by our board of directors, the chairperson of our board of directors, or our Chief Executive Officer or President. This provision might delay the ability of our stockholders to force consideration of a proposal or for stockholders controlling a majority of our capital stock to take any action, including the removal of directors.

### ***Requirements for Advance Notification of Stockholder Nominations and Proposals***

Our amended and restated bylaws have established advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the direction of the board of directors or a committee of the board of directors. Our amended and restated bylaws also specify certain requirements regarding the form and content of a stockholder's notice.

### ***Elimination of Stockholder Action by Written Consent***

Our amended and restated certificate of incorporation and our amended and restated bylaws eliminate the right of stockholders to act by written consent without a meeting. As a result, a holder controlling a majority of our capital stock would not be able to amend our amended and restated bylaws or remove directors without holding a meeting of our stockholders called in accordance with our amended and restated bylaws.

### ***Classified Board; Election and Removal of Directors***

Our amended and restated certificate of incorporation and amended and restated bylaws authorize only our board of directors to fill vacant directorships, including newly created seats. In addition, the number of directors constituting our board of directors is permitted to be set only by a resolution adopted by our board of directors. These provisions would prevent a stockholder from increasing the size of our board of directors and then gaining control of our board of directors by filling the resulting vacancies with its own nominees. This makes it more difficult to change the composition of our board of directors but promotes continuity of management.

Our board of directors is divided into three classes. The directors in each class serve for a three-year term, one class being elected each year by our stockholders, with staggered three-year terms. Only one class of directors will be elected at each annual meeting of our stockholders, with the other classes continuing for the remainder of their respective three-year terms. Because our stockholders do not have cumulative voting rights, our stockholders holding a majority of the shares of common stock outstanding are able to elect all of our directors. In addition, our amended and restated certificate of incorporation provides that directors may only be removed for cause. For more information on the classified board, see "Directors and Executive Officers — Classified board of directors." This system of electing and removing directors may tend to discourage a third party from making a tender offer or otherwise

attempting to obtain control of us, because it generally makes it more difficult for stockholders to replace a majority of the directors.

### ***Choice of Forum***

Our amended and restated certificate of incorporation provides that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware will be the exclusive forum for any derivative action or proceeding brought on our behalf, any action asserting a breach of fiduciary duty, any action asserting a claim against us arising pursuant to the Delaware General Corporation Law, our amended and restated certificate of incorporation or our amended and restated bylaws, or any action asserting a claim against us that is governed by the internal affairs doctrine.

### ***Amendment of Charter Provisions***

The amendment of any of the above provisions, except for the provision making it possible for our board of directors to issue preferred stock, would require approval by holders of at least 66<sup>2</sup>/<sub>3</sub>% of the voting power of our then outstanding voting stock.

The provisions of the Delaware General Corporation Law, our amended and restated certificate of incorporation and our amended and restated bylaws may have the effect of discouraging others from attempting hostile takeovers and, as a consequence, they may also inhibit temporary fluctuations in the market price of our Common Stock that often result from actual or rumored hostile takeover attempts. These provisions may also have the effect of preventing changes in our management. It is possible that these provisions could make it more difficult to accomplish transactions that stockholders may otherwise deem to be in their best interests.

### **Limitations of Liability and Indemnification Matters**

For a discussion of liability and indemnification, please see the section titled “Directors and Executive Officers—Limitation on Liability and Indemnification Matters.”

### **Transfer Agent**

The transfer agent and registrar for our Common Stock is Globex Transfer, LLC. The transfer agent and registrar’s address is 780 Deltona Blvd., Suite 202, Deltona, FL 32725 and its telephone number is (813) 344-4490.

## PLAN OF DISTRIBUTION

The selling stockholders and any of their pledgees, donees, transferees, assignees or other successors-in-interest may, from time to time, sell, transfer or otherwise dispose of any or all of their shares of common stock or interests in shares of common stock on any stock exchange, market or trading facility on which the shares are traded or in private transactions. These dispositions may be at fixed prices, at prevailing market prices at the time of sale, at prices related to the prevailing market price, at varying prices determined at the time of sale, or at negotiated prices. The selling stockholders may use one or more of, or a combination of, the following methods when disposing of the shares or interests therein:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- through brokers, dealers or underwriters that may act solely as agents;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- through the writing or settlement of options or other hedging transactions entered into after the effective date of the registration statement of which this Prospectus is a part, whether through an options exchange or otherwise;
- broker-dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share;
- a combination of any such methods of disposition; and
- any other method permitted pursuant to applicable law.

The selling stockholders may also sell shares under Rule 144 under the Securities Act of 1933, as amended, or Securities Act, if available, rather than under this Prospectus, provided that they meet the criteria and conform to the requirements of these provisions, including the requirements of Rule 144(i) applicable to former “shell companies.”

The selling stockholders and any broker-dealers or agents that are involved in selling the shares covered by this Prospectus may be deemed to be “underwriters” within the meaning of the Securities Act in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the shares purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act and the rules of the Financial Industry Regulatory Authority, or FINRA. The selling stockholders do not expect these commissions and discounts to exceed what is customary in the types of transactions involved.

The selling stockholders may from time to time pledge or grant a security interest in some or all of the shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell shares of common stock from time to time under this Prospectus, or under a supplement or amendment to this Prospectus under Rule 424(b)(3) or other applicable provision of the Securities

Act amending the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this Prospectus.

To our knowledge, there are currently no plans, arrangements or understandings between the selling stockholders and any underwriter, broker-dealer or agent regarding the sale of the shares covered by this Prospectus by such selling stockholders. Upon being notified in writing by a selling stockholder that any material arrangement has been entered into with an underwriter, broker-dealer or agent for the sale of common stock through a block trade, special offering, exchange distribution or secondary distribution or a purchase by a broker or dealer, we will file a supplement to this Prospectus, if required, pursuant to Rule 424(b) under the Securities Act, disclosing (i) the name of each such selling stockholder and of the participating broker-dealer(s), (ii) the number of shares involved, (iii) the price at which such shares of common stock were sold, (iv) the commissions paid or discounts or concessions allowed to such underwriter, broker-dealer or agent, where applicable, (v) that such underwriter, broker-dealer or agent did not conduct any investigation to verify the information set out or incorporated by reference in this Prospectus, and (vi) other facts material to the transaction. In addition, upon being notified in writing by a selling stockholder that a donee or pledge intends to sell more than 500 shares of common stock, we will file a supplement to this Prospectus if then required in accordance with applicable securities law.

The selling stockholders also may transfer the shares of common stock in other circumstances, in which case the transferees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this Prospectus.

In connection with the sale of the shares of common stock or interests in shares of common stock, the selling stockholders may enter into hedging transactions after the effective date of the registration statement of which this Prospectus is a part with broker-dealers or other financial institutions, which may in turn engage in short sales of the common stock in the course of hedging the positions they assume. The selling stockholders may also sell shares of common stock short after the effective date of the registration statement of which this Prospectus is a part and deliver these securities to close out their short positions, or loan or pledge the common stock to broker-dealers that in turn may sell these securities. The selling stockholders may also enter into option or other transactions after the effective date of the registration statement of which this Prospectus is a part with broker-dealers or other financial institutions or the creation of one or more derivative securities which require the delivery to such broker-dealer or other financial institution of shares offered by this Prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this Prospectus (as supplemented or amended to reflect such transaction).

We have advised the selling stockholders that they are required to comply with Regulation M promulgated under the Securities and Exchange Act during such time as they may be engaged in a distribution of the shares. The foregoing may affect the marketability of the common stock.

There can be no assurance that any selling stockholder will sell any or all of the shares of common stock registered pursuant to the registration statement of which this Prospectus forms a part. The aggregate proceeds to the selling stockholders from the sale of the common stock offered by them will be the purchase price of the common stock less discounts or commissions, if any. Each of the selling stockholders reserves the right to accept and, together with their agents from time to time, to reject, in whole or in part, any proposed purchase of common stock to be made directly or through agents. We will not receive any of the proceeds from the sale of common stock offered by the selling stockholders. We are required to pay all fees and expenses incident to the registration of the shares. We have agreed to indemnify the selling stockholders against certain losses, claims, damages and liabilities, including liabilities under the Securities Act or otherwise. Once sold under the registration statement of which this Prospectus forms a part, the shares of common stock will be freely tradable in the hands of persons other than our affiliates. We have agreed with the selling stockholders to keep the registration statement of which this Prospectus constitutes a part effective until the earlier of (a) the date that is two years from the date it is declared effective by the SEC and

(b) the date on which all the securities registered hereunder have been sold under this Prospectus or pursuant to Rule 144.

The aggregate proceeds to the selling stockholders from the sale of the common stock offered by them will be the purchase price of the common stock less discounts or commissions, if any. Each of the selling stockholders reserves the right to accept and, together with their agents from time to time, to reject, in whole or in part, any proposed purchase of common stock to be made directly or through agents. We will not receive any of the proceeds from the sale of common stock offered by the selling stockholders.

We are required to pay all fees and expenses incident to the registration of the shares. We have agreed to indemnify the selling stockholders against certain losses, claims, damages and liabilities, including liabilities under the Securities Act or otherwise.

Once sold under the registration statement of which this Prospectus forms a part, the shares of common stock will be freely tradable in the hands of persons other than our affiliates.

We have agreed with the selling stockholders to keep the registration statement of which this Prospectus constitutes a part effective until the earlier of (a) the date that is two years from the date it is declared effective by the SEC and (b) the date on which all the securities registered hereunder have been sold under this Prospectus or pursuant to Rule 144.

## **DETERMINATION OF OFFERING PRICE**

There currently is a limited public market for our common stock. The selling stockholders will determine at what price they may sell the offered shares, and such sales may be made at prevailing market prices or at privately negotiated prices. See “Plan of Distribution” above for more information.

## **MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES TO NON-U.S. HOLDERS**

The following discussion is a summary of the material U.S. federal income tax consequences to Non-U.S. Holders (as defined below) of the ownership and disposition of our common stock issued pursuant to this offering, but does not purport to be a complete analysis of all potential tax effects. The effects of other U.S. federal tax laws, such as estate and gift tax laws, and any applicable state, local or non-U.S. tax laws are not discussed. This discussion is based on the U.S. Internal Revenue Code of 1986, as amended (the “Code”), Treasury Regulations promulgated thereunder, judicial decisions, and published rulings and administrative pronouncements of the U.S. Internal Revenue Service (the “IRS”), in each case in effect as of the date hereof. These authorities may change or be subject to differing interpretations. Any such change or differing interpretation may be applied retroactively in a manner that could adversely affect a Non-U.S. Holder. We have not sought and will not seek any rulings from the IRS regarding the matters discussed below. There can be no assurance the IRS or a court will not take a contrary position to that discussed below regarding the tax consequences of the ownership and disposition of our common stock.

This discussion is limited to Non-U.S. Holders that hold our common stock as a “capital asset” within the meaning of Section 1221 of the Code (generally, property held for investment). This discussion does not address all U.S. federal income tax consequences relevant to a Non-U.S. Holder’s particular circumstances, including the impact of the Medicare contribution tax on net investment income. In addition, it does not address consequences relevant to Non-U.S. Holders subject to special rules, including, without limitation:

- certain former citizens or long-term residents of the U.S.;
- persons subject to the alternative minimum tax;
- persons holding our common stock as part of a hedge, straddle or other risk reduction strategy or as part of a conversion transaction or other integrated investment;
- banks, insurance companies, and other financial institutions;
- brokers, dealers or traders in securities;
- “controlled foreign corporations,” “passive foreign investment companies,” and corporations that accumulate earnings to avoid U.S. federal income tax;
- partnerships or other entities or arrangements treated as partnerships for U.S. federal income tax purposes (and investors therein);
- tax-exempt organizations or governmental organizations;
- persons deemed to sell our common stock under the constructive sale provisions of the Code;
- persons who own more than 5% of our common stock (except as specifically discussed below);
- persons who hold or receive our common stock pursuant to the exercise of any employee stock option or otherwise as compensation; and
- tax-qualified retirement plans.

If an entity treated as a partnership for U.S. federal income tax purposes holds our common stock, the tax treatment of a partner in the partnership will depend on the status of the partner, the activities of the partnership and

certain determinations made at the partner level. Accordingly, partnerships holding our common stock and the partners in such partnerships should consult their tax advisors regarding the U.S. federal income tax consequences to them.

INVESTORS SHOULD CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE APPLICATION OF THE U.S. FEDERAL INCOME TAX LAWS TO THEIR PARTICULAR SITUATIONS AS WELL AS ANY TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF OUR COMMON STOCK ARISING UNDER THE U.S. FEDERAL ESTATE OR GIFT TAX LAWS OR UNDER THE LAWS OF ANY STATE, LOCAL OR NON-U.S. TAXING JURISDICTION OR UNDER ANY APPLICABLE INCOME TAX TREATY.

### ***Definition of a Non-U.S. Holder***

For purposes of this discussion, a “Non-U.S. Holder” is any beneficial owner of our common stock that is neither a “U.S. person” nor an entity treated as a partnership for U.S. federal income tax purposes. A U.S. person is any person that, for U.S. federal income tax purposes, is or is treated as any of the following:

- an individual who is a citizen or resident of the U.S.;
- a corporation created or organized under the laws of the U.S., any state thereof or the District of Columbia (including any entity treated as a corporation for U.S. federal income tax purposes);
- an estate, the income of which is subject to U.S. federal income tax regardless of its source; or
- a trust that (1) is subject to the primary supervision of a U.S. court and all substantial decisions of which are subject to the control of one or more “United States persons” (within the meaning of Section 7701 (a)(30) of the Code), or (2) has a valid election in effect to be treated as a United States person for U.S. federal income tax purposes.

### ***Distributions***

As described in the section entitled “Dividend Policy,” we do not anticipate paying any cash dividends on our common stock in the foreseeable future. However, if we do make distributions of cash or property on our common stock, such distributions will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Amounts not treated as dividends for U.S. federal income tax purposes will constitute a return of capital and first be applied against and reduce a Non-U.S. Holder’s adjusted tax basis in its common stock, but not below zero. Any excess will be treated as capital gain and will be treated as described below under “Sale or Other Taxable Disposition.”

Subject to the discussion below on effectively connected income, dividends paid to a Non-U.S. Holder will be subject to U.S. federal withholding tax at a rate of 30% of the gross amount of the dividends (or such lower rate specified by an applicable income tax treaty, provided the Non-U.S. Holder furnishes a valid IRS Form W-8BEN or W-8BEN-E (or other applicable documentation) certifying qualification for the lower treaty rate). A Non-U.S. Holder that does not timely furnish the required documentation, but that qualifies for a reduced treaty rate, may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS. Non-U.S. Holders should consult their tax advisors regarding their entitlement to benefits under any applicable income tax treaty.

If dividends paid to a Non-U.S. Holder are effectively connected with the Non-U.S. Holder’s conduct of a trade or business within the U.S. (and, if required by an applicable income tax treaty, the Non-U.S. Holder maintains a permanent establishment in the U.S. to which such dividends are attributable), the Non-U.S. Holder will be exempt

from the U.S. federal withholding tax described above. To claim the exemption, the Non-U.S. Holder must furnish to the applicable withholding agent a valid IRS Form W-8ECI, certifying that the dividends are effectively connected with the Non-U.S. Holder's conduct of a trade or business within the U.S.

Any such effectively connected dividends will be subject to U.S. federal income tax on a net income basis at the regular graduated rates. A Non-U.S. Holder that is a corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on such effectively connected dividends, as adjusted for certain items. Non-U.S. Holders should consult their tax advisors regarding any applicable tax treaties that may provide for different rules.

### ***Sale or Other Taxable Disposition***

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

- the gain is effectively connected with the Non-U.S. Holder's conduct of a trade or business within the U.S. (and, if required by an applicable income tax treaty, the Non-U.S. Holder maintains a permanent establishment in the U.S. to which such gain is attributable);
- the Non-U.S. Holder is a nonresident alien individual present in the U.S. for 183 days or more during the taxable year of the disposition and certain other requirements are met; or
- our common stock constitutes a United States real property interest ("USRPI") by reason of our status as a United States real property holding corporation ("USRPHC") for U.S. federal income tax purposes.

Gain described in the first bullet point above generally will be subject to U.S. federal income tax on a net income basis at the regular graduated rates. A Non-U.S. Holder that is a corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on such effectively connected gain, as adjusted for certain items.

Gain described in the second bullet point above will be subject to U.S. federal income tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty), which may be offset by certain U.S. source capital losses of the Non-U.S. Holder (even though the individual is not considered a resident of the U.S.), provided the Non-U.S. Holder has timely filed U.S. federal income tax returns with respect to such losses.

With respect to the third bullet point above, we believe we currently are not, and do not anticipate becoming, a USRPHC. Because the determination of whether we are a USRPHC depends, however, on the fair market value of our USRPIs relative to the fair market value of our non-U.S. real property interests and our other business assets, there can be no assurance we currently are not a USRPHC or will not become one in the future. Even if we are or were to become a USRPHC, gain arising from the sale or other taxable disposition by a Non-U.S. Holder of our common stock will not be subject to U.S. federal income tax if our common stock is "regularly traded," as defined by applicable Treasury Regulations, on an established securities market, and such Non-U.S. Holder owned, actually and constructively, 5% or less of our common stock throughout the shorter of the five-year period ending on the date of the sale or other taxable disposition or the Non-U.S. Holder's holding period.

Non-U.S. Holders should consult their tax advisors regarding any applicable tax treaties that may provide for different rules.

### ***Information Reporting and Backup Withholding***

Payments of dividends on our common stock will not be subject to backup withholding, provided the applicable withholding agent does not have actual knowledge or reason to know the holder is a United States person and the holder either certifies its non-U.S. status, such as by furnishing a valid IRS Form W-8BEN, W-8BEN-E or W-8ECI, or otherwise establishes an exemption. However, information returns are required to be filed with the IRS in connection with any dividends on our common stock paid to the Non-U.S. Holder, regardless of whether any tax was actually withheld. In addition, proceeds of the sale or other taxable disposition of our common stock within the U.S. or conducted through certain U.S.-related brokers generally will not be subject to backup withholding or information reporting, if the applicable withholding agent receives the certification described above and does not have actual knowledge or reason to know that such holder is a United States person, or the holder otherwise establishes an exemption. Proceeds of a disposition of our common stock conducted through a non-U.S. office of a non-U.S. broker that does not have certain enumerated relationships with the U.S. generally will not be subject to backup withholding or information reporting.

Copies of information returns that are filed with the IRS may also be made available under the provisions of an applicable treaty or agreement to the tax authorities of the country in which the Non-U.S. Holder resides or is established.

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

#### ***Additional Withholding Tax on Payments Made to Foreign Accounts***

Withholding taxes may be imposed under Sections 1471 to 1474 of the Code (such Sections commonly referred to as the Foreign Account Tax Compliance Act, or "FATCA") on certain types of payments made to non-U.S. financial institutions and certain other non-U.S. entities. Specifically, a 30% withholding tax may be imposed on dividends on, or gross proceeds from the sale or other disposition of, our common stock paid to a "foreign financial institution" or a "non-financial foreign entity" (each as defined in the Code), unless (1) the foreign financial institution undertakes certain diligence and reporting obligations, (2) the non-financial foreign entity either certifies it does not have any "substantial United States owners" (as defined in the Code) or furnishes identifying information regarding each substantial United States owner, or (3) the foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from these rules. If the payee is a foreign financial institution and is subject to the diligence and reporting requirements in (1) above, it must enter into an agreement with the U.S. Department of the Treasury requiring, among other things, that it undertake to identify accounts held by certain "specified United States persons" or "United States-owned foreign entities" (each as defined in the Code), annually report certain information about such accounts, and withhold 30% on certain payments to non-compliant foreign financial institutions and certain other account holders. Foreign financial institutions located in jurisdictions that have an intergovernmental agreement with the U.S. governing FATCA may be subject to different rules.

Under the applicable Treasury Regulations and administrative guidance, withholding under FATCA generally applies to payments of dividends on our common stock, and will apply to payments of gross proceeds from the sale or other disposition of such stock on or after January 1, 2019.

Prospective investors should consult their tax advisors regarding the potential application of withholding under FATCA to their investment in our common stock.

## **LEGAL MATTERS**

The validity of the common stock being offered in this Prospectus will be passed upon by Wilson Sonsini Goodrich & Rosati, P.C.

## **EXPERTS**

The consolidated financial statements as of December 31, 2015 and 2014 and for each of the years in the two year period ended December 31, 2015 have been audited by SingerLewak LLP, an independent registered public accounting firm, as stated in their report thereon (which report expresses an unqualified opinion on the financial statements and includes an explanatory paragraph relating to the company's ability to continue as a going concern) and are included in this Prospectus and Registration Statement in reliance upon such report and upon the authority of such firm as experts in accounting and auditing.

## **WHERE YOU CAN FIND MORE INFORMATION**

Upon the effectiveness of registration statement of which this Prospectus forms a part or our earlier registration of a class of our securities under Section 12 of the Exchange Act, we will be required to file annual, quarterly and current reports and proxy statements and other information with the SEC. Prior to that time, we are not required to file such reports, but expect to do so as a "voluntary filer" under the Exchange Act. You may read and copy any document that we file at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549, on official business days during the hours of 10:00 am and 3:00 pm. Please call the SEC at 1-800-SEC-0330 for further information on the Public Reference Room. All filings we make with the SEC are also available on the SEC's web site at <http://www.sec.gov>. Our website address is [www.miramarlabs.com](http://www.miramarlabs.com). We have not incorporated by reference into this Prospectus the information on our website, and you should not consider it to be a part of this document.

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the shares of common stock being offered by this Prospectus. This Prospectus is part of that registration statement. This Prospectus does not contain all of the information set forth in the registration statement or the exhibits to the registration statement. For further information with respect to us and the shares we are offering pursuant to this Prospectus, you should refer to the complete registration statement and its exhibits. Statements contained in this Prospectus as to the contents of any contract, agreement or other document referred to are not necessarily complete, and you should refer to the copy of that contract or other documents filed as an exhibit to the registration statement. You may read or obtain a copy of the registration statement at the SEC's public reference room and website referred to above.

MIRAMAR LABS, INC.

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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

### Report of Independent Registered Public Accounting Firm

To the Board of Directors

Miramar Labs, Inc.

We have audited the accompanying consolidated balance sheets of Miramar Labs, Inc. and its subsidiary (collectively, the “Company”) as of December 31, 2015 and 2014, and the related consolidated statements of operations and comprehensive loss, redeemable convertible preferred stock and stockholders’ deficit, and cash flows for the years then ended. These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on these financial statements based on our audits.

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

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2015 and 2014, and the results of their operations and their cash flows for the years then ended in conformity with U.S generally accepted accounting principles.

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company has suffered recurring losses and negative cash flows from operations. This raises substantial doubt about the Company’s ability to continue as a going concern. Management’s plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

/s/ SingerLewak LLP

San Jose, California

May 18, 2016

(June 13, 2016 as to the effects of the reverse stock split described in Note 14)

**Miramar Labs, Inc.**  
**Consolidated Balance Sheets**

	December 31,	
	2015	2014
<b>Assets</b>		
Current assets		
Cash and cash equivalents	\$ 2,642,509	\$ 13,484,740
Accounts receivable, net	2,683,053	2,587,453
Inventories	4,791,741	5,433,742
Prepaid expenses and other current assets	290,481	358,204
Total current assets	10,407,784	21,864,139
Property and equipment, net	1,211,129	1,604,997
Restricted cash	295,067	295,067
Other noncurrent assets	11,860	12,500
Total assets	\$ 11,925,840	\$ 23,776,703
<b>Liabilities, Redeemable Convertible Preferred Stock and Stockholders' Deficit</b>		
Current liabilities		
Notes payable, net of discount	\$ 10,829,375	\$ 9,605,957
Accounts payable	1,288,107	844,660
Accrued and other current liabilities	3,572,441	2,729,712
Deferred revenue	739,786	1,336,883
Total current liabilities	16,429,709	14,517,212
Preferred stock warrant liability	499,616	371,039
Deferred rent, noncurrent	112,065	130,737
Capital lease payable, noncurrent	16,865	50,775
Total liabilities	17,058,255	15,069,763
Commitments and Contingencies (Note 6)		
Redeemable convertible preferred stock, \$0.001 par value 40,000,000 shares authorized and 2,826,981 shares issued and outstanding at December 31, 2015 and 2014 (Liquidation preference of \$61,179,942)	61,179,942	61,179,942
Stockholders' deficit		
Series A convertible preferred stock, \$0.001 par value 2,100,000 shares authorized and 147,864 shares issued and outstanding at December 31, 2015 and 2014 (Liquidation preference of \$2,000,000)	148	148
Series B convertible preferred stock, \$0.001 par value 9,000,000 shares authorized and 589,784 shares issued and outstanding at December 31, 2015 and 2014 (Liquidation preference of \$14,359,244)	590	590
Common stock, \$0.001 par value - 105,500,000 shares authorized and 398,540 and 385,294 shares issued and outstanding at December 31, 2015 and 2014	399	385
Additional paid-in capital	27,133,634	26,478,755
Accumulated deficit	(93,447,128)	(78,952,880)
Total stockholders' deficit	(66,312,357)	(52,473,002)
Total liabilities and stockholders' deficit	\$ 11,925,840	\$ 23,776,703

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

**Miramar Labs, Inc.**

**Consolidated Statements of Operations and Comprehensive Loss**

	Years Ended December 31,	
	2015	2014
Revenue	\$ 17,199,511	\$ 16,065,185
Cost of revenue	8,257,048	8,757,950
Gross profit	8,942,463	7,307,235
<b>Operating expenses:</b>		
Research and development	4,974,120	5,293,804
Sales and marketing	11,757,734	11,214,027
General and administrative	5,468,916	5,465,970
Total operating expenses	22,200,770	21,973,801
Loss from operations	(13,258,307)	(14,666,566)
Interest income	5,931	12,383
Interest expense	(1,295,930)	(992,970)
Other income, net	62,780	309,560
Net loss before provision for income taxes	(14,485,526)	(15,337,593)
Provision for income taxes	(8,722)	(10,344)
Net and comprehensive loss	(14,494,248)	(15,347,937)
Accretion of redeemable convertible preferred stock	(3,117)	(324,937)
Net loss attributable to common stockholders	\$ (14,497,365)	\$ (15,672,874)
Net loss per share attributable to common stockholders, basic and diluted	\$ (37.33)	\$ (41.29)

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

## Miramar Labs, Inc.

### Consolidated Statements of Redeemable Convertible Preferred Stock and Stockholders' Deficit

	Redeemable Convertible Preferred Stock		Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount	Shares	Amount			
<b>Balances at December 31, 2013</b>	2,087,659	\$ 45,179,942	737,648	\$ 738	370,946	\$ 371	\$ 26,241,909	\$ (63,604,943)	\$ (37,361,925)
Issuance of Series D redeemable convertible preferred stock at \$21.64 per share, net of issuance costs of \$324,937 for \$16,000,000 in October 2013	739,322	15,675,063	—	—	—	—	—	—	—
Accretion of redeemable convertible preferred stock to redemption value	—	324,937	—	—	—	—	(324,937)	—	(324,937)
Exercise of stock options at \$1.35 - \$8.66 per share for cash in March, May, July and August 2014	—	—	—	—	14,348	14	84,580	—	84,594
Stock-based compensation	—	—	—	—	—	—	477,203	—	477,203
Net loss	—	—	—	—	—	—	—	(15,347,937)	(15,347,937)
<b>Balances at December 31, 2014</b>	<b>2,826,981</b>	<b>61,179,942</b>	<b>737,648</b>	<b>738</b>	<b>385,294</b>	<b>385</b>	<b>26,478,755</b>	<b>(78,952,880)</b>	<b>(52,473,002)</b>
Exercise of stock options at \$1.35 - \$8.66 per share for cash in October 2015	—	—	—	—	13,246	14	51,079	—	51,093
Series D redeemable preferred stock issuance cost	—	(3,117)	—	—	—	—	—	—	—
Accretion of redeemable convertible preferred stock to redemption value	—	3,117	—	—	—	—	(3,117)	—	(3,117)
Stock-based compensation	—	—	—	—	—	—	606,917	—	606,917
Net loss	—	—	—	—	—	—	—	(14,494,248)	(14,494,248)
<b>Balances at December 31, 2015</b>	<b>2,826,981</b>	<b>\$ 61,179,942</b>	<b>737,648</b>	<b>\$ 738</b>	<b>398,540</b>	<b>\$ 399</b>	<b>\$ 27,133,634</b>	<b>\$ (93,447,128)</b>	<b>\$ (66,312,357)</b>

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

**Miramar Labs, Inc.**  
**Consolidated Statements of Cash Flows**

	<b>Years Ended December 31,</b>	
	<b>2015</b>	<b>2014</b>
<b>Cash flows from operating activities</b>		
Net loss	\$ (14,494,248)	\$ (15,347,937)
Adjustments to reconcile net loss to net cash used in operating activities		
Depreciation and amortization	682,563	1,318,385
Loss (gain) on disposal of property and equipment	40,258	(35,144)
Stock-based compensation	606,917	477,203
Change in preferred stock warrant liability	(106,142)	(289,351)
Amortization of debt discount	147,703	69,609
Amortization of debt issuance costs	52,602	89,527
Changes in operating assets and liabilities		
Accounts receivable	(95,600)	(2,001,605)
Inventories	536,751	(463,015)
Prepaid expenses and other current assets	67,723	(1,709)
Other noncurrent assets	640	(2,557)
Accounts payable	443,447	(175,708)
<b>Accrued and other current liabilities</b>	843,429	(76,487)
Deferred revenue	(597,097)	1,056,445
Net cash used in operating activities	<u>(11,871,054)</u>	<u>(15,382,344)</u>
<b>Cash flows from investing activities</b>		
Restricted cash	—	61,970
Proceeds from disposal of property and equipment	—	53,841
Purchase of property and equipment	(223,703)	(1,295,146)
Net cash used in investing activities	<u>(223,703)</u>	<u>(1,179,335)</u>
<b>Cash flows from financing activities</b>		
Proceeds from issuance of convertible preferred stock, net of issuance costs	(3,117)	15,675,062
Proceeds from issuance of common stock	51,093	84,595
Proceeds from issuance of notes payable	3,557,714	5,168,410
Principal payments on capital leases	(53,282)	(61,625)
Payments on notes payable	(2,299,882)	(167,639)
Net cash provided by financing activities	<u>1,252,526</u>	<u>20,698,803</u>
Net (decrease) increase in cash and cash equivalents	<u>(10,842,231)</u>	<u>4,137,124</u>
Cash and cash equivalents at beginning of year	13,484,740	9,347,616
Cash and cash equivalents at end of year	<u>2,642,509</u>	<u>13,484,740</u>
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid for interest	\$ 1,069,282	\$ 754,438
Cash paid for taxes	8,722	10,344
<b>Disclosure of non-cash investing and financing activities:</b>		
Assets acquired under capital lease	\$ —	\$ 129,398
Accretion of redeemable preferred stock to redemption value	3,117	324,937
Issuance of preferred stock warrants	234,719	149,250
Net transfer (to) from inventory to leased equipment	105,250	(301,174)

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

**MIRAMAR LABS, INC.**  
**Notes to Financial Statements**

**1. The Company and Basis of Presentation**

Miramar Labs, Inc., or the Company, was incorporated in the state of Delaware on April 4, 2006. The Company has developed clinical systems to address hyperhidrosis. In February 2011, the Company received approval from the U.S. Food and Drug Administration (FDA) to market the miraDry System to eliminate underarm sweat glands. The Company's principal markets are in the U.S., Asia-Pacific and Europe. During 2011, the Company commercially launched its initial product, the miraDry System, a clinical system to address hyperhidrosis.

The Company has a wholly-owned subsidiary in Hong Kong that oversees operations in Asia. The subsidiary, Miramar Labs HK Limited, was incorporated under the laws of Hong Kong on January 2013 and commenced operations during fiscal year 2013.

The accompanying financial statements are prepared on a going concern basis which contemplates the realization of assets and discharge of liabilities in the normal course of business. Since inception, the Company has incurred net losses and negative cash flows from operations. From April 4, 2006 (date of inception) to December 31, 2015, the Company has an accumulated deficit of \$93,447,128. The Company has not achieved positive cash flow from operations. In order to continue its operations, the Company must raise additional equity or debt financing and achieve profitable operations. These factors raise substantial doubt about the Company's ability to continue as a going concern. There can be no assurance that the Company will be able to obtain additional equity or debt financing on terms acceptable to the Company, or at all. The failure to obtain sufficient funds on acceptable terms, when needed, could have a material, adverse effect on the Company's business, results of operations, and future cash flows.

To achieve profitable operations, the Company must successfully continue to develop, enhance, manufacture, and market its products. There can be no assurance that any such products can continue to be developed or manufactured at an acceptable cost and with appropriate performance characteristics, or that such products will be successfully marketed. These factors could have a material adverse effect upon the Company's financial results, financial position and future cash flows.

**2. Summary of Significant Accounting Policies**

***Principles of Consolidation***

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiary. Intercompany balances have been eliminated in consolidation.

***Use of Estimates***

The preparation of financial statements in conformity with accounting principles generally accepted in the 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. Actual results could differ from those estimates. The Company's most significant estimates relate to inventory valuation and reserves, warranty accruals, deferred tax asset valuation allowance and valuation of equity and equity-linked instruments (common stock, options and warrants).

### ***Cash and Cash Equivalents and Restricted Cash***

The Company considers all highly liquid investments purchased with original maturities of three months or less to be cash equivalents. The restricted cash balance consists of a letter of credit related to an operating lease.

### ***Concentration of Credit Risk and Other Risks and Uncertainties***

Financial instruments that potentially subject the Company to a concentration of credit risk consist of cash and cash equivalents. The Company's cash and cash equivalents are deposited with one financial institution in the U.S. Deposits in this institution may exceed the amount of insurance provided on such deposits. The Company has not experienced any losses on its deposits of cash and cash equivalents. At December 31, 2015, the Company's uninsured cash balances totaled \$2,573,267.

The Company performs periodic credit evaluations of its customers' financial condition and generally requires deposits from its customers. The Company generally does not charge interest on past due accounts. The Company's customers representing greater than 10% of accounts receivable and revenue were as follows:

	Revenue		Accounts Receivable	
	Year Ended December 31,		December 31,	
	2015	2014	2015	2014
Customer A	15%	22%	20%	22%
Customer B	*	*	23%	*
Customer C	*	*	12%	22%
Customer D	*	*	*	14%
Customer E	*	*	*	10%

Sales in the U.S. consisted of 42% and 41% of total revenue, in 2015 and 2014, respectively. The remainder of the Company's sales come primarily from Asia-Pacific and Europe.

The Company is subject to risks common to companies in the medical device industry including, but not limited to, new technological innovations, dependence on key personnel, protection of proprietary technology, compliance with government regulations, uncertainty of market acceptance of products, product liability and the need to obtain additional financing.

The medical device industry has been characterized by frequent and extensive intellectual property litigation. Competitors or other patent holders may assert that the Company's devices and methods employed are covered by their patents. If the Company's devices or methods are found to infringe, the Company could be prevented from manufacturing or marketing its products, which could have a materially adverse impact on the Company.

### ***Inventories***

Inventories are stated at lower of cost or market value and consist of raw materials, work in process, and finished goods. Cost is determined using standard costs, which approximates actual cost on a first-in, first-out basis. Market value is determined as the lower of replacement cost or net realizable value. The Company writes down its inventory for estimated excess or obsolete inventory equal to the difference between the cost and the estimated market value based upon assumptions about future demands and market conditions.

### ***Shipping and Handling Costs***

Shipping and handling costs related to the Company's products are expensed as incurred and are included in cost of sales.

### ***Revenue Recognition***

The Company's revenue is derived from the sale of the miraDry system, related consumables and accessories, and separately priced extended warranties. The Company recognizes revenue in accordance with FASB Accounting Standards Codification 605, Revenue Recognition (ASC 605). Under ASC 605, revenue is recognized when persuasive evidence of an arrangement exists, title and risk of loss has transferred to the customer, the sales price is fixed or determinable, and collectability is reasonably assured.

The Company has distributor agreements with several international distributors. Certain distributor agreements contain product repurchase provisions. The Company defers revenue for its potential exposure for product repurchases.

In 2013, the Company introduced leasing programs for customers to evaluate the miraDry system for a defined rental period and then return or purchase the leased equipment. Each lease was evaluated by the Company according to FASB Accounting Standards Codification 840, Leases (ASC 840) and recorded as an operating or capital lease. Rental income from the operating leases is recorded on a straight-line basis over the rental term and the related depreciation of the leased equipment is recorded in cost of revenue in the accompanying Consolidated Statements of Operations and Comprehensive Loss. Included in revenue is rental income of \$45,900 and \$575,900 in 2015 and 2014, respectively. Included in cost of revenue is depreciation expense on the leased equipment of \$20,466 and \$701,602 in 2015 and 2014, respectively. The leased equipment and related accumulated depreciation is recorded in property and equipment in the accompanying Consolidated Balance Sheets. Leased equipment with a cost of \$305,787 and related accumulated depreciation of \$204,000 is included in property and equipment, net at December 31, 2014. The leasing program was discontinued in 2015 and no leased equipment or related accumulated depreciation was recorded in the accompanying Consolidated Balance Sheets as of December 31, 2015.

For capital leases, \$225,058 of revenue was recognized in 2014. No capital lease revenue was recognized in 2015. Capital lease receivables of \$13,139 and \$104,728 are included in prepaid expenses and other current assets at December 31, 2015 and 2014, respectively.

In 2015, the Company reintroduced the Market Validation Program (MVP), which contained a right of return less a restocking fee, during the contract period. The Company defers revenue until the equipment is either returned or purchased. Equipment at customers under this program of \$168,143 is recorded in property and equipment and \$19,200 is recorded in deferred revenue in the accompanying Consolidated Balance Sheets as of December 31, 2015.

The Company provides cooperative marketing programs as part of certain customer purchase agreements and qualification through marketing rewards programs. The programs generally provide for reimbursement up to 50% of qualifying marketing expenditures that promote the Company's products and brand. In order to qualify for the reimbursement, the customer must (1) have pre-approval from the Company's marketing group to ascertain that the marketing adheres to the established brand style guidelines and only feature miraDry system products and the customer's practice and (2) submit proof of payment and invoice for the marketing expenses. Through this review, the Company ensures that the fair value of the separately identifiable benefit received is equal to or greater than the amount being reimbursed. The Company's reimbursement of marketing expenditures under these programs are recorded in sales and marketing expenses in the accompanying Consolidated Statements of Operations and Comprehensive Loss.

### ***Product Warranty***

The Company warrants the miraDry System for a period of one to two years, depending on the territory. The Company accrues for warranty costs at the time of sale based on an estimate of total repair costs for all miraDry systems under the warranty period. An extended warranty or service plan may be purchased for additional fees.

#### ***Allowance for Doubtful Accounts***

The Company regularly reviews accounts receivable balances, including an analysis of customers' payment history and information regarding the customers' creditworthiness, and records an allowance for doubtful accounts based upon this evaluation. The allowance for doubtful accounts was \$60,000 and \$40,000 as of December 31, 2015 and 2014, respectively. The Company writes off accounts against the allowance when all attempts at collection have been exhausted.

#### ***Property and Equipment***

Property and equipment are stated at cost less accumulated depreciation and amortization. All property and equipment is depreciated on a straight-line basis over the estimated useful lives of the assets, which are as follows:

Machinery and equipment	5 years
Computer and office equipment/software	3 years
Furniture and fixtures	5 years
Leased equipment	1-2 years

Leasehold improvements are amortized over the lesser of their useful lives or the life of the lease. Upon sale or retirement of the assets, the cost and related accumulated depreciation are removed from the balance sheet and the resulting gain or loss is recognized in the statement of operations. Maintenance and repairs are charged to operations as incurred.

#### ***Research and Development Expenditures***

Research and development costs are charged to operations as incurred. These amounts include, but are not limited to, direct costs and research related overhead expenses.

#### ***Marketing and Advertising Expenditures***

The cost of marketing and advertising is expensed as incurred. Marketing and advertising costs totaled \$1,449,845 and \$1,503,794, in 2015 and 2014, respectively

#### ***Impairment of Long-Lived Assets***

The Company reviews long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset might not be recoverable. When such an event occurs, management determines whether there has been an impairment by comparing the anticipated undiscounted future net cash flows from the asset to the related asset's carrying value. If an asset is considered impaired, the asset is written down to fair value, which is determined based either on discounted cash flows or appraised value, depending on the nature of the asset. Through December 31, 2015, the Company has not experienced impairment losses on its long-lived assets.

### ***Fair Value of Financial Instruments***

Carrying amounts of certain of the Company's financial instruments, including cash, cash equivalents, and restricted cash, approximate fair value due to their relatively short maturities and level 1 market interest rates. The carrying value of notes payable approximates fair value based upon the present value of expected future cash flows and level 2 assumptions about current interest rates available to the Company. The carrying amount of the preferred stock warrant liability has been marked-to-market such that the carrying amount represents its fair value (Note 4).

### ***Freestanding Preferred Stock Warrants***

Freestanding warrants and other similar instruments related to shares that are redeemable are accounted for in accordance with ASC 480, "*Distinguishing Liabilities from Equity*." The Company's freestanding warrants are exercisable into the Company's convertible preferred stock and are classified as liabilities on the balance sheet. The warrants are subject to re-measurement at each balance sheet date and the change in fair value, if any, is recognized as other income (expense). The Company will continue to adjust the liability for changes in fair value until the earlier of (i) exercise of the warrants, (ii) conversion into warrants to purchase common stock (upon conversion of the preferred stock to common), or (iii) expiration of the warrants.

### ***Income taxes***

The Company accounts for income taxes under the liability method, whereby deferred tax assets and liabilities are recorded for the difference between the financial statement and tax bases of assets and liabilities and for net operating loss and tax credit carryforwards using the enacted tax rates in effect for the year in which the differences are expected to affect taxable income. A valuation allowance is established when necessary to reduce deferred tax assets to the amounts expected to be realized.

The Company adheres to the provisions of FASB Accounting Standards Codification (ASC 740-10), "*Accounting for Uncertainty in Income Taxes*." ASC 740-10 prescribes a comprehensive model for the recognition, measurement, presentation and disclosure in financial statements of any uncertain tax positions that have been taken or expected to be taken on a tax return.

It is the Company's policy to include penalties and interest expense related to income taxes as a component of other expense, net, as necessary.

### ***Foreign Currency Translation***

Assets and liabilities of non-U.S. subsidiaries for which the local currency is the functional currency are translated into U.S. dollars at the exchange rate on the balance sheet date. Revenues and expenses are translated at the average rates of exchange prevailing during the year. Translation adjustments resulting from this process are charged or credited to the other comprehensive income (loss). Foreign exchange gains and losses (as well as re-measurement gains and losses) for assets and liabilities of the Company's non-U.S. subsidiaries for which the functional currency is the U.S. dollar are recorded in other income (expense) in the Company's consolidated statement of operations. The U.S. dollar is the functional currency for all of the Company's consolidated operations.

### ***Stock -Based Compensation***

The Company accounts for stock-based compensation in accordance with ASC 718 "*Compensation-Stock Compensation*." ASC 718 requires the recognition of compensation expense, using a fair-value based method, for costs related to all share-based payments including stock options. ASC 718 requires companies to estimate the fair

value of all share-based payment awards on the date of grant using an option pricing model. All option grants valued since inception are expensed on a straight-line basis over the requisite service period.

The Company accounts for equity instruments issued to nonemployees in accordance with ASC 505-50 “*Accounting for Equity Instruments that are Issued to Other than Employees for Acquiring, or in Conjunction with Selling Goods or Services.*” Equity instruments issued to non-employees are recorded at their fair value on the measurement date and are subject to periodic adjustments as the underlying equity instruments vest.

### ***Segment and Geographic Information***

The Company has one business activity, which is the sale of the miraDry system to address hyperhidrosis, and operates in one reportable segment. The Company’s chief operating decision-maker, its chief executive officer, reviews its operating results on an aggregate basis for purposes of allocating resources and evaluating financial performance.

### ***Net Loss per Share***

The Company’s basic net loss per share attributable to common stockholders is calculated by dividing the net loss attributable to common stockholders by the weighted-average number of shares of common stock outstanding for the period. The diluted net loss per share attributable to common stockholders is computed by giving effect to all potential common stock equivalents outstanding for the period determined using the treasury stock method. For purposes of this calculation, convertible preferred stock, stock options and warrants to purchase convertible preferred stock are considered to be common stock equivalents but have been excluded from the calculation of diluted net loss per share attributable to common stockholders as their effect is anti-dilutive, due to the Company’s reported net losses.

### ***Preferred Stock***

Preferred shares subject to mandatory redemption (if any) are classified as liability instruments and are measured at fair value. The Company classifies conditionally redeemable preferred shares, which includes preferred shares that feature redemption rights that are either within the control of the holder or subject to redemption upon the occurrence of uncertain events not solely within the Company’s control, as temporary equity. At all other times, the Company classifies its preferred shares in stockholders’ equity. Accordingly, as of December 31, 2015 and 2014, all issuances of conditionally redeemable preferred shares are presented as temporary equity in the consolidated balance sheets.

### ***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).*” The amendment in this ASU provides guidance on revenue recognition and requires companies to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The core principle of this update provides guidance to identify the performance obligations under the contract(s) with a customer and how to allocate the transaction price to the performance obligations in the contract. It further provides guidance to recognize revenue when (or as) the entity satisfies a performance obligation. ASU 2014-09 is effective for public entities for annual and interim periods beginning after December 15, 2016. In August 2015, the FASB issued ASU 2015-14 which defers the effective date of ASU 2014-09 by one year making it effective for annual reporting periods beginning after December 15, 2017. In March 2016, the FASB issued ASU 2016-08, “*Revenue from Contracts with Customers (Topic 606): Principal versus Agent Considerations*” (“ASU 2016-08”). In April 2016, the FASB issued ASU 2016-10, “*Revenue from Contracts with Customers (Topic 606): Identifying*

*Performance Obligations and Licensing*” (“ASU 2016-10”). In May 2016, the FASB issued ASU 2016-12, “*Revenue from Contracts with Customers (Topic 606): Narrow-Scope Improvements and Practical Expedients*” (“ASU 2016-12”). ASU 2016-08, ASU 2016-10 and ASU 2016-12 all update and clarify the guidance previously issued in ASU 2014-09. ASU 2014-09, as amended, allows for two methods of adoption, a full retrospective method or a modified retrospective approach with the cumulative effect recognized at the date of initial application. The Company is currently evaluating the effect that the standard will have on the consolidated financial statements.

In August 2014, the FASB issued ASU No. 2014-15, “*Presentation of Financial Statements - Going Concern (Subtopic 205-40): Disclosure of Uncertainties about an Entity’s Ability to Continue as a Going Concern*” (“ASU 2014-15”). The update sets forth a requirement for management to evaluate whether there are conditions and events that raise substantial doubt about an entity’s ability to continue as a going concern, a responsibility that did not previously exist in GAAP. The amendments included in this update require management to assess an entity’s ability to continue as a going concern by incorporating and expanding upon certain principles that are currently in U.S. auditing standards. Specifically, the amendments (1) provide a definition of the term substantial doubt, (2) require an evaluation every reporting period, including interim periods, (3) provide principles for considering the mitigating effect of management’s plans, (4) require certain disclosures when substantial doubt is alleviated as a result of consideration of management’s plans, (5) require an express statement and other disclosures when substantial doubt is not alleviated, and (6) require an assessment for a period of one year after the date that the financial statements are issued (or available to be issued). ASU 2014-15 will be effective for the Company in fiscal year 2016. The Company is currently assessing the future impact of this update on its financial statements.

In April 2015, the FASB issued ASU No. 2015-03, “*Interest - Imputation of Interest (Subtopic 835-30): Simplifying the Presentation of Debt Issuance Costs*” (ASU 2015-03”). The amendments in this ASU require that debt issuance costs related to a recognized debt liability be presented in the balance sheet as a direct deduction from the carrying amount of that debt liability, consistent with debt discounts. ASU 2015-03 is effective for annual and interim reporting periods of public entities beginning after December 15, 2015, and early adoption is permitted. The Company has adopted this standard and has accordingly reclassified debt issuance costs of \$225,438 as of December 31, 2014 as a deduction of notes payable.

In July 2015, the FASB issued ASU 2015-11, “*Inventory (Topic 330): Simplifying the Measurement of Inventory.*” This update requires inventory that is recorded using the first-in, first-out (FIFO) or average cost method to be measured at the lower of cost or net realizable value (defined as the estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal and transportation), as opposed to the existing requirement to measure such inventory at the lower of cost or market value. This update is effective for annual periods beginning after December 15, 2016, and interim periods within those years, with early adoption permitted. The Company does not believe adoption will have any significant impact on the consolidated financial statements.

In February 2016, the FASB issued ASU 2016-02, “*Leases (Topic 842).*” The guidance in this update supersedes the leasing guidance in “*Leases (Topic 840).*” Under the new guidance, lessees are required to recognize lease assets and lease liabilities on the balance sheet for all leases with terms longer than 12 months. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the income statement. For public entities, the new standard is effective for annual periods beginning after December 15, 2018, including interim periods within those fiscal years. A modified retrospective transition approach is required for lessees for capital and operating leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements, with certain practical expedients available. The Company is currently evaluating the effect that the standard will have on the consolidated financial statements.

In March 2016, the FASB issued ASU 2016-09, “*Compensation - Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting.*” This update will require all income tax effects of awards to be recognized in the income statement when the awards vest or are settled. It will also allow an employer to repurchase more of an employee’s shares than it can today for tax withholding purposes without triggering liability accounting and to make a policy election to account for forfeitures as they occur. For public entities, the new standard is effective for annual periods beginning after December 15, 2016, and early adoption is permitted. The Company is currently evaluating the effect that the standard will have on the consolidated financial statements.

### 3. Balance Sheet Components

#### *Inventories*

	December 31,	
	2015	2014
Raw materials	\$ 2,132,655	\$ 2,646,551
Work in process	1,263,019	1,307,388
Finished goods	1,396,067	1,479,803
	<u>\$ 4,791,741</u>	<u>\$ 5,433,742</u>

#### *Property and Equipment, Net*

	December 31,	
	2015	2014
Leasehold improvements	\$ 844,360	\$ 844,360
Machinery and equipment	1,355,986	1,268,033
Computer and office equipment	241,291	264,673
Software	326,992	326,992
Furniture and fixtures	114,564	114,564
Equipment leased to customers	168,143	305,787
	<u>3,051,336</u>	<u>3,124,409</u>
Less: Accumulated depreciation and amortization	<u>(1,840,207)</u>	<u>(1,519,412)</u>
	<u>\$ 1,211,129</u>	<u>\$ 1,604,997</u>

Assets acquired under capital leases for the year ended December 31, 2014, were \$129,398 and are included in property and equipment, net. No assets under capital leases were acquired in 2015. Depreciation and amortization expense was \$682,563 and \$1,318,385 in 2015 and 2014, respectively.

At December 31, 2015 and 2014, substantially all of the property and equipment is located at the Company’s corporate headquarters in the U.S.

#### *Accrued Liabilities*

	December 31,	
	2015	2014
Accrued payroll and related expenses	\$ 1,457,534	\$ 1,224,819
Accrued royalty	1,226,973	693,717
Accrued warranty	217,000	253,000
Accrued marketing	165,600	100,830
Accrued clinical expenses	2,600	35,110
Accrued legal	112,000	45,045
Capital lease payable, current	33,909	53,282
Deferred rent, current	18,672	3,057
Accrued other expenses	338,153	320,852
	<u>\$ 3,572,441</u>	<u>\$ 2,729,712</u>

### ***Accrued Warranty***

The Company regularly reviews the accrued warranty balance and updates as necessary based on sales and warranty experience trends. The warranty accrual as of December 31, 2015 and 2014 consists of the following activity:

<b>Warranty accrual, December 31, 2013</b>	357,000
Accruals for product warranty	55,566
Cost of warranty claims	(159,566)
<b>Warranty accrual, December 31, 2014</b>	<u>\$ 253,000</u>
Accruals for product warranty	427,467
Cost of warranty claims	(463,467)
<b>Warranty accrual, December 31, 2015</b>	<u>\$ 217,000</u>

#### **4. Fair Value of Financial Instruments**

FASB Codification 820, Fair Value Measurements and Disclosures (“ASC 820”) established a framework for measuring fair value under generally accepted accounting principles and clarified the definition of fair value within that framework. ASC 820 does not require assets and liabilities that were previously recorded at cost to be recorded at fair value. For assets and liabilities that are already required to be disclosed at fair value, ASC 820 introduced, or reiterated, a number of key concepts that form the foundation of the fair value measurement approach to be used for financial reporting purposes. The fair value of the Company’s financial instruments reflects the amounts that the Company estimates that it would receive in connection with the sale of an asset or paid in connection with the transfer of a liability in an orderly transaction between market participants at the measurement date (exit price). ASC 820 also established a fair value hierarchy that prioritizes the inputs used in valuation techniques into the following three levels:

- Level 1. Quoted prices in active markets for identical assets and liabilities;
- Level 2. Observable inputs other than quoted prices in active markets for identical assets and liabilities;
- Level 3. Unobservable inputs.

ASC 820 introduced new disclosures about how the Company values certain assets and liabilities. Much of the disclosure focuses on the inputs used to measure fair value, particularly in instances in which the measurement uses significant unobservable (Level 3) inputs. The Company's cash equivalents are classified within Level 1 of the fair value hierarchy because they are valued using quoted market prices, broker or dealer quotations, or alternative pricing sources with reasonable levels of price transparency. The Company's preferred stock warrant liability is classified within Level 3 of the fair value hierarchy. The preferred stock warrant liability has been valued using a Black-Scholes valuation model and the related input assumptions are discussed in Note 9.

The fair value of the Company's financial assets and liabilities measured on a recurring basis, as of December 31, 2015, and 2014 are as follows:

	As of December 31, 2015			
	Level 1	Level 2	Level 3	Total
<b>Liabilities</b>				
Preferred stock warrant liability	\$ —	\$ —	\$ 499,616	\$ 499,616

	As of December 31, 2014			
	Level 1	Level 2	Level 3	Total
<b>Liabilities</b>				
Preferred stock warrant liability	—	—	371,039	\$ 371,039

The changes in the convertible preferred stock warrant liability are summarized below:

<b>Fair value at December 31, 2013</b>	\$ 511,140
Fair value of warrants issued during the year	149,250
Change in fair value recorded in interest and other income, net	(289,351)
<b>Fair value at December 31, 2014</b>	<u>371,039</u>
Fair value of warrants issued during the year	234,719
Change in fair value recorded in interest and other income, net	(106,142)
<b>Fair value at March 31, 2015</b>	<u>\$ 499,616</u>

## 5. Related Party Transactions

The Company was formed at an incubator, The Foundry, LLC (The Foundry), a company which provides seed capital and management services to its investees. Certain employees of The Foundry serve as members of the Company's board of directors and own shares of common stock. The total amount reimbursed to The Foundry for the years ended December 31, 2015 and 2014 was \$62,267 and \$62,180, respectively.

In February 2008, the Company entered into a technology license and royalty agreement with The Foundry wherein the Company agreed to pay The Foundry a royalty of 1.5% of sales of the licensed products and 1.5% of the patented products, up to a maximum of \$30 million. In March 2013, the total royalty percentage increased from 1.5% to 3% due to the issuance of a patent covering certain company products. The total amount payable to The Foundry for the years ended December 31, 2015 and 2014 was \$1,226,973 and \$693,717, respectively, which includes interest accrued at the annual interest rate of prime plus 1% beginning on the first day of the calendar quarter to which such payment relates. In addition, \$250,000 in royalty payments was paid to The Foundry in 2014. No royalties were paid in 2015.

## 6. Commitments and Contingencies

### *Indemnification Agreements*

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

The Company has entered into indemnification agreements with its directors that may require the Company to indemnify its directors against liabilities that may arise by reason of their status or service as directors, other than liabilities arising from willful misconduct of the individual.

No liability associated with such indemnifications has been recorded at December 31, 2015 or 2014.

### *Legal Claims*

Occasionally, the Company may be involved in claims and legal proceedings arising from the ordinary course of its business. The Company records a provision for a liability when it believes that is both probable that a liability has been incurred, and the amount can be reasonably estimated. If these estimates and assumptions change or prove to be incorrect, it could have a material impact on the Company's consolidated financial statements. Contingencies are inherently unpredictable and the assessments of the value can involve a series of complex judgments about future events and can rely heavily on estimates and assumptions.

### *Operating and Capital Leases*

In December 2013, the Company entered into a 62 month non-cancelable operating lease for its office building space in Santa Clara, California. In connection with the lease, the Company entered into a letter of credit, which is secured by a restricted cash balance of \$295,067. The Company previously had a five year non-cancelable operating lease for its office building space in Sunnyvale, California that expired in June 2014.

The Company also has a one year operating lease for office space in Hong Kong which expires in November 2016. The previous lease agreements for office space in Hong Kong expired in November 2015.

Rent expense under the Company's operating leases was \$567,032 and \$617,570 for the years ended December 31, 2015 and 2014, respectively. The Company recognizes rent expense on a straight-line basis over the lease period. The difference between rent payable and rent expense on a straight-line basis is recorded as deferred rent and amortized over the period of the lease.

The Company has the following agreements classified as capital leases:

Date Lease Entered	Description	Lease Period in Months
September 2011	Machinery equipment	36
February 2012	Office Equipment	39
April 2014	Office Equipment	39
June 2014	Machinery equipment	24

The gross cost of capital leases was \$129,398 at December 31, 2015 and 2014, respectively. The accumulated amortization of asset under capital leases was \$57,479 and \$22,615 for the years ended December 31, 2015 and 2014, respectively. The Company depreciates the underlying assets on a straight line basis over the lesser of estimated useful lives of the assets or lease term.

The aggregate future minimum lease payments under all leases are as follows:

Year Ending December 31,	Operating Lease	Capital Leases
2016	\$ 584,616	\$ 35,581
2017	552,207	17,249
2018	568,773	—
2019	241,592	—
Total minimum lease payments	<u>\$ 1,947,188</u>	<u>52,830</u>
Less: Amount representing interest		(2,056)
Present value of minimum lease payments		<u>50,774</u>
Less: current portion of capital leases		(33,909)
		<u>\$ 16,865</u>

## 7. Notes Payable

In June 2013, the Company entered into a loan and security agreement with certain financial institutions, providing for the issuance of secured promissory notes in the aggregate principal amount of up to \$15 million to be drawn down in three different tranches of \$5 million each. The first \$5 million tranche was drawn on June 27, 2013 and the second \$5 million tranche was drawn on April 29, 2014. The agreement provided for the promissory notes to be issued no later than December 31, 2014. The promissory notes for the first tranche accrued interest at 9.34% per annum and monthly interest only payments commenced on July 1, 2013. The promissory notes for the second tranche accrued interest at 9.52% per annum and monthly interest only payments commenced on May 1, 2014. The principal and interest payments commenced on February 1, 2015 for both tranches.

In August 2015, the Company refinanced the outstanding balance of the loan and security agreement entered into in June 2013. The new \$10 million promissory note accrues interest at 7.80% per annum and monthly interest only payments commenced on September 1, 2015. Principal and interest payments shall commence on January 1, 2017.

All borrowings under the agreement are collateralized by substantially all of the Company's assets. There are no significant financial covenants. The agreement contains a subjective acceleration clause. Failure to comply with the loan covenants may result in the acceleration of payment terms on all outstanding principal and interest amounts plus a prepayment fee. Due to the subjective acceleration clause, the outstanding notes payable are classified

as current in the accompanying Consolidated Balance Sheets. As of December 31, 2015, the Company was in compliance with the debt covenants.

In December 2015, the Company entered into a note purchase agreement with existing private investors to draw down up to \$1.5 million for working capital purposes. The Company subsequently issued \$1.3 million of convertible promissory notes (“December 2015 notes”). The December 2015 notes accrued interest at 8% per annum and are due at the earliest of a liquidation event or one year from date of issuance. In the event of a qualified equity financing, the outstanding principal and interest on the notes payable will automatically convert into shares of the qualified financing shares at a price equal to the price per share paid by investors in the qualified equity financing. In the event of a non-qualified financing, the shares will be converted at the option of the majority of the investors. If there is no financing event prior to the maturity date, the outstanding principal and interest on the notes payable will automatically convert into shares of Series D preferred stock at \$21.64 per share.

The Company entered into short term financing agreements for insurance premiums with nine month payment terms and interest rates ranging from 4.95% to 5.18%. The outstanding balance of the financing agreements was \$40,899 and \$44,692 at December 31, 2015 and 2014, respectively.

Annual future principal payments under the notes payable are as follows:

2016	\$ 1,302,524
2017	3,391,604
2018	3,665,814
2019	2,942,582
Total payments	<u>11,302,524</u>
Less: Amount representing debt discount	(409,771)
Carrying value of notes payable	<u>\$ 10,892,753</u>

## 8. Common Stock

The Company’s amended Articles of Incorporation authorize the Company to issue 105,500,000 shares of \$0.001 par value common stock. The common stockholders are entitled to elect three members of the Company’s board of directors. The preferred stockholders also have rights to elect members of the board of directors, after these rights both classes of stock voting together as one class elect all remaining directors. The holders of common stock are also entitled to receive dividends whenever funds are legally available, as, when, and if declared by the board of directors. As of December 31, 2015, no dividends have been declared to date.

At December 31, 2015, the Company had reserved common stock for future issuance as follows:

Conversion of Series A convertible preferred stock	147,864
Conversion of Series B convertible preferred stock	637,030
Conversion of Series C convertible preferred stock	1,625,203
Conversion of Series D convertible preferred stock	1,201,778
Exercise of options under stock plan	855,903
Issuance of options under stock plan	48,560
Exercise and conversion of preferred stock warrants	66,923
	<u>4,583,261</u>

## 9. Convertible Preferred Stock

The Company has authorized 51,100,000 shares of preferred stock, designated in series, with the rights and preferences of each designated series to be determined by the Company's board of directors.

Convertible preferred stock at December 31, 2015 and 2014 consisted of the following:

Series	Shares Authorized	Shares Issued and Outstanding	Per Share Liquidation Preference	Aggregate Liquidation Amount	Carrying Value
Series A	2,100,000	147,864	\$ 13.53	\$ 2,000,000	\$ 1,966,935
Series B	9,000,000	589,784	24.35	14,359,244	14,261,779
Series C	23,000,000	1,625,203	21.64	35,171,735	35,171,735
Series D	17,000,000	1,201,778	21.64	26,008,207	26,008,207
	<u>51,100,000</u>	<u>3,564,629</u>		<u>\$ 77,539,186</u>	<u>\$ 77,408,656</u>

The holders of preferred stock have various rights and preferences as follows:

### *Voting Rights*

The holders of Series A, Series B, Series C and Series D convertible preferred stock shares are entitled to vote on all matters on which the common stockholders are entitled to vote. Holders of Series A, Series B, Series C and Series D convertible preferred and common stock vote together as a single class not as separate classes. Each holder of Series A, Series B, Series C and Series D convertible preferred stock is entitled to the number of votes equal to the number of common stock shares into which the shares held by such holder are convertible. However, so long as 73,932 convertible preferred shares of Series A, 184,830 convertible preferred shares of Series B, 147,864 convertible preferred shares of Series C and 184,830 convertible preferred shares of Series D stock are outstanding, respectively, the holders of the preferred stock voting as a separate class are entitled to elect one member of the Company's board of directors for each class of stock.

As long as at least 184,830 shares of convertible preferred stock shares remain outstanding (subject to adjustment from time to time for Recapitalizations), the Company must obtain approval from holders of a majority of the then outstanding shares of the convertible preferred stock, voting together as a single class on an as-converted to common stock basis to: (i) alter or change the rights, preferences, or privileges of the convertible preferred stock; (ii) change the aggregate number of authorized shares of any series of convertible preferred stock or the aggregate number of authorized shares of common stock; (iii) create (by reclassification or otherwise) any new class or series of shares having any rights, preferences, or privileges superior to or on a parity with any outstanding shares of any series of convertible preferred stock or increase the authorized or designated number of such new class or series of shares; (iv) redeem, repurchase, or pay any Distribution on the Company's common stock (other than acquisitions of common stock by the Company pursuant to agreements which permit the Company or pursuant to the exercise of the Company's right of first refusal upon a proposed transfer); (v) declare or pay dividends on any shares of common or convertible preferred stock; (vi) merge into, consolidate with, or implement a reorganization with any other corporation (other than a wholly-owned subsidiary corporation) in one or more related transactions or implement any other transaction or series of related transaction then result in the sale of all or substantially all of the Company's assets; (vii) voluntarily dissolve or liquidate the Company; (viii) change the number of authorized directors of the Company's board of directors; (ix) enter in to any transaction in which the Company shall incur or guarantee indebtedness in a principal amount greater than \$1,000,000 in the aggregate; (x) approve material change to the Company's business plan; (xi) approve the Company's annual budget; or (xii) take any action that results in taxation

of the holders of any series of convertible preferred stock under Section 305 of the Internal Revenue Code of 1986, as amended.

As long as at least 184,830 shares of convertible preferred Series C stock shares are outstanding (subject to adjustment from time to time for Recapitalizations), the Company must obtain approval of holders of at least sixty-six and two-thirds percent (66 2/3%) of the then outstanding shares of Series C convertible preferred stock to: (i) alter or change the rights, preferences, or privileges of the Series C convertible preferred stock; or (ii) increase the authorized or designated number of shares of Series C Preferred Stock.

As long as at least 184,830 shares of convertible preferred Series D stock shares are outstanding (subject to adjustment from time to time for Recapitalizations), the Company must obtain the approval of holders of at least sixty-six and two-thirds percent (66 2/3%) of the then outstanding shares of Series D convertible preferred stock to: (i) alter or change the rights, preferences, or privileges of the Series D convertible preferred stock; or (ii) increase the authorized or designated number of shares of Series D convertible preferred stock.

### ***Dividends***

The holders of Series D convertible preferred stock are entitled to receive noncumulative dividends, when, as and if declared by the board of directors, out of any assets legally available, prior to and in preference to any declaration or payment of dividends on the Series A, Series B, Series C convertible preferred stock and common stock of the Company. Dividends are payable at an annual rate of 8% of the original issue price of \$21.64 per share of Series D convertible preferred stock, respectively (adjusted to reflect subsequent stock dividends, stock splits or recapitalization).

After payment of the Series D convertible preferred stock dividends, the holders of Series C convertible preferred stock are entitled to receive noncumulative dividends, when, as and if declared by the board of directors, out of any assets legally available, prior to and in preference to any declaration or payment of dividends on the Series A, Series B, and common stock of the Company. Dividends are payable at an annual rate of 8% of the original issue price of \$21.64 per share for Series C convertible preferred stock, respectively (adjusted to reflect subsequent stock dividends, stock splits or recapitalization).

The holders of Series A and Series B convertible preferred stock are entitled to receive noncumulative dividends, when, as and if declared by the board of directors, out of any assets legally available, prior to and in preference to any declaration or payment of dividends on the common stock of the Company. Dividends are payable at an annual rate of 8% of the original issue price of \$13.53 and \$24.35 per share for Series A and Series B convertible preferred stock, respectively, (adjusted to reflect subsequent stock dividends, stock splits or recapitalization), when, as, and if declared by the board of directors, respectively.

After payment of all convertible preferred stock Series D, Series C, Series B and Series A dividends, any additional dividends shall be distributed to the holders of all convertible preferred stock and common stock on a pro rata basis in proportion to the number of common stock held by each shareholder as if the preferred stock had been converted at the effective conversion rate. No dividends on preferred stock or common stock have been declared as of December 31, 2014.

### ***Liquidation***

In the event of any liquidation, dissolution or winding up of the Company, including a merger, reorganization, consolidation, acquisition or sale of substantially all of the assets of the Company, or any other transaction or series of transactions in which more than 50% of the voting power of the Company is disposed of ("Liquidation"), the holders of Series D convertible preferred stock are entitled to receive, prior to and in preference to any distribution

to holders of Series A, Series B, Series C convertible preferred stock and common stock, an amount equal to \$21.64 per share (subject to adjustment from time to time), plus any declared but unpaid dividends on such shares (“Series D liquidation preference”). Should the Company’s legally available assets be insufficient to satisfy the full liquidation preference, the funds will be distributed ratably among the holders of Series D convertible preferred stock in proportion to the preferential amount each holder is otherwise entitled to receive.

In the event of a Liquidation and after payment of the Series D liquidation preference, the holders of Series C convertible preferred stock are entitled to receive, prior to and in preference to any distribution to holders of Series A, Series B, convertible preferred stock and common stock, an amount equal to \$21.64 per share (subject to adjustment from time to time), plus any declared but unpaid dividends on such shares (“Series C liquidation preference”). Should the Company’s legally available assets be insufficient to satisfy the full liquidation preference, the funds will be distributed ratably among the holders of Series C convertible preferred stock in proportion to the preferential amount each holder is otherwise entitled to receive.

In the event of a Liquidation and after payment of the Series D and Series C convertible preferred stock liquidation preferences, the remaining assets, if any, shall be distributed to the holders of Series A and Series B convertible preferred stock prior to and in preference to any distribution to holders of common stock, an amount equal to \$13.53 and \$24.35 per share (subject to adjustment from time to time), respectively, plus any declared but unpaid dividends on such shares (“Series A and Series B liquidation preferences”). Should the Company’s legally available assets be insufficient to satisfy the full preferential amount, the remaining funds will be distributed ratably among the holders of Series A and Series B convertible preferred stock in proportion to the preferential amount each holder is otherwise entitled to receive.

In the event of a Liquidation and after payment of the liquidation preference to the holders of Series D, Series C, Series A, and Series B convertible preferred stock, the remaining assets, if any, shall be distributed to the holders of common stock in proportion to the number of common stock held by each shareholder.

Any liquidation, dissolution, winding-up of the Company, a merger or consolidation of the Company into or with any other corporation, and/or a sale, transfer, or lease of all or substantially all of the assets of the Company, is deemed a liquidation event.

### ***Conversion***

Each share of Series A, Series B, Series C and Series D convertible preferred stock is convertible, at the option of the holder, into the number of shares of common stock into which such shares are convertible at the then effective conversion ratio. The original conversion price per share for Series A, Series B, Series C and Series D convertible preferred stock was \$13.53, \$24.35, \$21.64 and \$21.64 per share, respectively. The initial conversion price is subject to adjustment from time to time. As of December 31, 2015, the conversion price per share for Series A, Series B, Series C and Series D convertible preferred stock is \$13.53, \$22.54, \$21.64 and \$21.64 per share, respectively.

Each share of Series A, Series B, Series C and Series D convertible preferred stock is convertible into common stock automatically upon the earlier of (i) immediately before the closing of a firm commitment underwritten public offering in which the aggregate proceeds raised equals or exceeds \$30,000,000 and a pre-offering valuation of the Company of at least \$150,000,000, or (ii) the Company’s receipt of a written request for such conversion from the holders of 66 2/3% of the then outstanding shares of convertible preferred stock.

### ***Redemption***

Beginning on or after the seventh anniversary of the date of the filing of the amended Articles of Incorporation

upon Series C issuance, the Series C convertible preferred shares are redeemable upon request by holders of at least 66 2/3% of the then outstanding fully-paid Preferred Series C Shares, the Company shall redeem all, but not less than all, of the then outstanding fully-paid Preferred Series D Shares, by paying a redemption price equal to the original issuance price plus all declared but unpaid dividends attributable to such shares.

Beginning on or after December 16, 2020, the Series D convertible preferred shares are redeemable upon request by holders of at least 66 2/3% of the then outstanding fully-paid Preferred Series D Shares, the Company shall redeem all, but not less than all, of the then outstanding fully-paid Preferred Series D Shares, by paying a redemption price equal to the original issuance price plus all declared but unpaid dividends attributable to such shares.

### **Warrants for Preferred Stock**

In January 2009, the Company issued warrants to purchase a total of 1,108 shares of Series A convertible preferred stock at an exercise price of \$13.53 per share in connection with the same purchase of technology. The Company determined the value of the warrants on the date of issuance to be \$12,930 using the Black-Scholes option pricing model. Assumptions used were dividend yield 0%, fair value of preferred stock of \$18.12, volatility of 70%, risk-free interest rate of 1.47%, and a contractual life of five years. The fair value of the warrants was recorded as a warrant liability and expensed to research and development expense as technological feasibility had not been established and there was no alternative future use. The warrants expired on January 16, 2014. For the year ended December 31, 2014, \$1,035 was recorded to other income from the revaluation of the warrants to fair market value.

In November 2010, the Company issued warrants to purchase a total of 12,117 shares of Series C convertible preferred stock at an exercise price of \$21.64 per share in connection with convertible notes payable issued. The Company determined the value of the warrants on the date of issuance to be \$212,409 using the Black-Scholes option pricing model. Assumptions used were dividend yield 0%, fair value of preferred stock of \$21.64, volatility of 96%, risk-free interest rate of 2.08%, and a contractual life of seven years. The fair value of the warrants was recorded as a warrant liability, the estimated value, which represented a debt discount, was being amortized to interest expense over the term of the convertible notes, which were converted in May 2011. The warrants expire November 19, 2017. For the years ended December 31, 2015 and 2014, \$27,535 and \$69,492, respectively, was recorded to other income from the revaluation of the warrants to fair market value. The warrants remain outstanding at December 31, 2015.

In January 2011, the Company issued warrants to purchase a total of 19,042 shares of Series C convertible preferred stock at an exercise price of \$21.64 per share in connection with convertible notes payable issued. The Company determined the value of the warrants on the date of issuance to be \$259,355 using the Black-Scholes option pricing model. Assumptions used were dividend yield 0%, fair value of preferred stock of \$21.64, volatility of 62%, risk-free interest rate of 2.72%, and a contractual life of seven years. The fair value of the warrants was recorded as a warrant liability, the estimated value, which represented a debt discount, was being amortized to interest expense over the term of the convertible notes, which were converted in May 2011. The warrants expire January 7, 2018. For the years ended December 31, 2015 and 2014, \$43,011 and \$108,944, respectively, was recorded to other income from the revaluation of the warrants to fair market value. The warrants remain outstanding at December 31, 2015.

In December 2011, the Company issued warrants to purchase a total of 1,109 shares of Series A convertible preferred stock at an exercise price of \$13.53 per share in connection with the same purchase of technology. The Company determined the value of the warrants on the date of issuance to be \$6,930 using the Black-Scholes option pricing model. Assumptions used were dividend yield 0%, fair value of preferred stock of \$12.44, volatility of 62%, risk-free interest rate of 1.00%, and a contractual life of five years. The fair value of the warrants was recorded as a warrant liability and expensed to research and development expense as technological feasibility had not been established and there is no alternative future use. The warrants expire December 6, 2016. For the years ended

December 31, 2015 and 2014, \$690 and \$3,630, respectively, was recorded to other income from the revaluation of the warrants to fair market value. The warrants remain outstanding at December 31, 2015.

In June 2013, the Company issued warrants to purchase 9,241 shares of the Company's Series C convertible preferred stock upon each \$5 million draw down under a loan and security agreement at an exercise price of \$21.64. The Company determined the value of the warrants on the date of issuance to be \$152,750 using the Black-Scholes option pricing model. Assumptions used were dividend yield 0%, fair value of preferred stock of \$23.13, volatility of 61%, risk-free interest rate of 2.49%, and a contractual life of ten years. The fair value of the warrants was recorded as a warrant liability. The estimated value, which represents a debt discount, was being amortized to interest expense over the term of the note, which was four years. Upon the refinancing of the loan and security agreement in August 2015, the remaining unamortized debt discount was included in the net present value calculation of the refinanced loan balance. The warrants expire June 26, 2023. For the years ended December 31, 2015 and 2014, \$18,375 and \$56,500, respectively, was recorded to other income from the revaluation of the warrants to fair market value. The warrants remain outstanding at December 31, 2015.

In April 2014, the Company issued warrants to purchase 9,242 shares of the Company's Series C convertible preferred stock upon the \$5 million draw down under the loan and security agreement at an exercise price of \$21.64. The Company determined the value of the warrants on the date of issuance to be \$149,250 using the Black-Scholes option pricing model. Assumptions used were dividend yield 0%, fair value of preferred stock of \$23.13, volatility of 58%, risk-free interest rate of 2.71%, and a contractual life of ten years. The fair value of the warrants was recorded as a warrant liability. The estimated value, which represents a debt discount, was being amortized to interest expense over the remaining term of the note, which was 38 months. Upon the refinancing of the loan and security agreement in August 2015, the remaining unamortized debt discount was included in the carrying value of the refinanced loan balance. The warrants expire April 28, 2024. For the years ended December 31, 2015 and 2014, \$18,500 and \$49,750, respectively, was recorded to other income from the revaluation of the warrants to fair market value. The warrants remain outstanding at December 31, 2015.

In August 2015, the Company issued warrants to purchase 16,173 shares of the Company's Series D convertible preferred stock under a loan and security agreement at an exercise price of \$21.64. The Company determined the value of the warrants on the date of issuance to be \$234,719 using the Black-Scholes option pricing model. Assumptions used were dividend yield 0%, fair value of preferred stock of \$22.05, volatility of 55%, risk-free interest rate of 2.18%, and a contractual life of ten years. The fair value of the warrants was recorded as a warrant liability. The estimated value, which represents a debt discount, is being amortized to interest expense over the term of the note, which is four years. The warrants expire August 6, 2025. For the years ended December 31, 2015, \$(1,969) was recorded to other income from the revaluation of the warrants to fair market value. The warrants remain outstanding at December 31, 2015.

The following assumptions were used to value the outstanding warrants:

	Year Ended December 31,	
	2015	2014
Expected term (years)	.94 - 9.60	1.94 - 9.49
Expected volatility	57%	58%
Risk-free interest rate	.65% - 2.27%	.67% - 2.17%
Annual dividend rate	0%	0%

## 10. Stock Option Plan

In April 2006, the Company adopted the 2006 Stock Option Plan (the “Plan”) under which the Board of Directors may issue incentive and nonqualified stock options to employees, directors and consultants. The Board of Directors has the authority to determine to whom options will be granted, the number of shares, the term and the exercise price. If an individual owns stock representing more than 10% of the outstanding shares, the price of each share shall be at least 110% of the fair market value, as determined by the Board of Directors. The exercise price of an incentive stock option and a nonqualified stock option shall not be less than 100% and 85%, respectively, of the fair market value on the date of grant. A total of 961,477 shares have been reserved for issuance under the Plan. Options granted have a term of ten years, except, options granted to individuals holding more than 10% of the outstanding shares have a term of five years. As of December 31, 2015, no options issued or outstanding have a term of five years. Options generally vest over a four-year period. Certain shares issued under the Plan are exercisable immediately, but subject to a right of repurchase by the Company of any unvested shares.

The following table summarizes activity under the Plan for the years ended December 31, 2015 and 2014:

	Outstanding Options		
	Shares Available for Grant	Number of Options	Weighted Average Exercise Price
<b>Balance, December 31, 2013</b>	240,736	469,525	\$ 6.63
Options granted	(335,213)	335,213	6.63
Options exercised		(14,348)	5.95
Options forfeited	160,831	(160,831)	7.17
<b>Balance, December 31, 2014</b>	66,354	629,559	\$ 6.49
Additional shares reserved	221,797		
Options granted	(271,414)	271,414	7.57
Options exercised		(13,246)	3.92
Options forfeited	31,823	(31,823)	7.17
<b>Balance, December 31, 2015</b>	48,560	855,904	\$ 6.76

The following table summarizes information about stock options outstanding at December 31, 2015:

Exercise Price	Options Outstanding			Options Vested			
	Number Outstanding	Weighted Average Remaining Contractual Life (in years)	Weighted Average Exercise Price	Aggregate Intrinsic Value	Number Vested	Weighted Average Exercise Price	Aggregate Intrinsic Value
\$ 1.35	33,344	1.31	\$ 1.35	\$ 207,460	33,344	\$ 1.35	\$ 207,460
2.43	8,503	2.30	2.43	43,700	8,503	2.43	43,700
4.33	29,568	4.10	4.33	95,986	29,568	4.33	95,986
6.36	42,909	2.98	6.63	52,235	42,909	6.36	52,235
6.63	322,817	8.59	6.63	305,647	131,245	6.63	124,265
7.44	94,345	5.93	7.44	12,761	92,519	7.44	12,514
7.57	270,509	9.33	7.57	—	45,334	7.57	—
8.66	53,909	7.04	8.66	—	41,264	8.66	—
	855,904	7.65	\$ 6.76	\$ 717,789	424,686	\$ 6.36	\$ 536,160

Early exercises of stock options are subject to a right of repurchase by the Company of any unvested shares. The repurchase rights lapse over the original vesting period of the options. The Company accounts for the cash received in consideration for the early exercised options as a liability included in accrued liabilities, which is then reclassified to stockholders equity as the options vest. At December 31, 2015 and 2014, the Company had no shares of common stock subject to repurchase under the Plan.

### **Stock-Based Compensation Associated with Awards to Employees**

During the years ended December 31, 2015 and 2014, the Company granted stock options to employees to purchase 172,102 and 335,213 shares of common stock, respectively, with a weighted-average grant date fair value of \$3.52 and \$3.65 per share, respectively. Stock-based employee compensation expense recognized during the years ended December 31, 2015 and 2014, was \$545,501 and \$477,203, respectively. As of December 31, 2015, there were total unrecognized compensation costs of \$1,087,675 related to these stock options. These costs are expected to be recognized over a period of approximately 2.48 years. The aggregate intrinsic value of options exercised during the year ended December 31, 2015 and 2014 was \$49,580 and \$13,155, respectively.

The total fair value of employee options vested during the years ended December 31, 2015 and 2014 was \$715,085 and \$269,863, respectively.

The Company estimated the fair value of stock options using the Black-Scholes option valuation model. The fair value of employee stock options is being amortized on a straight-line basis over the requisite service period of the awards. The fair value of employee stock options was estimated using the following assumptions:

	Year Ended December 31,	
	2015	2014
Expected term (in years)	5.65 years	5.68 years
Expected volatility	49%	59%
Risk-free interest rate	1.43% -1.74%	1.64% -1.96%
Dividend yield	0%	0%

The expected term of stock options is calculated using the simplified method which represents the weighted-average period the stock options are expected to remain outstanding, as the Company did not have sufficient historical information to develop reasonable expectations about future exercise patterns and post-vesting employment termination behavior. The expected stock price volatility assumption was determined by examining the historical volatilities for industry peers, as the Company did not have any trading history for the Company's common stock. The Company will continue to analyze the historical stock price volatility and expected term assumption as more historical data for the Company's common stock becomes available. The risk-free interest rate assumption is based on the U.S. Treasury instruments whose term was consistent with the expected term of the Company's stock options. The expected dividend assumption is based on the Company's history and expectation of dividend payouts.

In addition, forfeitures are estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. Forfeitures were estimated based on management's expectation using historical forfeiture patterns.

### **Stock-Based Compensation Associated with Awards to Nonemployees**

During the year ended December 31, 2015, the Company granted stock options to a board advisor to purchase 99,313 shares of common stock at \$7.57. The shares vest monthly over four years and expire in ten years. Stock-

based compensation expense recognized during the year ended December 31, 2015 was \$61,416. As of December 31, 2015, there were total unrecognized compensation costs of \$260,554 related to this stock option. These costs are expected to be recognized over a period of approximately 3.29 years. No shares were issued and no compensation expense was recognized for nonemployees during the year ended December 31, 2014.

The fair value of the stock options granted to nonemployees is calculated at each reporting date using the Black-Scholes option pricing model. The following assumptions were used to calculate the fair value of stock options granted to nonemployees as of December 31, 2015.

Expected term (in years)	5.67 years
Expected volatility	49%
Risk-free interest rate	1.43%
Dividend yield	0%

## 11. Income Taxes

The following reconciles the differences between income taxes computed at the federal income tax rate and the provision for income taxes:

	Year Ended December 31,	
	2015	2014
Expected income tax benefit at the federal statutory rate	34.0%	34.0%
State tax, net of federal benefit	3.4	2.0
Non-deductible items and other	0.6	0.8
Change in valuation allowance	(38.0)	(36.8)
<b>Total</b>	<b>—%</b>	<b>—%</b>

The tax effects of temporary differences and carryforwards that give rise to significant portions of the deferred tax assets are presented below:

	December 31,	
	2015	2014
Net operating loss carryforwards	\$ 31,866,000	\$ 26,592,000
Research and development credits	1,887,000	1,727,000
Capitalized start-up costs	1,349,000	1,420,000
Accruals and reserves	1,230,000	1,072,000
Total deferred tax assets	36,332,000	30,811,000
Less: Valuation allowance	(36,332,000)	(30,811,000)
Net deferred tax assets	\$ —	\$ —

Based on the available objective evidence, management believes it is more likely than not that the net deferred tax assets will not be fully realizable. Accordingly, the Company has provided full valuation allowance against its net deferred tax assets at December 31, 2015 and 2014. The valuation allowance increased by \$5,521,000 and \$4,880,000 during years ended December 31, 2015 and December 31, 2014, respectively.

As of December 31, 2015, the Company had net operating loss carry forwards of approximately \$82,592,000 and \$66,799,000 available to reduce future taxable income, if any, for federal and state income tax purposes, respectively. The federal net operating loss carryforwards begin expiring in 2026, and the state net operating loss carryforwards begin expiring in 2016.

As of December 31, 2015 and 2014, the Company had research and development credit carryforwards of approximately \$1,393,000 and \$1,465,000 available to reduce future taxable income, if any, for federal and California state income tax purposes, respectively. The federal credit carryforwards begin expiring in 2026, and the California R&D credits carryforward indefinitely.

The Tax Reform Act of 1986 limits the use of net operating loss and tax credit carryforwards in certain situations where changes occur in the stock ownership of a company. In the event the Company has had a change in ownership, utilization of the carryforwards could be limited.

The Company is not currently under audit by any tax authorities. The statute of limitations is open for all years due to the carryover and potential future usage of net operating loss carryovers.

As of December 31, 2015 and 2014, respectively, the Company had an unrecognized tax benefit of \$471,858 and \$431,657. No liability, penalties or interest expense has been recorded in the consolidated financial statements. A reconciliation of the change in unrecognized tax benefits is as follows:

	<u>Year Ended December 31,</u>	
	<u>2015</u>	<u>2014</u>
<b>Beginning Balance</b>	\$ 431,657	\$ 390,000
Increase in balance related to tax positions taken during the year	40,201	41,657
<b>Ending Balance</b>	<u>\$ 471,858</u>	<u>\$ 431,657</u>

## 12. Employee Benefit Plan

The Company sponsors a 401(k) plan covering all employees. Contributions made by the Company are discretionary and are determined annually by the board of directors. As of December 31, 2015 and 2014, respectively, the Company had accrued benefit expenses of \$52,752 and \$48,183, which represented a 100% match for employee contributions up to \$1,000 made during the calendar year.

## 13. Net Loss per Share

The Company's basic and diluted net loss per share are as follows:

	Year Ended December 31,	
	2015	2014
Net and comprehensive loss	\$(14,494,248)	\$(15,347,937)
Accretion of redeemable convertible preferred stock	(3,117)	(324,938)
Net loss attributable to common stockholders	(14,497,365)	(15,672,875)
Weighted-average common shares used in computing net loss per share attributable to common stockholders,	388,379	379,651
Net loss per share attributable to common stockholders, basic and diluted	\$ (37.33)	\$ (41.29)

The following weighted-average common stock equivalents were excluded from the calculation of diluted net loss per share for the periods presented due to their anti-dilutive effect:

	Year Ended December 31,	
	2015	2014
Convertible preferred stock (if converted)	3,611,876	3,611,876
Preferred stock warrants	66,923	50,751
Options to purchase common stock	855,903	629,559

#### 14. Subsequent Events

In February 2016, the Company entered into another note purchase agreement with existing private investors to draw down up to \$2.7 million for working capital purposes. If the investors agreed to purchase the full amount available under the February 2016 note purchase agreement, the December 2015 outstanding notes would be cancelled and the February 2016 note purchase agreement would be increased by the outstanding principal and interest due on the December 2015 notes payable. The Company subsequently cancelled and reissued \$1.3 million of the December 2015 notes and issued \$2.6 million of convertible promissory notes that accrue interest at 8% per year and are due at the earliest of a liquidation event or one year from date of issuance. In the event of a qualified equity financing, the outstanding principal and interest on the notes payable will automatically convert into shares of the qualified financing shares at a price equal to the price per share paid by investors in the qualified equity financing. In the event of a non-qualified financing, the shares will be converted at the option of the majority of the investors. If there is no financing event prior to the maturity date, the outstanding principal and interest on the notes payable will automatically convert into shares of Series D preferred stock at \$1.60 per share.

In May 2016, the Company entered into another note purchase agreement with existing private investors to draw down up to \$4.85 million for working capital purposes. If the investors agreed to purchase the full amount available under the May 2016 note purchase agreement, the February 2016 outstanding notes would be cancelled and the May 2016 note purchase agreement would be increased by the outstanding principal and interest due on the February 2016 notes payable. The Company subsequently cancelled and reissued \$2.6 million of the February 2016 notes and issued \$1.7 million of convertible promissory notes that accrue interest at 8% per year and are due at the earliest of a liquidation event or one year from date of issuance. In the event of a qualified equity financing, the outstanding principal and interest on the notes payable will automatically convert into shares of the qualified financing shares at a price equal to the price per share paid by investors in the qualified equity financing. In the event of a non-qualified financing, the shares will be converted at the option of the majority of the investors. If there is no

financing event prior to the maturity date, the outstanding principal and interest on the notes payable will automatically convert into shares of Series D preferred stock at \$1.60 per share.

On June 7, 2016, the Company effected a 1-for-13.5259 reverse stock split of the Company's then outstanding common stock and convertible preferred stock (collectively referred to as "Capital Stock") and convertible preferred stock warrants, in which (i) each 13.5259 share of outstanding Capital Stock at the conversion price was combined into 1 share of Capital Stock; (ii) the number of outstanding options to purchase each Capital Stock was proportionately reduced on a 1-for-13.5259 basis; (iii) number of shares reserved for future option grants under the 2006 Plan were proportionately reduced on a 1-for-13.5259 basis; (iv) the exercise price of each such outstanding option was proportionately increased on a 13.5259-for-1 basis and (v) each share of outstanding preferred stock warrants was proportionately reduced to a common stock warrant on a 1-for-13.5259 basis. All of the share and per share amounts have been adjusted, on a retroactive basis, to reflect the 1-for-13.5259 reverse stock split (Note 7, 8, 9, 10, 13).

Management has evaluated all transactions and events through May 18, 2016, the date on which these financial statements were issued and did not note any items that would adjust the financial statements or require additional disclosures.

**Miramar Labs, Inc.**  
**Condensed Consolidated Balance Sheets (Unaudited)**

	<u>June 30, 2016</u>	<u>December 31, 2015</u>
	<u>(Unaudited)</u>	<u>(Audited)</u>
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 8,653,227	\$ 2,642,509
Accounts receivable, net	4,176,278	2,683,053
Inventories	4,210,940	4,791,741
Prepaid expenses and other current assets	816,157	290,481
Total current assets	<u>17,856,602</u>	<u>10,407,784</u>
Property and equipment, net	904,439	1,211,129
Restricted cash	295,067	295,067
Other noncurrent assets	19,560	11,860
<b>TOTAL ASSETS</b>	<u><u>\$ 19,075,668</u></u>	<u><u>\$ 11,925,840</u></u>
<b>LIABILITIES, REDEEMABLE CONVERTIBLE PREFERRED STOCK, AND STOCKHOLDERS' EQUITY (DEFICIT)</b>		
Current liabilities:		
Notes payable, net of discount	\$ 9,962,979	\$ 10,829,375
Accounts payable	1,661,189	1,288,107
Accrued and other current liabilities	4,264,322	3,572,441
Deferred revenue	251,038	739,786
Total current liabilities	<u>16,139,528</u>	<u>16,429,709</u>
Warrant liability	31,680	499,616
Deferred rent, noncurrent	96,712	112,065
Capital lease payable, noncurrent	6,737	16,865
<b>TOTAL LIABILITIES</b>	<u><u>16,274,657</u></u>	<u><u>17,058,255</u></u>
Commitments and contingencies (Note 6)		
Redeemable convertible preferred stock, \$0.001 par value - 40,000,000 shares authorized and 2,826,981 shares issued and outstanding at December 31, 2015 (Liquidation preference of \$61,179,942). No shares outstanding at June 30, 2016	—	61,179,942
Stockholders' equity (deficit):		
Series A convertible preferred stock, \$0.001 par value - 2,100,000 shares authorized and 147,864 shares issued and outstanding at December 31, 2015 (Liquidation preference of \$2,000,000). No shares outstanding at June 30, 2016	—	148
Series B convertible preferred stock, \$0.001 par value - 9,000,000 shares authorized and 589,784 shares issued and outstanding at December 31, 2015 (Liquidation preference of \$14,359,244). No shares outstanding at June 30, 2016	—	590
Common stock, \$0.001 par value - 100,000,000 and 105,500,000 shares authorized and 9,182,434 and 398,540 shares issued and outstanding at June 30, 2016 and December 31, 2015	9,182	399
Additional paid-in capital	109,321,550	27,133,634
Accumulated deficit	<u>(106,529,721)</u>	<u>(93,447,128)</u>
<b>TOTAL STOCKHOLDERS' EQUITY (DEFICIT)</b>	<u><u>2,801,011</u></u>	<u><u>(66,312,357)</u></u>
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)</b>	<u><u>\$ 19,075,668</u></u>	<u><u>\$ 11,925,840</u></u>

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

**MIRAMAR LABS, INC.**  
**Condensed Consolidated Statements of Operations and Comprehensive Loss**  
**(Unaudited)**

	<u>Six Months Ended June 30,</u>	
	<u>2016</u>	<u>2015</u>
Revenue	\$ 11,732,031	\$ 8,029,079
Cost of revenue	5,423,339	4,002,941
Gross margin	<u>6,308,692</u>	<u>4,026,138</u>
Operating expenses:		
Research and development	1,744,993	2,749,340
Selling and marketing	6,526,272	6,244,210
General and administrative	2,845,252	2,594,387
Total operating expenses	<u>11,116,517</u>	<u>11,587,937</u>
Loss from operations	<u>(4,807,825)</u>	<u>(7,561,799)</u>
Interest income	3,729	3,787
Interest expense	(663,047)	(543,818)
Loss on debt conversion	(8,062,001)	—
Other income, net	448,076	76,852
Net loss before provision for income taxes	<u>(13,081,068)</u>	<u>(8,024,978)</u>
Provision for income taxes	(1,525)	(1,425)
Net and comprehensive loss	<u>(13,082,593)</u>	<u>(8,026,403)</u>
Accretion of redeemable convertible preferred stock	—	(43,117)
Net loss attributable to common stockholders	<u>\$(13,082,593)</u>	<u>\$(8,069,520)</u>
Weighted-average common shares used in computing net loss per share attributable to common stockholders, basic and diluted	1,389,322	385,271
Net loss per share attributable to common stockholders, basic and diluted	<u>\$ (9.42)</u>	<u>\$ (20.95)</u>

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

**MIRAMAR LABS, INC.**  
**Condensed Consolidated Statements of Redeemable**  
**Convertible Preferred Stock and Stockholders' Equity (Deficit)**  
**(Unaudited)**

	<u>Redeemable Convertible Preferred Stock</u>		<u>Convertible Preferred Stock</u>		<u>Common Stock</u>		<u>Additional Paid-In Capital</u>	<u>Accumulated Deficit</u>	<u>Total Stockholders' Equity (Deficit)</u>
	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>			
<b>Balances at December 31, 2014</b>	2,826,981	\$ 61,179,942	737,648	\$ 738	385,294	\$ 385	\$ 26,478,755	\$ (78,952,880)	\$ (52,473,002)
Exercise of stock options at \$1.35- \$8.66 per share for cash in October 2015	—	—	—	—	13,246	14	51,079	—	51,093
Series D redeemable preferred stock issuance cost	—	(3,117)	—	—	—	—	—	—	—
Accretion of redeemable convertible preferred stock to redemption value	—	3,117	—	—	—	—	(3,117)	—	(3,117)
Stock-based compensation	—	—	—	—	—	—	606,917	—	606,917
Net and comprehensive loss	—	—	—	—	—	—	—	(14,494,248)	(14,494,248)
<b>Balances at December 31, 2015</b>	<u>2,826,981</u>	<u>\$ 61,179,942</u>	<u>737,648</u>	<u>\$ 738</u>	<u>398,540</u>	<u>\$ 399</u>	<u>\$ 27,133,634</u>	<u>\$ (93,447,128)</u>	<u>\$ (66,312,357)</u>
Exercise of stock options at \$6.63 - \$8.66 per share for cash in April 2016	—	—	—	—	3,267	3	24,619	—	24,622
Issuance of common stock, net of offering costs of \$660,984	—	—	—	—	1,452,626	1,452	6,600,695	—	6,602,147
Issuance of common stock for conversion of February 2016 convertible notes	—	—	—	—	2,418,628	2,418	12,090,633	—	12,093,051
Issuance of common stock for conversion of May 2016 convertible notes	—	—	—	—	409,841	410	2,048,884	—	2,049,294
Issuance of common stock to KTL Bamboo International Corp	—	—	—	—	900,000	900	(900)	—	—
Conversion of preferred stock to common stock in connection with the merger	(2,826,981)	(61,179,942)	(737,648)	(738)	3,611,857	3,612	61,177,068	—	61,179,942
Common stock repurchased in connection with the merger	—	—	—	—	(12,325)	(12)	(61,684)	—	(61,696)
Conversion of convertible preferred stock warrants to common stock warrants	—	—	—	—	—	—	53,436	—	53,436
Issuance of common stock warrants	—	—	—	—	—	—	(31,680)	—	(31,680)
Stock-based compensation	—	—	—	—	—	—	286,845	—	286,845
Net and comprehensive loss	—	—	—	—	—	—	—	(13,082,593)	(13,082,593)
<b>Balances at June 30, 2016</b>	<u>—</u>	<u>\$ —</u>	<u>—</u>	<u>\$ —</u>	<u>9,182,434</u>	<u>\$ 9,182</u>	<u>\$ 109,321,550</u>	<u>\$ (106,529,721)</u>	<u>\$ 2,801,011</u>

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

**MIRAMAR LABS, INC.**  
**Condensed Consolidated Statements of Cash Flows**  
**(Unaudited)**

	<b>Six Months Ended June 30,</b>	
	<b>2016</b>	<b>2015</b>
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net loss	\$ (13,082,593)	\$ (8,026,403)
Adjustments to reconcile net loss to net cash used in operating activities		
Depreciation and amortization	280,577	366,312
Loss on debt conversion	8,062,001	—
Loss on disposal of fixed assets	—	1,475
Stock-based compensation	286,845	282,437
Change in preferred stock warrant value	(446,180)	(78,733)
Amortization of debt discount and issuance costs	223,663	87,747
Changes in operating assets and liabilities		
Accounts receivable	(1,493,225)	226,882
Inventories	748,945	338,691
Prepaid expenses and other current assets	(525,676)	(602)
Other noncurrent assets	(7,700)	—
Accounts payable	373,082	(94,529)
Accrued and other current liabilities	690,486	197,601
Deferred revenue	(488,748)	(139,014)
Net cash used in operating activities	(5,378,523)	(6,838,136)
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Purchase of property and equipment	(142,031)	(117,897)
Net cash used in investing activities	(142,031)	(117,897)
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Redeemable convertible preferred stock issuance costs	—	(43,118)
Net proceeds from issuance of common stock	6,626,769	—
Repurchase of common stock	(61,696)	—
Proceeds from issuance of notes payable	5,145,067	116,065
Principal payments on capital leases	(24,086)	(28,533)
Payments on notes payable	(154,782)	(1,605,259)
Net cash provided by (used in) financing activities	11,531,272	(1,560,845)
Net increase (decrease) in cash and cash equivalents	6,010,718	(8,516,878)
Cash and cash equivalents at beginning of period	2,642,509	13,484,740
Cash and cash equivalents at end of period	\$ 8,653,227	\$ 4,967,862
<b>SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:</b>		
Cash paid for interest	\$ 396,638	\$ 450,879
Cash paid for taxes	\$ 1,525	\$ 1,425
<b>DISCLOSURE OF NON-CASH INVESTING AND FINANCING ACTIVITIES:</b>		
Accretion of redeemable preferred stock to redemption value	\$ —	\$ 43,117
Net transfer to inventory from leased equipment	\$ (168,143)	\$ (89,975)
Conversion of preferred stock and warrants to common stock and warrants	\$ 76,827,313	\$ —
Common stock issued to convert notes payable	\$ 14,142,345	\$ —
Issuance of common stock warrants	\$ 31,680	\$ —

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

**MIRAMAR LABS, INC.**  
**Notes to Condensed Consolidated Financial Statements**  
*(Unaudited)*

## 1. Background and Organization

On June 7, 2016 (the Closing Date), the Company, Acquisition Sub and Miramar entered into an Agreement and Plan of Merger and Reorganization (the Merger Agreement). Pursuant to the terms of the Merger Agreement, Acquisition Sub merged with and into Miramar, and Miramar became the surviving corporation and thus became the Company's wholly-owned subsidiary (the Merger). Prior to the Merger, the Company discontinued its prior business of distributing water filtration systems produced in China, and acquired the business of Miramar, which designs, manufactures and markets the miraDry System, which is designed to eliminate axillary, or underarm, sweat.

At the Closing Date, each of the shares of Miramar's common stock and preferred stock issued and outstanding immediately prior to the closing of the Merger was converted into shares of the Company's common stock at a ratio of 1:0.07393 (the Conversion Ratio). Additionally, warrants to purchase shares of Miramar's Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock issued and outstanding immediately prior to the closing of the Merger were converted into warrants to purchase shares of the Company's common stock at the Conversion Ratio.

The Merger was treated as a recapitalization and reverse acquisition of the Company for financial accounting purposes. Miramar is considered the acquirer for accounting purposes, and the Company's historical financial statements before the Merger will be replaced with the historical financial statements of Miramar before the Merger in future filings with the SEC. For more details on the Merger, see "Explanatory Note" section above and Item 2.01 of our Current Report on Form 8-K filed with the SEC on June 13, 2016, as amended on June 14, 2016.

The Company and its wholly-owned subsidiary, Miramar, develop clinical systems to address hyperhidrosis. In January 2011, Miramar received approval from the U.S. Food and Drug Administration (FDA), to market the miraDry System to eliminate underarm sweat glands. The Company's principal markets are the U.S., Asia-Pacific and Europe. During 2012, Miramar Technologies, Inc. commercially launched its first product, the miraDry System, a clinical system to address hyperhidrosis.

Miramar has a wholly-owned subsidiary, Miramar Labs HK Limited, which was incorporated under the laws of Hong Kong in January 2013. Miramar Labs HK Limited commenced its operations during 2013 to oversee operations in Asia and is located in Hong Kong.

The accompanying unaudited condensed financial statements have been prepared in accordance with the rules and regulations of the SEC, for interim financial information and, accordingly, do not include all of the information and footnotes required by GAAP for complete financial statements. These condensed consolidated financial statements are prepared on the same basis and should be read in conjunction with the audited financial statements and related notes included in the Company's financial statements for the year ended December 31, 2015. Interim results are not necessarily indicative of the results to be expected for the full year, and no representation is made thereto.

In the opinion of management, these financial statements include all adjustments necessary to state fairly the financial position and results of operations for each interim period shown. All such adjustments occur in the ordinary course of business and are of a normal, recurring nature.

The accompanying financial statements are prepared on a going concern basis which contemplates the realization of assets and discharge of liabilities in the normal course of business. Since inception, Miramar Labs, Inc. had incurred net losses and negative cash flows from operations. From April 4, 2006 (date of inception) to June 30, 2016, Miramar Labs, Inc. had an accumulated deficit of \$106,529,721. The Company has not achieved positive cash flow from operations. To date, the Company has been funded primarily by preferred stock and debt financings. In order to continue its operations, the Company must raise additional equity or debt financing and

achieve profitable operations. These factors raise substantial doubt about the Company's ability to continue as a going concern. There can be no assurance that the Company will be able to obtain additional equity or debt financing on terms acceptable to the Company, or at all. The failure to obtain sufficient funds on acceptable terms, when needed, could have a material, adverse effect on the Company's business, results of operations, and future cash flows.

To achieve profitable operations, the Company must successfully continue to develop, enhance, manufacture, and market its products. There can be no assurance that any such products can continue to be developed or manufactured at an acceptable cost and with appropriate performance characteristics, or that such products will be successfully marketed. These factors could have a material adverse effect upon the Company's financial results, financial position and future cash flows.

## 2. Summary of Significant Accounting Policies

### *Principles of Consolidation*

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiary. Intercompany balances have been eliminated in consolidation.

### *Use of Estimates*

The preparation of financial statements in conformity with 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. Actual results could differ from those estimates. The Company's most significant estimates relate to inventory valuation and reserves, warranty accruals, deferred tax asset valuation allowance and valuation of equity and equity-linked instruments (common stock, options and warrants).

### *Concentration of Credit Risk and Other Risks and Uncertainties*

Financial instruments that potentially subject the Company to a concentration of credit risk consist of cash and cash equivalents. The Company's cash and cash equivalents are deposited with one financial institution in the U.S. Deposits in this institution may exceed the amount of insurance provided on such deposits. The Company has not experienced any losses on its deposits of cash and cash equivalents. At June 30, 2016, the Company's uninsured cash balances totaled \$8,118,489.

The Company performs periodic credit evaluations of its customers' financial condition and generally requires deposits from its customers. The Company generally does not charge interest on past due accounts. The Company's customers representing greater than 10% of accounts receivable and revenue were as follows:

	Revenue		Accounts Receivable	
	Six Months Ended June 30,		June 30,	December 31,
	2016	2015	2016	2015
Customer A	16%	*	30%	*
Customer B	*	*	11%	12%
Customer C	*	16%	*	20%
Customer D	*	*	*	23%

Sales in North America consisted of 43% and 43% of total revenue, in the six month periods ended in June 30, 2016 and 2015, respectively. The remainder of the Company's sales came primarily from Asia-Pacific and Europe.

Generally, the second quarter tends to be stronger than the third quarter, when vacations and holidays are more prevalent in North America and Europe.

Amplifiers used in the production of the miraDry system are manufactured in the U.S. and bioTips are manufactured in China. These single source suppliers of these critical components may not be replaced without significant effort and delay in production. If the operations of these manufacturers are interrupted or if they are unable to meet our delivery requirements due to capacity limitations or other constraints, the Company may be limited in its ability to fulfill customer orders or to repair equipment at current customer sites.

### ***Significant Accounting Policies***

There have been no material changes to the Company's significant accounting policies during the six months ended June 30, 2016, as compared to the significant accounting policies described in the Company's financial statements for the year ended December 31, 2015, filed on Form 8-K on June 13, 2016.

### ***Recent Accounting Pronouncements***

Our critical accounting policies are disclosed in our financial statements for the year ended December 31, 2015, filed on Form 8-K on June 13, 2016.

Our critical accounting policies have not changed during the three or six months ended June 30, 2016. Furthermore, the preparation of our consolidated financial statements is in conformity with GAAP. The preparation of our consolidated financial statements requires management to make judgments and estimates that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenses during the reporting period. Our management believes that we consistently apply these judgments and estimates and the consolidated financial statements and accompanying notes fairly represent all periods presented. However, any differences between these judgments and estimates and actual results could have a material impact on our consolidated statements of income and financial position.

## **3. Balance Sheet Components**

### ***Inventories***

	<b>June 30, 2016</b>	<b>December 31, 2015</b>
	<b>(Unaudited)</b>	
Raw materials	\$ 2,092,021	\$ 2,132,655
Work in progress	1,284,180	1,263,019
Finished goods	834,739	1,396,067
	<b>\$ 4,210,940</b>	<b>\$ 4,791,741</b>

### ***Property and Equipment, Net***

	<b>June 30, 2016</b>	<b>December 31, 2015</b>
	<b>(Unaudited)</b>	
Leasehold Improvements	\$ 844,360	\$ 844,360
Machinery and equipment	1,498,016	1,355,986
Computer and office equipment	241,291	241,291
Software	326,992	326,992
Furniture and fixtures	114,564	114,564
Leased equipment	—	168,143
	<u>3,025,223</u>	<u>3,051,336</u>
Less: Accumulated depreciation and amortization	(2,120,784)	(1,840,207)
	<u>\$ 904,439</u>	<u>\$ 1,211,129</u>

No capital leases were entered into during the year ended December 31, 2015 or the six month period ended June 30, 2016. Depreciation and amortization expense was \$280,577 and \$366,312 for the six-month periods ended June 30, 2016 and 2015, respectively. There was no leased equipment at June 30, 2016 due to the discontinuation of the Market Validation Program.

At June 30, 2016 and December 31, 2015, substantially all of the property and equipment was located at the Company's corporate headquarters in the U.S.

#### ***Accrued Liabilities***

	<b>June 30, 2016</b>	<b>December 31, 2015</b>
	<b>(Unaudited)</b>	
Accrued payroll and related expenses	\$ 1,457,197	\$ 1,457,534
Accrued royalty	1,598,256	1,226,973
Accrued warranty	205,000	217,000
Accrued marketing	223,000	165,600
Accrued clinical expenses	29,500	2,600
Accrued legal	257,700	112,000
Capital lease payable, current	19,952	33,909
Deferred rent, current	26,655	18,672
Accrued other expenses	447,062	338,153
	<u>\$ 4,264,322</u>	<u>\$ 3,572,441</u>

#### ***Accrued Warranty***

The Company regularly reviews the accrued warranty balance and updates as necessary based on sales and warranty trends. The warranty accrual as of June 30, 2016 and December 31, 2015 consisted of the following activity:

<b>Warranty accrual, December 31, 2014</b>	\$ 253,000
Accruals for product warranty	427,467
Cost of warranty claims	(463,467)
<b>Warranty accrual, December 31, 2015</b>	<u>\$ 217,000</u>
Accruals for product warranty	182,676
Cost of warranty claims	(194,676)
<b>Warranty accrual, June 30, 2016</b>	<u>\$ 205,000</u>

#### 4. Fair Value of Financial Instruments

Fair Value Measurements are determined under a three-level hierarchy for fair value measurements that prioritizes the inputs to valuation techniques used to measure fair value, distinguishing between market participant assumptions developed based on market data obtained from sources independent of the reporting entity (the observable inputs) and the reporting entity's own assumptions about market participant assumptions developed based on the best information available in the circumstances (the unobservable inputs). Fair value is the price that would be received to sell an asset or would be paid to transfer a liability (i.e., the exit price) in an orderly transaction between market participants at the measurement date. In determining fair value, the Company primarily uses prices and other relevant information generated by market transactions involving identical or comparable assets. The Company also considers the impact of a significant decrease in volume and level of activity for an asset or liability when compared with normal activity to identify transactions that are not orderly.

The highest priority is given to unadjusted quoted prices in active markets for identical assets (Level 1 measurements) and the lowest priority to unobservable inputs (Level 3 measurements). Securities are classified in their entirety based on the lowest level of input that is significant to the fair value measurement.

The three hierarchy levels are defined as follows:

- Level 1. Quoted prices in active markets that are unadjusted and accessible at the measurement date for identical, unrestricted assets or liabilities identical assets and liabilities;
- Level 2. Quoted prices for identical assets and liabilities in markets that are not active, quoted prices for similar assets and liabilities in active markets or financial instruments for which significant inputs are observable, either directly or indirectly;
- Level 3. Prices or valuations that require inputs that are both significant to the fair value measurement and unobservable.

The fair value of the Company's financial assets and liabilities measured on a recurring basis, as of June 30, 2016 and December 31, 2015, were as follows:

	June 30, 2016			
	Level 1	Level 2	Level 3	Total
<b>Liabilities</b>				
Warrant liability	\$ —	\$ —	\$ 31,680	\$ 31,680

	December 31, 2015			
	Level 1	Level 2	Level 3	Total
<b>Liabilities</b>				
Warrant liability	\$ —	\$ —	\$ 499,616	\$ 499,616

There were no transfers between Level 1, 2 and 3 of the fair value hierarchy during the six months ended June 30, 2016 and 2015.

Assumptions used in valuing the warrant liabilities are discussed in Note 9 below. The principal assumptions used, and their impact on valuations were as follows:

*Stock Price* - As a private company, there was no actively traded market for the Company's stock and the Company used commonly accepted valuation techniques such as the discounted cash flows, market comparables and recent actual stock sales to derive an estimate of the fair value of its stock. An increase in value of the stock will increase the value of the warrant liability. Upon closing of the Merger, the Company became a publicly traded company and began using its publicly traded stock price.

*Risk-Free Interest Rate* - This is the U.S. Treasury rate for the measurement date having a term equal to the weighted average expected remaining term of the instrument. An increase in the risk-free interest rate will increase the fair value of the warrant liability.

*Expected Remaining Term* - This is the period of time over which the instrument is expected to remain outstanding and is based on management's estimate, taking into consideration the remaining contractual life, historical experience and the possibility of liquidation. An increase in the expected remaining term will increase the fair value of the warrant liability.

*Expected Volatility* - This is a measure of the amount by which the Company's common stock price has fluctuated or is expected to fluctuate. The Company uses the historic volatility of a group of comparable peer publicly traded companies over the retrospective period corresponding to the expected remaining term of the instrument on the measurement date. An increase in the expected volatility will increase the fair value of the warrant liability. Since the Company is newly public, it does not have sufficient trading history to estimate its own volatility.

*Dividend Yield* - The Company has not made any dividend payments and does not plan to pay dividends in the foreseeable future. An increase in the dividend yield will decrease the fair value of the warrant liability.

The changes in the warrant liability are summarized below:

<b>Fair value at December 31, 2014</b>	\$ 371,039
Fair value of warrants issued during the year	234,719
Change in fair value recorded in interest and other income, net	(106,142)
<b>Fair value at December 31, 2015</b>	<u>\$ 499,616</u>
Fair value of warrants issued during the period	31,680
Conversion to common stock warrants	(53,436)
Change in fair value recorded in interest and other income, net	(446,180)
<b>Fair value at June 30, 2016</b>	<u>\$ 31,680</u>

## 5. Related Party Transactions

Miramar Technologies, Inc. was formed at an incubator, The Foundry, LLC, or The Foundry, a company which provides seed capital and management services to its investees. Certain employees of The Foundry serve as members of the Company's board of directors and own shares of our common stock. The total amount reimbursed to The Foundry for services provided as members of the Company's board of directors was \$31,785 and \$31,834, for the six months ended June 30, 2016 and 2015, respectively.

In February 2008, Miramar Technologies, Inc. entered into a technology license and royalty agreement with The Foundry wherein Miramar Technologies, Inc. agreed to pay The Foundry a royalty of 1.5% of sales of the licensed products and 1.5% of the patented products, up to a maximum of \$30 million. In March 2013, the total royalty percentage increased from 1.5% to 3.0% due to the issuance of a patent covering certain products of the Company. The total amount payable to The Foundry as of June 30, 2016 and December 31, 2015 was \$1,598,256 and \$1,226,973, respectively, which included interest accrued at the annual interest rate of the prime rate quoted by the Wall Street Journal plus 1% beginning on the first day of the calendar quarter to which such payment relates. No royalties were paid during the six months ended June 30, 2016 or in the year ended December 31, 2015.

## **6. Commitments and Contingencies**

### ***Indemnification Agreements***

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

The Company has entered into indemnification agreements with its directors and certain executive 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 and officers, other than liabilities arising from willful misconduct of the individual.

No liability associated with such indemnifications has been recorded at June 30, 2016 or December 31, 2015.

### ***Legal Claims***

On July 20, 2015, a lawsuit alleging product liability, breach of warranty and negligence was filed against the Company in the Orange County Superior Court. The plaintiff alleged, among other things, that the Company was liable to plaintiff for injuries suffered due to defects in a certain miraDry device. We believe that there is no merit to the claims against the Company and the Company intends to vigorously defend the lawsuit, but the outcome of any potential litigation matter is uncertain. Management does not believe that resolution of this matter will have a material negative effect on our operating results.

Other than the foregoing, we are currently not aware of any pending legal proceedings to which we are a party or of which any of our property is the subject, nor are we aware of any such proceedings that are contemplated by any governmental authority. Occasionally, the Company may be involved in claims and legal proceedings arising from the ordinary course of its business. The Company records a provision for a liability when it believes that it is probable that a liability has been incurred, and when the amount can be reasonably estimated. If these estimates and assumptions change or prove to be incorrect, it could have a material impact on the Company's consolidated financial

statements. Contingencies are inherently unpredictable and the assessments of the value can involve a series of complex judgments about future events and can rely heavily on estimates and assumptions.

### ***Operating and Capital Leases***

Rent expense under the Company's operating leases was \$289,282 and \$284,824 for the six-month periods ended June 30, 2016 and 2015, respectively. The Company recognizes rent expense on a straight-line basis over the lease period. The difference between rent payable and rent expense on a straight-line basis is recorded as deferred rent and amortized over the period of the lease.

The aggregate future minimum lease payments under all leases are as follows:

	<u>Operating Lease</u>	<u>Capital Leases</u>
Six months ended December 31, 2016	\$ 315,033	\$ 10,512
Year ending December 31, 2017	552,207	17,249
Year ending December 31, 2018	568,773	—
Year ending December 31, 2019	241,592	—
Total minimum lease payments	<u>\$ 1,677,605</u>	<u>27,761</u>
Less: Amount representing interest		(1,072)
Present value of minimum lease payments		<u>26,689</u>
Less: current portion of capital leases		(19,952)
		<u>\$ 6,737</u>

## **7. Notes Payable**

In August 2015, the Company refinanced the outstanding balance of the \$10 million loan and security agreement entered into in June 2013. The new agreement provided for the issuance of secured promissory notes in the aggregate principal amount of up to \$20 million to be drawn down in two additional tranches of \$5 million each, subject to certain financial milestones. The refinanced \$10 million promissory note accrues interest at 7.80% per annum and monthly interest payments commenced on September 1, 2015. Principal and interest payments will commence on January 1, 2017.

All borrowings under the agreement are collateralized by substantially all of the Company's assets. There are no significant financial covenants. The agreement contains a subjective acceleration clause. Failure to comply with the loan covenants may result in the acceleration of payment of all outstanding principal and interest amounts plus a prepayment fee. Due to the subjective acceleration clause, the outstanding notes payable are classified as current in the accompanying Consolidated Balance Sheets. As of June 30, 2016, the Company was in compliance with the debt covenants.

In December 2015, the Company entered into a note purchase agreement with existing private investors to draw down up to \$1.5 million for working capital purposes. The Company subsequently issued \$1.3 million of convertible promissory notes (December 2015 Notes). In February 2016, the Company entered into another note purchase agreement (February 2016 NPA) with existing private investors to draw down up to \$2.7 million for working capital purposes. If the investors agreed to purchase the full amount available under the February 2016 NPA, the December 2015 Notes would be canceled and the February 2016 NPA would be increased by the outstanding principal and interest due on the December 2015 Notes. The Company subsequently canceled and reissued \$1.3 million of the December 2015 Notes and issued \$2.7 million of convertible promissory notes (February 2016 Notes). In May

2016, the Company increased the aggregate principal amount of the notes that may be issued under the February 2016 Notes from \$2.7 million to \$4.85 million and subsequently issued \$2.0 million of additional convertible promissory notes.

Per the terms of the notes, interest was accrued at 8% per year and were due at the earliest of a liquidation event or one year from date of issuance. In the event of a qualified equity financing, the outstanding principal and interest on the notes payable would automatically convert into shares of the qualified financing shares at a price equal to the price per share paid by the investors in the qualified equity financing. In the event of a non-qualified financing, the shares would be converted at the option of the majority of the investors. If there was no financing event prior to the maturity date, the outstanding principal and interest on the notes payable would automatically convert into shares of Series D preferred stock at \$21.64 per share.

In June 2016, in connection with the Merger, \$6 million of outstanding notes were converted into 2,828,469 shares of common stock. The notes that were not converted according to their original conversion terms incurred a loss on debt conversion of \$8,062,001.

The Company entered into short term financing agreements for insurance premiums with nine month payment terms and interest rates ranging from 4.95% to 5.18%. The outstanding balance of the financing agreements was \$307,643 at June 30, 2016 and \$40,889 at December 31, 2015.

Annual future principal payments under the notes payable are as follows:

Six months ended December 31, 2016	\$ 221,897
Year ended December 31, 2017	3,477,349
Year ended December 31, 2018	3,665,814
Year ended December 31, 2019	2,942,582
Total payments	<u>10,307,642</u>
Less: Unamortized debt discount	(344,663)
Carrying value of notes payable	<u>\$ 9,962,979</u>

## 8. Common Stock

The Company's amended Certificate of Incorporation authorize the Company to issue 100,000,000 shares of \$0.001 common stock. The common stockholders are entitled to elect three members to the board of directors. The holders of common stock are also entitled to receive dividends whenever funds are legally available, as, when, and if declared by the Company's board of directors. As of June 30, 2016, no dividends have been declared to date. In June 2016, upon the closing of the Merger, 1,452,626 shares of common stock were issued in exchange for cash proceeds, net of issuance costs, of \$6,602,147 and 900,000 shares were issued to the shareholders of KTL Bamboo International Corp.

At June 30, 2016, the Company had reserved common stock for future issuance as follows:

Exercise of options under stock plan	855,888
Issuance of options under stock plan	644,844
Exercise of common stock warrants	79,940
	<u>1,580,672</u>

## 9. Convertible Preferred Stock

In June 2016, upon the closing of the Merger, all of the Company's outstanding preferred stock of 3,564,629 shares was converted into 3,611,857 shares of common stock and the authorized preferred stock was decreased to 5,000,000 shares of "blank check" preferred stock, par value of \$0.001 per share.

Convertible preferred stock at December 31, 2015 consisted of the following:

Series	Shares Authorized	Shares Issued and Outstanding	Per Share Liquidation Preference	Aggregate Liquidation Amount	Carrying Value
Series A	2,100,000	147,864	\$ 13.53	\$ 2,000,000	\$ 1,966,935
Series B	9,000,000	589,784	24.35	14,359,244	14,261,779
Series C	23,000,000	1,625,203	21.64	35,171,735	35,171,735
Series D	17,000,000	1,201,778	21.64	26,008,207	26,008,207
	<u>51,100,000</u>	<u>3,564,629</u>		<u>\$ 77,539,186</u>	<u>\$ 77,408,656</u>

## 10. Stock Warrants

In June 2016, the Company issued warrants to purchase 8,952 shares of the common stock in conjunction with the Merger at an exercise price of \$5.00. The Company determined the value of the warrants on the date of issuance to be \$21,870 using the Black-Scholes option pricing model. Assumptions used were dividend yield 0%, fair value of common stock of \$5.00, volatility of 57%, risk-free interest rate of 1.23%, and a contractual life of five years. The fair value of the warrants was recorded as a warrant liability. The estimated value, which represents issuance costs, is recorded to additional paid in capital. The warrants expire June 6, 2021.

In June 2016, the Company issued warrants to purchase 4,064 shares of the common stock in conjunction with the Merger at an exercise price of \$5.00. The Company determined the value of the warrants on the date of issuance to be \$9,810 using the Black-Scholes option pricing model. Assumptions used were dividend yield 0%, fair value of common stock of \$5.00, volatility of 56%, risk-free interest rate of 1.01%, and a contractual life of five years. The fair value of the warrants was recorded as a warrant liability. The estimated value, which represents issuance costs, is recorded to additional paid in capital. The warrants expire June 29, 2021.

Total outstanding warrants as of June 30, 2016 are as follows:

	<u>Number of Warrants</u>	<u>Exercise Price</u>	<u>Fair Value at date of issuance</u>
November 2010 warrants issued with Series C convertible preferred stock	12,117	\$ 21.64	\$ 212,409
January 2011 warrants issued with Series C convertible preferred stock	19,042	21.64	259,355
December 2011 warrants issued with Series A convertible preferred stock	1,109	13.53	6,930
June 2013 warrants issued in conjunction with note purchase agreement	9,241	21.64	152,750
April 2014 warrants issued in conjunction with drawdown on note purchase agreement	9,242	21.64	149,250
August 2015 warrants issued with refinance of note purchase agreement	16,173	21.64	234,719
June 2016 warrants issued with in conjunction with merger	13,016	5.00	31,680
Total outstanding warrants	<u>79,940</u>		

For the six month period ended June 30, 2016 and 2015, respectively, \$446,180 and \$78,733 were recorded to other income from the revaluation of the warrants to fair market value.

The following assumptions were used in the Black-Scholes model to value the outstanding warrants:

	<u>Six Months Ended June 30,</u>	<u>Year Ended December 31,</u>
	<u>2016</u>	<u>2015</u>
Expected term (years)	.50 - 9.10	.94 - 9.60
Expected volatility	56%	57%
Risk-free interest rate	.39% - 1.78%	.65% - 2.27%
Annual dividend rate	—%	—%
Stock Price	\$5.00 - \$22.05	\$11.50- \$22.05

## 11. Stock Option Plan

The following table summarizes activity under the 2006 Stock Option Plan (the 2006 Plan) for the six month period ended June 30, 2016 and year ended December 31, 2015:

	Outstanding Options		
	Shares Available for Grant	Number of Options	Weighted Average Exercise Price
<b>Balance, December 31, 2014</b>	66,354	629,559	\$ 6.49
Additional shares reserved	221,797		
Options granted	(271,414)	271,414	7.57
Options exercised		(13,246)	3.92
Options forfeited	31,823	(31,823)	7.17
<b>Balance, December 31, 2015</b>	48,560	855,904	\$ 6.76
Additional shares reserved	599,564		
Options granted	(15,689)	15,689	7.58
Options exercised		(3,296)	7.47
Options forfeited	12,409	(12,409)	7.37
<b>Balance, June 30, 2016</b>	644,844	855,888	\$ 6.81

The following table summarizes information about stock options outstanding at June 30, 2016:

Exercise Price	Options Outstanding				Options Vested		
	Number Outstanding	Weighted Average Remaining Contractual Life (in years)	Weighted Average Exercise Price	Aggregate Intrinsic Value	Number Vested	Weighted Average Exercise Price	Aggregate Intrinsic Value
\$ 1.36	33,339	0.82	\$ 1.36	\$ 121,354	33,339	\$ 1.36	\$ 121,354
2.44	8,501	1.80	2.44	21,763	8,501	2.44	21,763
4.33	29,553	3.60	4.33	19,801	29,553	4.33	19,801
6.36	42,900	2.48	6.36	—	42,900	6.36	—
6.63	317,753	8.09	6.63	—	181,960	6.63	—
7.44	91,842	5.44	7.44	—	91,842	7.44	—
7.58	280,126	8.87	7.58	—	80,793	7.58	—
8.66	51,874	6.52	8.66	—	46,763	8.66	—
	855,888	7.18	\$ 6.81	\$ 162,918	515,651	\$ 6.54	\$ 162,918

### ***Stock-Based Compensation Associated with Awards to Employees***

During the six month period ended June 30, 2016, the Company granted stock options to employees to purchase 15,689 shares of common stock with a weighted-average grant date fair value of \$7.58. Stock-based employee compensation expense recognized during the six-month periods ended June 30, 2016 and 2015 was \$243,464 and \$264,519, respectively. As of June 30, 2016, there were total unrecognized compensation costs of \$851,217 related to these stock options. These costs are expected to be recognized over a period of approximately 2.15 years.

The total fair value of employee options vested during the six-month periods ended June 30, 2016 and 2015 was \$263,897 and \$421,447, respectively.

The Company estimated the fair value of stock options using the Black-Scholes option valuation model. The fair value of employee stock options is being amortized on a straight-line basis over the requisite service period of the awards. The fair value of employee stock options was estimated using the following assumptions:

	<u>June 30, 2016</u>	<u>December 31, 2015</u>
Expected term (in years)	5.81 years	5.65 years
Expected volatility	48%	49%
Risk-free interest rate	1.38% -1.54%	1.43% -1.74%
Dividend yield	—%	—%

***Stock-Based Compensation Associated with Awards to Non-employees***

In April 2015, the Company granted stock options to a board advisor to purchase 99,312 shares of common stock at \$7.57. Stock-based compensation expense recognized during the six-month periods ended June 30, 2016 and 2015 was \$43,381 and \$17,917, respectively. As of June 30, 2016, there were total unrecognized compensation costs of \$221,066 related to these stock options. These costs are expected to be recognized over a period of approximately 2.79 years.

The fair value of the stock options granted to non-employees is calculated at each reporting date using the Black-Scholes options pricing model. The fair value of stock options granted to non-employees was estimated using the following assumptions as of June 30, 2016 and December 31, 2015:

Expected term (in years)	5.67 years
Expected volatility	49%
Risk-free interest rate	1.43%
Dividend yield	—%

**12. Employee Benefit Plan**

The Company sponsors a 401(k) plan covering all employees. Contributions made by the Company are discretionary and are determined annually by the Board. The Company accrues for a 100% match for employee contributions up to \$1,000.

**13. Net Loss per Share**

The Company's basic and diluted net loss per share are as follows:

	<u>Six Months Ended June 30,</u>	
	<u>2016</u>	<u>2015</u>
Net loss	\$(13,082,593)	\$ (8,026,403)
Accretion of redeemable convertible preferred stock	—	(43,117)
Net loss attributable to common stockholders	(13,082,593)	(8,069,520)
Weighted-average common shares used in computing net loss per share attributable to common stockholders, basic and diluted	1,389,322	385,271
Net loss per share attributable to common stockholders, basic and diluted	<u>\$ (9.42)</u>	<u>\$ (20.95)</u>

The following weighted-average common stock equivalents were excluded from the calculation of diluted net loss per share for the periods presented due to their anti-dilutive effect:

	<u>Six Months Ended June 30,</u>	
	<u>2016</u>	<u>2015</u>
Convertible preferred stock (if converted)	—	3,611,876
Stock warrants	79,940	50,751
Options to purchase common stock	855,888	840,027

#### **14. Subsequent Events**

In June 2016, the Company's board of directors approved repricing of outstanding stock options to current employee and consultant option holders. In exchange for extending the vesting of options for an additional six months, the price of the outstanding stock grants was amended to \$5.00 per share. The offer expired on July 12, 2016. Outstanding option shares of 744,133, ranging in grant prices from \$6.36 to \$8.66, were approved by the board of directors on July 14, 2016 and were repriced as part of the program.

In July and August 2016, the Company sold 116,100 additional shares of common stock at \$5.00 per share in connection with its Private Placement, for cash proceeds, net of issuance costs, of \$557,885.

The FDA performed a routine inspection from July 25, 2016 through August 1, 2016. A Form FDA 483 listing one observation related to complaint handling and reporting and a second observation related to the documentation of CAPA activities was issued. Corrective actions for each item are in process and will be completed in a timely manner.

Management has evaluated all transactions and events through August 11, 2016, the date on which these financial statements were issued and did not note any items that would adjust the financial statements or require additional disclosures.

## MIRAMAR LABS, INC.

### UNAUDITED PRO FORMA COMBINED FINANCIAL INFORMATION

Miramar Labs, Inc. was originally incorporated as Spacepath, Inc. in Nevada on December 28, 2012. We subsequently changed our name to KTL Bamboo International Corp. on March 18, 2015 and changed our name again to Miramar Labs, Inc. on June 7, 2016. Prior to the Merger and Split-Off (each described below), we were in the business of distributing water filtration systems produced in China.

As previously reported in our Current Report on Form 8-K filed with the SEC on June 13, 2016 as amended on June 14, 2016, we declared a 1.801801-for-1 forward stock split of our common stock, par value \$0.001 per share, on May 24, 2016 in the form of a dividend with the record date of May 31, 2016. On June 8, 2016, Financial Industry Regulatory Authority, Inc. (FINRA), notified us of its announcement of the payment date of the stock split as June 2, 2016 and ex-dividend date of the stock split as June 9, 2016. On the payment date, as a result of the stock split, each holder of our common stock, par value \$0.001 per share, as of the record date received an additional 0.801801 share of our common stock for each share, resulting in issuance of an additional 2,004,503 shares of common stock to the 2,500,000 shares of our common stock before the stock split. As of the ex-dividend date, our common stock began trading on a post-split adjusted basis. Also on May 26, 2016, we changed our name to Miramar Labs, Inc. by filing the Certificate of Amendment to our Amended and Restated Articles of Incorporation with the Secretary of State of the State of Nevada. Additionally, on June 7, 2016 (the Closing Date), we changed our domicile from the State of Nevada to the State of Delaware by reincorporation (the Conversion), and as a result of the Conversion, our corporate matters and affairs ceased to be governed by the Nevada Revised Statutes and became subject to the Delaware General Corporation Law. All share and per share numbers in this Prospectus relating to our common stock have been adjusted to give effect to this forward stock split and this Conversion, unless otherwise stated. On the Closing Date, we adopted the Amended and Restated Certificate of Incorporation by filing the Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware and adopted the Amended and Restated Bylaws. Upon effectiveness of the Amended and Restated Certificate of Incorporation, we decreased our authorized capital stock from 300 million shares of common stock, par value \$0.001 per share and 10 million shares of “blank check” preferred stock, par value \$0.001 per share, to 100 million shares of common stock, par value \$0.001 per share, and 5 million shares of “blank check” preferred stock, par value \$0.001 per share.

On the Closing Date, our wholly-owned subsidiary, Miramar Acquisition Corp., a corporation formed in the State of Delaware on June 2, 2016 (the Acquisition Sub) merged with and into Miramar Technologies, Inc., a corporation incorporated in April 2006 in the State of Delaware, originally under the name of Miramar Labs, Inc. (Miramar) (such transaction, the Merger). Pursuant to the Merger, Miramar was the surviving corporation and became our wholly-owned subsidiary. All of the outstanding capital stock of Miramar was converted into shares of our common stock, as described in more detail below.

Further, immediately prior to the closing of the Merger, under the terms of a split-off agreement and a general release agreement (the Split-Off Agreement), the Company transferred all of its pre-Merger operating assets and liabilities to its wholly-owned special-purpose subsidiary, Spacepath Enterprise Corp., a Nevada corporation formed on June 2, 2016 (the Split-Off Subsidiary). Thereafter, pursuant to the Split-Off Agreement, the Company transferred all of the outstanding shares of capital stock of the Split-Off Subsidiary to the pre-Merger majority stockholder of the Company, and the former sole officer and director of the Company, in consideration of and in exchange for (i) the surrender and cancellation of an aggregate of 3,603,602 shares of our common stock (which were cancelled and will resume the status of authorized but unissued shares of our common stock) and (ii) certain representations, covenants and indemnities (together, the Split-Off).

As a result of the Merger and the Split-Off, we discontinued our pre-Merger business, acquired the business of Miramar and continued the existing business operations of Miramar as a publicly-traded company under the name Miramar Labs, Inc.

At the Closing Date, each of the shares of Miramar's common stock and preferred stock issued and outstanding immediately prior to the closing of the Merger was converted into shares of our common stock at a ratio of 1:0.07393, or the Conversion Ratio. Additionally, warrants to purchase shares of Miramar's Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock issued and outstanding immediately prior to the closing of the Merger were converted into warrants to purchase shares of our common stock at the Conversion Ratio. As a result, an aggregate of 6,486,891 shares of our common stock and warrants to purchase our common stock were issued to the holders of Miramar's capital stock and warrants which included shares resulting from the conversion of certain existing convertible promissory notes. Finally, 11,603,764 options to purchase shares of Miramar's common stock issued and outstanding immediately prior to the closing of the Merger were assumed and converted into 857,634 options to purchase shares of our common stock, after taking into account the Conversion Ratio.

Also on the Closing Date, we entered into a subscription agreement, or the Subscription Agreement, with certain accredited investors, providing for the issuance and sale to such investors of an aggregate of 1,810,708 shares of common stock at a purchase price of \$5.00 per share, or the Offering Price. On June 30, 2016, we closed a private placement offering in which we sold an aggregate of 51,759 shares of our common stock at the Offering Price. On July 21, 2016, we completed another closing of a private placement offering in which we sold an aggregate of 36,000 shares of our common stock at the Offering Price. On August 8, 2016, we closed another private placement offering in which we sold an aggregate of 80,100 shares of our common stock at the Offering Price. Together with our initial offering held on June 7, 2016 and the three subsequent closings, we sold an aggregate of 1,978,567 shares of our common stock and raised gross proceeds of approximately \$9.9 million.

The Merger is being accounted for as a reverse-merger and recapitalization. Miramar is the acquirer for financial reporting purposes and KTL Bamboo International Corp. is the acquired company under the acquisition method of accounting in accordance with FASB ASC Topic 805, *Business Combination*. Consequently, the assets, liabilities and operations that will be reflected in the historical financial statements prior to the Merger will be those of the Company and will be recorded at the historical cost basis of the Company, and the consolidated financial statements after completion of the Merger will include the assets, liabilities and results of operations of the Company up to the day prior to the closing of the Merger and the assets, liabilities and results of operations of the combined company from and after the closing date of the Merger. The unaudited pro forma combined financial information is based on individual historical financial statements of the Company and KTL Bamboo International Corp. prepared under GAAP and is adjusted to give effect to the Merger Agreement.

The historical financial statements have been adjusted in the pro forma combined financial statements to give effects to events that are (1) directly attributable to the Merger, (2) factually supportable, and (3) with respect to the statement of operations, expected to have a continuing impact on the combined entities. The unaudited pro forma combined statements of operations eliminate any non-recurring charges directly related to the Merger that the combined entities incur upon completion of the Merger.

Due to different fiscal periods for the Company and KTL Bamboo International Corp., the unaudited pro forma combined statements of operations combine the Company's historical statements of operations for the six months ended June 30, 2016, with KTL Bamboo International Corp. historical statements of operations for the nine months ending April 30, 2016, giving effect to the events that are directly attributable to the Merger, as if the Merger were consummated at the beginning of the year ended December 31, 2015, and that are expected to have a continuing impact on the combined company. The difference in fiscal periods between the Company and KTL Bamboo International Corp. does not result to material misstatement in the combined pro forma financial statements.

The unaudited pro forma combined financial information does not purport to represent what the combined company's results of operations would actually have been had the Merger occurred on the dates described above or to project the combined company's results of operations for any future date or period.

The unaudited pro forma combined financial information should be read together with (1) the Company's audited balance sheets as of December 31, 2015 and 2014 and the related statements of operations and statements of cash flows for the years ended December 31, 2015 and 2014 and the accompanying notes, and unaudited balance sheet as of June 30, 2016 and unaudited statement of operations and statement of cash flows for the six months ended June 30, 2016 and the accompanying notes, and (2) KTL Bamboo International Corp.'s unaudited balance sheet as of April 30, 2016 and the related statements of operations and statements of cash flows for the nine months ended April 30, 2016 and 2015 and the accompanying notes.

**Miramar Technologies, Inc. and Miramar Labs, Inc.**  
**Unaudited Pro Forma Combined Statement of Operations and**  
**Comprehensive Loss**

**For the six months ended June 30, 2016**

	<b>Miramar Technologies, Inc.</b>	<b>Miramar Labs, Inc. (For the six months ended April 30, 2016)</b>	<b>Merger Pro Forma Adjustments</b>	<b>Combined Pro Forma</b>
<b>Revenue:</b>	\$ 11,732,031	\$ —	\$ —	\$ 11,732,031
Cost of revenue	5,423,339	—	—	5,423,339
Gross profit	6,308,692	—	—	6,308,692
<b>Operating expenses:</b>				
Research and development	1,744,993	—	—	1,744,993
Sales and marketing	6,526,272	—	—	6,526,272
General and administrative	2,845,252	92,838	(92,838) A	2,845,252
Total operating expenses	11,116,517	92,838	(92,838)	11,116,517
Loss from operations	(4,807,825)	(92,838)	92,838	(4,807,825)
Interest income	3,729	—	—	3,729
Interest expense	(663,047)	—	—	(663,047)
Loss on debt conversion	(8,062,001)	—	—	(8,062,001)
Other income, net	448,076	—	—	448,076
Net loss before provision for income taxes	(13,081,068)	(92,838)	92,838	(13,081,068)
Provision for income taxes	(1,525)	—	—	(1,525)
Net and comprehensive loss	(13,082,593)	(92,838)	92,838	(13,082,593)
Accretion of redeemable convertible preferred stock	—	—	—	—
Net loss attributable to common stockholders	\$(13,082,593)	\$ (92,838)	\$ 92,838	\$(13,082,593)
Net loss per share attributable to common stockholders, basic and diluted	\$ (9.42)	\$ —	\$ —	\$ (9.42)

**Miramar Technologies, Inc. and Miramar Labs, Inc.**  
**Unaudited Pro Forma Combined Statement of Operations and**  
**Comprehensive Loss**

For the year ended December 31, 2015

	Miramar Technologies, Inc.	Miramar Labs, Inc. (For the year ended July 31, 2015)	Merger Pro Forma Adjustments	Combined Pro Forma
Revenue	\$ 17,199,511	\$ 28,163	\$ (28,163) <b>A</b>	\$ 17,199,511
Cost of revenue	8,257,048	5,040	(5,040) <b>A</b>	8,257,048
Gross profit	8,942,463	23,123	(23,123)	8,942,463
<b>Operating expenses:</b>				
Research and development	4,974,120	—	—	4,974,120
Sales and marketing	11,757,734	—	—	11,757,734
General and administrative	5,468,916	50,155	(50,155) <b>A</b>	5,468,916
Total operating expenses	22,200,770	50,155	(50,155)	22,200,770
Loss from operations	(13,258,307)	(27,032)	27,032	(13,258,307)
Interest income	5,931	—	—	5,931
Interest expense	(1,295,930)	—	—	(1,295,930)
Loss on debt conversion	—	—	(2,528,247) <b>C</b>	(2,528,247)
Other income, net	62,780	—	499,616 <b>B</b>	562,396
Net loss before provision for income taxes	(14,485,526)	(27,032)	(2,001,599)	(16,514,157)
Provision for income taxes	(8,722)	—	—	(8,722)
Net and comprehensive loss	(14,494,248)	(27,032)	(2,001,599)	(16,522,879)
Accretion of redeemable convertible preferred stock	(3,117)	—	—	—
Net loss attributable to common stockholders	\$(14,497,365)	\$ (27,032)	\$ (2,001,599)	\$(16,522,879)
Net loss per share attributable to common stockholders, basic and diluted	\$ (37.33)	\$ —	\$ —	\$ (4.10)

Merger Pro Forma Adjustments

**A** - The adjustment reflects the split-off of Miramar operations, and the surrender and cancellation of Miramar pre-Merger outstanding capital stock upon consummation of the Merger.

**B** - The adjustment reflects the elimination of the change in fair value of warrant liability from the conversion of 66,924 preferred stock warrants to common stock warrants.

**C** - The adjustment reflects outstanding convertible notes payable with current investors converted to 2,418,627 shares of common stock

## PART II

### Information Not Required in Prospectus

#### Item 13. Other Expenses of Issuance and Distribution.

Set forth below is an estimate (except for registration fees, which are actual) of the approximate amount of the types of fees and expenses listed below that were paid or are payable by us in connection with the issuance and distribution of the shares of common stock to be registered by this registration statement. None of the expenses listed below are to be borne by any of the selling stockholders named in the prospectus that forms a part of this registration statement.

Item	Amount to be paid
SEC registration fee	\$5,968
Printing and filing expenses	\$7,000
Legal fees and expenses	\$100,000
Accounting fees and expenses	\$15,000
Transfer agent fees and expenses	*
Miscellaneous expenses	\$30,000
Total	*

\* To be completed by amendment

#### Item 14. Indemnification of Directors and Officers.

As permitted by Section 102 of the Delaware General Corporation Law, we have adopted provisions in our amended and restated certificate of incorporation and amended and restated bylaws that limit or eliminate the personal liability of our directors for a breach of their fiduciary duty of care as a director. The duty of care generally requires that, when acting on behalf of the corporation, directors exercise an informed business judgment based on all material information reasonably available to them. Consequently, a director will not be personally liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director, except for liability for:

- any breach of the director's duty of loyalty to us or our stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- any act related to unlawful stock repurchases, redemptions or other distributions or payment of dividends; or
- any transaction from which the director derived an improper personal benefit.

These limitations of liability do not affect the availability of equitable remedies such as injunctive relief or rescission. Our amended and restated certificate of incorporation also authorizes us to indemnify our officers, directors and other agents to the fullest extent permitted under Delaware law.

As permitted by Section 145 of the Delaware General Corporation Law, our amended and restated bylaws provide that:

- we may indemnify our directors, officers and employees to the fullest extent permitted by the Delaware General Corporation Law, subject to limited exceptions;
- we may advance expenses to our directors, officers and employees in connection with a legal proceeding to the fullest extent permitted by the Delaware General Corporation Law, subject to limited exceptions; and
- the rights provided in our amended and restated bylaws are not exclusive.

Our amended and restated certificate of incorporation and our amended and restated bylaws provide for the indemnification provisions described above and elsewhere herein. We have entered into separate indemnification agreements with our directors and officers that may be broader than the specific indemnification provisions contained in the Delaware General Corporation Law. These indemnification agreements generally require us, among other things, to indemnify our directors and officers against liabilities that may arise by reason of their status or service as directors or officers, other than liabilities arising from willful misconduct. These indemnification agreements also generally require us to advance any expenses incurred by the directors or officers as a result of any proceeding against them as to which they could be indemnified. In addition, we have purchased a policy of directors' and officers' liability insurance that insures our directors and officers against the cost of defense, settlement or payment of a judgment in some circumstances. These indemnification provisions and the indemnification agreements may be sufficiently broad to permit indemnification of directors and officers for liabilities, including reimbursement of expenses incurred, arising under the Securities Act of 1933, as amended, or the Securities Act.

#### **Item 15. Recent Sales of Unregistered Securities.**

The following list sets forth information as to all securities Miramar sold from January 1, 2013 through October 13, 2016, which were not registered under the Securities Act. The following description is historical and has not been adjusted to give effect to the Merger or the share conversion ratio pursuant to the Merger Agreement.

1. On December 16, 2013 and September 30, 2014, we issued an aggregate of 16,255,133 shares of Series D Preferred Stock at a price per share of \$1.60 for aggregate gross consideration of \$26,008,213 to 7 accredited investors, which included 3,130,133 shares of Series D Preferred Stock which were issued pursuant to the conversion of \$5,008,212 aggregate principal amount and interest of convertible notes.
2. In December 2015, February 2016 and May 2016, we issued convertible promissory notes for an aggregate principal amount of \$4,850,000 to 9 accredited investors.
3. In June 7, 2016, June 30, 2016, July 21, 2016 and August 8, 2016, we issued an aggregate of (i) 1,978,567 shares of common stock to accredited investors in the Private Placement, (ii) 6,419,967 shares of our common stock issued to former stockholders of Miramar Technologies, Inc. in connection with the closing of the Merger and (iv) 17,504 shares of common stock issuable upon exercise of the Placement Agent Warrants.
4. In August 2016, we issued an aggregate of 63,636 shares of common stock to certain consultants in consideration of such consultants' services provided to the company.
5. Miramar granted stock options and stock awards to employees, directors and consultants under the 2006 Plan covering an aggregate of 1,232,636 shares of common stock, at a weighted average exercise price

of \$5.4421921 per share. Of these, options covering aggregate of 77,523 shares were canceled without being exercised.

6. Miramar sold an aggregate of 78,767 shares of common stock to employees, directors and consultants for cash consideration in the aggregate amount of \$261,415.32 upon the exercise of stock options and stock awards.

We claimed exemption from registration under the Securities Act for the sale and issuance of securities in the transactions described in paragraphs (1)-(3) by virtue of Section 4(a)(2) of the Securities Act and/or Regulation D promulgated under the Securities Act as transactions not involving any public offering. All of the purchasers of unregistered securities for which we relied on Section 4(a)(2) and/or Regulation D represented that they were accredited investors as defined under the Securities Act. We claimed such exemption on the basis that (a) the purchasers in each case represented that they intended to acquire the securities for investment only and not with a view to the distribution thereof and that they either received adequate information about the Registrant or had access, through employment or other relationships, to such information and (b) appropriate legends were affixed to the stock certificates issued in such transactions.

We claimed exemption from registration under the Securities Act for the sales and issuances of securities in the transactions described in paragraphs (4)-(5) above under Section 4(a)(2) of the Securities Act, in that such sales and issuances did not involve a public offering, or under Rule 701 promulgated under the Securities Act, in that they were offered and sold either pursuant to written compensatory plans or pursuant to a written contract relating to compensation, as provided by Rule 701.

#### **Item 16. Exhibits and Financial Statement Schedules.**

**(a) Exhibits.** See the Exhibit Index attached to this Registration Statement, which is incorporated by reference herein.

**(b) Financial Statement Schedules.** Schedules not listed above have been omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or notes thereto.

#### **Item 17. Undertakings.**

The undersigned registrant hereby undertakes:

1. To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

- a. To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

- b. To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

c. To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

2. That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of the securities at that time shall be deemed to be the initial bona fide offering thereof.

3. To remove from registration by means of a post-effective amendment any of the securities being registered that remain unsold at the termination of the offering.

4. That, for the purpose of determining liability under the Securities Act to any purchaser, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A (§ 230.430A of Title 17 of the Code of Federal Regulations), shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

5. That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities:

6. The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

a. Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424 (§230.424 of Title 17 of the Code of Federal Regulations);

b. Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

c. The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

d. Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in

the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

## **SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Registration Statement on Form S-1 to be signed on its behalf by the undersigned hereunto duly authorized in the City of Santa Clara, State of California, on October 14, 2016.

**MIRAMAR LABS, INC.**

/s/ Robert Michael Kleine

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Name: Robert Michael Kleine

Title: Chief Executive Officer

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Robert Michael Kleine and Brigid A. Makes, and each of them acting individually, as his or her true and lawful attorneys-in-fact and agents, each with full power of substitution, for him or her in any and all capacities, to sign any and all amendments to this Registration Statement, including post-effective amendments or any abbreviated registration statement and any amendments thereto filed pursuant to Rule 462(b) increasing the number of securities for which registration is sought, and to file the same, with all exhibits thereto and other documents in connection therewith, with the SEC, granting unto said attorneys-in-fact and agents, with full power of each to act alone, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or his, her or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ Robert Michael Kleine</u> Robert Michael Kleine	Director, President and Chief Executive Officer (Principal Executive Officer)	October 14, 2016
<u>/s/ Brigid A. Makes</u> Brigid A. Makes	Chief Financial Officer (Principal Financial and Accounting Officer)	October 14, 2016
<u>Mark E. Deem</u>	Director	, 2016
<u>/s/ Hanson S. Gifford III</u> Hanson S. Gifford III	Director	October 14, 2016
<u>/s/ Maxim Gorbachev</u> Maxim Gorbachev	Director	October 14, 2016
<u>/s/ Henry A. Plain, Jr.</u> Henry A. Plain, Jr.	Director	October 14, 2016
<u>/s/ Stacey D. Seltzer</u> Stacey D. Seltzer	Director	October 14, 2016
<u>/s/ Brian H. Dovey</u> Brian H. Dovey	Director	October 14, 2016
<u>/s/ Patrick F. Williams</u> Patrick F. Williams	Director	October 14, 2016

## EXHIBIT INDEX

Exhibit Number	Description
2.1	Agreement and Plan of Merger and Reorganization, dated June 7, 2016, by and among Miramar Labs, Inc., Miramar Technologies, Inc. and Miramar Acquisition Corp.
3.1	Amended and Restated Certificate of Incorporation of Miramar Labs, Inc., filed June 7, 2016.
3.2	Amended and Restated Bylaws of Miramar Labs, Inc., effective as of June 7, 2016.
3.3	Certificate of Merger of Miramar Acquisition Corp. with and into Miramar Technologies, Inc., filed June 7, 2016.
4.1	Form of Common Stock Certificate.
4.2	Registration Rights Agreement, dated June 7, 2016, by and among Miramar Labs, Inc. and certain investors named therein.
5.1	Opinion of Wilson Sonsini Goodrich & Rosati P.C.
10.1	Split Off Agreement, dated June 7, 2016, by and among Miramar Labs, Inc. (f/k/a KTL Bamboo International Corp.), Spacepath Enterprise Corp. and Andrey Zasoryn.
10.2	General Release Agreement, dated June 7, 2016, by and among Miramar Labs, Inc. (f/k/a KTL Bamboo International Corp.), Spacepath Enterprise Corp. and Andrey Zasoryn.
10.3	Form of Lock-Up Agreement, by and between Miramar Labs, Inc. (f/k/a KTL Bamboo International Corp.) and certain parties thereto.
10.4	Form of Subscription Agreement, by and between Miramar Labs, Inc. (f/k/a KTL Bamboo International Corp.) and the purchasers thereto.
10.5	Private Placement Engagement Agreement, dated June 1, 2016, by and among Miramar Labs, Inc., Katalyst Securities LLC and The Benchmark Company, LLC.
10.6	Assignment and Assumption of Engagement Letter dated June 7, 2016 by and among Miramar Labs, Inc., Miramar Technologies, Inc., Katalyst Securities LLC and The Benchmark Company, LLC.
10.7	Form of Placement Agent Warrant for Common Stock of Miramar Labs, Inc.
10.8	Assignment and License Agreement, dated December 31, 2008, by and between Miramar Labs, Inc. and The Foundry, Inc.
10.9	Assignment and License Clarification Letter, dated June 10, 2010, by and between Miramar Labs, Inc. and The Foundry, LLC.
10.10	Asset Purchase Agreement, dated January 18, 2008, by and between Miramar Labs, Inc. and Jan Wallace.
10.11	Loan and Security Agreement, dated August 7, 2015, by and among Miramar Labs, Inc., Oxford Finance LLC, and Silicon Valley Bank.
10.12	Subordination Agreement, dated February 24, 2016, by and among Oxford Finance LLC and Lenders from time to time a party thereto.
10.13	Consent, Joinder and First Amendment to Loan and Security Agreement, dated June 2, 2016, by and among Miramar Labs, Inc., Oxford Finance LLC, Silicon Valley Bank and Lenders from time to time a party thereto.
10.14	Consent, Joinder and Second Amendment to Loan and Security Agreement, dated June 7, 2016, by and among Miramar Labs, Inc., Oxford Finance LLC, Silicon Valley Bank and Lenders from time to time a party thereto.
10.15	Lease Agreement, dated December 16, 2013, by and between Miramar Labs, Inc. and DWF III Walsh Bowers, LLC.

Exhibit Number	Description
10.16†	Miramar Labs, Inc. 2006 Stock Plan.
10.17†	Form of Stock Option Agreement under the 2006 Plan.
10.18†	Form of Indemnification Agreement for directors and executive officers.
10.19†	Employment Offer Letter, dated October 16, 2006, by and between Foundry Newco X and Steven Kim.
10.20†	Employment Agreement, dated September 21, 2011, by and between Miramar Labs, Inc. and Brigid A. Makes.
10.21†	Amendment to Employment Agreement, dated May 28, 2013, by and between Miramar Labs, Inc. and Brigid A. Makes.
10.22†	Employment Agreement, dated May 27, 2016, by and between Miramar Labs, Inc. and Robert Michael Kleine.
10.23#	Supply Agreement dated, November 13, 2014, by and between Miramar Labs, Inc. and Broadband Wireless, LLC.
10.24#	Contract Manufacturing Service Agreement dated, November 6, 2012, by and between Miramar Labs, Inc. and Healthcare Technology International Limited.
23.1	Consent of SingerLewak LLP.
23.2	Consent of Wilson Sonsini Goodrich & Rosati P.C. (contained in Exhibit 5.1).
24.1	Power of Attorney (contained on signature page hereto).
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

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† Management contract or compensatory plan or arrangement

# Confidential treatment granted. Portions of this exhibit (indicated by asterisks) have been omitted and this exhibit has been filed separately with the SEC.

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AGREEMENT AND PLAN OF MERGER AND REORGANIZATION

among

MIRAMAR LABS, INC.  
(formerly KTL Bamboo International Corp.), a Delaware corporation

MIRAMAR ACQUISITION CORP., a Delaware corporation

and

MIRAMAR TECHNOLOGIES, INC., a Delaware corporation

June 7, 2016

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**EXHIBITS**

Exhibit A	Form of Subscription Agreement
Exhibit B	Form of Split-Off Agreement
Exhibit C	Form of General Release Agreement
Exhibit D	Signatories to Lock-Up and No-Shorting Agreements

Exhibit E      Form of Lock-Up and No-Shorting Agreement

## AGREEMENT AND PLAN OF MERGER AND REORGANIZATION

**AGREEMENT AND PLAN OF MERGER AND REORGANIZATION** (this “Agreement”), dated as of June 7, 2016, by and among **Miramar Labs, Inc.** (formerly KTL Bamboo International Corp.), a Delaware corporation (the “Parent”), **Miramar Acquisition Corp.**, a Delaware corporation (the “Acquisition Subsidiary”) and **Miramar Technologies, Inc.**, a Delaware corporation (the “Company”).” The Parent, the Acquisition Subsidiary and the Company are each a “Party” and referred to collectively herein as the “Parties.”

**WHEREAS**, this Agreement contemplates a merger of the Acquisition Subsidiary with and into the Company, with the Company remaining as the surviving entity after the merger (the “Merger”), whereby the stockholders of the Company will receive Parent Common Stock (as defined below) in exchange for their capital stock of the Company; and

**WHEREAS**, simultaneously with the closing of the Merger, the Parent will complete a private placement offering (the “Private Placement Offering”) of a minimum of 1,800,000 shares (the “Minimum Amount”) of the Parent’s common stock, par value \$0.001 per share (the “Parent Common Stock”) at a purchase price of \$5.00 per share (the “Purchase Price”) upon the terms and subject to the conditions of a subscription agreement in the form of Exhibit A attached hereto (the “Subscription Agreement”); and

**WHEREAS**, immediately prior to the closing of the Merger, the Parent shall assign of all of the Parent’s assets and liabilities (other than those under this Agreement and the other related agreements and transactions contemplated hereby) to its wholly owned subsidiary Spacepath Enterprise Corp., a Nevada corporation (the “Split Off Subsidiary”) and exchange the Share Contribution (as defined below) for all of the outstanding capital stock of the Split-Off Subsidiary (the “Split-Off”) upon the terms and conditions of a split-off agreement, substantially in the form of Exhibit B attached hereto (the “Split-Off Agreement”), by and among the Parent, the Split-Off Subsidiary and Andrey Zasoryn (the “Split-Off Purchaser”); and

**WHEREAS**, simultaneously with the closing of the Merger, the Parent, Split-Off Subsidiary and Split-Off Purchaser shall enter into a general release agreement in substantially the form of Exhibit C attached hereto (the “General Release Agreement”); and

**WHEREAS**, the Parent, the Acquisition Subsidiary and the Company intend for the Merger to qualify as a “reorganization” under Section 368(a) of the Internal Revenue Code of 1986, as amended (the “Code”), and that this Agreement constitute a “plan of reorganization” within the meaning of Sections 1.368-2 (g) and 1.368-3(a) of the United States Treasury Regulations;

**NOW, THEREFORE**, in consideration of the representations, warranties and covenants herein contained, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties hereto, intending legally to be bound, agree as follows:

### ARTICLE I THE MERGER

1.1 The Merger. Upon and subject to the terms and conditions set forth in this Agreement, the Acquisition Subsidiary shall merge with and into the Company at the Effective Time (as defined below). From and after the Effective Time, the separate corporate existence of the Acquisition Subsidiary shall cease and the Company shall continue as the surviving corporation in the Merger (the “Surviving Corporation”). The “Effective Time” shall be the time at which a certificate of merger in proper form and duly executed, reflecting the Merger (the “Certificate of Merger”) pursuant to Section 251(c) of General Corporation Law

of the State of Delaware (the “Delaware Act”) is filed with the Secretary of State of the State of Delaware. The Merger shall have the effects set forth herein and in the applicable provisions of the Delaware Act.

1.2 The Closing . The closing of the transactions contemplated by this Agreement (the “Closing”) shall take place at the offices of CKR Law LLP, in New York, New York, commencing at 10:00 a.m. local time (or such other place and time as is mutually agreed to by the Parties) on June 7, 2016, or, if all of the conditions to the obligations of the Parties to consummate the transactions contemplated hereby have not been satisfied or waived by such date, on such mutually agreeable later date as soon as practicable (and in any event not later than three Business Days) after the satisfaction or waiver of all conditions (excluding the delivery of any documents to be delivered at the Closing by any of the Parties) set forth in Article V hereof (the “Closing Date”). As used in this Agreement, the term “Business Day” means any day other than a Saturday, a Sunday or a day on which banks in the state of New York are required or authorized by applicable Law to close.

1.3 Actions at the Closing. At the Closing:

(a) the Company shall deliver to the Parent and the Acquisition Subsidiary the various certificates, instruments and documents to be delivered by the Company pursuant to Sections 5.1 and 5.2;

(b) the Parent and the Acquisition Subsidiary shall deliver to the Company the various certificates, instruments and documents to be delivered by the Parent and/or Acquisition Subsidiary pursuant to Sections 5.1 and 5.3;

(c) the Surviving Corporation shall file the Certificate of Merger with the Secretary of State of the State of Delaware; and

(d) the Split-Off Purchaser shall surrender for cancellation to the Parent 3,603,602 (assuming the effect of the dividend declared on May 24, 2016) shares of Parent Common Stock (the “Share Contribution”) in connection with the Split-Off.

1.4 Additional Actions . If at any time after the Effective Time the Surviving Corporation or Parent shall consider or be advised that any deeds, bills of sale, assignments or assurances or any other acts or things are necessary, desirable or proper (a) to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation or Parent, its right, title or interest in, to or under any of the rights, privileges, powers, franchises, properties or assets of either the Company or the Acquisition Subsidiary or (b) otherwise to carry out the purposes of this Agreement, the Surviving Corporation, Parent and its officers and directors or their designees shall be authorized (to the fullest extent allowed under applicable Law) to execute and deliver, in the name and on behalf of either the Company, Parent or the Acquisition Subsidiary, all such deeds, bills of sale, assignments and assurances and do, in the name and on behalf of the Company, Parent or the Acquisition Subsidiary, all such other acts and things necessary, desirable or proper to vest, perfect or confirm its right, title or interest in, to or under any of the rights, privileges, powers, franchises, properties or assets of the Company, Parent or the Acquisition Subsidiary, as applicable, and otherwise to carry out the purposes of this Agreement.

1.5 Conversion of Company Securities. At the Effective Time, by virtue of the Merger and without any action on the part of any Party or the holder of any of the following securities:

(a) Each share of common stock, par value \$0.001 per share, of the Company (“Company Common Stock”) and of each series of preferred stock, par value \$0.001 per share, of the Company (“Company Preferred Stock” and, together with the Company Common Stock, the “Company

Stock”) issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares and shares of Company Stock held by Unaccredited Investors (each as defined below)), shall be converted into and represent the right to receive (subject to the provisions of Section 1.6) such number of shares of Parent Common Stock as is equal to the applicable “Conversion Ratio” specified with respect to such class or series on Schedule 1.5(a) hereto (the “Applicable Conversion Ratio”). An aggregate of 6,499,268 shares of Parent Common Stock (including Dissenting Shares), subject to adjustment as necessary due to rounding as set forth in Section 1.7, shall be issuable to the stockholders of record of the Company outstanding immediately prior to the Effective Time (the “Company Stockholders”) in connection with the Merger. The shares of Parent Common Stock into which the shares of Company Common Stock are converted pursuant to this Section shall be referred to herein as the “Merger Shares.”

(b) The Parent shall deliver certificates for the Merger Shares to each Company Stockholder entitled thereto who shall have presented a certificate that immediately prior to the Effective Time represented Company Stock to be converted into Merger Shares pursuant to this Section 1.5 (the “Company Stock Certificates”) to the Parent’s transfer agent. If any Company Stock Certificate shall have been lost, stolen or destroyed, the Parent’s transfer agent may, in its sole discretion and as a condition to the issuance of any certificates representing Merger Shares, require the owner of such lost, stolen or destroyed Company Stock Certificate to provide an appropriate affidavit with respect to such Company Stock Certificate.

(c) Each issued and outstanding share of Company Stock held by Unaccredited Investors (other than Dissenting Shares) shall be converted into the right to receive a cash payment equal to \$5.00 multiplied by the Applicable Conversation Ratio (the “Cash Merger Consideration”). “Unaccredited Investor” shall mean a Company Stockholder who does not complete and deliver to the Company and Parent prior to the Closing Date an investor questionnaire reasonably acceptable to the Company certifying that such Company Stockholder is an “accredited investor” as such term is defined in Rule 501(a) under the Securities Act of 1933, as amended (“Securities Act”); provided that the Company and Parent may mutually determine any Company Stockholder is an “accredited investor” without having received such an investor questionnaire if they reasonably believe that such Company Stockholder qualifies as an “accredited investor”.

(d) Each issued and outstanding share of common stock, par value \$0.001 per share, of the Acquisition Subsidiary shall be converted into one validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation.

#### 1.6 Dissenting Shares.

(a) For purposes of this Agreement, “Dissenting Shares” means shares of Company Stock held as of the Effective Time by a Company Stockholder who has not voted such Company Stock in favor of the adoption of this Agreement and the Merger and with respect to which appraisal shall have been duly demanded and perfected in accordance with Section 262 of the Delaware Act and not effectively withdrawn or forfeited prior to the Effective Time. Dissenting Shares shall not be converted into or represent the right to receive shares of Parent Common Stock unless such Company Stockholder’s right to appraisal shall have ceased in accordance with the Delaware Act. If such Company Stockholder has so forfeited or withdrawn his, her or its right to appraisal of Dissenting Shares, then (i) as of the occurrence of such event, such holder’s Dissenting Shares shall cease to be Dissenting Shares and shall be converted into and represent the right to receive the Merger Shares issuable in respect of such Company Stock pursuant to Section 1.5 (a), and (ii) promptly following the occurrence of such event and, if requested by Parent, the proper surrender of such person’s Company Stock Certificate, the Parent shall deliver to such Company Stockholder a certificate representing the Merger Shares to which such holder is entitled pursuant to Section 1.5(a).

(b) The Company shall give the Parent prompt notice of any written demands for appraisal of any Company Stock, withdrawals of such demands, and any other instruments that relate to such demands received by the Company. The Company shall not, except with the prior written consent of the Parent (such consent not to be unreasonably withheld), make any payment with respect to any demands for appraisal of Company Stock or offer to settle or settle any such demands unless required by the court of the State of Delaware having jurisdiction thereof.

1.7 Fractional Shares . No certificates or scrip representing fractional Merger Shares shall be issued to Company Stockholders on the surrender for exchange of shares of Company Stock, and such Company Stockholders shall not be entitled to any voting rights, rights to receive any dividends or distributions or other rights as a stockholder of the Parent with respect to any fractional Merger Shares that would have otherwise been issued to such Company Stockholders. In lieu of any fractional Merger Shares to which the holder would otherwise be entitled, the Company shall pay the holder cash equal to such fraction multiplied by the Purchase Price.

1.8 Options and Warrants.

(a) As of the Effective Time, all outstanding Company Options (as defined below) that remain unexercised, whether vested or unvested, shall be assumed by Parent and shall be converted into options to purchase shares of Parent Common Stock (“Parent Options”) without further action by the holder thereof. Each Parent Option as so assumed and converted shall constitute an option to acquire such number of shares of Parent Common Stock as is equal to the number of shares of Company Common Stock subject to the unexercised portion of the Company Option multiplied by the Applicable Conversion Ratio for Company Common Stock (with any fraction resulting from such multiplication to be rounded down to the nearest whole number). The exercise price per share of each Parent Option as so assumed and converted shall be equal to the exercise price of the Company Option prior to the assumption divided by the Applicable Conversion Ratio (rounded up to the nearest whole cent), and the vesting schedule shall be the same as that of the Company Option that is converted into the Parent Option.

(b) Prior to the Effective Time, the Company shall adopt such resolutions as are necessary to effect the treatment of the Company Options as contemplated by this Section 1.8. At the Effective Time, the Parent shall assume all obligations of the Company under the applicable Company Equity Plan, each outstanding Company Option, and the agreements evidencing the grants thereof and shall administer and honor all such awards in accordance with the terms and conditions of such awards and the applicable Company Equity Plan (subject to the adjustments required by reason of this Agreement or such other adjustments or amendments made by Parent in accordance with such terms and conditions). Following the Closing, the Company shall notify each holder of the conversion of Company Options into Parent Options.

(c) As of the Effective Time, all outstanding Company Warrants (as defined below) that remain unexercised shall be assumed by Parent and shall be converted into warrants to purchase shares of Parent Common Stock (the “Parent Warrants”) in substitution for the Company Warrants, on substantially the same terms and conditions of the Company Warrants, but representing the right to acquire such number of shares of Parent Common Stock as is equal to the number of shares of Company Common Stock or Company Preferred Stock, as the case may be, subject to the unexercised portion of the Company Warrant multiplied by the Applicable Conversion Ratio for the class or series of Company Stock for which such Company Warrant is exercisable (with any fraction resulting from such multiplication to be rounded up or down to the nearest whole number, and with 0.5 shares rounded upward to the nearest whole number (unless such Company Warrant provides for different treatment of fractions of a share in such circumstance, in which case the terms of such Company Warrant pertaining to the treatment of a fraction of a cent shall control)).

The exercise price per share of each Parent Warrant shall be equal to the exercise price of the Warrant prior to substitution divided by the Applicable Conversion Ratio (rounded to the nearest whole cent, and with \$0.005 rounded upward to the nearest whole cent (unless such Company Warrant provides for different treatment of fractions of a cent in such circumstance, in which case the terms of such Company Warrant pertaining to the treatment of a fraction of a cent shall control)).

(d) The Parent shall take all corporate action necessary to reserve for issuance a sufficient number of shares of Parent Common Stock for delivery upon exercise of (i) the Parent Options to be issued for the Company Options and (ii) the Parent Warrants to be issued for the Company Warrants, in accordance with this Section 1.8.

1.9 Directors and Officers. At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Acquisition Subsidiary, the Company or the holders of any shares of capital stock of any of the foregoing, the directors and officers of the Company shall be the directors and officers of the Surviving Corporation until the earlier of their resignation or removal or until their respective successors are duly appointed and qualified, as the case may be, and the Surviving Corporation and the Parent shall take any necessary actions (whether prior to, at or after the Effective Time) as shall be necessary or appropriate to effectuate or carry out the purpose of this Section 1.9.

1.10 Certificate of Incorporation and Bylaws . At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Acquisition Subsidiary, the Company or the holders of any shares of capital stock of any of the foregoing; provided that the Surviving Corporation or Parent may make any necessary filings in the State of Delaware as shall be necessary or appropriate to effectuate or carry out fully the purpose of this Section 1.10:

(a) the certificate of incorporation of the Acquisition Subsidiary in effect immediately prior to the Effective Time shall be the certificate of incorporation of the Surviving Corporation until duly amended or repealed;

(b) the bylaws of the Acquisition Subsidiary in effect immediately prior to the Effective Time shall be the bylaws of the Surviving Corporation until duly amended or repealed;

(c) the certificate of incorporation of the Parent in effect immediately prior to the Effective Time shall be the certificate of incorporation of the Parent until duly amended or repealed; and

(d) the bylaws of the Parent in effect immediately prior to the Effective Time shall be the bylaws of the Parent until duly amended or repealed.

1.11 No Further Rights. From and after the Effective Time, no shares of Company Stock shall be deemed to be outstanding, and holders of Company Stock, certificated or uncertificated, shall cease to have any rights with respect thereto, except as provided herein or by applicable Law, other than the right to receive Parent Common Stock in connection with the Merger.

1.12 Closing of Transfer Books. At the Effective Time, the stock transfer books of the Company shall be closed and no transfer of Company Stock shall thereafter be made. If, after the Effective Time, Company Stock Certificates are presented to the Parent or the Surviving Corporation, they shall be cancelled and exchanged for Merger Shares in accordance with Section 1.5, subject to the provisions hereof and applicable Law in the case of Dissenting Shares.

1.13 Exemption from Registration; Rule 144; Rule 701.

(a) The Parent and the Company intend that the shares of Parent Common Stock to be issued pursuant to Section 1.5 hereof or upon exercise of Parent Options and Parent Warrants granted pursuant to Section 1.8 hereof, will be issued in a transaction exempt from registration under the Securities Act, by reason of Section 4(a)(2) of the Securities Act, Rule 506 of Regulation D promulgated by the Securities and Exchange Commission (the “SEC”) thereunder, Regulation S promulgated by the SEC and/or Rule 701 of the Securities Act and that all recipients of such shares of Parent Common Stock shall either be “accredited investors” or not “U.S. Persons” as such terms are defined in Regulation D and Regulation S, respectively, or, within the meaning of Rule 701 of the Securities Act, were employees or directors of the Company, its parent or its majority-owned subsidiaries or were consultants who were natural persons and who provided bonafide services to the Company, its parent or its majority-owned subsidiaries (provided that such services were not in connection with the offer or sale of securities in a capital raising transaction and did not directly or indirectly promote or maintain a market for the Company’s securities), and, in each case, who received Parent Common Stock or Parent Options pursuant to a compensatory benefit plan, or are family members of employees, directors or consultants who acquired such securities by gift or domestic relations orders. The shares of Parent Common Stock to be issued pursuant to Section 1.5 hereof or upon exercise of Parent Options and Parent Warrants granted pursuant to Section 1.8 hereof, will be “restricted securities” within the meaning of Rule 144 under the Securities Act and may not be offered, sold, pledged, assigned or otherwise transferred unless (i) a registration statement with respect thereto is effective under the Securities Act and any applicable state securities laws, or (ii) an exemption from such registration exists and either the Parent receives an opinion of counsel to the holder of such securities, which counsel and opinion are satisfactory to the Parent, that such securities may be offered, sold, pledged, assigned or transferred in the manner contemplated without an effective registration statement under the Securities Act or applicable state securities laws, or the holder complies with the requirements of Regulation S, if applicable; and the certificates representing such shares of Parent Common Stock will bear an appropriate legend and restriction on the books of the Parent’s transfer agent to that effect.

(b) The Parent is a “shell company” as defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). The Company acknowledges that pursuant to Rule 144(i), securities issued by a former shell company (such as the Merger Shares) that otherwise meet the holding period and other requirements of Rule 144 nevertheless cannot be sold in reliance on Rule 144 until one year after the Parent (i) is no longer a shell company; and (ii) has filed current “Form 10 information” (as defined in Rule 144(i)) with the SEC reflecting that it is no longer a shell company, and provided that at the time of a proposed sale pursuant to Rule 144, the Parent is subject to the reporting requirements of section 13 or 15(d) of the Exchange Act and has filed all reports and other materials required to be filed by section 13 or 15(d) of the Exchange Act, as applicable, during the preceding 12 months (or for such shorter period that the issuer was required to file such reports and materials), other than Form 8-K reports. **As a result, the restrictive legends on certificates for the Merger Shares cannot be removed except in connection with an actual sale meeting the foregoing requirements or pursuant to an effective registration statement.**

1.14 Certain Tax Matters. Each of the Parties shall use its reasonable best efforts to cause the Merger to qualify as a reorganization within the meaning of Section 368(a) of the Code. None of the Parties shall (and each of the Parties shall cause their respective Subsidiaries not to) take any action, or fail to take any action, that could reasonably be expected to cause the Merger to fail to qualify as a reorganization within the meaning of Section 368(a) of the Code. The Parties intend to report and, except to the extent otherwise required by a “final determination” within the meaning of Section 1313(a) of the Code, shall report, for all tax purposes, the Merger as a reorganization within the meaning of Section 368(a) of the Code.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

The Company represents and warrants to the Parent that the statements contained in this Article II are true and correct, except as set forth in the disclosure schedule provided by the Company to the Parent on the date hereof (the “Company Disclosure Schedule”). The Company Disclosure Schedule shall be arranged in paragraphs corresponding to the numbered and lettered paragraphs contained in this Article II; and to the extent that it is reasonably apparent from the context thereof that such disclosure also applies to any other numbered paragraph contained in this Article II, the disclosures in any numbered paragraph of the Company Disclosure Schedule shall qualify such other corresponding numbered paragraph in this Article II. For purposes of this Article II, the phrase “to the knowledge of the Company” or any phrase of similar import shall be deemed to refer to the actual knowledge of Michael Kleine, Brigid Makes, Steven Kim, or Kathy O’Shaughnessy as well as any other knowledge which such person would have possessed had such person made reasonable inquiry of executive officers, directors and key employees of the Company who report directly to such person and the accountants and attorneys of the Company.

2.1 Organization, Qualification and Corporate Power. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company is duly qualified to conduct business and is in good standing under the laws of each jurisdiction in which the nature of its businesses or the ownership or leasing of its properties requires such qualification, except where the failure to be so qualified or in good standing, individually or in the aggregate, has not had and would not reasonably be expected to have a Company Material Adverse Effect (as defined below). The Company has all requisite corporate power and authority to carry on the businesses in which it is engaged and to own and use the properties owned and used by it. The Company has furnished or made available to the Parent complete and accurate copies of its certificate of incorporation and bylaws. The Company is not in default under or in violation of any provision of its certificate of incorporation, as amended to date, or its bylaws, as amended to date, or any or any agreement referred to in Section 2.14 or 2.15, except where such default or violation would not be reasonably expected to have a Company Material Adverse Effect. For purposes of this Agreement, “Company Material Adverse Effect” means a material adverse effect on the assets, business, financial condition, or results of operations of the Company and the Company Subsidiaries (as defined below) taken as a whole; provided, that, in no event shall any effects (whether alone or in combination) resulting from or arising in connection with any of the following be deemed to constitute, nor shall any of the following be taken into account in determining whether there has occurred, a Company Material Adverse Effect: (a) conditions generally affecting the industries in which the Company or the Company Subsidiaries participate or the U.S. or global economy or capital markets as a whole; (b) any failure by the Company to meet internal projections or forecasts or revenue or earnings predictions; (c) the execution, delivery, announcement or performance of the obligations under this Agreement or the announcement, pendency or anticipated consummation of the Merger; (d) any natural disaster or any acts of terrorism, sabotage, military action or war or any escalation or worsening thereof; (e) any changes (after the date of this Agreement) in GAAP, other applicable accounting rules or applicable Law, or changes or developments in political, regulatory or legislative conditions, or (f) the taking of any action required by this Agreement.

2.2 Capitalization. The authorized capital stock of the Company consists of 105,000,000 shares of Company Common Stock and 51,600,000 shares of Company Preferred Stock, of which 2,100,000 shares are designated “Series A Preferred Stock,” 9,000,000 shares are designated “Series B Preferred Stock,” 23,000,000 shares are designated “Series C Preferred Stock”, and 17,500,000 shares are designated “Series D Preferred Stock”. As of the date of this Agreement and as of immediately prior to the Effective Time, and without giving effect to the transactions contemplated by this Agreement or any of the other Transaction Documentation, 5,390,620 shares of Company Common Stock are issued and outstanding, 2,000,000 shares of Series A Preferred Stock are issued and outstanding, 7,977,358 shares of Series B Preferred Stock are

issued and outstanding, 21,982,331 shares of Series C Preferred Stock are issued and outstanding, and 16,255,133 shares of Series D Preferred Stock are issued and outstanding. No other shares of Company Stock are issued and outstanding, and no shares of Company Stock are held in the treasury of the Company. As of the date of this Agreement and as of immediately prior to the Effective Time, there are and will be outstanding, options to purchase shares of Company Common Stock as set forth on Section 2.2 of the Company Disclosure Schedule (“Company Options”). As of the date of this Agreement and as of immediately prior to the Effective Time, there are and will be outstanding, warrants to purchase shares of Company Stock as set forth on Section 2.2 of the Company Disclosure Schedule (“Company Warrants”). Section 2.2 of the Company Disclosure Schedule sets forth a complete and accurate list of (i) all stockholders of the Company, indicating the number and class of Company Stock held by each stockholder, (ii) all stock option plans and other stock or equity-related plans of the Company (“Company Equity Plans”) and the number of shares of Company Common Stock remaining available for future awards thereunder, (iii) all outstanding Company Options and Company Warrants, indicating (A) the holder thereof, (B) the number of shares of Company Common Stock subject to each Company Option and Company Warrant, (C) the Company Equity Plan under which each Company Option was issued, (D) the exercise price, date of grant, vesting schedule and expiration date for each Company Option or Company Warrant, and (E) any terms regarding the acceleration of vesting, and (iv) all outstanding debt convertible into Company Stock, indicating (A) the date of issue, (B) the holder thereof, (C) the unpaid principal amount thereof, (D) the interest rate thereon, (E) the accrued and unpaid interest thereon, (F) the number and class of Company Stock into which such debt is convertible, and (G) the conversion price thereof. All of the issued and outstanding shares of Company Stock are, and all shares of Company Common Stock that may be issued upon exercise of Company Options or Company Warrants or conversion of convertible debt will be (upon issuance in accordance with their terms), duly authorized, validly issued, fully paid, nonassessable and, effective as of the Effective Time, free of all preemptive rights, and have been or will be issued in accordance with applicable laws, including but not limited to, the Securities Act. Other than the Company Options and Company Warrants and convertible debt listed in Section 2.2 of the Company Disclosure Schedule, there are no outstanding or authorized options, warrants, securities, rights, agreements or commitments to which the Company is a party or which are binding upon the Company providing for the issuance or redemption of any of Company Stock or pursuant to which any outstanding Company Stock is subject to vesting. There are no outstanding or authorized stock appreciation, phantom stock or similar rights with respect to the Company. Other than as listed in Section 2.2 of the Company Disclosure Schedule, there are no agreements to which the Company is a party or by which it is bound with respect to the voting (including without limitation voting trusts or proxies), registration under the Securities Act, or sale or transfer (including without limitation agreements relating to pre-emptive rights, rights of first refusal, co-sale rights or “drag-along” rights) of any securities of the Company. To the knowledge of the Company, there are no agreements among other parties, to which the Company is not a party and by which it is not bound, with respect to the voting (including without limitation voting trusts or proxies) or sale or transfer (including without limitation agreements relating to rights of first refusal, co-sale rights or “drag-along” rights) of any securities of the Company. All of the issued and outstanding shares of Company Common Stock were issued in compliance in all material respects with applicable securities laws.

2.3 Authorization of Transaction. The Company has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution and delivery by the Company of this Agreement and the Transaction Documentation, and, subject to the adoption of this Agreement and (a) the approval of the Merger by the vote of stockholders of the Company required by Delaware law and (b) the approvals and waivers set forth in Section 2.3 of the Company Disclosure Schedule (collectively, the “Company Consents”), the consummation by the Company of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action on the part of the Company. Without limiting the generality of the foregoing, the board of directors of the Company (i) determined that the Merger is fair and in the best interests of the Company and the Company Stockholders, (ii) adopted this

Agreement in accordance with the provisions of the Delaware Act, and (iii) directed that this Agreement and the Merger be submitted to the Company Stockholders for their adoption and approval and resolved to recommend that the Company Stockholders vote in favor of the adoption of this Agreement and the approval of the Merger. This Agreement has been duly and validly executed and delivered by the Company and constitutes a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited under applicable bankruptcy, insolvency and similar laws, rules or regulations affecting creditors' rights and remedies generally and to general principles of equity, whether applied in a court of law or a court of equity.

2.4 Non-contravention. Subject to the receipt of Company Consents and the filing of the Certificate of Merger as required by the Delaware Act, neither the execution and delivery by the Company of this Agreement or the Transaction Documentation, nor the consummation by the Company of the transactions contemplated hereby or thereby will (a) conflict with or violate any provision of the certificate of incorporation or bylaws of the Company, as amended to date, (b) require on the part of the Company or any Company Subsidiary any filing with, or any permit, authorization, consent or approval of, any court, arbitrational tribunal, administrative agency or commission or other governmental or regulatory authority or agency (a "Governmental Entity"), except for such permits, authorizations, consents and approvals for which the Company is obligated to use its Reasonable Best Efforts to obtain pursuant to Section 4.2(a), (c) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of obligations under, create in any party the right to terminate, modify or cancel, or require any notice, consent or waiver under, any contract or instrument to which the Company or any Company Subsidiary is a party or by which the Company or any Company Subsidiary is bound, except for (i) any conflict, breach, default, acceleration, termination, modification or cancellation in any contract or instrument set forth in Section 2.4 of the Company Disclosure Schedule, for which the Company is obligated to use its Reasonable Best Efforts to obtain waiver, consent or approval pursuant to Section 4.2 (b), (ii) any conflict, breach, default, acceleration, termination, modification or cancellation which would not reasonably be expected to have a Company Material Adverse Effect and would not reasonably be expected to adversely affect the consummation of the transactions contemplated hereby or (iii) any notice, consent or waiver the absence of which would not have a Company Material Adverse Effect and would not adversely affect the consummation of the transactions contemplated hereby, (d) result in the imposition of any Security Interest (as defined below) upon any material assets of the Company or any Company Subsidiary or (e) violate any federal, state, local, municipal, foreign, international, multinational, Governmental Entity or other constitution, law, statute, ordinance, principle of common law, rule, regulation, code, governmental determination, order, writ, injunction, decree, treaty, convention, governmental certification requirement or other public limitation, U.S. or non-U.S., including Tax and U.S. antitrust laws (collectively, "Laws") applicable to the Company or any Company Subsidiary, except for any violation which would not reasonably be expected to have a Company Material Adverse Effect. For purposes of this Agreement: "Security Interest" means any mortgage, pledge, security interest, encumbrance, charge or other lien (whether arising by contract or by operation of law), other than (i) mechanic's, materialmen's and similar Security Interests, (ii) Security Interests arising under worker's compensation, unemployment insurance, social security, retirement and similar legislation, or (iii) Security Interests on goods in transit incurred pursuant to documentary letters of credit, in each case arising in the Ordinary Course of Business (as defined below) of the Company and not material to the Company; and "Ordinary Course of Business" means the ordinary course of the Company's business, consistent with past practice (including with respect to frequency and amount).

#### 2.5 Subsidiaries.

(a) Section 2.5(a) of the Company Disclosure Schedule sets forth: (i) the name of each Company Subsidiary; (ii) the number and type of outstanding equity securities of each Company Subsidiary

and a list of the holders thereof; (iii) the jurisdiction of organization of each Company Subsidiary; (iv) the names of the officers and directors of each Company Subsidiary; and (v) the jurisdictions in which each Company Subsidiary is qualified or holds licenses to do business as a foreign corporation or other entity. For purposes of this Agreement, a “Subsidiary” shall mean any corporation, partnership, joint venture or other entity in which a Party has, directly or indirectly, an equity interest representing 50% or more of the equity securities thereof or other equity interests therein; a “Company Subsidiary” is a Subsidiary of the Company and a “Parent Subsidiary” is a Subsidiary of the Parent.

(b) Each Company Subsidiary is an entity duly organized, validly existing and in corporate and tax good standing under the laws of the jurisdiction of its incorporation. Each Company Subsidiary is duly qualified to conduct business and is in corporate and tax good standing under the laws of each jurisdiction in which the nature of its businesses or the ownership or leasing of its properties requires qualification to do business, except where the failure to be so qualified or in good standing, individually or in the aggregate, has not had and would not reasonably be expected to have a Company Material Adverse Effect. Each Company Subsidiary has all requisite power and authority to carry on the businesses in which it is engaged and to own and use the properties owned and used by it. The Company has delivered or made available to the Parent complete and accurate copies of the charter, bylaws or other organizational documents of each Company Subsidiary. No Company Subsidiary is in default under or in violation of any provision of its charter, bylaws or other organizational documents. All of the issued and outstanding equity securities of each Company Subsidiary (i) are duly authorized, validly issued, fully paid, nonassessable and free of preemptive rights, (ii) are held of record and beneficially by either the Company or any other Company Subsidiary and (iii) are held or owned free and clear of any restrictions on transfer (other than restrictions under the Securities Act and state or other applicable securities laws), claims, Security Interests, options, warrants, rights, contracts, calls, commitments, equities and demands. Except as set forth in Section 2.5(b) of the Company Disclosure Schedule, there are no outstanding or authorized options, warrants, rights, agreements or commitments to which the Company or any Company Subsidiary is a party or which are binding on any of them providing for the issuance, disposition or acquisition of any equity securities of any Company Subsidiary. There are no outstanding stock appreciation, phantom stock or similar rights with respect to any Company Subsidiary. To the knowledge of the Company, there are no voting trusts, proxies or other agreements or understandings with respect to the voting of any equity securities of any Company Subsidiary.

(c) Except as set forth in Section 2.5(c) of the Company Disclosure Schedule, the Company does not control directly or indirectly or have any direct or indirect equity participation or similar interest in any corporation, partnership, limited liability company, joint venture, trust or other business association which is not a Company Subsidiary.

## 2.6 Compliance with Laws. Each of the Company and its Subsidiaries:

(a) and the conduct and operations of their respective businesses, are in compliance with each Law applicable to the Company, any Company Subsidiary or any of their properties or assets, except for any violations or defaults that, individually or in the aggregate, have not had and would not reasonably be expected to have a Company Material Adverse Effect;

(b) has complied with all federal and state securities laws and regulations, except for any violations or defaults that, individually or in the aggregate, have not had and would not reasonably be expected to have a Company Material Adverse Effect, and all prior issuances of its securities have been either registered under the Securities Act or exempt from registration;

(c) has not been the subject of any voluntary or involuntary bankruptcy proceeding, nor has it been a party to any material litigation or, within the past two years, the subject of any threat of material litigation; and

(d) is not and has not, and the past and present officers, directors and Affiliates of the Company are not and have not, been the subject of, nor does any officer or director of the Company have any reason to believe that the Company or any of its officers, directors or Affiliates are the subject of, any civil, criminal or administrative investigation or proceeding brought by any federal or state agency having regulatory authority over such entity or person or alleging a violation of securities laws.

2.7 Financial Statements. The Company has provided or made available to the Parent: (a) the audited consolidated balance sheet of the Company (the "Company Balance Sheet") at December 31, 2015 (the "Company Balance Sheet Date"), and the related consolidated statements of operations and cash flows for the years ended December 31, 2015 and 2014 (collectively, the "Company Year-End Financial Statements"); and (b) the unaudited balance sheet of the Company (the "Company Interim Balance Sheet") at March 31, 2016 (the "Company Interim Balance Sheet Date") and the related statement of operations and cash flows for the threemonths ended March 31, 2016 (collectively, the "Company Interim Financial Statements" and together with the Company Year-End Financial Statements, the "Company Financial Statements"). The Company Financial Statements have been prepared in accordance with United States generally accepted accounting principles ("GAAP") applied on a consistent basis throughout the periods covered thereby, fairly present in all material respects the financial condition, results of operations and cash flows of the Company and the Company Subsidiaries on a consolidated basis as of the respective dates thereof and for the periods referred to therein, comply as to form with the applicable rules and regulations of the SEC for inclusion of such Company Financial Statements in the Parent's filings with the SEC as required by the Exchange Act, and are consistent in all material respects with the books and records of the Company and the Company Subsidiaries.

2.8 Absence of Certain Changes. Since the Company Interim Balance Sheet Date, and except as set forth in Section 2.8 of the Company Disclosure Schedule, to the knowledge of the Company, there has occurred no event or development which, individually or in the aggregate, has had, or could reasonably be expected to have in the future, a Company Material Adverse Effect.

2.9 Undisclosed Liabilities. To the knowledge of the Company, except as set forth in Section 2.9 of the Company Disclosure Schedule, none of the Company and the Company Subsidiaries has any liability (whether absolute or contingent, whether liquidated or unliquidated and whether due or to become due), except for (a) liabilities shown on the Company Interim Balance Sheet, (b) liabilities not exceeding \$100,000 in the aggregate that have arisen since the Company Interim Balance Sheet Date in the Ordinary Course of Business and (c) contractual and other liabilities incurred in the Ordinary Course of Business which are not required by GAAP to be reflected on a balance sheet.

2.10 Off-Balance Sheet Arrangements. Neither the Company nor any of its Subsidiaries is a party to, or has any commitment to become a party to, any joint venture, off balance sheet partnership or any similar contract or arrangement (including any contract or arrangement relating to any transaction or relationship between or among the Company or any of the Company Subsidiaries, on the one hand, and any unconsolidated affiliate, including any structured finance, special purpose or limited purpose entity or person, on the other hand, or any "off balance sheet arrangements" (as defined in Item 303(a) of Regulation S-K under the Exchange Act)), where the result, purpose or intended effect of such contract is to avoid disclosure of any material transaction involving, or material liabilities of, the Company or any Company Subsidiary in the Super 8-K.

2.11 Tax Matters.

(a) For purposes of this Agreement, the following terms shall have the following meanings:

(i) “Taxes” means all taxes, levies or other similar assessments or liabilities, including without limitation income, gross receipts, ad valorem, premium, value-added, excise, real property, personal property, sales, use, transfer, withholding, employment, unemployment insurance, social security, business license, business organization, environmental, workers compensation, payroll, profits, license, lease, service, service use, severance, stamp, occupation, windfall profits, customs, duties, franchise and other taxes imposed by the United States of America or any state, local or foreign government, or any agency thereof, or other political subdivision of the United States or any such government, and any interest, fines, penalties, assessments or additions to tax resulting from, attributable to or incurred in connection with any tax or any contest or dispute thereof.

(ii) “Tax Returns” means all United States of America, state, local or foreign government reports, returns, declarations, statements or other information required to be supplied to a taxing authority in connection with the Taxes.

(b) Except as set forth in Section 2.11 of the Company Disclosure Schedule, each of the Company and the Company Subsidiaries has filed on a timely basis (taking into account any valid extensions) all material Tax Returns that it was required to file, and all such Tax Returns were complete and accurate in all material respects. Neither the Company nor any Company Subsidiary is or has ever been a member of a group of corporations with which it has filed (or been required to file) consolidated, combined or unitary Tax Returns, other than a group of which only the Company and the Company Subsidiaries are or were members. Each of the Company and the Company Subsidiaries has paid on a timely basis all material Taxes that were due and payable in accordance with the Tax Returns. The unpaid Taxes of the Company and the Company Subsidiaries for tax periods through the Company Interim Balance Sheet Date do not exceed the accruals and reserves for Taxes (excluding accruals and reserves for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the Company Interim Balance Sheet. Neither the Company nor any Company Subsidiary has any actual or potential liability for any Tax obligation of any taxpayer other than the Company and the Company Subsidiaries (including without limitation any affiliated group of corporations or other entities that included the Company or any Company Subsidiary during a prior period). All Taxes that the Company or any Company Subsidiary is or was required by law to withhold or collect have been duly withheld or collected and, to the extent required, have been paid to the proper Governmental Entity.

(c) To the knowledge of the Company, no examination or audit of any Tax Return of the Company or any Company Subsidiary by any Governmental Entity is currently in progress or threatened or contemplated. Neither the Company nor any Company Subsidiary has been informed in writing by any jurisdiction that the jurisdiction believes that the Company or Company Subsidiary was required to file any Tax Return that was not filed. Neither the Company nor any Company Subsidiary has waived any statute of limitations with respect to Taxes, or agreed to an extension of time with respect to a Tax assessment or deficiency, which waiver or extension is still in effect.

(d) No state or federal “net operating loss” of the Company determined as of the Closing Date will be subject to limitation on its use pursuant to Section 382 of the Code or comparable provisions of state law as a result of the execution and delivery by the Company of this Agreement or the consummation by the Company of the transactions contemplated hereby.

2.12 Assets. Each of the Company and the Company Subsidiaries owns or leases all tangible assets reasonably necessary for the conduct of its businesses as presently conducted. Except as set forth in Section 2.12 of the Company Disclosure Schedule, no material amount of assets of the Company or any Company Subsidiary (tangible or intangible) (including without limitation any shares or other equity interests in or securities of any Company Subsidiary or any corporation, partnership, association or other business organization or division thereof) is subject to any Security Interest.

2.13 Owned Real Property. Neither the Company nor any Company Subsidiary owns any real property.

2.14 Real Property Leases. Section 2.14 of the Company Disclosure Schedule lists all real property leased or subleased to or by the Company or any Company Subsidiary. The Company has delivered or made available to the Parent complete and accurate copies of the leases and subleases listed in Section 2.14 of the Company Disclosure Schedule. With respect to each lease and sublease listed in Section 2.14 of the Company Disclosure Schedule:

(a) the lease or sublease is a legal, valid, binding and enforceable obligation of the Company or Company Subsidiary party thereto and is in full force and effect;

(b) the lease or sublease will not, as a result of the execution and delivery by the Company of this Agreement or the Transaction Documentation or the consummation by the Company of the transactions contemplated hereby or thereby, cease to be legal, valid, binding, enforceable and in full force and effect immediately following the Closing in accordance with the terms thereof as in effect immediately prior to the Closing, and the Closing will not, after the giving of notice, with lapse of time, or otherwise, result in a breach or default by the Company or any Company Subsidiary or, to the knowledge of the Company, any other party under such lease or sublease;

(c) neither the Company nor any Company Subsidiary nor, to the knowledge of the Company, any other party, is in breach or violation of, or default under, any such lease or sublease, and no event has occurred, is pending or, to the knowledge of the Company, is threatened, which, after the giving of notice, with lapse of time, or otherwise, would constitute a breach or default by the Company or any Company Subsidiary or, to the knowledge of the Company, any other party under such lease or sublease, except for any breach, violation or default that has not had and would not reasonably be anticipated to have a Company Material Adverse Effect;

(d) neither the Company nor any Company Subsidiary has assigned, transferred, conveyed, mortgaged, deeded in trust or encumbered any interest in the leasehold or subleasehold; and

(e) to the knowledge of the Company, there is no Security Interest, easement, covenant or other restriction applicable to the real property subject to such lease, except for recorded Security Interests, leases, easements, covenants and other restrictions which do not materially impair the current uses or the occupancy by the Company or a Company Subsidiary of the property subject thereto.

2.15 Contracts.

(a) Section 2.15 of the Company Disclosure Schedule lists the following agreements (written or oral) to which the Company or any Company Subsidiary is a party as of the date of this Agreement (other than the Transaction Documentation (as hereinafter defined)):

(i) any agreement (or group of related agreements) for the lease of personal property from or to third parties (A) which provides for lease payments in excess of \$100,000 per annum and (B) which has a remaining term longer than 12 months and is not cancellable without penalty by the Company on sixty (60) days or less prior written notice;

(ii) any agreement (or group of related agreements) for the purchase or sale of products or for the furnishing or receipt of services (A) which calls for performance over a period of more than one year, is not cancellable without penalty by the Company on sixty (60) days or less prior written notice and involves more than the sum of \$100,000 per annum, or (B) in which the Company or any Company Subsidiary has granted manufacturing rights, “most favored nation” pricing provisions or exclusive marketing or distribution rights relating to any products or territory or has agreed to purchase goods or services exclusively from a certain party;

(iii) any agreement which, to the knowledge of the Company, establishes a material joint venture or legal partnership;

(iv) any agreement (or group of related agreements) under which it has created, incurred, assumed or guaranteed (or may create, incur, assume or guarantee) indebtedness (including capitalized lease obligations) involving more than \$100,000 or under which it has imposed (or may impose) a Security Interest on any of its assets, tangible or intangible;

(v) any agreement that purports to limit in any material respect the right of the Company to engage in any line of business, or to compete with any person or operate in any geographical location;

(vi) any employment agreement or consulting agreement which provides for payments in excess of \$250,000 per annum (other than employment or consulting agreements terminable on less than thirty (30) days’ notice);

(vii) any agreement involving any officer, director or stockholder of the Company or any affiliate (as defined in Rule 12b-2 under the Exchange Act) thereof (an “Affiliate”) (other than stock subscription, stock option, restricted stock, warrant or stock purchase agreements the forms of which have been made available to Parent);

(viii) any agreement or commitment for capital expenditures in excess of \$100,000, for a single project (it being represented and warranted that the liability under all undisclosed agreements and commitments for capital expenditures does not exceed \$500,000 in the aggregate for all projects);

(ix) any other agreement required to be filed as an exhibit to the Super 8-K;

(x) any agreement, other than as contemplated by this Agreement, relating to the future sales of securities of the Company or any Company Subsidiary; and

(xi) any other agreement (or group of related agreements) (A) under which the Company is obligated to make payments or incur costs in excess of \$100,000 in any year or (B) not entered into in the Ordinary Course of Business, in each case which is not otherwise described in clauses (i) through (xi).

(b) The Company has delivered or made available to the Parent a complete and accurate copy of each agreement listed in Section 2.15 of the Company Disclosure Schedule. With respect to each agreement so listed, and except as set forth in Section 2.15 of the Company Disclosure Schedule: (i) the agreement is a legal, valid, binding and enforceable obligation of the Company and in full force and effect, except as such enforceability may be limited under applicable bankruptcy, insolvency and similar laws, rules or regulations affecting creditors' rights and remedies generally and to general principles of equity whether applied in a court of law or a court of equity; (ii) the agreement will not, as a result of the execution and delivery by the Company of this Agreement or the Transaction Documentation, or the consummation by the Company of the transactions contemplated hereby or thereby, cease to be a legal, valid, binding and enforceable obligation of the Company, except as such enforceability may be limited under applicable bankruptcy, insolvency and similar laws, rules or regulations affecting creditors' rights and remedies generally and to general principles of equity, whether applied in a court of law or a court of equity, or to be in full force and effect in accordance with the terms thereof as in effect immediately prior to the Closing; and (iii) neither the Company nor any Company Subsidiary nor, to the knowledge of the Company, any other party, is in breach or violation of, or default under, any such agreement, and no event has occurred, is pending or, to the knowledge of the Company, is threatened, which, after the giving of notice, with lapse of time, or otherwise, would constitute a breach or default by the Company or any Company Subsidiary or, to the knowledge of the Company, any other party under such contract, except for any breach, violation or default that has not had and would not reasonably be anticipated to have a Company Material Adverse Effect.

2.16 Accounts Receivable. All accounts receivable of the Company and the Company Subsidiaries reflected on the Company Interim Balance Sheet are valid receivables subject to no setoffs or counterclaims and are current and collectible (within 90 days after the date on which it first became due and payable), net of the applicable reserve for bad debts on the Company Balance Sheet. All accounts receivable reflected in the financial or accounting records of the Company that have arisen since the Company Interim Balance Sheet Date are valid receivables subject to no setoffs or counterclaims and are collectible (within 90 days after the date on which it first became due and payable), net of a reserve for bad debts in an amount proportionate to the reserve shown on the Company Balance Sheet.

2.17 Insurance. The Company maintains insurance policies (including fire, theft, casualty, general liability, workers compensation, business interruption, environmental, product liability and automobile insurance policies and bond and surety arrangements) of the type and in amounts customarily carried by organizations conducting businesses or owning assets similar to those of the Company and the Company Subsidiaries. There is no material claim pending under any such policy as to which coverage has been questioned, denied or disputed by the underwriter of such policy. All premiums due and payable under all such policies have been paid. The Company has no knowledge of any threatened termination of, or material premium increase with respect to, any such policy.

2.18 Litigation. Except as set forth in Section 2.18 of the Company Disclosure Schedule, as of the date of this Agreement, there is no action, suit, proceeding, claim, arbitration or investigation before any Governmental Entity or before any arbitrator (a "Legal Proceeding") which is pending or, to the Company's knowledge, threatened against the Company or any Company Subsidiary which (a) seeks either damages in excess of \$25,000 individually or \$50,000 in the aggregate, (b) if determined adversely to the Company or such Company Subsidiary, would have or be reasonably anticipated to have, individually or in the aggregate, a Company Material Adverse Effect or (c) in any manner challenges or seeks to prevent, enjoin, alter or delay the transactions contemplated by this Agreement.

## 2.19 Employees.

(a) Each employee of the Company is a party to a non-disclosure and assignment of inventions agreement with the Company or a Company Subsidiary. To the knowledge of the Company, no key employee (within the meaning of Section 416 of the Code) or group of employees acting in concert has given written notice of any plans to terminate employment with the Company or any Company Subsidiary.

(b) Neither the Company nor any Company Subsidiary is a party to or bound by any collective bargaining agreement, nor has any of them experienced any strikes, grievances, claims of unfair labor practices or other collective bargaining disputes. To the knowledge of the Company, (i) no organizational effort has been made or threatened, either currently or within the past two years, by or on behalf of any labor union with respect to employees of the Company or any Company Subsidiary, and (ii) to the Company's knowledge, there are no circumstances or facts which could individually or collectively give rise to a suit against the Company or any Company Subsidiary by any current or former employee or applicant for employment based on discrimination prohibited by fair employment practices laws.

## 2.20 Employee Benefits.

(a) For purposes of this Agreement, the following terms shall have the following meanings:

(i) "Employee Benefit Plan" means any "employee pension benefit plan" (as defined in Section 3(2) of ERISA), any "employee welfare benefit plan" (as defined in Section 3(1) of ERISA), and any other written or oral plan, agreement or arrangement providing direct or indirect compensation for services rendered, including without limitation insurance coverage, severance benefits, disability benefits, deferred compensation, bonuses, stock options, stock purchase, phantom stock, stock appreciation or other forms of incentive compensation or post-retirement compensation.

(ii) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

(iii) "ERISA Affiliate" means any entity which is, or at any applicable time was, a member of (1) a controlled group of corporations (as defined in Section 414(b) of the Code), (2) a group of trades or businesses under common control (as defined in Section 414(c) of the Code), or (3) an affiliated service group (as defined under Section 414(m) of the Code or the regulations under Section 414(o) of the Code), any of which includes or included the Company or a Company Subsidiary.

(b) Section 2.20(b) of the Company Disclosure Schedule contains a complete and accurate list of all material Employee Benefit Plans maintained, or contributed to, by the Company, any Company Subsidiary or any ERISA Affiliate (collectively, the "Company Benefit Plans"); provided that the following Employee Benefit Plans shall not be listed in Section 2.20(b): (A) offer letters or other employee service agreements that provide for employment that is terminable "at will" and that are terminable without severance or change of control pay or benefits, in which case only forms of such agreements shall be scheduled, (B) consulting agreements that are terminable without material cost or material liability, in which case only forms of such agreements shall be scheduled, unless any such contract provides severance or change of control pay or benefits that are, in each case, greater than required by applicable Law). Except as would not, individually or in the aggregate, be reasonably expected to result in a Company Material Adverse Effect, each Company Benefit Plan has been administered in all material respects in accordance with its

terms and each of the Company, the Company Subsidiaries and the ERISA Affiliates has in all material respects met its obligations with respect to such Company Benefit Plan.

(c) Except as would not, individually or in the aggregate, be reasonably expected to result in a Company Material Adverse Effect, to the knowledge of the Company, there are no Legal Proceedings (except claims for benefits payable in the normal operation of the Company Benefit Plans and proceedings with respect to qualified domestic relations orders, qualified medical support orders or similar benefit directives) against or involving any Company Benefit Plan or asserting any rights or claims to benefits under any Company Benefit Plan that could give rise to any material liability to the Company or any Company Subsidiary.

(d) Neither the Company, any Company Subsidiary nor any ERISA Affiliate has ever maintained an Employee Benefit Plan subject to Section 412 of the Code or Title IV of ERISA.

(e) At no time has the Company, any Company Subsidiary or any ERISA Affiliate been obligated to contribute to any “multiemployer plan” (as defined in Section 4001(a)(3) of ERISA).

(f) There are no unfunded obligations under any Company Benefit Plan providing benefits after termination of employment to any employee of the Company or any Company Subsidiary (or to any beneficiary of any such employee), including but not limited to retiree health coverage and deferred compensation, but excluding continuation of health coverage required to be continued under Section 4980B of the Code or other applicable Law and insurance conversion privileges under state law.

(g) No Company Benefit Plan is funded by, associated with or related to a “voluntary employee’s beneficiary association” within the meaning of Section 501(c)(9) of the Code.

(h) Section 2.15 or Section 2.20(h) of the Company Disclosure Schedule discloses each: (i) agreement with any stockholder, director, executive officer or other key employee of the Company or any Company Subsidiary the benefits of which are contingent, or the terms of which are materially altered, upon the occurrence of a transaction involving the Company or any Company Subsidiary of the nature of any of the transactions contemplated by this Agreement; (ii) agreement, plan or arrangement under which any person may receive payments from the Company or any Company Subsidiary that may be subject to the tax imposed by Section 4999 of the Code or included in the determination of such person’s “parachute payment” under Section 280G of the Code; and (iii) agreement or plan binding the Company or any Company Subsidiary, including without limitation any stock option plan, stock appreciation right plan, restricted stock plan, stock purchase plan, severance benefit plan or Company Benefit Plan, any of the benefits of which will be increased, or the vesting of the benefits of which will be accelerated, by the occurrence of any of the transactions contemplated by this Agreement or the value of any of the benefits of which will be calculated on the basis of any of the transactions contemplated by this Agreement.

(i) The accruals for vacation, sickness and disability expenses are accounted for on the Company Interim Balance Sheet and are adequate and materially reflect the expenses associated therewith in accordance with GAAP.

## 2.21 Environmental Matters.

(a) Each of the Company and the Company Subsidiaries has complied with all applicable Environmental Laws (as defined below), except for violations of Environmental Laws that, individually or in the aggregate, have not had and would not reasonably be expected to have a Company Material Adverse Effect. There is no pending or, to the knowledge of the Company, threatened civil or

criminal litigation, written notice of violation, formal administrative proceeding, or investigation, inquiry or information request by any Governmental Entity, relating to any Environmental Law involving the Company or any Company Subsidiary, except for litigation, notices of violations, formal administrative proceedings or investigations, inquiries or information requests that, individually or in the aggregate, have not had and would not reasonably be expected to have a Company Material Adverse Effect. For purposes of this Agreement, “Environmental Law” means any Law relating to the environment, including without limitation any Law pertaining to (i) treatment, storage, disposal, generation and transportation of industrial, toxic or hazardous materials or substances or solid or hazardous waste; (ii) air, water and noise pollution; (iii) groundwater and soil contamination; (iv) the release or threatened release into the environment of industrial, toxic or hazardous materials or substances, or solid or hazardous waste, including without limitation emissions, discharges, injections, spills, escapes or dumping of pollutants, contaminants or chemicals; (v) the protection of wild life, marine life and wetlands, including without limitation all endangered and threatened species; (vi) storage tanks, vessels, containers, abandoned or discarded barrels, and other closed receptacles; (vii) the reclamation of mines; (viii) health and safety of employees and other persons; and (ix) manufacturing, processing, using, distributing, treating, storing, disposing, transporting or handling of materials regulated under any law as pollutants, contaminants, toxic or hazardous materials or substances or oil or petroleum products or solid or hazardous waste. As used above, the terms “release” and “environment” shall have the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”).

(b) To the knowledge of the Company, without independent investigation, there are no documents that contain any environmental reports, investigations or audits relating to premises currently or previously owned or operated by the Company or a Company Subsidiary (whether conducted by or on behalf of the Company or a Company Subsidiary or a third party, and whether done at the initiative of the Company or a Company Subsidiary or directed by a Governmental Entity or other third party) which were issued or conducted during the past five years and which the Company has possession of or access to.

(c) To the knowledge of the Company, there is no material environmental liability with respect to any solid or hazardous waste transporter or treatment, storage or disposal facility that has been used by the Company or any Company Subsidiary.

2.22 Legal Compliance. Each of the Company and the Company Subsidiaries, and the conduct and operations of their respective businesses, are in compliance with each Law applicable to the Company, any Company Subsidiary or any of their properties or assets, except for any violations or defaults that, individually or in the aggregate, have not had and would not reasonably be expected to have a Company Material Adverse Effect.

2.23 Permits. The Company and the Company Subsidiaries have all authorizations, approvals, clearances, licenses, permits, certificates or exemptions (including, without limitation, manufacturing approvals and authorizations, pricing and reimbursement approvals, labeling approvals, registration notifications or their foreign equivalent, and including those issued or required under Environmental Laws and those relating to the occupancy or use of owned or leased real property) from any Governmental Entity (“Permits”) that are required for the Company and the Company Subsidiaries to conduct their respective businesses as presently conducted, except for those the absence of which, individually or in the aggregate, have not had and would not reasonably be expected to have a Company Material Adverse Effect. Each such Permit is in full force and effect, and except for such instances as would not reasonably be expected to have a Company Material Adverse Effect, no such Permit will cease to be in full force and effect as a result of the execution and delivery by the Company of this Agreement or the consummation by the Company of the transactions contemplated hereby.

2.24 Certain Business Relationships with Affiliates. Except as listed in Section 2.24 of the Company Disclosure Schedule, no Affiliate of the Company or of any Company Subsidiary (a) owns any material property or right, tangible or intangible, which is used in and material to the business of the Company or any Company Subsidiary, (b) to the knowledge of the Company, has any claim or cause of action against the Company or any Company Subsidiary, or (c) owes any money to, or is owed any money by, the Company or any Company Subsidiary.

2.25 Brokers' Fees. Other than obligations arising under the Private Placement Engagement Agreement, dated June 1, 2016, among the Parent and The Benchmark Company LLC and Katalyst Securities LLC (the "Placement Agents"), and except as listed in Section 2.25 of the Company Disclosure Schedule, neither the Company nor any Company Subsidiary has any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

2.26 Books and Records. The minute books and other similar records of the Company and each Company Subsidiary made available to the Parent contain, in all material respects, complete and accurate records in all material respects of all actions taken at any meetings of the Company's or such Company Subsidiary's stockholders, board of directors or any committees thereof and of all written consents executed in lieu of the holding of any such meetings.

#### 2.27 Intellectual Property.

(a) Each of the Company and any Company Subsidiary owns, is licensed or otherwise possesses legally enforceable rights to use, license and exploit all issued patents, copyrights, trademarks, service marks, trade names, trade secrets, and registered domain names and all applications for registration therefor (collectively, the "Intellectual Property Rights") and all computer programs and other computer software, databases, know-how, proprietary technology, formulae, and development tools, together with all goodwill related to any of the foregoing (collectively, the "Intellectual Property"), in each case as is necessary to conduct their respective businesses as presently conducted, the absence of which would be considered reasonably likely to result in a Company Material Adverse Effect.

(b) Section 2.27(b) of the Company Disclosure Schedule sets forth, with respect to all issued patents and all registered copyrights, trademarks, service marks and domain names registered with any Governmental Entity by the Company or any Company Subsidiary or for which an application for registration has been filed with any Governmental Entity by the Company or any Company Subsidiary, (i) the registration or application number, the date filed and the title, if applicable, of the registration or application and (ii) the names of the jurisdictions covered by the applicable registration or application. Section 2.27(b) of the Company Disclosure Schedule identifies each agreement currently in effect containing any ongoing royalty or payment obligations of the Company and any Company Subsidiary in excess of \$100,000 per annum with respect to Intellectual Property Rights and Intellectual Property that are licensed or otherwise made available to the Company and any Company Subsidiary.

(c) Except as set forth on Section 2.27(c) of the Company Disclosure Schedule, all Intellectual Property Rights of the Company and the Company Subsidiaries that have been registered by them with any Governmental Entity are valid and subsisting, except as would not reasonably be expected to have a Company Material Adverse Effect. As of the Effective Date, in connection with such registered Intellectual Property Rights, all necessary registration, maintenance and renewal fees will have been paid and all necessary documents and certificates will have been filed with the relevant Governmental Entities.

(d) Neither the Company nor any Company Subsidiary is, or will as a result of the consummation of the Merger or other transactions contemplated by this Agreement be, in breach in any

material respect of any license, sublicense or other agreement relating to the Intellectual Property Rights of the Company and the Company Subsidiaries, or any licenses, sublicenses or other agreements as to which the Company or any Company Subsidiary is a party and pursuant to which the Company or any Company Subsidiary uses any patents, copyrights (including software), trademarks or other intellectual property rights of or owned by third parties (the “Third Party Intellectual Property Rights”), the breach of which would be reasonably likely to result in a Company Material Adverse Effect.

(e) Except as set forth on Section 2.27(e) of the Company Disclosure Schedule, neither the Company nor any Company Subsidiary has been named as a defendant in any suit, action or proceeding which involves a claim of infringement or misappropriation of any Third Party Intellectual Property Right and neither the Company nor any Company Subsidiary has received any notice or other communication (in writing or otherwise) of any actual or alleged infringement, misappropriation or unlawful or unauthorized use of any Third Party Intellectual Property Right. With respect to its product candidates and products in research or development described in the Super 8-K, after the same are marketed, the Company will not, to its knowledge, infringe any Third Party Intellectual Property Rights in any material manner.

(f) To the knowledge of the Company, except as set forth on Section 2.27(f) of the Company Disclosure Schedule, no other person is infringing, misappropriating or making any unlawful or unauthorized use of any Intellectual Property Rights of the Company and the Company Subsidiaries in a manner that has a material impact on the business of the Company or any Company Subsidiary, except for such infringement, misappropriation or unlawful or unauthorized use as would not be reasonably expected to have a Company Material Adverse Effect.

2.28 Disclosure. None of: (a) the representations and warranties by the Company contained in this Agreement, (b) the Company Disclosure Schedule, (c) the draft dated June 2, 2016, of the Super 8-K (insofar as it relates to the Company), in the form delivered by the Company to the Company Stockholders, or (d) any other document, certificate or other instrument delivered or to be delivered by or on behalf of the Company pursuant to this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary in order to make the statements made herein or therein, in light of the circumstances under which they were or will be made, not misleading.

2.29 Duty to Make Inquiry. To the extent that any of the representations or warranties in this Article II are qualified by “knowledge” or “belief,” the Company represents and warrants that it has made reasonable inquiry and investigation concerning the matters to which such representations and warranties relate, including, but not limited to, reasonable inquiry by its directors, officers and key personnel.

2.30 Accountants. SingerLewak LLP (the “Company Auditor”) is and has been throughout the periods covered by the Company Financial Statements (a) a registered public accounting firm (as defined in Section 2(a)(12) of the Sarbanes-Oxley Act of 2002) and (b) “independent” with respect to the Company within the meaning of Regulation S-X. Except as set forth on Section 2.30 of the Company Disclosure Schedule, the reports of the Company Auditor (or any prior auditor) on the financial statements of the Company for the past three fiscal years and any subsequent interim period did not contain an adverse opinion or a disclaimer of opinion, or were qualified as to uncertainty, audit scope, or accounting principles. During the Company’s most recent fiscal year and the subsequent interim periods, there were no disagreements with the Company Auditor on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedures. None of the reportable events listed in Item 304(a)(1)(iv) or (v) of Regulation S-K occurred with respect to the Company Auditor.

2.31 FDA and Related Matters. The conduct of business by the Company complies, and at all times has substantially complied, in all material respects with the Federal Food, Drug and Cosmetic Act (the “FDCA”) and similar federal, state and foreign laws applicable to the evaluation, testing, manufacturing, distribution, advertising and marketing of each of the Company’s products, in whatever stage of development or commercialization except to the extent that the failure to so comply would not have a Company Material Adverse Effect. To the knowledge of the Company, as of the date hereof, neither the United States Food and Drug Administration (the “FDA”) nor any comparable Governmental Entity is considering limiting, suspending or revoking any Permit pursuant to the FDCA and similar federal, state and foreign laws or changing the marketing classification or labeling of the products of the Company or any Company Subsidiary. To the knowledge of the Company, there is no untrue statement of material fact, fraudulent statement or material omission in any product application or other submission by the Company or any Company Subsidiary to the FDA or any comparable Governmental Entity. As of the date hereof, to the knowledge of the Company, no event has occurred or condition or state of facts exists which would constitute a breach or default or would cause revocation or termination of any such Permit except to the extent that such breach, default, revocation or termination would not have a Company Material Adverse Effect. Except as set forth on Section 2.31 of the Company Disclosure Schedule, the Company and Company Subsidiaries have not received any Form FDA-483, notice of adverse finding, FDA warning letter, notice of violation or “untitled letter,” notice of FDA action for import detention or refusal, or any other notice from the FDA or other Governmental Entity alleging or asserting noncompliance with any applicable Laws or Permits. The Company and Company Subsidiaries are not subject to any obligation arising under an administrative or regulatory enforcement action, FDA inspection, FDA warning letter, FDA notice of violation letter or other notice, response or commitment made to or with the FDA or any comparable Governmental Entity. The Company and Company Subsidiaries have made all notifications, submissions and reports required by the FDCA or similar federal, state and foreign Laws, except to the extent that the failure to make such notifications, submission or reports would not have a Company Material Adverse Effect. The preclinical studies, tests and clinical trials conducted by or on behalf of the Company (the “Company Studies and Trials”) were and, if still pending, are being, conducted in all material respects in accordance with experimental protocols, procedures and controls pursuant to, where applicable, accepted professional scientific standards; the descriptions of the results of the Company Studies and Trials contained in the Super 8-K are accurate in all material respects; the Company has no knowledge of any other studies or trials not described in the Super 8-K, the results of which are materially inconsistent with or call into question the results described or referred to in the Super 8-K; and the Company has not received any written notices or correspondence from the FDA or any foreign, state or local governmental authority exercising comparable authority requiring the termination or suspension or material modification of any Company Studies and Trials, which termination or suspension or material modification would reasonably be expected to have a Material Adverse Effect. The Company has obtained (or caused to be obtained) informed consent by or on behalf of each human subject who participated in the Company Studies and Trials. In using or disclosing patient information received by the Company in connection with the Company Studies and Trials, the Company has complied in all material respects with all applicable laws and regulatory rules, including, without limitation, the Health Insurance Portability and Accountability Act of 1996 and the rules and regulations thereunder.

**ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF THE PARENT  
AND THE ACQUISITION SUBSIDIARY**

The Parent represents and warrants to the Company that the statements contained in this Article III are, after giving effect to the Split-Off (unless otherwise stated to the contrary), true and correct, except as set forth in the disclosure schedule provided by the Parent to the Company on the date hereof (the “Parent Disclosure Schedule”). The Parent Disclosure Schedule shall be arranged in paragraphs corresponding to

the numbered and lettered paragraphs contained in this Article III; and to the extent that it is reasonably apparent from the context thereof that such disclosure also applies to any other numbered paragraph contained in this Article III, the disclosures in any numbered paragraph of the Parent Disclosure Schedule shall qualify such other corresponding numbered paragraph in this Article III. For purposes of this Article III, the phrase “to the knowledge of the Parent” or any phrase of similar import shall be deemed to refer to the actual knowledge of Andrey Zasoryn as well as any other knowledge which such person would have possessed had such person made reasonable inquiry of the accountants and attorneys of the Parent.

3.1 Organization, Qualification and Corporate Power. The Parent is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and the Acquisition Subsidiary is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Parent is duly qualified to conduct business and is in good standing under the laws of each jurisdiction in which the nature of its businesses or the ownership or leasing of its properties requires such qualification, except where the failure to be so qualified or in good standing, individually or in the aggregate, has not had and would not reasonably be expected to have a Parent Material Adverse Effect (as defined below). The Parent has all requisite corporate power and authority to carry on the businesses in which it is engaged and to own and use the properties owned and used by it. The Parent has furnished or made available to the Company complete and accurate copies of its certificate or articles of incorporation and bylaws. Neither the Parent nor the Acquisition Subsidiary is in default under or in violation of any provision of its certificate or articles of incorporation, as amended to date, its bylaws, as amended to date, or any agreement referred to in Section 3.15 or 3.16, except where such default or violation would not reasonably be expected to have a Parent Material Adverse Effect. For purposes of this Agreement, “Parent Material Adverse Effect” means a material adverse effect on the assets, business, financial condition, or results of operations of the Parent and its subsidiaries, taken as a whole, provided that in no event shall any effects (whether alone or in combination) resulting from or arising in connection with any of the following be deemed to constitute, nor shall any of the following be taken into account in determining whether there has occurred, a Parent Material Adverse Effect: (a) conditions generally affecting the industries in which the Parent or its subsidiaries participate or the U.S. or global economy or capital markets as a whole; (b) any failure by the Parent to meet internal projections or forecasts or revenue or earnings predictions; (c) the execution, delivery, announcement or performance of the obligations under this Agreement or the announcement, pendency or anticipated consummation of the Merger; (d) any natural disaster or any acts of terrorism, sabotage, military action or war or any escalation or worsening thereof; (e) any changes (after the date of this Agreement) in GAAP, other applicable accounting rules or applicable Law, or changes or developments in political, regulatory or legislative conditions, or (f) the taking of any action required by this Agreement.

3.2 Capitalization. As of immediately prior to the Effective Time, but prior to giving effect to the issuance of the Merger Shares or the Share Contribution (as defined below), the authorized capital stock of the Parent will consist of 100,000,000 shares of Parent Common Stock, \$0.001 par value per share, of which 4,503,602 shares will be issued and outstanding, and 5,000,000 shares of preferred stock, \$0.001 par value per share, of which no shares will be outstanding (assuming the effect of the dividend declared on May 24, 2016). The Parent Common Stock is presently eligible for quotation and trading on the OTC Markets Group Inc. (“OTC Markets”) and is not subject to any notice of suspension or delisting. All of the issued and outstanding shares of Parent Common Stock are duly authorized, validly issued, fully paid, nonassessable and free of all preemptive rights and have been issued in accordance with applicable laws, including, but not limited to, the Securities Act. Except as contemplated by the Transaction Documentation or as described in Section 3.2 of the Parent Disclosure Schedule, there are no outstanding or authorized options, warrants, rights, agreements or commitments to which the Parent is a party or which are binding upon the Parent providing for the issuance or redemption of any of its capital stock. There are no outstanding or authorized stock appreciation, phantom stock or similar rights with respect to the Parent. Except as contemplated by

the Transaction Documentation, there are no agreements to which the Parent is a party or by which it is bound with respect to the voting (including without limitation voting trusts or proxies), registration under the Securities Act, or sale or transfer (including without limitation agreements relating to pre-emptive rights, rights of first refusal, co-sale rights or “drag-along” rights) of any securities of the Parent. There are no agreements among other parties, to which the Parent is not a party and by which it is not bound, with respect to the voting (including without limitation voting trusts or proxies) or sale or transfer (including without limitation agreements relating to rights of first refusal, co-sale rights or “drag-along” rights) of any securities of the Parent. All of the issued and outstanding shares of Parent Common Stock were issued in compliance in all material respects with applicable federal and state securities laws. The Merger Shares to be issued at the Closing pursuant to Section 1.5 hereof, when issued and delivered in accordance with the terms hereof and of the Certificate of Merger, shall be duly and validly issued, fully paid and nonassessable and free of all preemptive rights and will be issued in compliance with applicable federal and state securities laws. At the Effective Time, after giving effect to the surrender by the Split-Off Purchaser of 3,603,602 shares (assuming the effect of the dividend declared on May 24, 2016) of Parent Common Stock (the Share Contribution) in connection with the Split-Off and the cancellation thereof, but prior to giving effect to the issuance of the Merger Shares, there will be 900,000 shares of Parent Common Stock issued and outstanding.

3.3 Authorization of Transaction. Each of the Parent and the Acquisition Subsidiary has all requisite power and authority to execute and deliver this Agreement and (in the case of the Parent) the Split-Off Agreement and the General Release Agreement and to perform its obligations hereunder and thereunder. The execution and delivery by the Parent and the Acquisition Subsidiary of this Agreement and (in the case of the Parent) the Split-Off Agreement and the General Release Agreement and the agreements contemplated hereby and thereby (collectively, the “Transaction Documentation”), and the consummation by the Parent and the Acquisition Subsidiary of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action on the part of the Parent and the Acquisition Subsidiary, respectively. Each of the documents included in the Transaction Documentation has been duly and validly executed and delivered by the Parent or the Acquisition Subsidiary, as the case may be, and constitutes a valid and binding obligation of the Parent or the Acquisition Subsidiary, as the case may be, enforceable against them in accordance with its terms, except as such enforceability may be limited under applicable bankruptcy, insolvency and similar laws, rules or regulations affecting creditors’ rights and remedies generally and to general principles of equity, whether applied in a court of law or a court of equity.

3.4 Noncontravention. Subject to the filing of the Certificate of Merger as required by the Delaware Act, neither the execution and delivery by the Parent or the Acquisition Subsidiary, as the case may be, of this Agreement or the Transaction Documentation, nor the consummation by the Parent or the Acquisition Subsidiary, as the case may be, of the transactions contemplated hereby or thereby, will (a) conflict with or violate any provision of the organizational documents or bylaws of the Parent or the Acquisition Subsidiary, as the case may be, (b) require on the part of the Parent or the Acquisition Subsidiary, as the case may be, any filing with, or permit, authorization, consent or approval of, any Governmental Entity, other than required notification to the Financial Industry Regulatory Authority (“FINRA”), (c) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of obligations under, create in any party any right to terminate, modify or cancel, or require any notice, consent or waiver under, any contract or instrument to which the Parent or the Acquisition Subsidiary, as the case may be, is a party or by which either is bound or to which any of their assets are subject, except for (i) any conflict, breach, default, acceleration, termination, modification or cancellation which would not reasonably be expected to have a Parent Material Adverse Effect and would not reasonably be expected to adversely affect the consummation of the transactions contemplated hereby or (ii) any notice, consent or waiver the absence of which would not reasonably be expected to have a Parent Material Adverse Effect and would not reasonably be expected to adversely affect the consummation of the

transactions contemplated hereby, (d) result in the imposition of any Security Interest upon any assets of the Parent or the Acquisition Subsidiary or (e) violate any Laws applicable to the Parent or the Acquisition Subsidiary, except for any violation which would not reasonably be expected to have a Parent Material Adverse Effect.

### 3.5 Subsidiaries.

(a) The Parent has no Subsidiaries other than the Acquisition Subsidiary and the Split-Off Subsidiary. Each of the Acquisition Subsidiary and the Split-Off Subsidiary is an entity duly organized, validly existing and in corporate and tax good standing under the laws of the jurisdiction of its organization. The Acquisition Subsidiary was formed solely to effectuate the Merger, the Split-Off Subsidiary was formed solely to effectuate the Split-Off, and neither of them has conducted any business operations since its organization. The Parent has delivered or made available to the Company complete and accurate copies of the charter, bylaws or other organizational documents of the Acquisition Subsidiary and the Split-Off Subsidiary. The Acquisition Subsidiary has no assets other than minimal paid-in capital, has no liabilities or other obligations, and is not in default under or in violation of any provision of its charter, bylaws or other organizational documents. All of the issued and outstanding shares of capital stock of the Acquisition Subsidiary are duly authorized, validly issued, fully paid, nonassessable and free of preemptive rights. All shares of the Acquisition Subsidiary are owned by the Parent free and clear of any restrictions on transfer (other than restrictions under the Securities Act and state securities laws), claims, Security Interests, options, warrants, rights, contracts, calls, commitments, equities and demands. There are no outstanding or authorized options, warrants, rights, agreements or commitments to which the Parent or the Acquisition Subsidiary is a party or which are binding on any of them providing for the issuance, disposition or acquisition of any capital stock of the Parent, the Acquisition Subsidiary or the Split-Off Subsidiary (except as contemplated by this Agreement and the Split-Off Agreement). There are no outstanding stock appreciation, phantom stock or similar rights with respect to the Acquisition Subsidiary. There are no voting trusts, proxies or other agreements or understandings with respect to the voting of any capital stock of the Acquisition Subsidiary.

(b) At all times from December 28, 2012 (inception) through the date of this Agreement, the business and operations of the Parent have been conducted exclusively through the Parent.

(c) The Parent does not control directly or indirectly or have any direct or indirect participation or similar interest in any corporation, partnership, limited liability company, joint venture, trust or other business association which is not a Subsidiary.

3.6 SEC Reports and Prior Registration Statement Matters. The Parent has furnished or made available to the Company complete and accurate copies, as amended or supplemented, of its (a) Annual Report on Form 10-K for the fiscal year ended July 31, 2015, as filed with the SEC, which contained audited balance sheets of the Parent as of July 31, 2015, and the related statements of operation, changes in shareholders' equity and cash flows for the two years then ended; and (b) Quarterly Reports on Form 10-Q for the quarterly periods ended October 30, 2015, January 31, 2016, and April 20, 2016 and (c) all other reports filed by the Parent under Section 13 or subsections (a) or (c) of Section 14 of the Exchange Act with the SEC (such reports are collectively referred to herein as the "Parent Reports"). The Parent Reports constitute all of the documents required to be filed or furnished by the Parent with the SEC, including under Section 13 or subsections (a) or (c) of Section 14 of the Exchange Act, through the date of this Agreement. The Parent Reports complied in all material respects with the requirements of the Exchange Act and the rules and regulations thereunder when filed. As of the date hereof, there are no outstanding or unresolved comments in comment letters received from the staff of the SEC with respect to any of the Parent Reports. As of their respective dates, the Parent Reports, including any financial statements, schedules or exhibits

included or incorporated by reference therein, did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. None of the Parent Subsidiaries is required to file or furnish any forms, reports or other documents with the SEC. No order suspending the effectiveness of any registration statement of Parent under the Securities Act or the Exchange Act has been issued by the SEC and, to Parent's knowledge, no proceedings for that purpose have been initiated or threatened by the SEC.

3.7 Compliance with Laws. Each of the Parent and its Subsidiaries:

(a) and the conduct and operations of their respective businesses, are in compliance with each Law applicable to the Parent, any Parent Subsidiary or any of their properties or assets, except for any violations or defaults that, individually or in the aggregate, have not had and would not reasonably be expected to have a Parent Material Adverse Effect;

(b) has complied with all federal and state securities laws and regulations, including being current in all of its reporting obligations under such federal and state securities laws and regulations, except for any violations or defaults that, individually or in the aggregate, have not had and would not reasonably be expected to have a Parent Material Adverse Effect, and all prior issuances of its securities have been either registered under the Securities Act or exempt from registration;

(c) has not been the subject of any voluntary or involuntary bankruptcy proceeding, nor has it been a party to any material litigation or, within the past two years, the subject of any threat of material litigation;

(d) is not and has not, and the past and present officers, directors and Affiliates of the Parent are not and have not, been the subject of, nor does any officer or director of the Parent have any reason to believe that the Parent or any of its officers, directors or Affiliates are the subject of, any civil, criminal or administrative investigation or proceeding brought by any federal or state agency having regulatory authority over such entity or person or alleging a violation of securities laws;

(e) except as set forth in Section 3.7(f) of the Parent Disclosure Schedule, does not and will not on the Closing, have any liabilities, contingent or otherwise, including but not limited to notes payable and accounts payable, exclusive of professional fees and expenses related to the Merger and Private Placement Offering transactions, including brokers' fees, and is not a party to any executory agreements; and

(f) is not a "blank check company" as such term is defined by Rule 419 of the Securities Act.

3.8 Financial Statements. The audited financial statements and unaudited interim financial statements of the Parent included in the Parent Reports (collectively, the "Parent Financial Statements") (i) complied as to form in all material respects with applicable accounting requirements and, as appropriate, the published rules and regulations of the SEC with respect thereto when filed, (ii) were prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby (except as may be indicated therein or in the notes thereto, and in the case of quarterly financial statements, as permitted by Form 10-Q under the Exchange Act), (iii) fairly present in all material respects the financial condition, results of operations and cash flows of the Parent as of the respective dates thereof and for the periods referred to therein, and (iv) are consistent in all material respects with the books and records of the Parent.

3.9 Absence of Certain Changes. Since the date of the balance sheet contained in the most recent Parent Report, (a) there has occurred no event or development which, individually or in the aggregate, has had, or could reasonably be expected to have in the future, a Parent Material Adverse Effect and (b) neither the Parent nor the Acquisition Subsidiary has taken any of the actions set forth in paragraphs (a) through (m) of Section 4.6.

3.10 Undisclosed Liabilities. None of the Parent and its Subsidiaries has any liability (whether known or unknown, whether absolute or contingent, whether liquidated or unliquidated and whether due or to become due), except for (a) liabilities shown on the balance sheet contained in the most recent Parent Report, (b) liabilities which have arisen since the date of the balance sheet contained in the most recent Parent Report in the Ordinary Course of Business which do not exceed \$25,000 in the aggregate and (c) contractual and other liabilities incurred in the Ordinary Course of Business which are not required by GAAP to be reflected on a balance sheet.

3.11 Off-Balance Sheet Arrangements. Neither the Parent nor any of its Subsidiaries is a party to, or has any commitment to become a party to, any joint venture, off balance sheet partnership or any similar contract or arrangement (including any contract or arrangement relating to any transaction or relationship between or among the Parent and any of its Subsidiaries, on the one hand, and any unconsolidated affiliate, including any structured finance, special purpose or limited purpose entity or person, on the other hand, or any "off balance sheet arrangements" (as defined in Item 303(a) of Regulation S-K under the Exchange Act)), where the result, purpose or intended effect of such contract is to avoid disclosure of any material transaction involving, or material liabilities of, the Parent or any of its Subsidiaries in the Parent's or such Subsidiary's published financial statements or other Parent Reports.

3.12 Tax Matters.

(a) Each of the Parent and its Subsidiaries has filed on a timely basis all Tax Returns that it was required to file, and all such Tax Returns were complete and accurate in all material respects. Neither the Parent nor any of its Subsidiaries is or has ever been a member of a group of corporations with which it has filed (or been required to file) consolidated, combined or unitary Tax Returns, other than a group of which only the Parent and its Subsidiaries are or were members. Each of the Parent and its Subsidiaries has paid on a timely basis all Taxes that were due and payable. The unpaid Taxes of the Parent and its Subsidiaries for tax periods through the date of the balance sheet contained in the most recent Parent Report do not exceed the accruals and reserves for Taxes (excluding accruals and reserves for deferred Taxes established to reflect timing differences between book and Tax income) set forth on such balance sheet. Neither the Parent nor any of its Subsidiaries has any actual or potential liability for any Tax obligation of any taxpayer (including without limitation any affiliated group of corporations or other entities that included the Parent or any of its Subsidiaries during a prior period) other than the Parent and its Subsidiaries. All Taxes that the Parent or any of its Subsidiaries is or was required by law to withhold or collect have been duly withheld or collected and, to the extent required, have been paid to the proper Governmental Entity.

(b) The Parent has delivered or made available to the Company complete and accurate copies of all federal income Tax Returns, examination reports and statements of deficiencies assessed against or agreed to by the Parent or any of its Subsidiaries since December 28, 2012 (which was the date of the Parent's incorporation). No examination or audit of any Tax Return of the Parent or any of its Subsidiaries by any Governmental Entity is currently in progress or, to the knowledge of the Parent, threatened or contemplated. Neither the Parent nor any of its Subsidiaries has been informed by any jurisdiction that the jurisdiction believes that the Parent or its Subsidiaries was required to file any Tax Return that was not filed.

Neither the Parent nor any of its Subsidiaries has waived any statute of limitations with respect to Taxes or agreed to an extension of time with respect to a Tax assessment or deficiency.

(c) No state or federal “net operating loss” of the Parent determined as of the Closing Date will become subject to limitation on its use pursuant to Section 382 of the Code or comparable provisions of state law as a result of the execution and delivery by the Parent of this Agreement or the consummation by the Parent of the transactions contemplated hereby.

3.13 Assets. Each of the Parent and the Acquisition Subsidiary owns or leases all tangible assets necessary for the conduct of its businesses as presently conducted and as presently proposed to be conducted. Each such tangible asset is free from material defects, has been maintained in accordance with normal industry practice, is in good operating condition and repair (subject to normal wear and tear) and is suitable for the purposes for which it presently is used. No asset of the Parent or the Acquisition Subsidiary (tangible or intangible) is subject to any Security Interest.

3.14 Owned Real Property. Except as disclosed in Section 3.14 of the Parent Disclosure Schedule, neither the Parent nor any of its Subsidiaries owns any real property.

3.15 Real Property Leases. Section 3.15 of the Parent Disclosure Schedule lists all real property leased or subleased to or by the Parent or any of its Subsidiaries and lists the term of such lease, any extension and expansion options, and the rent payable thereunder. The Parent has delivered or made available to the Company complete and accurate copies of the leases and subleases listed in Section 3.15 of the Parent Disclosure Schedule. With respect to each lease and sublease listed in Section 3.15 of the Parent Disclosure Schedule:

(a) the lease or sublease is legal, valid, binding, enforceable and in full force and effect;

(b) the lease or sublease will not, as a result of the execution and delivery by the Parent of this Agreement or the consummation by the Parent of the transactions contemplated hereby, cease to be legal, valid, binding, enforceable and in full force and effect immediately following the Closing in accordance with the terms thereof as in effect immediately prior to the Closing, and the Closing will not, after the giving of notice, with lapse of time, or otherwise, result in a breach or default by the Parent or any of its Subsidiaries or, to the knowledge of the Parent, any other party under such lease or sublease;

(c) neither the Parent nor any of its Subsidiaries nor, to the knowledge of the Parent, any other party, is in breach or violation of, or default under, any such lease or sublease, and no event has occurred, is pending or, to the knowledge of the Parent, is threatened, which, after the giving of notice, with lapse of time or otherwise, would constitute a breach or default by the Parent or any of its Subsidiaries or, to the knowledge of the Parent, any other party under such lease or sublease;

(d) neither the Parent nor any of its Subsidiaries has assigned, transferred, conveyed, mortgaged, deeded in trust or encumbered any interest in the leasehold or subleasehold; and

(e) to the knowledge of the Parent, there is no Security Interest, easement, covenant or other restriction applicable to the real property subject to such lease, except for recorded easements, covenants and other restrictions which do not materially impair the current uses or the occupancy by the Parent or any of its Subsidiaries of the property subject thereto.

3.16 Contracts.

(a) Section 3.16 of the Parent Disclosure Schedule lists the following agreements (written or oral) to which the Parent or any of its Subsidiaries is a party as of the date of this Agreement:

(i) any agreement (or group of related agreements) for the lease of personal property from or to third parties;

(ii) any agreement (or group of related agreements) for the purchase or sale of products or for the furnishing or receipt of services;

(iii) any agreement establishing a partnership or joint venture;

(iv) any agreement (or group of related agreements) under which it has created, incurred, assumed or guaranteed (or may create, incur, assume or guarantee) indebtedness (including capitalized lease obligations) or under which it has imposed (or may impose) a Security Interest on any of its assets, tangible or intangible;

(v) any agreement that purports to limit in any material respect the right of the Company to engage in any line of business, or to compete with any person or operate in any geographical location;

(vi) any employment or consulting agreement;

(vii) any agreement involving any current or former officer, director or stockholder of the Parent or any Affiliate thereof;

(viii) any agreement under which the consequences of a default or termination would reasonably be expected to have a Parent Material Adverse Effect;

(ix) any agreement which contains any provisions requiring the Parent or any of its Subsidiaries to indemnify any other party thereto (excluding indemnities contained in agreements for the purchase, sale or license of products entered into in the Ordinary Course of Business);

(x) any other agreement (or group of related agreements) either involving more than \$5,000 or not entered into in the Ordinary Course of Business; and

(xi) any agreement, other than as contemplated by this Agreement and the Split-Off, relating to the sales of securities of the Parent or any of its Subsidiaries to which the Parent or such Subsidiary is a party.

(b) The Parent has delivered or made available to the Company a complete and accurate copy of each agreement listed in Section 3.16 of the Parent Disclosure Schedule. With respect to each agreement so listed: (i) the agreement is legal, valid, binding and enforceable and in full force and effect, except as such enforceability may be limited under applicable bankruptcy, insolvency and similar laws, rules or regulations affecting creditors' rights and remedies generally and to general principles of equity whether applied in a court of law or a court of equity; (ii) the agreement will not, as a result of the execution and delivery by the Parent of this Agreement or the consummation by the Parent of the transactions contemplated hereby, cease to be a legal, valid, binding and enforceable obligation of the Parent, except as such enforceability may be limited under applicable bankruptcy, insolvency and similar laws, rules or regulations affecting creditors' rights and remedies generally and to general principles of equity, whether applied in a court of law or a court of equity, or to be in full force and effect in accordance with the terms thereof as in effect immediately prior to the Closing; and (iii) neither the Parent nor any of its Subsidiaries nor, to the knowledge of the Parent, any other party, is in breach or violation of, or default under, any such agreement, and no event has occurred, is pending or, to the knowledge of the Parent, is threatened, which, after the giving of notice, with lapse of time or otherwise, would constitute a breach or default by the Parent or any of its Subsidiaries or, to the knowledge of the Parent, any other party under such contract.

3.17 Accounts Receivable. All accounts receivable of the Parent and its Subsidiaries reflected on the Parent Reports are valid receivables subject to no setoffs or counterclaims and are current and collectible (within 90 days after the date on which it first became due and payable), net of the applicable reserve for bad debts on the balance sheet contained in the most recent Parent Report. All accounts receivable reflected in the financial or accounting records of the Parent that have arisen since the date of the balance sheet contained in the most recent Parent Report are valid receivables subject to no setoffs or counterclaims and are collectible (within 90 days after the date on which it first became due and payable), net of a reserve for bad debts in an amount proportionate to the reserve shown on the balance sheet contained in the most recent Parent Report.

3.18 Powers of Attorney. There are no outstanding powers of attorney executed on behalf of the Parent or any of its Subsidiaries.

3.19 Insurance. Section 3.19 of the Parent Disclosure Schedule lists each insurance policy (including fire, theft, casualty, general liability, workers compensation, business interruption, environmental, product liability and automobile insurance policies and bond and surety arrangements) to which the Parent or any of its Subsidiaries is a party. Such insurance policies are of the type and in amounts customarily carried by organizations conducting businesses or owning assets similar to those of the Parent and its Subsidiaries. There is no material claim pending under any such policy as to which coverage has been questioned, denied or disputed by the underwriter of such policy. All premiums due and payable under all such policies have been paid, neither the Parent nor any of its Subsidiaries may be liable for retroactive premiums or similar payments, and the Parent and its Subsidiaries are otherwise in compliance in all material respects with the terms of such policies. The Parent has no knowledge of any threatened termination of, or material premium increase with respect to, any such policy.

3.20 Warranties. No product or service sold or delivered by the Parent or any of its Subsidiaries is subject to any guaranty, warranty, right of credit or other indemnity other than the applicable standard terms and conditions of sale of the Parent or the appropriate Subsidiary.

3.21 Litigation. Except as disclosed in Section 3.21 of the Parent Disclosure Schedule, as of the date of this Agreement, there is no Legal Proceeding which is pending or, to the Parent's knowledge, threatened against the Parent or any Subsidiary of the Parent which, if determined adversely to the Parent

or such Subsidiary, could have, individually or in the aggregate, a Parent Material Adverse Effect or which in any manner challenges or seeks to prevent, enjoin, alter or delay the transactions contemplated by this Agreement. For purposes of this Section 3.21, any such pending or threatened Legal Proceedings where the amount at issue exceeds or could reasonably be expected to exceed the lesser of \$10,000 per Legal Proceeding or \$25,000 in the aggregate shall be considered to possibly result in a Parent Material Adverse Effect hereunder.

### 3.22 Employees.

(a) The Parent and Parent Subsidiaries have no employees.

(b) Neither the Parent nor any of its Subsidiaries is a party to or bound by any collective bargaining agreement, nor have any of them experienced any strikes, grievances, claims of unfair labor practices or other collective bargaining disputes. The Parent has no knowledge of any organizational effort made or threatened, either currently or since the date of organization of the Parent, by or on behalf of any labor union with respect to employees of the Parent or any of its Subsidiaries.

3.23 Employee Benefits. Neither the Parent nor any of its Subsidiaries or ERISA Affiliates maintains, sponsors or contributes to or in the past has maintained, sponsored or contributed to any Employee Benefit Plan or multiemployer plan (as defined in Section 4001(a)(3) of ERISA).

### 3.24 Environmental Matters.

(a) Each of the Parent and its Subsidiaries has complied with all applicable Environmental Laws, except for violations of Environmental Laws that, individually or in the aggregate, have not had and would not reasonably be expected to have a Parent Material Adverse Effect. There is no pending or, to the knowledge of the Parent, threatened civil or criminal litigation, written notice of violation, formal administrative proceeding, or investigation, inquiry or information request by any Governmental Entity, relating to any Environmental Law involving the Parent or any of its Subsidiaries, except for litigation, notices of violations, formal administrative proceedings or investigations, inquiries or information requests that, individually or in the aggregate, have not had and would not reasonably be expected to have a Parent Material Adverse Effect.

(b) Set forth in Section 3.24(b) of the Parent Disclosure Schedule is a list of all documents (whether in hard copy or electronic form) that contain any environmental reports, investigations and audits relating to premises currently or previously owned or operated by the Parent or any of its Subsidiaries (whether conducted by or on behalf of the Parent or its Subsidiaries or a third party, and whether done at the initiative of the Parent or any of its Subsidiaries or directed by a Governmental Entity or other third party) which were issued or conducted during the past five years and which the Parent has possession of or access to. A complete and accurate copy of each such document has been provided to the Company.

(c) To the knowledge of the Parent, there is no material environmental liability of any solid or hazardous waste transporter or treatment, storage or disposal facility that has been used by the Parent or any of its Subsidiaries.

3.25 Permits. Section 3.25 of the Parent Disclosure Schedule sets forth a list of all authorizations, approvals, clearances, permits, licenses, registrations, certificates, orders, approvals or exemptions from any Governmental Entity (including without limitation those issued or required under Environmental Laws and those relating to the occupancy or use of owned or leased real property) (“Parent Permits”) issued to or held by the Parent or any of its Subsidiaries. Such listed permits are the only Parent Permits that are required for

the Parent and any of its Subsidiaries to conduct their respective businesses as presently conducted except for those the absence of which, individually or in the aggregate, have not had and would not reasonably be expected to have a Parent Material Adverse Effect. Each such Parent Permit is in full force and effect and, to the knowledge of the Parent, no suspension or cancellation of such Parent Permit is threatened and there is no basis for believing that such Parent Permit will not be renewable upon expiration. Each such Parent Permit will continue in full force and effect immediately following the Closing.

3.26 Certain Business Relationships with Affiliates. No Affiliate of the Parent or of any of its Subsidiaries (a) owns any property or right, tangible or intangible, which is used in the business of the Parent or any of its Subsidiaries, (b) has any claim or cause of action against the Parent or any of its Subsidiaries, or (c) owes any money to, or is owed any money by, the Parent or any of its Subsidiaries. Section 3.26 of the Parent Disclosure Schedule describes any transactions involving the receipt or payment in excess of \$1,000 in any fiscal year between the Parent or any of its Subsidiaries and any Affiliate thereof which have occurred or existed since the beginning of the time period covered by the Parent Financial Statements.

3.27 Tax-Free Reorganization.

(a) The Parent (i) is not an “investment company” as defined in Section 368(a)(2)(F) (iii) and (iv) of the Code; (ii) has no present plan or intention to liquidate the Surviving Corporation or to merge the Surviving Corporation with or into any other corporation or entity, or to sell or otherwise dispose of the stock of the Surviving Corporation which the Parent will acquire in the Merger, or to cause the Surviving Corporation to sell or otherwise dispose of its assets, all except in the ordinary course of business or if such liquidation, merger or disposition is described in Section 368(a)(2)(C) or Treasury Regulation Section 1.368-2(d)(4) or Section 1.368-2(k); and (iii) has no present plan or intention, following the Merger, to issue any additional shares of stock of the Surviving Corporation or to create any new class of stock of the Surviving Corporation.

(b) The Acquisition Subsidiary is a wholly-owned subsidiary of the Parent, formed solely for the purpose of engaging in the Merger, and will carry on no business prior to the Merger.

(c) Immediately prior to the Merger, the Parent will be in control of Acquisition Subsidiary within the meaning of Section 368(c) of the Code.

(d) Immediately following the Merger, the Surviving Corporation will hold at least 90% of the fair market value of the net assets and at least 70% of the fair market value of the gross assets held by the Company immediately prior to the Merger (for purposes of this representation, amounts used by the Company to pay reorganization expenses, if any, will be included as assets of the Company held immediately prior to the Merger).

(e) The Parent has no present plan or intention to reacquire any of the Merger Shares.

(f) The Acquisition Subsidiary will have no liabilities assumed by the Surviving Corporation and will not transfer to the Surviving Corporation any assets subject to liabilities in the Merger.

(g) Following the Merger, the Surviving Corporation will continue the Company’s historic business or use a significant portion of the Company’s historic business assets in a business as required by Section 368 of the Code and the Treasury Regulations promulgated thereunder.

(h) Each of the Split-Off Agreement and the General Release Agreement will constitute a legally binding obligation among the Parent, the Split-Off Subsidiary and the Split-Off Purchaser prior to

the Effective Time; immediately following consummation of the Merger, the Parent will distribute the stock of the Split-Off Subsidiary to the Split-Off Purchaser in cancellation of the Purchase Price Securities (as such term is defined in the Split-Off Agreement); no property other than the capital stock of Split-Off Subsidiary will be distributed by the Parent to the Split-Off Purchaser in connection with or following the Merger; upon execution and delivery of the Split-Off Agreement and the General Release Agreement, the Split-Off Purchaser will have no right to sell or transfer the Purchase Price Securities to any person without the Parent's prior written consent, and the Parent will not consent (nor will it permit others to consent) to any such sale or transfer; upon execution of the Split-Off Agreement and the General Release Agreement, there will be no other plan, arrangement, agreement, contract, intention or understanding, whether written or verbal and whether or not enforceable in law or equity, that would permit the Split-Off Purchaser to vote the Purchase Price Securities or receive any property or other distributions from the Parent with respect to the Purchase Price Securities other than the capital stock of the Split-Off Subsidiary.

3.28 Split-Off. As of the Effective Time, the Parent will have discontinued all of its business operations which it conducted prior to the Effective Time by closing the transactions contemplated by the Split-Off Agreement and the General Release Agreement. Upon the closing of the transactions contemplated by the Split-Off Agreement and the General Release Agreement, the Parent will have no liabilities, contingent or otherwise, in any way related to its pre-Effective Time business operations or to the Split-Off Subsidiary.

3.29 Brokers' Fees. Except as set forth on Section 3.29 of the Parent Disclosure Schedule, neither the Parent nor any of its Subsidiaries has any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

3.30 Disclosure. No representation or warranty by the Parent or the Acquisition Subsidiary contained in this Agreement, and no statement contained in the any document, certificate or other instrument delivered or to be delivered by or on behalf of the Parent or the Acquisition Subsidiary pursuant to this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary, in light of the circumstances under which it was or will be made, in order to make the statements herein or therein not misleading. The Parent has disclosed to the Company all material information relating to the business of the Parent or any of its Subsidiaries or the transactions contemplated by this Agreement.

3.31 Interested Party Transactions. Except for the Split-Off Agreement and the General Release Agreement, to the knowledge of the Parent, no officer, director or stockholder of the Parent or any "affiliate" (as such term is defined in Rule 12b-2 under the Exchange Act) or "associate" (as such term is defined in Rule 405 under the Securities Act) of any such person currently has or has had, either directly or indirectly, (a) an interest in any person that (i) furnishes or sells services or products that are furnished or sold or are proposed to be furnished or sold by the Parent or any of its Subsidiaries or (ii) purchases from or sells or furnishes to the Parent or any of its Subsidiaries any goods or services, or (b) a beneficial interest in any contract or agreement to which the Parent or any of its Subsidiaries is a party or by which it may be bound or affected. Neither the Parent nor any of its Subsidiaries has extended or maintained credit, arranged for the extension of credit, or renewed an extension of credit, in the form of a personal loan to or for any director or executive officer (or equivalent thereof) of the Parent or any of its Subsidiaries.

3.32 Duty to Make Inquiry. To the extent that any of the representations or warranties in this Article III are qualified by "knowledge" or "belief," each of the Parent and the Acquisition Subsidiary represents and warrants that it has made due and reasonable inquiry and investigation concerning the matters to which such representations and warranties relate, including, but not limited to, diligent inquiry by its directors, officers and key personnel and the directors, officers and key personnel of any Subsidiary.

3.33 Accountants. B F Borgers CPA PC (the “Parent Auditor”) is and has been throughout the periods covered by the financial statements of the Parent for the most recently completed fiscal year and through the date hereof (a) a registered public accounting firm (as defined in Section 2(a)(12) of the Sarbanes-Oxley Act of 2002), (b) “independent” with respect to the Parent within the meaning of Regulation S-X and (c) in compliance with subsections (g) through (l) of Section 10A of the Exchange Act and the related rules of the SEC and the Public Company Accounting Oversight Board. Schedule 3.33 of the Parent Disclosure Schedule lists all non-audit services performed by Parent Auditor for the Parent and/or any of its Subsidiaries. Except as set forth on Section 3.33 of the Parent Disclosure Schedule, the report of the Parent Auditor on the financial statements of the Parent for the past fiscal year did not contain an adverse opinion or a disclaimer of opinion, or was qualified as to uncertainty, audit scope, or accounting principles, although it did express uncertainty as to the Parent’s ability to continue as a going concern. During the Parent’s most recent fiscal year and the subsequent interim periods, there were no disagreements with the Parent Auditor on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedures. None of the reportable events listed in Item 304(a)(1)(iv) or (v) of Regulation S-K occurred with respect to the Parent Auditor.

3.34 Minute Books. The minute books and other similar records of the Parent and each of its Subsidiaries contain, in all material respects, complete and accurate records of all actions taken at any meetings of directors (or committees thereof) and stockholders or actions by written consent in lieu of the holding of any such meetings since the time of organization of each such corporation through the date of this Agreement. The Parent has provided true and complete copies of all such minute books and other similar records to the Company’s representatives.

3.35 Board Action. The Parent’s Board of Directors (a) has unanimously determined that the Merger is advisable and in the best interests of the Parent’s stockholders and is on terms that are fair to such Parent stockholders, (b) has caused the Parent, in its capacity as the sole stockholder of the Acquisition Subsidiary, and the Board of Directors of the Acquisition Subsidiary, to approve the Merger and this Agreement by unanimous written consent, (c) adopted this Agreement in accordance with the provisions of the Delaware Act, and (d) directed that this Agreement and the Merger be submitted to the Parent stockholders for their adoption and approval and resolved to recommend that the Parent stockholders vote in favor of the adoption of this Agreement and the approval of the Merger and the transactions contemplated hereby.

## **ARTICLE IV COVENANTS**

4.1 Closing Efforts. Each of the Parties shall use its best efforts, to the extent commercially reasonable in light of the circumstances (“Reasonable Best Efforts”), to take all actions and to do all things necessary, proper or advisable to consummate the transactions contemplated by this Agreement, including without limitation using its Reasonable Best Efforts to ensure that (i) its representations and warranties remain true and correct in all material respects through the Closing Date and (ii) the conditions to the obligations of the other Parties to consummate the Merger are satisfied.

### 4.2 Governmental and Third-Party Notices and Consents.

(a) Each Party shall use its Reasonable Best Efforts to obtain, at its expense, all waivers, permits, consents, approvals or other authorizations from Governmental Entities, and to effect all registrations, filings and notices with or to Governmental Entities, as may be required for such Party to consummate the transactions contemplated by this Agreement and to otherwise comply with all applicable Laws in connection with the consummation of the transactions contemplated by this Agreement.

(b) The Company shall use its Reasonable Best Efforts to obtain, at its expense, all such waivers, consents or approvals from third parties, and to give all such notices to third parties, as are required to be listed in Section 2.4 of the Company Disclosure Schedule.

4.3 Super 8-K. Promptly after the execution of this Agreement, the Parties shall complete a Current Report on Form 8-K relating to this Agreement and the transactions contemplated hereby (including the “Form 10 information” required by Items 2.01(f) and 5.01(a)(8) of Form 8-K and the financial statements required thereby) (the “Super 8-K”). Each of the Company and the Parent shall use its Reasonable Best Efforts to cause the Super 8-K to be filed with the SEC within four Business Days of the execution of this Agreement and to otherwise comply with all requirements of applicable federal and state securities laws.

4.4 Operation of Company Business. Except as contemplated by this Agreement, during the period from the date of this Agreement to the Effective Time, the Company shall (and shall cause each Company Subsidiary to) conduct its operations in the Ordinary Course of Business and in material compliance with all Laws applicable to the Company, any Company Subsidiary or any of their properties or assets and, to the extent consistent therewith, use its commercially reasonable efforts to preserve intact its current business organization, keep its physical assets in good working condition, keep available the services of its current officers and employees and preserve its relationships with customers, suppliers and others having business dealings with it to the end that its goodwill and ongoing business shall not be impaired in any material respect. Without limiting the generality of the foregoing, prior to the Effective Time, the Company shall not (and shall cause each Company Subsidiary not to), without the written consent of the Parent (which shall not be unreasonably withheld or delayed) and except as contemplated by this Agreement:

(a) except as contemplated by the Private Placement Offering, issue or sell, or redeem or repurchase, any stock or other securities of the Company or any warrants, options or other rights to acquire any such stock or other securities (except pursuant to the conversion or exercise of outstanding convertible securities or Company Options or Company Warrants outstanding on the date hereof), or amend any of the terms of (including without limitation the vesting of) any such convertible securities or options or warrants;

(b) split, combine or reclassify any shares of its capital stock; declare, set aside or pay any dividend or other distribution (whether in cash, stock or property or any combination thereof) in respect of its capital stock;

(c) create, incur or assume any indebtedness for borrowed money (including obligations in respect of capital leases) except in the Ordinary Course of Business or in connection with the transactions contemplated by this Agreement; assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the obligations of any other person or entity; or make any loans, advances or capital contributions to, or investments in, any other person or entity;

(d) acquire, sell, lease, license or dispose of any assets or property (including without limitation any shares or other equity interests in or securities of any Company Subsidiary or any corporation, partnership, association or other business organization or division thereof), other than purchases and sales of assets in the Ordinary Course of Business;

(e) mortgage or pledge any of its property or assets (including without limitation any shares or other equity interests in or securities of any Company Subsidiary or any corporation, partnership, association or other business organization or division thereof), or subject any such property or assets to any Security Interest;

- (f) discharge or satisfy any Security Interest or pay any obligation or liability other than in the Ordinary Course of Business;
- (g) amend its charter, by-laws or other organizational documents;
- (h) change in any material respect its accounting methods, principles or practices, except insofar as may be required by a generally applicable change in GAAP;
- (i) enter into, amend, terminate, take or omit to take any action that would constitute a violation of or default under, or waive any rights under, any material contract or agreement;
- (j) institute or settle any Legal Proceeding;
- (k) take any action or fail to take any action permitted by this Agreement with the knowledge that such action or failure to take action would result in (i) any of the representations and warranties of the Company set forth in this Agreement becoming untrue in any material respect or (ii) any of the conditions to the Merger set forth in Article V not being satisfied; or
- (l) agree in writing or otherwise to take any of the foregoing actions.

#### 4.5 Access to Company Information.

(a) During the period from the date of this Agreement to the Effective Time, the Company shall (and shall cause each Company Subsidiary to) permit representatives of the Parent to have reasonable access (at all reasonable times, and in a manner so as not to interfere with the normal business operations of the Company and the Company Subsidiaries) to all premises, properties, financial and accounting records, contracts, other records and documents, and personnel, of or pertaining to the Company and each Company Subsidiary.

(b) The Parent and each of its Subsidiaries (i) shall treat and hold as confidential any Company Confidential Information (as defined below), (ii) shall not use any of the Company Confidential Information except in connection with this Agreement, and (iii) if this Agreement is terminated for any reason whatsoever, shall return to the Company all tangible embodiments (and all copies) thereof which are in its possession. For purposes of this Agreement, "Company Confidential Information" means any information of the Company or any Company Subsidiary that is furnished to the Parent or any of its Subsidiaries by the Company or any Company Subsidiary in connection with this Agreement; provided, however, that it shall not include any information (A) which, at the time of disclosure, is available publicly other than as a result of non-permitted disclosure by the Parent, any of its Subsidiaries or their respective directors, officers, or employees, (B) which, after disclosure, becomes available publicly through no fault of the Parent, any of its Subsidiaries or their respective directors, officers, or employees, (C) which the Parent or any of its Subsidiaries knew or to which the Parent or any of its Subsidiaries had access prior to disclosure, provided that the source of such information is not known by the Parent or any of its Subsidiaries to be bound by a confidentiality obligation to the Company or any Company Subsidiary, or (D) which the Parent or any of its Subsidiaries rightfully obtains from a source other than the Company or a Company Subsidiary, provided that the source of such information is not known by the Parent or any of its Subsidiaries to be bound by a confidentiality obligation to the Company or any Company Subsidiary.

4.6 Operation of Parent Business. Except as contemplated by this Agreement, during the period from the date of this Agreement to the Effective Time, the Parent shall (and shall cause each of its Subsidiaries to) conduct its operations in the Ordinary Course of Business and in material compliance with all Laws

applicable to the Parent, any Parent Subsidiary or any of their properties or assets and, to the extent consistent therewith, use its commercially reasonable efforts to preserve intact its current business organization, keep its physical assets in good working condition, keep available the services of its current officers and employees and preserve its relationships with customers, suppliers and others having business dealings with it to the end that its goodwill and ongoing business shall not be impaired in any material respect. Without limiting the generality of the foregoing, prior to the Effective Time, the Parent shall not (and shall cause each of its Subsidiaries not to), without the written consent of the Company:

(a) issue or sell, or redeem or repurchase, any stock or other securities of the Parent or any rights, warrants or options to acquire any such stock or other securities, except as contemplated by, and in connection with, the Merger, the Split-Off and the Private Placement Offering;

(b) split, combine or reclassify any shares of its capital stock; declare, set aside or pay any dividend or other distribution (whether in cash, stock or property or any combination thereof) in respect of its capital stock;

(c) create, incur or assume any indebtedness (including obligations in respect of capital leases); assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the obligations of any other person or entity; or make any loans, advances or capital contributions to, or investments in, any other person or entity;

(d) enter into, adopt or amend any Parent Benefit Plan or any employment or severance agreement or arrangement or increase in any manner the compensation or fringe benefits of, or materially modify the employment terms of, its directors, officers or employees, generally or individually, or pay any bonus or other benefit to its directors, officers or employees, except as provided in Section 4.14;

(e) acquire, sell, lease, license or dispose of any assets or property (including without limitation any shares or other equity interests in or securities of any Subsidiary of the Parent or any corporation, partnership, association or other business organization or division thereof), except as contemplated by, and in connection with, the Split-Off;

(f) mortgage or pledge any of its property or assets or subject any such property or assets to any Security Interest;

(g) discharge or satisfy any Security Interest or pay any obligation or liability other than in the Ordinary Course of Business;

(h) amend its charter, by-laws or other organizational documents (except as contemplated hereby);

(i) change in any material respect its accounting methods, principles or practices, except insofar as may be required by a generally applicable change in GAAP;

(j) enter into, amend, terminate, take or omit to take any action that would constitute a violation of or default under, or waive any rights under, any contract or agreement;

(k) institute or settle any Legal Proceeding;

(l) take any action or fail to take any action permitted by this Agreement with the knowledge that such action or failure to take action would result in (i) any of the representations and warranties

of the Parent and/or the Acquisition Subsidiary set forth in this Agreement becoming untrue in any material respect or (ii) any of the conditions to the Merger set forth in Article V not being satisfied; or

(m) agree in writing or otherwise to take any of the foregoing actions.

#### 4.7 Access to Parent Information.

(a) The Parent shall (and shall cause the Acquisition Subsidiary to) permit representatives of the Company to have full access (at all reasonable times, and in a manner so as not to interfere with the normal business operations of the Parent and the Acquisition Subsidiary) to all premises, properties, financial and accounting records, contracts, other records and documents, and personnel of or pertaining to the Parent, the Acquisition Subsidiary and the Split-Off Subsidiary.

(b) Each of the Company and any Company Subsidiary (i) shall treat and hold as confidential any Parent Confidential Information (as defined below), (ii) shall not use any of the Parent Confidential Information except in connection with this Agreement, and (iii) if this Agreement is terminated for any reason whatsoever, shall return to the Parent all tangible embodiments (and all copies) thereof which are in its possession. For purposes of this Agreement, "Parent Confidential Information" means any information of the Parent or any Parent Subsidiary that is furnished to the Company or any Company Subsidiary by the Parent or its Subsidiaries in connection with this Agreement; provided, however, that it shall not include any information (A) which, at the time of disclosure, is available publicly other than as a result of non-permitted disclosure by the Company, any Company Subsidiary or their respective directors, officers, or employees, (B) which, after disclosure, becomes available publicly through no fault of the Company or any Company Subsidiary or their respective directors, officers, or employees, (C) which the Company or any Company Subsidiary knew or to which the Company or Company Subsidiary had access prior to disclosure, provided that the source of such information is not known by the Company or any Company Subsidiary to be bound by a confidentiality obligation to the Parent or any Subsidiary of the Parent or (D) which the Company or any Company Subsidiary rightfully obtains from a source other than the Parent or a Subsidiary of the Parent, provided that the source of such information is not known by the Company or any Company Subsidiary to be bound by a confidentiality obligation to the Parent or any Subsidiary of the Parent.

4.8 Expenses. The costs and expenses of the Parent and the Company (including legal fees and expenses of the Parent and the Company) incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses; provided, that in the event that the Merger and Private Placement Offering are consummated, such costs and expenses shall be payable at Closing from the proceeds of the Private Placement Offering.

#### 4.9 Indemnification.

(a) The Parent shall not, and shall cause the Surviving Corporation not to, after the Effective Time, take any action to alter or impair any exculpatory or indemnification provisions now existing in the certificate of incorporation or bylaws of the Company for the benefit of any individual who served as a director or officer of the Company at any time prior to the Effective Time, except for any changes which may be required to conform with changes in applicable Law and any changes which do not affect the application of such provisions to acts or omissions of such individuals prior to the Effective Time.

(b) From and after the Effective Time, the Parent agrees that it will, and will cause the Surviving Corporation to, indemnify and hold harmless each present and former director and officer of the Company (the "Indemnified Executives") against any costs or expenses (including reasonable attorneys'

fees), judgments, fines, losses, claims, damages, liabilities or amounts paid in settlement incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of or pertaining to matters existing or occurring at or prior to the Effective Time, whether asserted or claimed prior to, at or after the Effective Time, to the fullest extent permitted under Delaware law (and the Parent and the Surviving Corporation shall also advance expenses as incurred to the fullest extent permitted under Delaware law, provided the Indemnified Executive to whom expenses are advanced provides an undertaking to repay such advances if it is ultimately determined that such Indemnified Executive is not entitled to indemnification).

(c) The provisions of this Section 4.9 shall survive the Closing and are intended to be for the benefit of, and enforceable by, each Indemnified Executive, and nothing in this Agreement shall affect any indemnification rights that any such Indemnified Executive may have under the certificate of incorporation or bylaws of the Company or any Company Subsidiary or any contract or instrument or applicable Law. Notwithstanding anything in this Agreement to the contrary, the obligations under this Section 4.9 shall not be terminated or modified in such a manner as to adversely affect any Indemnified Executive without the consent of such Indemnified Executive.

4.10 Quotation of Merger Shares. The Parent shall take whatever steps are necessary to cause the Merger Shares, and any shares of Parent Common Stock that may be issued pursuant to Sections 1.5 and 1.8 to be eligible for quotation on the OTC Markets.

4.11 Name and Fiscal Year Change. The Parent shall take all necessary steps to enable it to change its corporate name to such name as is agreeable to the Company as of the Effective Time, if the Parent has not already done so prior to the Effective Time. The Parent shall change its fiscal year end to December 31 on or promptly after the Effective Date, if the Parent's fiscal year end is not December 31 as of immediately prior to the Effective Time.

4.12 Split-Off. The Parent shall take, and shall cause the Acquisition Subsidiary to take, whatever steps are necessary to enable it to effect the Split-Off pursuant to the terms of the Split-Off Agreement immediately prior to the Effective Time.

4.13 Parent Board; Amendment of Charter Documents. The Parent shall take such actions as are necessary, if the Parent has not already done so prior to the Effective Time, (a) to authorize the Parent's Board of Directors to consist of seven (7) members and (b) to amend its certificate or articles of incorporation and bylaws in a manner satisfactory to the Company.

4.14 Assumption of Company Equity Plan. As of the Effective Time, the Board of Directors and shareholders of Parent shall take whatever steps are necessary to cause the Parent to assume the Company's 2006 Equity Incentive Plan (the "Assumed Plan"), which after such assumption shall provide for the issuance of awards covering an aggregate of up to 1,500,732 shares of Parent Common Stock (including all outstanding Company Options).

4.15 Information Provided to Stockholders. The Company shall prepare, with the cooperation of the Parent, information to be sent to the holders of shares of Company Stock in connection with receiving their approval of the Merger, this Agreement and related transactions (including, without limitation, a substantially complete draft of the Super 8-K), and the Parent shall prepare, with the cooperation of the Company, information to be sent to the holders of shares of Parent Common Stock in connection with receiving their approval of the Merger, this Agreement and related transactions. The Parent and the Company shall each use Reasonable Best Efforts to cause information provided to such party's stockholders to comply with applicable federal and state securities laws requirements. Each of the Parent and the Company agrees

to provide promptly to the other such information concerning its business and financial statements and affairs as, in the reasonable judgment of the providing party or its counsel, may be required or appropriate for inclusion in the information sent, or in any amendments or supplements thereto, and to cause its counsel and auditors to cooperate with the other's counsel and auditors in the preparation of the information to be sent to the stockholders of each Party. The Company will promptly advise the Parent, and the Parent will promptly advise the Company, in writing if at any time prior to the Effective Time either the Company or the Parent shall obtain knowledge of any facts that might make it necessary or appropriate to amend or supplement the information sent in order to make the statements contained or incorporated by reference therein not misleading or to comply with applicable Law. The information sent by the Company shall contain the recommendation of the Board of Directors of the Company that the holders of shares of Company Common Stock approve the Merger and this Agreement and the conclusion of the Board of Directors of the Company that the terms and conditions of the Merger are advisable and fair and in the best interests of the Company and such holders. The information sent by the Parent shall contain the recommendation of the Board of Directors of the Parent that the holders of shares of Parent Common Stock approve the Merger and this Agreement and the conclusion of the Board of Directors of the Parent that the terms and conditions of the Merger are advisable and fair and in the best interests of the Parent and such holders. Anything to the contrary contained herein notwithstanding, neither the Company nor the Parent shall include in the information sent to its stockholders any information with respect to the other party or its affiliates or associates, the form and content of which information shall not have been approved by such party in its reasonable discretion prior to such inclusion.

4.16 Cancellation of Share Contribution. The Parent shall cause its transfer agent to cancel the shares of Parent Common Stock included in the Share Contribution at the Effective Time.

## **ARTICLE V CONDITIONS TO CONSUMMATION OF MERGER**

5.1 Conditions to Each Party's Obligations. The respective obligations of each Party to consummate the Merger are subject to the satisfaction of the following conditions:

(a) the Company shall have obtained (and shall have provided copies thereof to the Parent) the written consents of (i) all of the members of its Board of Directors, (ii) a majority of the issued and outstanding shares of Company Common Stock and Company Preferred Stock (on an as-converted to Company Common Stock basis), and (iii) sixty-six and two-thirds (66 2/3%) of the issued and outstanding shares of Company Preferred Stock (on an as-converted to Company Common Stock basis), voting together as a single class, to approve the execution, delivery and performance by the Company of this Agreement and the other Transaction Documentation to which the Company is a party, in form and substance reasonably satisfactory to the Parent;

(b) the Parent, Split-Off Subsidiary and the Split-Off Purchaser shall have executed and delivered the Split-Off Agreement and a General Release Agreement, and all other documents anticipated by such agreements, and the Split-Off shall be effective immediately prior to the Effective Time;

(c) the Split-Off Purchaser shall have surrendered to the Parent the certificates for Parent Common Stock representing the Share Contribution, duly endorsed to the Parent or in blank, with Medallion Signature Guaranteed stock powers;

(d) the Parent shall have delivered to the Split-Off Purchaser certificates representing the Shares (as defined in the Split-Off Agreement) of stock of Split-Off Subsidiary deliverable to the Split-Off Purchaser under the Split-Off Agreement, duly registered in the name of the Split-Off Purchaser or as directed by the Split-Off Purchaser;

(e) the Parent and the Company shall have completed all necessary legal due diligence to their reasonable satisfaction;

(f) the employment agreements of Michael Kleine, as Chief Executive Officer, and Brigid A. Makes, as Chief Financial Officer, with the Company shall have been assigned to and assumed by the Parent; and

(g) the closing of at least the Minimum Amount of the Private Placement Offering shall have occurred, or shall occur simultaneously with the Closing, on the terms and conditions set forth in the Subscription Agreement; and

(h) each of the individuals set forth on Exhibit D to this Agreement shall have executed and delivered to the Parent an agreement substantially in the form of Exhibit E attached hereto (the “Lock-Up and No-Shorting Agreements”).

5.2 Conditions to Obligations of the Parent and the Acquisition Subsidiary . The obligation of each of the Parent and the Acquisition Subsidiary to consummate the Merger is subject to the satisfaction (or waiver by the Parent) of the following additional conditions:

(a) the number of Dissenting Shares shall not exceed 10% of the number of outstanding shares of Company Stock as of the Effective Time;

(b) the Company and the Company Subsidiaries shall have obtained (and shall have provided copies thereof to the Parent) all other waivers, permits, consents, approvals or other authorizations, and effected all of the registrations, filings and notices, referred to in Section 4.2 which are required on the part of the Company or any Company Subsidiary, except such waivers, permits, consents, approvals or other authorizations the failure of which to obtain or effect does not, individually or in the aggregate, have a Company Material Adverse Effect or a material adverse effect on the ability of the Parties to consummate the transactions contemplated by this Agreement;

(c) the representations and warranties of the Company set forth in this Agreement (when read without regard to any qualification as to materiality or Company Material Adverse Effect contained therein) shall be true and correct as of the date of this Agreement and shall be true and correct as of the Effective Time as though made as of the Effective Time (provided, however, that to the extent such representation and warranty expressly relates to an earlier date, such representation and warranty shall be true and correct as of such earlier date), except for any untrue or incorrect representations and warranties that, individually or in the aggregate, do not have a Company Material Adverse Effect or a material adverse effect on the ability of the Parties to consummate the transactions contemplated by this Agreement;

(d) the Company shall have performed or complied with its agreements and covenants required to be performed or complied with under this Agreement as of or prior to the Effective Time, except for such non-performance or non-compliance as does not have a Company Material Adverse Effect or a material adverse effect on the ability of the Parties to consummate the transactions contemplated by this Agreement;

(e) no Legal Proceeding shall be pending wherein an unfavorable judgment, order, decree, stipulation or injunction would (i) prevent consummation of any of the transactions contemplated by this Agreement or (ii) cause any of the transactions contemplated by this Agreement to be rescinded following consummation, and no such judgment, order, decree, stipulation or injunction shall be in effect;

(f) the Company shall have delivered to the Parent and the Acquisition Subsidiary a copy of each written consent received from a Company Stockholder consenting to the Merger together with a certification from each such Company Stockholder that such person is either an “accredited investor” or not a “U.S. Person” as such terms are defined in Regulation D and Regulation S, respectively, under the Securities Act;

(g) the Company shall have delivered to the Parent and the Acquisition Subsidiary a certificate (the “Company Certificate”) to the effect that each of the conditions specified in clauses (a) and (e) (with respect to the Company’s due diligence of the Parent) of Section 5.1 and clauses (a) through (e) (insofar as clause (e) relates to Legal Proceedings involving the Company or a Company Subsidiary) of this Section 5.2 is satisfied in all respects;

(h) the Company shall have delivered to the Parent and the Acquisition Subsidiary a certificate, validly executed by the Secretary of the Company, certifying as to (i) true, correct and complete copies of the certificate of incorporation and bylaws of the Company; (ii) the valid adoption of resolutions of the board of directors and stockholders of the Company (whereby this Agreement, the Merger and the transactions contemplated hereunder were unanimously approved by the board of directors and the requisite vote of the stockholders of the Company); (iii) a good standing certificate from the Secretary of State of the State of Delaware dated within five (5) Business Days prior to the Closing Date; and (iv) incumbency and signatures of the officers of the Company executing this Agreement or any other agreement contemplated by this Agreement;

(i) the Company shall have delivered to the Parent audited and interim unaudited financial statements of the Company pro forma in respect of the Merger, compliant with applicable SEC regulations for inclusion under Item 2.01 (f) and/or 5.01(a)(8) of Form 8-K in substantially final form; and

(j) the Company shall have obtained (and shall have provided a copy thereof to Parent) the consent of Silicon Valley Bank and Oxford Finance LLC to the Merger and related Transaction Documentation in form reasonably acceptable to the Parent.

5.3 Conditions to Obligations of the Company. The obligation of the Company to consummate the Merger is subject to the satisfaction of the following additional conditions:

(a) the Parent shall have obtained (and shall have provided copies thereof to the Company) the written consents of (i) all of the members of its Board of Directors, (ii) all of the members of the Board of Directors of Acquisition Subsidiary, (iii) the sole stockholder of Acquisition Subsidiary, (iv) all of the members of the Board of Directors of Split-Off Subsidiary, (v) the sole stockholder of Split-Off Subsidiary, and (vi) holders of more than 50% of the Parent Common Stock outstanding immediately prior to the Effective Time, in each case to the execution, delivery and performance by the each such entity of this Agreement and/or the other Transaction Documentation to which each such entity a party, in form and substance reasonably satisfactory to the Company;

(b) the Parent shall have obtained (and shall have provided copies thereof to the Company) all of the other waivers, permits, consents, approvals or other authorizations, and effected all of the registrations, filings and notices, referred to in Section 4.2 which are required on the part of the Parent or any of its Subsidiaries, except for waivers, permits, consents, approvals or other authorizations the failure of which to obtain or effect does not, individually or in the aggregate, have a Parent Material Adverse Effect or a material adverse effect on the ability of the Parties to consummate the transactions contemplated by this Agreement;

(c) the representations and warranties of the Parent set forth in this Agreement (when read without regard to any qualification as to materiality or Parent Material Adverse Effect contained therein) shall be true and correct as of the date of this Agreement and shall be true and correct as of the Effective Time as though made as of the Effective Time (provided, however, that to the extent such representation and warranty expressly relates to an earlier date, such representation and warranty shall be true and correct as of such earlier date), except for any untrue or incorrect representations and warranties that, individually or in the aggregate, do not have a Parent Material Adverse Effect or a material adverse effect on the ability of the Parties to consummate the transactions contemplated by this Agreement;

(d) each of the Parent and the Acquisition Subsidiary shall have performed or complied with its agreements and covenants required to be performed or complied with under this Agreement as of or prior to the Effective Time, except for such non-performance or non-compliance as does not have a Parent Material Adverse Effect or a material adverse effect on the ability of the Parties to consummate the transactions contemplated by this Agreement;

(e) no Legal Proceeding shall be pending wherein an unfavorable judgment, order, decree, stipulation or injunction would (i) prevent consummation of any of the transactions contemplated by this Agreement or (ii) cause any of the transactions contemplated by this Agreement to be rescinded following consummation, and no such judgment, order, decree, stipulation or injunction shall be in effect;

(f) the Board of Directors of the Parent shall have adopted, and the shareholders of the Parent shall have approved, the assumption of the Assumed Plan;

(g) the Parent shall have delivered to the Company a certificate (the "Parent Certificate") to the effect that each of the conditions specified in clauses (a) and (e) (with respect to the Parent's due diligence of the Company) of Section 5.1 and clauses (a) through (e) (insofar as clause (e) relates to Legal Proceedings involving the Parent or the Acquisition Subsidiary) of this Section 5.3 is satisfied in all respects;

(h) Each of the Parent and Acquisition Subsidiary shall have delivered to the Company a certificate, validly executed by Secretary of the Parent or the Acquisition Subsidiary, as applicable, certifying as to (i) true, correct and complete copies of its certificate of incorporation and bylaws; (ii) the valid adoption of resolutions of the board of directors and stockholders of the Parent or Acquisition Subsidiary, as applicable (whereby this Agreement, the Merger and the transactions contemplated hereunder were unanimously approved by the board of directors and the requisite vote of the stockholders of Parent or the Acquisition Subsidiary, as applicable); (iii) a good standing certificate from the Secretary of State of the State of Delaware dated within five (5) Business Days prior to the Closing Date; and (iv) incumbency and signatures of the officers of the Parent or the Acquisition Subsidiary, as applicable, executing this Agreement or any other agreement contemplated by this Agreement;

(i) The Split-Off Subsidiary shall have delivered to the Company a certificate, certifying as to (i) true, correct and complete copies of its Articles of Incorporation and bylaws; (ii) the valid adoption of resolutions of the board of directors and stockholders of the Split-Off Subsidiary (whereby the Split-Off Agreement and the transactions contemplated thereunder were unanimously approved by the board of directors and the requisite vote of the stockholders of the Split-Off Subsidiary); (iii) a good standing certificate from the Secretary of State of the State of Nevada dated within five (5) Business Days prior to the Closing Date; and (iv) incumbency and signatures of the officers of the Split-Off Subsidiary executing the Split-Off Agreement and any ancillary agreements to which the Split-Off Subsidiary is a party;

(j) the Company shall have received an official stockholder list from Parent's transfer agent and registrar showing that as of immediately prior to the Effective Time there are 4,503,602 shares of

Parent Common Stock issued and outstanding (without giving effect to the cancellation of 3,603,602 shares of Parent Common Stock in connection with the Share Contribution and assuming the effect of the dividend declared on May 24, 2016) ; and

(k) the Parent shall have delivered to the Company (i) evidence that the Parent’s Board of Directors is authorized to consist of seven (7) individuals, (ii) evidence of the resignations of all individuals who served as directors and/or officers of the Parent immediately prior to the Effective Time, which resignations shall be effective as of the Effective Time, (iii) evidence of the appointment of the following seven (7) persons to serve as directors immediately following the Effective Time: Michael Kleine, as Chairman, Mark Deem, Hanson S. Gifford III, Maxim Gorbachev, Henry A. Plain, Jr., Stacy Seltzer and Brian Dovey, and (iv) evidence of the appointment of such executive officers of the Parent to serve immediately following the Effective Time as shall have been designated by the Company, including Michael Kleine as Chief Executive Officer and Brigid A. Makes as Chief Financial Officer.

## **ARTICLE VI DEFINITIONS**

For purposes of this Agreement, each of the following defined terms is defined in the Section of this Agreement indicated below.

<b><u>Defined Term</u></b>	<b><u>Section</u></b>
Abandonment and Reclamation Liabilities	6.1(d)
Accredited Investor	1.5(d)
Acquisition Subsidiary	Introduction
ADR Procedure	6.3(d)
ADR Service	6.3(d)
Affiliate	2.14(a)(vii)
Agreed Amount	6.3(c)
Agreement	Introduction
Applicable Conversion Ratio	1.5(a)
Business Day	1.2
CERCLA	2.22(a)
Certificate of Merger	1.1
Claim Notice	6.3(b)
Claimed Amount	6.3(b)
Closing	1.2
Closing Date	1.2
Code	Recitals
Company	Introduction
Company Auditor	2.30
Company Balance Sheet	2.7
Company Balance Sheet Date	2.7
Company Benefit Plans	2.20(b)
Company Certificate	5.2(g)
Company Common Stock	1.5(a)
Company Confidential Information	4.5(b)

<b><u>Defined Term</u></b>	<b><u>Section</u></b>
Company Consents	2.3
Company Disclosure Schedule	Article II
Company Equity Plan(s)	2.2
Company Financial Statements	2.7
Company Interim Balance Sheet	2.7
Company Interim Balance Sheet Date	2.7
Company Interim Financial Statements	2.7
Company Material Adverse Effect	2.1
Company Options	2.2
Company Common Stock	1.5(a)
Company Preferred Stock	1.5(a)
Company Stock	1.5(a)
Company Stockholders	1.5(a)
Company Stock Certificate(s)	1.5(b)
Company Studies and Trials	2.31
Company Subsidiary	2.5(a)
Company Warrants	2.2
Company Year-End Financial Statements	2.7
Contemplated Transactions	7.3
Controlling Party	6.3(a)
Damages	6.1
Damages Threshold	6.5(a)
Defaulting Party	7.6
Delaware Act	1.1
Dispute	6.3(c)
Dissenting Shares	1.6(a)
Effective Time	1.1
Employee Benefit Plan	2.21(a)(i)
Environmental Law	2.22(a)
ERISA	2.21(a)(ii)
ERISA Affiliate	2.21(a)(iii)
Exchange Act	1.12(b)
Expected Claim Notice	6.4
FDA	2.31
GAAP	2.7
Governmental Entity	2.4
Indemnification Representative	Introduction
Indemnified Executives	4.9(b)
Indemnifying Stockholders	6.1
Intellectual Property	2.29(a)
Intellectual Property Rights	2.29(a)
Laws	2.4

<b><u>Defined Term</u></b>	<b><u>Section</u></b>
Legal Proceeding	2.19
Merger	Recitals
Merger Shares	1.5(a)
Minimum Amount	Recitals
Non-Controlling Party	6.3(a)
Non-Defaulting Party	7.6
Ordinary Course of Business	2.4
Organization Date	2.10(c)
Parent	Introduction
Parent Certificate	5.3(g)
Parent Common Stock	Recitals
Parent Confidential Information	4.7(b)
Parent Disclosure Schedule	Article III
Parent Financial Statements	3.8
Parent Material Adverse Effect	3.1
Parent Options	1.8(a)
Parent Permits	3.25
Parent Reports	3.6
Parent Subsidiary	2.5(a)
Parent Warrants	1.8(c)
Party	Introduction
Permits	2.25
Placement Agent	2.27
Private Placement Offering	Recitals
Purchase Price	Recitals
Reasonable Best Efforts	4.1
Response	6.3(c)
SEC	1.13(a)
Securities Act	1.5(d)
Security Interest	2.4
Share Contribution	1.3(d)
Split-Off	Recitals
Split-Off Agreement	Recitals
Split-Off Purchaser	Recitals
Split-Off Subsidiary	Recitals
Subsidiary	2.5(a)
Super 8-K	4.3
Surviving Corporation	1.1
Tax Returns	2.10(a)(ii)
Taxes	2.10(a)(i)
Third Party Intellectual Property Rights	2.29(d)
Transaction Documentation	3.3

## ARTICLE VII TERMINATION

7.1 Termination by Mutual Agreement. This Agreement may be terminated at any time by mutual consent of the Parties, provided that such consent to terminate is in writing and is signed by each of the Parties.

7.2 Termination for Failure to Close. This Agreement shall automatically be terminated if the Closing Date shall not have occurred by July 7, 2016; provided, that the right to terminate this Agreement pursuant to this Section 7.2 shall not be available to any Party whose breach of any provision of this Agreement results in the failure of the Closing to have occurred by such time.

7.3 Termination by Operation of Law. This Agreement may be terminated by any Party hereto if there shall be any statute, rule or regulation issued by a Governmental Entity of competent jurisdiction that renders consummation of the transactions contemplated by this Agreement (the “Contemplated Transactions”) illegal or otherwise prohibited, or a court of competent jurisdiction or any Governmental Entity of competent jurisdiction shall have issued an order, decree or ruling, or has taken any other action restraining, enjoining or otherwise prohibiting the consummation of such transactions and such order, decree, ruling or other action shall have become final and non-appealable.

7.4 Termination for Failure to Perform Covenants or Conditions. This Agreement may be terminated prior to the Effective Time:

(a) by the Parent and the Acquisition Subsidiary if: (i) any of the conditions set forth in Section 5.2 hereof have not been fulfilled in all material respects by the Closing Date; (ii) the Company shall have breached or failed to observe or perform in any material respect any of its covenants or obligations under this Agreement if such breach is not cured within ten (10) days of written notice of such breach from Parent (to the extent such breach is curable) or (iii) as otherwise set forth herein; provided that Parent and Acquisition Subsidiary may not exercise the right in this Section 7.4(a) if either of them are then in breach of any provision of this Agreement; or

(b) by the Company if: (i) any of the conditions set forth in Section 5.3 hereof have not been fulfilled in all material respects by the Closing Date; (ii) the Parent or the Acquisition Subsidiary shall have breached or failed to observe or perform in any material respect any of its covenants or obligations under this Agreement if such breach is not cured within ten (10) days of written notice of such breach from the Company (to the extent such breach is curable) or (iii) as otherwise set forth herein; provided that Company may not exercise the right in this Section 7.4(a) if it is then in breach of any provision of this Agreement;.

7.5 Effect of Termination or Default; Remedies. In the event of termination of this Agreement as set forth above, this Agreement shall forthwith become void and there shall be no liability on the part of any Party hereto, provided that such Party is a Non-Defaulting Party (as defined below). The foregoing shall not relieve any Party from liability for damages actually incurred as a result of such Party’s breach of any term or provision of this Agreement.

7.6 Remedies; Specific Performance. In the event that any Party shall fail or refuse to consummate the Contemplated Transactions or if any default under or breach of any representation, warranty, covenant or condition of this Agreement on the part of any Party (the “Defaulting Party”) shall have occurred that results in the failure to consummate the Contemplated Transactions, then in addition to the other remedies provided herein, the non-defaulting Party (the “Non-Defaulting Party”) shall be entitled to seek and obtain money damages from the Defaulting Party, or may seek to obtain an order of specific performance thereof against the Defaulting Party from a court of competent jurisdiction, provided that the Non-Defaulting Party

seeking such protection must file its request with such court within forty-five (45) days after it becomes aware of the Defaulting Party's failure, refusal, default or breach. In addition, the Non-Defaulting Party shall be entitled to obtain from the Defaulting Party court costs and reasonable attorneys' fees incurred in connection with or in pursuit of enforcing the rights and remedies provided hereunder.

## **ARTICLE VIII MISCELLANEOUS**

8.1 Press Releases and Announcements. No Party shall issue any press release or public announcement relating to the subject matter of this Agreement without the prior written approval of the other Parties; provided, however, that any Party may make any public disclosure it believes in good faith is required by applicable Law or stock market rule (in which case the disclosing Party shall use reasonable efforts to advise the other Parties and provide them with a copy of the proposed disclosure prior to making the disclosure).

8.2 No Third Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns; provided, however, that (a) the provisions in Article I concerning issuance of the Merger Shares is intended for the benefit of the Company Stockholders and (b) the provisions in Section 4.9 concerning indemnification are intended for the benefit of the Indemnified Executives and their successors and assigns.

8.3 Entire Agreement. This Agreement (including the documents referred to herein) constitutes the entire agreement among the Parties and supersedes any prior or (other than as set forth in the Transaction Documentation) contemporaneous understandings, agreements or representations by or among the Parties, written or oral, with respect to the subject matter hereof.

8.4 Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of the other Parties.

8.5 Counterparts and Facsimile Signature. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures delivered by fax and/or e-mail/.pdf transmission shall be sufficient and binding as if they were originals and such delivery shall constitute valid delivery of this Agreement.

8.6 Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

8.7 Notices. All notices, requests, demands, claims and other communications hereunder shall be in writing. Any notice, request, demand, claim or other communication hereunder shall be deemed duly delivered four Business Days after it is sent by registered or certified mail, return receipt requested, postage prepaid, or one Business Day after it is sent for next Business Day delivery via a reputable nationwide overnight courier service, in each case to the intended recipient as set forth below:

If to the Company or the Company  
Stockholders:

Miramar Technologies, Inc.  
2790 Walsh Avenue  
Santa Clara, CA 95051  
Attn: Michael Kleine, CEO  
Facsimile: (408) 579-8795

Copy to (which copy shall not constitute notice  
hereunder):

Wilson Sonsini Goodrich & Rosati, P.C.  
650 Page Mill Road  
Palo Alto, CA 94304  
Attn: Philip H. Oettinger  
Facsimile: (650) 493-6811

If to the Parent or the Acquisition Subsidiary  
(prior to the Closing):

Miramar Labs, Inc.  
7 Mayakovskogo Street  
Birobidjan, Russia 679016  
Attn: Andrey Zasorin  
Facsimile: (212) 259-8200

Copy to (which copy shall not constitute notice  
hereunder):

CKR Law LLP  
1330 Avenue of the Americas  
New York, NY 10019  
Attn: Barrett S. DiPaolo  
Facsimile: (212) 259-8200

Any Party may give any notice, request, demand, claim or other communication hereunder using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail or electronic mail), but no such notice, request, demand, claim or other communication shall be deemed to have been duly given unless and until it actually is received by the Party for whom it is intended. Any Party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Parties notice in the manner herein set forth.

8.8 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of laws of any jurisdictions other than those of the State of Delaware.

8.9 Amendments and Waivers. The Parties may mutually amend any provision of this Agreement at any time prior to the Effective Time. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by all of the Parties. No waiver of any right or remedy hereunder shall be valid unless the same shall be in writing and signed by the Party giving such waiver. No waiver by any Party with respect to any default, misrepresentation or breach of warranty or covenant hereunder shall be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

8.10 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the Parties agree that the court making the determination of invalidity or unenforceability shall have the power to limit the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified.

8.11 Submission to Jurisdiction. Each of the parties hereto irrevocably consents to the exclusive jurisdiction and venue of the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular

matter, any state or federal court within the State of Delaware) in connection with any matter based upon or arising out of this Agreement or the matters contemplated herein, agrees that process may be served upon them in any manner authorized by the laws of the State of Delaware for such persons and irrevocably waives, to the fullest extent permitted by applicable Law, and covenants not to assert or plead any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Any Party may make service on another Party by sending or delivering a copy of the process to the Party to be served at the address and in the manner provided for the giving of notices in Section 8.7. Nothing in this Section 8.11, however, shall affect the right of any Party to serve legal process in any other manner permitted by law.

8.12 WAIVER OF JURY TRIAL. EACH OF THE PARTIES IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BETWEEN THE PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

8.13 Survival. None of the representations or warranties in this Agreement or in any certificate delivered pursuant to this Agreement shall survive the Effective Time.

8.14 Construction.

(a) The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

(b) Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

***[SIGNATURE PAGE FOLLOWS]***

**IN WITNESS WHEREOF**, the Parties have executed this Agreement and Plan of Merger and Reorganization as of the date first above written.

**PARENT:**  
MIRAMAR LABS, INC.

By: /s/ Andrey Zasoryn  
Name: Andrey Zasoryn  
Title: President

**ACQUISITION SUBSIDIARY:**  
MIRAMAR ACQUISITION CORP.

By: /s/ Andrey Zasoryn  
Name: Andrey Zasoryn  
Title: President

**COMPANY:**  
MIRAMAR TECHNOLOGIES INC.

By: /s/ R. Michael Kleine  
Name: R. Michael Kleine  
Title: President and Chief Executive Officer

**Exhibit A**

**Form of Subscription Agreement**

**Exhibit B**

**Form of Split-Off Agreement**

## **Exhibit C**

### **Form of General Release Agreement**

## Exhibit D

### Signatories to Lock-Up and No-Shorting Agreements

**Name**

---

Aisling Capital III, LP  
Domain Partners VII, LP  
Morgenthaler Partners VIII, LP  
RMI  
Michael Kleine  
Brigid Makes  
Steve Kim  
Mark Deem  
Hanson Gifford III  
Maxim Gorbachev  
Henry Plain, Jr.  
Stacey Seltzer  
Brain Dovery

**Exhibit E**

**Form of Lock-Up and No-Shorting Agreement**

**Schedule 1.5(a)**

**Class of Company Stock**  
**Common**

**Applicable Conversion Ratio**  
13.5259 to 1

## Disclosure Schedules

## MIRAMAR LABS, INC.

### AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

Miramar Labs, Inc., a corporation organized and existing under the laws of the State of Delaware (the “**Corporation**”), hereby certifies as follows:

A. The name of the Corporation is Miramar Labs, Inc., and the original Certificate of Incorporation of this Corporation was filed with the Secretary of State of the State of Delaware on June 7, 2016.

B. This Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware (the “**DGCL**”), and restates, integrates and further amends the provisions of the Corporation’s Amended and Restated Certificate of Incorporation, and has been duly approved by the written consent of the stockholders of the Corporation in accordance with Section 228 of the DGCL.

C. The text of the Amended and Restated Certificate of Incorporation of this Corporation is hereby amended and restated to read in its entirety as follows:

#### ARTICLE I

The name of the Corporation is Miramar Labs, Inc.

#### ARTICLE II

The address of the Corporation’s registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of the Corporation’s registered agent at such address is The Corporation Trust Company.

#### ARTICLE III

The purpose of this corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law, as the same exists or as may hereafter be amended from time to time.

#### ARTICLE IV

4.1 Authorized Capital Stock. The total number of shares of all classes of capital stock that the Corporation is authorized to issue is One Hundred and Five Million (105,000,000) shares, consisting of One Hundred Million (100,000,000) shares of Common Stock, par value \$0.001 per share (the “**Common Stock**”), and Five Million (5,000,000) shares of Preferred Stock, par value \$0.001 per share (the “**Preferred Stock**”).

4.2 Increase or Decrease in Authorized Capital Stock. The number of authorized shares of Preferred Stock or Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority in voting power of the stock of the Corporation entitled to vote generally in the election of directors, irrespective of

the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), voting together as a single class, without a separate vote of the holders of the class or classes the number of authorized shares of which are being increased or decreased, unless a vote by any holders of one or more series of Preferred Stock is required by the express terms of any series of Preferred Stock as provided for or fixed pursuant to the provisions of Section 4.4 of this Article IV.

#### 4.3 Common Stock.

(a) The holders of shares of Common Stock shall be entitled to one vote for each such share on each matter properly submitted to the stockholders on which the holders of shares of Common Stock are entitled to vote. Except as otherwise required by law or this certificate of incorporation (this “**Certificate of Incorporation**” which term, as used herein, shall mean the certificate of incorporation of the Corporation, as amended from time to time, including the terms of any certificate of designations of any series of Preferred Stock), and subject to the rights of the holders of Preferred Stock, at any annual or special meeting of the stockholders the holders of shares of Common Stock shall have the right to vote for the election of directors and on all other matters properly submitted to a vote of the stockholders; provided, however, that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation that relates solely to the terms, number of shares, powers, designations, preferences, or relative participating, optional or other special rights (including, without limitation, voting rights), or to qualifications, limitations or restrictions thereon, of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one more other such series, to vote thereon pursuant to this Certificate of Incorporation (including, without limitation, by any certificate of designations relating to any series of Preferred Stock) or pursuant to the DGCL.

(b) Subject to the rights of the holders of Preferred Stock, the holders of shares of Common Stock shall be entitled to receive such dividends and other distributions (payable in cash, property or capital stock of the Corporation) when, as and if declared thereon by the Board of Directors of the Corporation (the “**Board of Directors**”) from time to time out of any assets or funds of the Corporation legally available therefor and shall share equally on a per share basis in such dividends and distributions.

(c) In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation, and subject to the rights of the holders of Preferred Stock in respect thereof, the holders of shares of Common Stock shall be entitled to receive all the remaining assets of the Corporation available for distribution to its stockholders, ratably in proportion to the number of shares of Common Stock held by them.

#### 4.4 Preferred Stock.

(a) The Preferred Stock may be issued from time to time in one or more series pursuant to a resolution or resolutions providing for such issue duly adopted by the Board of Directors (authority to do so being hereby expressly vested in the Board of Directors). The Board of Directors is

further authorized, subject to limitations prescribed by law, to fix by resolution or resolutions and to set forth in a certification of designations filed pursuant to the DGCL the powers, designations, preferences and relative, participation, optional or other rights, if any, and the qualifications, limitations or restrictions thereof, if any, of any wholly unissued series of Preferred Stock, including without limitation authority to fix by resolution or resolutions that dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including, without limitation, sinking fund provisions), redemption price or prices, and liquidation preferences of any such series, and the number of shares constituting any such series and the designation thereof, or any of the foregoing.

(b) The Board of Directors is further authorized to increase (but not above the total number of authorized shares of the class) or decrease (but not below the number of shares of any such series then outstanding) the number of shares of any series, the number of which was fixed by it, subsequent to the issuance of shares of such series then outstanding, subject to the powers, preferences and rights, and the qualifications, limitations and restrictions thereof stated in the Certificate of Incorporation or the resolution of the Board of Directors originally fixing the number of shares of such series. If the number of shares of any series is so decreased, then the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

## ARTICLE V

5.1 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

5.2 Number of Directors; Election; Term.

(a) Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, the number of directors that constitutes the entire Board of Directors shall be fixed solely by resolution of the Board of Directors.

(b) Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, effective upon the closing date (the “**Effective Date**”) of the initial sale of shares of common stock in the Corporation’s initial public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, the directors of the Corporation shall be divided into three classes as nearly equal in size as is practicable, hereby designated Class I, Class II and Class III. The initial assignment of members of the Board of Directors to each such class shall be made by the Board of Directors. The term of office of the initial Class I directors shall expire at the first regularly-scheduled annual meeting of the stockholders following the Effective Date, the term of office of the initial Class II directors shall expire at the second annual meeting of the stockholders following the Effective Date and the term of office of the initial Class III directors shall expire at the third annual meeting of the stockholders following the Effective Date. At each annual meeting of stockholders, commencing with the first regularly-scheduled annual meeting of stockholders following the Effective Date, each of the successors elected to replace the directors of a Class whose term shall have expired at such annual meeting shall be elected to hold office until the third annual meeting next succeeding his or her election and until

his or her respective successor shall have been duly elected and qualified. Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, if the number of directors that constitutes the Board of Directors is changed, any newly created directorships or decrease in directorships shall be so apportioned by the Board of Directors among the classes as to make all classes as nearly equal in number as is practicable, provided that no decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

(c) Notwithstanding the foregoing provisions of this Section 5.2, and subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, each director shall serve until his or her successor is duly elected and qualified or until his or her earlier death, resignation, or removal.

(d) Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

5.3 Removal. Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, a director may be removed from office by the stockholders of the Corporation only for cause.

5.4 Vacancies and Newly Created Directorships. Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, and except as otherwise provided in the DGCL, vacancies occurring on the Board of Directors for any reason and newly created directorships resulting from an increase in the authorized number of directors may be filled only by vote of a majority of the remaining members of the Board of Directors, although less than a quorum, or by a sole remaining director, at any meeting of the Board of Directors. A person so elected by the Board of Directors to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been assigned by the Board of Directors and until his or her successor shall be duly elected and qualified.

## **ARTICLE VI**

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to adopt, amend or repeal the Bylaws of the Corporation.

## **ARTICLE VII**

7.1 No Action by Written Consent of Stockholders. To the fullest extent permitted by law, whenever any action is required or permitted to be taken at a meeting of stockholders, by law, by the Certificate of Incorporation or by these Bylaws, such action may be taken without a meeting, without prior notice and without a vote of stockholders, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

7.2 Special Meetings. Except as otherwise expressly provided by the terms of any series of Preferred Stock permitting the holders of such series of Preferred Stock to call a special meeting of the holders of such series, special meetings of stockholders of the Corporation may be called only by the Board of Directors, the chairperson of the Board of Directors, the chief executive officer or the president (in the absence of a chief executive officer), and the ability of the stockholders to call a special meeting is hereby specifically denied. The Board of Directors may cancel, postpone or reschedule any previously scheduled special meeting at any time, before or after the notice for such meeting has been sent to the stockholders.

7.3 Advance Notice. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws of the Corporation.

7.4 Exclusive Jurisdiction. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation arising pursuant to any provision of the DGCL or the Corporation's Certificate of Incorporation or Bylaws, (iv) any action to interpret, apply, enforce or determine the validity of the Corporation's Certificate of Incorporation or Bylaws, or (v) any action asserting a claim against the Corporation governed by the internal affairs doctrine, in each such case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 7.4.

## ARTICLE VIII

8.1 Limitation of Personal Liability. To the fullest extent permitted by the DGCL, as it presently exists or may hereafter be amended from time to time, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

### 8.2 Indemnification.

The Corporation shall indemnify, to the fullest extent permitted by applicable law, any director or officer of the Corporation who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**Proceeding**") by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys' fees), judgments, fines

and amounts paid in settlement actually and reasonably incurred by such person in connection with any such Proceeding. The Corporation shall be required to indemnify a person in connection with a Proceeding initiated by such person only if the Proceeding was authorized by the Board of Directors.

The Corporation shall have the power to indemnify, to the extent permitted by the DGCL, as it presently exists or may hereafter be amended from time to time, any employee or agent of the Corporation who was or is a party or is threatened to be made a party to any Proceeding by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any such Proceeding.

Any repeal or amendment of this Article VIII by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of this Certificate of Incorporation inconsistent with this Article VIII will, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to further limit or eliminate the liability of directors) and shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or amendment or adoption of such inconsistent provision with respect to acts or omissions occurring prior to such repeal or amendment or adoption of such inconsistent provision.

#### **ARTICLE IX**

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation (including, without limitation, any rights, preferences or other designations of Preferred Stock), in the manner now or hereafter prescribed by this Certificate of Incorporation and the DGCL; and all rights, preferences and privileges herein conferred upon stockholders by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the right reserved in this Article IX. Notwithstanding any other provision of this Certificate of Incorporation, and in addition to any other vote that may be required by law or the terms of any series of Preferred Stock, the affirmative vote of the holders of at least 66 $\frac{2}{3}$ % of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend, alter or repeal, or adopt any provision as part of this Certificate of Incorporation inconsistent with the purpose and intent of, Article V, Article VI, Article VII or this Article IX (including, without limitation, any such Article as renumbered as a result of any amendment, alteration, change, repeal or adoption of any other Article).

IN WITNESS WHEREOF, Miramar Labs, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by a duly authorized officer of the Corporation on this 7th day of June, 2016.

By: /s/ Michael Kleine  
Michael Kleine  
President and Chief Executive Officer

IN WITNESS WHEREOF, Miramar Labs, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by a duly authorized officer of the Corporation on this 7th day of June, 2016.

By: /s/ Michael Kleine  
Michael Kleine  
President and Chief Executive Officer

**AMENDED AND RESTATED BYLAWS OF  
MIRAMAR LABS, INC.**

(effective as of June 7, 2016)

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**AMENDED AND RESTATED BYLAWS OF MIRAMAR LABS, INC.**

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**ARTICLE I — CORPORATE OFFICES**

1.1 REGISTERED OFFICE

The registered office of Miramar Labs, Inc. shall be fixed in the corporation's certificate of incorporation. References in these bylaws to the certificate of incorporation shall mean the certificate of incorporation of the corporation, as amended from time to time, including the terms of any certificate of designations of any series of Preferred Stock.

1.2 OTHER OFFICES

The corporation's board of directors may at any time establish other offices at any place or places where the corporation is qualified to do business.

**ARTICLE II — MEETINGS OF STOCKHOLDERS**

2.1 PLACE OF MEETINGS

Meetings of stockholders shall be held at any place, within or outside the State of Delaware, designated by the board of directors. The board of directors may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the General Corporation Law of the State of Delaware (the "DGCL"). In the absence of any such designation or determination, stockholders' meetings shall be held at the corporation's principal executive office.

2.2 ANNUAL MEETING

The annual meeting of stockholders shall be held on such date, at such time, and at such place (if any) within or without the State of Delaware as shall be designated from time to time by the board of directors and stated in the corporation's notice of the meeting. At the annual meeting, directors shall be elected and any other proper business may be transacted. The first annual meeting of stockholders shall be held in 2017.

2.3 SPECIAL MEETING

(i) A special meeting of the stockholders, other than those required by statute, may be called at any time only by (A) the board of directors, (B) the chairperson of the board of directors, (C) the chief executive

officer or (D) the president (in the absence of a chief executive officer). A special meeting of the stockholders may not be called by any other person or persons. The board of directors may cancel, postpone or reschedule any previously scheduled special meeting at any time, before or after the notice for such meeting has been sent to the stockholders.

(ii) The notice of a special meeting shall include the purpose for which the meeting is called. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting by or at the direction of the board of directors, the chairperson of the board of directors, the chief executive officer or the president (in the absence of a chief executive officer). Nothing contained in this Section 2.3 (ii) shall be construed as limiting, fixing or affecting the time when a meeting of stockholders called by action of the board of directors may be held.

## 2.4 ADVANCE NOTICE PROCEDURES

(i) *Advance Notice of Stockholder Business.* At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be brought: (A) pursuant to the corporation's proxy materials with respect to such meeting, (B) by or at the direction of the board of directors, or (C) by a stockholder of the corporation who (1) is a stockholder of record at the time of the giving of the notice required by this Section 2.4 (i) and on the record date for the determination of stockholders entitled to vote at the annual meeting and (2) has timely complied in proper written form with the notice procedures set forth in this Section 2.4(i). In addition, for business to be properly brought before an annual meeting by a stockholder, such business must be a proper matter for stockholder action pursuant to these bylaws and applicable law. Except for proposals properly made in accordance with Rule 14a-8 under the Securities and Exchange Act of 1934, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations), and included in the notice of meeting given by or at the direction of the board of directors, for the avoidance of doubt, clause (C) above shall be the exclusive means for a stockholder to bring business before an annual meeting of stockholders.

(a) To comply with clause (C) of Section 2.4(i) above, a stockholder's notice must set forth all information required under this Section 2.4(i) and must be timely received by the secretary of the corporation. To be timely, a stockholder's notice must be received by the secretary at the principal executive offices of the corporation not later than the 45th day nor earlier than the 75th day before the one-year anniversary of the date on which the corporation first mailed its proxy materials or a notice of availability of proxy materials (whichever is earlier) for the preceding year's annual meeting; *provided, however*, that in the event that no annual meeting was held in the previous year or if the date of the annual meeting is advanced by more than 30 days prior to or delayed by more than 60 days after the one-year anniversary of the date of the previous year's annual meeting, then, for notice by the stockholder to be timely, it must be so received by the secretary not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of (i) the 90th day prior to such annual meeting, or (ii) the tenth day following the day on which Public Announcement (as defined below) of the date of such annual meeting is first made. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described in this Section 2.4(i)(a). "**Public Announcement**" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Securities Exchange Act of 1934, as amended, or any successor thereto (the "**1934 Act**").

(b) To be in proper written form, a stockholder's notice to the secretary must set forth as to each matter of business the stockholder intends to bring before the annual meeting: (1) a brief description of the business intended to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (2) the name and address, as they appear on the corporation's books, of the stockholder proposing such business and any Stockholder Associated Person (as defined below), (3) the class and number of shares of the corporation that are held of record or are beneficially owned by the stockholder or any Stockholder Associated Person and any derivative positions held or beneficially held by the stockholder or any Stockholder Associated Person, (4) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of such stockholder or any Stockholder Associated Person with respect to any securities of the corporation, and a description of any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares), the effect or intent of which is to mitigate loss to, or to manage the risk or benefit from share price changes for, or to increase or decrease the voting power of, such stockholder or any Stockholder Associated Person with respect to any securities of the corporation, (5) any material interest of the stockholder or a Stockholder Associated Person in such business, and (6) a statement whether either such stockholder or any Stockholder Associated Person will deliver a proxy statement and form of proxy to holders of at least the percentage of the corporation's voting shares required under applicable law to carry the proposal (such information provided and statements made as required by clauses (1) through (6), a "**Business Solicitation Statement**"). In addition, to be in proper written form, a stockholder's notice to the secretary must be supplemented not later than five days following the record date for notice of the meeting to disclose the information contained in clauses (3) and (4) above as of the record date for notice of the meeting. For purposes of this Section 2.4, a "**Stockholder Associated Person**" of any stockholder shall mean (i) any person controlling, directly or indirectly, or acting in concert with, such stockholder, (ii) any beneficial owner of shares of stock of the corporation owned of record or beneficially by such stockholder and on whose behalf the proposal or nomination, as the case may be, is being made, or (iii) any person controlling, controlled by or under common control with such person referred to in the preceding clauses (i) and (ii).

(c) Without exception, no business shall be conducted at any annual meeting except in accordance with the provisions set forth in this Section 2.4(i) and, if applicable, Section 2.4(ii). In addition, business proposed to be brought by a stockholder may not be brought before the annual meeting if such stockholder or a Stockholder Associated Person, as applicable, takes action contrary to the representations made in the Business Solicitation Statement applicable to such business or if the Business Solicitation Statement applicable to such business contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading. The chairperson of the annual meeting shall, if the facts warrant, determine and declare at the annual meeting that business was not properly brought before the annual meeting and in accordance with the provisions of this Section 2.4(i), and, if the chairperson should so determine, he or she shall so declare at the annual meeting that any such business not properly brought before the annual meeting shall not be conducted.

(ii) *Advance Notice of Director Nominations at Annual Meetings.* Notwithstanding anything in these bylaws to the contrary, only persons who are nominated in accordance with the procedures set forth in this Section 2.4(ii) shall be eligible for election or re-election as directors at an annual meeting of stockholders. Nominations of persons for election or re-election to the board of directors of the corporation shall be made at an annual meeting of stockholders only (A) by or at the direction of the board of directors or (B) by a stockholder of the corporation who (1) was a stockholder of record at the time of the giving of the notice required by this Section 2.4(ii) and on the record date for the determination of stockholders entitled to vote at the annual meeting and (2) has complied with the notice procedures set forth in this Section 2.4(ii). In addition to any other applicable

requirements, for a nomination to be made by a stockholder, the stockholder must have given timely notice thereof in proper written form to the secretary of the corporation.

(a) To comply with clause (B) of Section 2.4(ii) above, a nomination to be made by a stockholder must set forth all information required under this Section 2.4(ii) and must be received by the secretary of the corporation at the principal executive offices of the corporation at the time set forth in, and in accordance with, the final three sentences of Section 2.4(i)(a) above.

(b) To be in proper written form, such stockholder's notice to the secretary must set forth:

(1) as to each person (a "**nominee**") whom the stockholder proposes to nominate for election or re-election as a director: (A) the name, age, business address and residence address of the nominee, (B) the principal occupation or employment of the nominee, (C) the class and number of shares of the corporation that are held of record or are beneficially owned by the nominee and any derivative positions held or beneficially held by the nominee, (D) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of the nominee with respect to any securities of the corporation, and a description of any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares), the effect or intent of which is to mitigate loss to, or to manage the risk or benefit of share price changes for, or to increase or decrease the voting power of the nominee, (E) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder, (F) a written statement executed by the nominee acknowledging that as a director of the corporation, the nominee will owe a fiduciary duty under Delaware law with respect to the corporation and its stockholders, and (G) any other information relating to the nominee that would be required to be disclosed about such nominee if proxies were being solicited for the election or re-election of the nominee as a director, or that is otherwise required, in each case pursuant to Regulation 14A under the 1934 Act (including without limitation the nominee's written consent to being named in the proxy statement, if any, as a nominee and to serving as a director if elected or re-elected, as the case may be); and

(2) as to such stockholder giving notice, (A) the information required to be provided pursuant to clauses (2) through (5) of Section 2.4(i)(b) above, and the supplement referenced in the second sentence of Section 2.4(i)(b) above (except that the references to "business" in such clauses shall instead refer to nominations of directors for purposes of this paragraph), and (B) a statement whether either such stockholder or Stockholder Associated Person will deliver a proxy statement and form of proxy to holders of a number of the corporation's voting shares reasonably believed by such stockholder or Stockholder Associated Person to be necessary to elect or re-elect such nominee(s) (such information provided and statements made as required by clauses (A) and (B) above, a "**Nominee Solicitation Statement**").

(c) At the request of the board of directors, any person nominated by a stockholder for election or re-election as a director must furnish to the secretary of the corporation (1) that information required to be set forth in the stockholder's notice of nomination of such person as a director as of a date subsequent to the date on which the notice of such person's nomination was given and (2) such other information as may reasonably be required by the corporation to determine the eligibility of such proposed nominee to serve as an independent director or audit committee financial expert of the corporation under applicable law, securities

exchange rule or regulation, or any publicly-disclosed corporate governance guideline or committee charter of the corporation and (3) that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee; in the absence of the furnishing of such information if requested, such stockholder's nomination shall not be considered in proper form pursuant to this Section 2.4(ii).

(d) Without exception, no person shall be eligible for election or re-election as a director of the corporation at an annual meeting of stockholders unless nominated in accordance with the provisions set forth in this Section 2.4(ii). In addition, a nominee shall not be eligible for election or re-election if a stockholder or Stockholder Associated Person, as applicable, takes action contrary to the representations made in the Nominee Solicitation Statement applicable to such nominee or if the Nominee Solicitation Statement applicable to such nominee contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading. The chairperson of the annual meeting shall, if the facts warrant, determine and declare at the annual meeting that a nomination was not made in accordance with the provisions prescribed by these bylaws, and if the chairperson should so determine, he or she shall so declare at the annual meeting, and the defective nomination shall be disregarded.

(iii) *Advance Notice of Director Nominations for Special Meetings.*

(a) For a special meeting of stockholders at which directors are to be elected or re-elected, nominations of persons for election or re-election to the board of directors shall be made only (1) by or at the direction of the board of directors or (2) by any stockholder of the corporation who (A) is a stockholder of record at the time of the giving of the notice required by this Section 2.4(iii) and on the record date for the determination of stockholders entitled to vote at the special meeting and (B) delivers a timely written notice of the nomination to the secretary of the corporation that includes the information set forth in Sections 2.4(ii)(b) and (ii)(c) above. To be timely, such notice must be received by the secretary at the principal executive offices of the corporation not later than the close of business on the later of the 90th day prior to such special meeting or the tenth day following the day on which Public Announcement is first made of the date of the special meeting and of the nominees proposed by the board of directors to be elected or re-elected at such meeting. A person shall not be eligible for election or re-election as a director at a special meeting unless the person is nominated (i) by or at the direction of the board of directors or (ii) by a stockholder in accordance with the notice procedures set forth in this Section 2.4(iii). In addition, a nominee shall not be eligible for election or re-election if a stockholder or Stockholder Associated Person, as applicable, takes action contrary to the representations made in the Nominee Solicitation Statement applicable to such nominee or if the Nominee Solicitation Statement applicable to such nominee contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading.

(b) The chairperson of the special meeting shall, if the facts warrant, determine and declare at the meeting that a nomination or business was not made in accordance with the procedures prescribed by these bylaws, and if the chairperson should so determine, he or she shall so declare at the meeting, and the defective nomination or business shall be disregarded.

(iv) *Other Requirements and Rights.* In addition to the foregoing provisions of this Section 2.4, a stockholder must also comply with all applicable requirements of state law and of the 1934 Act and the rules and regulations thereunder with respect to the matters set forth in this Section 2.4. Nothing in this Section 2.4 shall be deemed to affect any rights of:

(a) stockholder to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 (or any successor provision) under the 1934 Act; or

(b) the corporation to omit a proposal from the corporation's proxy statement pursuant to Rule 14a-8 (or any successor provision) under the 1934 Act.

## 2.5 NOTICE OF STOCKHOLDERS' MEETINGS

Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Except as otherwise provided in the DGCL, the certificate of incorporation or these bylaws, the written notice of any meeting of stockholders shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting.

## 2.6 QUORUM

The holders of a majority of the stock issued and outstanding and entitled to vote, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders. Where a separate vote by a class or series or classes or series is required, a majority of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter, except as otherwise provided by law, the certificate of incorporation or these bylaws.

If a quorum is not present or represented at any meeting of the stockholders, then either (i) the chairperson of the meeting, or (ii) if the chairperson does not act, the stockholders entitled to vote at the meeting, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

## 2.7 ADJOURNED MEETING; NOTICE

When a meeting is adjourned to another time or place, unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the board of directors shall fix a new record date for notice of such adjourned meeting in accordance with Section 213(a) of the DGCL and Section 2.11 of these bylaws, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

## 2.8 CONDUCT OF BUSINESS

The chairperson of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of business. The chairperson of any meeting of stockholders shall be designated by the board of directors; in the absence of such designation, the chairperson of the board, if any, the chief executive officer (in the absence of the chairperson) or the president (in the absence of the chairperson of the board and the chief executive officer), or in their absence any other executive officer of the corporation, shall serve as chairperson of the stockholder meeting.

## 2.9 VOTING

The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.11 of these bylaws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the DGCL.

Except as may be otherwise provided in the certificate of incorporation or these bylaws, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder.

Except as otherwise required by law, the certificate of incorporation or these bylaws, in all matters other than the election of directors, the affirmative vote of a majority of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders. Except as otherwise required by law, the certificate of incorporation or these bylaws, directors shall be elected by a plurality of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Where a separate vote by a class or series or classes or series is required, in all matters other than the election of directors, the affirmative vote of the majority of shares of such class or series or classes or series present in person or represented by proxy at the meeting shall be the act of such class or series or classes or series, except as otherwise provided by law, the certificate of incorporation or these bylaws.

## 2.10 STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING

To the fullest extent permitted by law, whenever any action is required or permitted to be taken at a meeting of stockholders, by law, by the Certificate of Incorporation or by these Bylaws, such action may be taken without a meeting, without prior notice and without a vote of stockholders, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

## 2.11 RECORD DATES

In order that the corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If the board of directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to

vote at such meeting unless the board of directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination.

If no record date is fixed by the board of directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the board of directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the provisions of Section 213 of the DGCL and this Section 2.11 at the adjourned meeting.

In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

## 2.12 PROXIES

Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL. A written proxy may be in the form of any means of electronic transmission which sets forth or is submitted with information from which it can be determined that the means of electronic transmission was authorized by the person.

## 2.13 LIST OF STOCKHOLDERS ENTITLED TO VOTE

The officer who has charge of the stock ledger of the corporation shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting; *provided, however*, if the record date for determining the stockholders entitled to vote is less than 10 days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date. The stockholder list shall be arranged in alphabetical order and show the address of each stockholder and the number of shares registered in the name of each stockholder. The corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose related to the meeting for a period of at least 10 days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the corporation's principal place of business. In the event that the corporation determines to make the list available

on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Such list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

#### 2.14 INSPECTORS OF ELECTION

Before any meeting of stockholders, the board of directors shall appoint an inspector or inspectors of election to act at the meeting or its adjournment. The number of inspectors shall be either one (1) or three (3). If any person appointed as inspector fails to appear or fails or refuses to act, then the chairperson of the meeting may, and upon the request of any stockholder or a stockholder's proxy shall, appoint a person to fill that vacancy.

Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors so appointed and designated shall (i) ascertain the number of shares of capital stock of the corporation outstanding and the voting power of each share, (ii) determine the shares of capital stock of the corporation represented at the meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, (v) certify their determination of the number of shares of capital stock of the corporation represented at the meeting and such inspector or inspectors' count of all votes and ballots, (vi) determine when the polls shall close; (vii) determine the result; and (viii) do any other acts that may be proper to conduct the election or vote with fairness to all stockholders.

In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the corporation, the inspector or inspectors may consider such information as is permitted by applicable law. If there are three (3) inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all. Any report or certificate made by the inspectors of election is prima facie evidence of the facts stated therein.

### **ARTICLE III — DIRECTORS**

#### 3.1 POWERS

The business and affairs of the corporation shall be managed by or under the direction of the board of directors, except as may be otherwise provided in the DGCL or the certificate of incorporation.

#### 3.2 NUMBER OF DIRECTORS

The board of directors shall consist of one or more members, each of whom shall be a natural person. Unless the certificate of incorporation fixes the number of directors, the number of directors shall be determined from time to time solely by resolution of the board of directors. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

### 3.3 ELECTION, QUALIFICATION AND TERM OF OFFICE OF DIRECTORS

Except as provided in Section 3.4 of these bylaws, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until such director's successor is elected and qualified or until such director's earlier death, resignation or removal. Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws. The certificate of incorporation or these bylaws may prescribe other qualifications for directors. If so provided in the certificate of incorporation, the directors of the corporation shall be divided into three classes.

### 3.4 RESIGNATION AND VACANCIES

Any director may resign at any time upon notice given in writing or by electronic transmission to the corporation; *provided, however*, that if such notice is given by electronic transmission, such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the director. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. Acceptance of such resignation shall not be necessary to make it effective. A resignation which is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. Unless otherwise provided in the certificate of incorporation or these bylaws, when one or more directors resign from the board of directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective.

Unless otherwise provided in the certificate of incorporation or these bylaws, vacancies and newly created directorships resulting from any increase in the authorized number of directors shall be filled only by a majority of the directors then in office, even if the directors in office represent less than a quorum, or by a sole remaining director. If the directors are divided into classes, a person so elected by the directors then in office to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall have been duly elected and qualified.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole board of directors (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least 10% of the voting stock at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the DGCL as far as applicable.

### 3.5 PLACE OF MEETINGS; MEETINGS BY TELEPHONE

The board of directors may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the board of directors, or any committee designated by the board of directors, may participate in a meeting of the board of directors, or any committee, by means of conference telephone or other communications equipment by means

of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

### 3.6 REGULAR MEETINGS

Regular meetings of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by the board of directors.

### 3.7 SPECIAL MEETINGS; NOTICE

Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairperson of the board of directors, the chief executive officer, the president, the secretary or a majority of the authorized number of directors, at such times and places as he or she or they shall designate.

Notice of the time and place of special meetings shall be:

- (i) delivered personally by hand, by courier or by telephone;
- (ii) sent by United States first-class mail, postage prepaid;
- (iii) sent by facsimile; or
- (iv) sent by electronic mail,

directed to each director at that director's address, telephone number, facsimile number or electronic mail address, as the case may be, as shown on the corporation's records.

If the notice is (i) delivered personally by hand, by courier or by telephone, (ii) sent by facsimile or (iii) sent by electronic mail, it shall be delivered or sent at least 24 hours before the time of the holding of the meeting. If the notice is sent by United States mail, it shall be deposited in the United States mail at least four days before the time of the holding of the meeting. Any oral notice may be communicated to the director. The notice need not specify the place of the meeting (if the meeting is to be held at the corporation's principal executive office) nor the purpose of the meeting.

### 3.8 QUORUM; VOTING

At all meetings of the board of directors, a majority of the total authorized number of directors shall constitute a quorum for the transaction of business. If a quorum is not present at any meeting of the board of directors, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the board of directors, except as may be otherwise specifically provided by statute, the certificate of incorporation or these bylaws.

If the certificate of incorporation provides that one or more directors shall have more or less than one vote per director on any matter, every reference in these bylaws to a majority or other proportion of the directors shall refer to a majority or other proportion of the votes of the directors.

### 3.9 BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof, may be taken without a meeting if all members of the board of directors or committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the board of directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

### 3.10 FEES AND COMPENSATION OF DIRECTORS

Unless otherwise restricted by the certificate of incorporation or these bylaws, the board of directors shall have the authority to fix the compensation of directors.

### 3.11 REMOVAL OF DIRECTORS

A director may be removed from office by the stockholders of the corporation only for cause.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

## ARTICLE IV — COMMITTEES

### 4.1 COMMITTEES OF DIRECTORS

The board of directors may designate one or more committees, each committee to consist of one or more of the directors of the corporation. The board of directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors or in these bylaws, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority to (i) approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopt, amend or repeal any bylaw of the corporation.

#### 4.2 COMMITTEE MINUTES

Each committee shall keep regular minutes of its meetings and report the same to the board of directors when required.

#### 4.3 MEETINGS AND ACTION OF COMMITTEES

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of:

- (i) Section 3.5 (place of meetings and meetings by telephone);
- (ii) Section 3.6 (regular meetings);
- (iii) Section 3.7 (special meetings; notice);
- (iv) Section 3.8 (quorum; voting);
- (v) Section 3.9 (action without a meeting); and
- (vi) Section 7.5 (waiver of notice)

with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the board of directors and its members. In addition, the following provisions shall apply:

- (i) the time of regular meetings of committees may be determined by resolution of the committee;
- (ii) special meetings of committees may also be called by resolution of the committee; and
- (iii) notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The board of directors may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

Any provision in the certificate of incorporation providing that one or more directors shall have more or less than one vote per director on any matter shall apply to voting in any committee or subcommittee, unless otherwise provided in the certificate of incorporation or these bylaws.

#### 4.4 SUBCOMMITTEES

Unless otherwise provided in the certificate of incorporation, these bylaws or the resolutions of the board of directors designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

## ARTICLE V — OFFICERS

### 5.1 OFFICERS

The officers of the corporation shall be a president and a secretary. The corporation may also have, at the discretion of the board of directors, a chairperson of the board of directors, a vice chairperson of the board of directors, a chief executive officer, a chief financial officer or treasurer, one or more vice presidents, one or more assistant vice presidents, one or more assistant treasurers, one or more assistant secretaries, and any such other officers as may be appointed in accordance with the provisions of these bylaws. Any number of offices may be held by the same person.

### 5.2 APPOINTMENT OF OFFICERS

The board of directors shall appoint the officers of the corporation, except such officers as may be appointed in accordance with the provisions of Section 5.3 of these bylaws, subject to the rights, if any, of an officer under any contract of employment. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in this Section 5 for the regular election to such office.

### 5.3 SUBORDINATE OFFICERS

The board of directors may appoint, or empower the chief executive officer or, in the absence of a chief executive officer, the president, to appoint, such other officers and agents as the business of the corporation may require. Each of such officers and agents shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the board of directors may from time to time determine.

### 5.4 REMOVAL AND RESIGNATION OF OFFICERS

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by an affirmative vote of the majority of the board of directors at any regular or special meeting of the board of directors or, except in the case of an officer chosen by the board of directors, by any officer upon whom such power of removal may be conferred by the board of directors.

Any officer may resign at any time by giving written or electronic notice to the corporation; *provided, however,* that if such notice is given by electronic transmission, such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the officer. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

### 5.5 VACANCIES IN OFFICES

Any vacancy occurring in any office of the corporation shall be filled by the board of directors or as provided in Section 5.3.

## 5.6 REPRESENTATION OF SHARES OF OTHER CORPORATIONS

The chairperson of the board of directors, the president, any vice president, the treasurer, the secretary or assistant secretary of this corporation, or any other person authorized by the board of directors or the president or a vice president, is authorized to vote, represent, and exercise on behalf of this corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

## 5.7 AUTHORITY AND DUTIES OF OFFICERS

All officers of the corporation shall respectively have such authority and perform such duties in the management of the business of the corporation as may be designated from time to time by the board of directors and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the board of directors.

# ARTICLE VI — STOCK

## 6.1 STOCK CERTIFICATES; PARTLY PAID SHARES

The shares of the corporation shall be represented by certificates, provided that the board of directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of the corporation by the chairperson of the board of directors or vice-chairperson of the board of directors, or the president or a vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. The corporation shall not have power to issue a certificate in bearer form.

The corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly-paid shares, or upon the books and records of the corporation in the case of uncertificated partly-paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully-paid shares, the corporation shall declare a dividend upon partly-paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

## 6.2 SPECIAL DESIGNATION ON CERTIFICATES

If the corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/

or rights shall be set forth in full or summarized on the face or back of the certificate that the corporation shall issue to represent such class or series of stock; *provided, however*, that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the corporation shall issue to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this section 6.2 or Sections 156, 202(a) or 218(a) of the DGCL or with respect to this section 6.2 a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

### 6.3 LOST, STOLEN OR DESTROYED CERTIFICATES

Except as provided in this Section 6.3, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the corporation and cancelled at the same time. The corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

### 6.4 DIVIDENDS

The board of directors, subject to any restrictions contained in the certificate of incorporation or applicable law, may declare and pay dividends upon the shares of the corporation's capital stock. Dividends may be paid in cash, in property, or in shares of the corporation's capital stock, subject to the provisions of the certificate of incorporation.

The board of directors may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the corporation, and meeting contingencies.

### 6.5 TRANSFER OF STOCK

Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by an attorney duly authorized, and, if such stock is certificated, upon the surrender of a certificate or certificates for a like number of shares, properly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer; *provided, however*, that such succession, assignment or authority to transfer is not prohibited by the certificate of incorporation, these bylaws, applicable law or contract.

## 6.6 STOCK TRANSFER AGREEMENTS

The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

## 6.7 REGISTERED STOCKHOLDERS

The corporation:

(i) shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner;

(ii) shall be entitled to hold liable for calls and assessments the person registered on its books as the owner of shares; and

(iii) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

## ARTICLE VII — MANNER OF GIVING NOTICE AND WAIVER

### 7.1 NOTICE OF STOCKHOLDERS' MEETINGS

Notice of any meeting of stockholders, if mailed, is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the corporation's records. An affidavit of the secretary or an assistant secretary of the corporation or of the transfer agent or other agent of the corporation that the notice has been given shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

### 7.2 NOTICE BY ELECTRONIC TRANSMISSION

Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the DGCL, the certificate of incorporation or these bylaws, any notice to stockholders given by the corporation under any provision of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any such consent shall be deemed revoked if:

(i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent; and

(ii) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice.

However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

Any notice given pursuant to the preceding paragraph shall be deemed given:

- (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;
- (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice;
- (iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and
- (iv) if by any other form of electronic transmission, when directed to the stockholder.

An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

An “**electronic transmission**” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

### 7.3 NOTICE TO STOCKHOLDERS SHARING AN ADDRESS

Except as otherwise prohibited under the DGCL, without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the corporation under the provisions of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any stockholder who fails to object in writing to the corporation, within 60 days of having been given written notice by the corporation of its intention to send the single notice, shall be deemed to have consented to receiving such single written notice.

### 7.4 NOTICE TO PERSON WITH WHOM COMMUNICATION IS UNLAWFUL

Whenever notice is required to be given, under the DGCL, the certificate of incorporation or these bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

## 7.5 WAIVER OF NOTICE

Whenever notice is required to be given to stockholders, directors or other persons under any provision of the DGCL, the certificate of incorporation or these bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders or the board of directors, as the case may be, need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the certificate of incorporation or these bylaws.

## ARTICLE VIII — INDEMNIFICATION

### 8.1 INDEMNIFICATION OF DIRECTORS AND OFFICERS IN THIRD PARTY PROCEEDINGS

Subject to the other provisions of this Article VIII, the corporation shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a “**Proceeding**”) (other than an action by or in the right of the corporation) by reason of the fact that such person is or was a director of the corporation or an officer of the corporation, or while a director of the corporation or officer of the corporation is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person’s conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person’s conduct was unlawful.

### 8.2 INDEMNIFICATION OF DIRECTORS AND OFFICERS IN ACTIONS BY OR IN THE RIGHT OF THE CORPORATION

Subject to the other provisions of this Article VIII, the corporation shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the corporation, or while a director or officer of the corporation is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation; except that no indemnification

shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

### 8.3 SUCCESSFUL DEFENSE

To the extent that a present or former director or officer of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described in Section 8.1 or Section 8.2, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

### 8.4 INDEMNIFICATION OF OTHERS

Subject to the other provisions of this Article VIII, the corporation shall have power to indemnify its employees and its agents to the extent not prohibited by the DGCL or other applicable law. The board of directors shall have the power to delegate the determination of whether employees or agents shall be indemnified to such person or persons as the board of determines.

### 8.5 ADVANCED PAYMENT OF EXPENSES

Expenses (including attorneys' fees) incurred by an officer or director of the corporation in defending any Proceeding shall be paid by the corporation in advance of the final disposition of such Proceeding upon receipt of a written request therefor (together with documentation reasonably evidencing such expenses) and an undertaking by or on behalf of the person to repay such amounts if it shall ultimately be determined that the person is not entitled to be indemnified under this Article VIII or the DGCL. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the corporation deems reasonably appropriate and shall be subject to the corporation's expense guidelines. The right to advancement of expenses shall not apply to any claim for which indemnity is excluded pursuant to these bylaws, but shall apply to any Proceeding referenced in Section 8.6(ii) or 8.6(iii) prior to a determination that the person is not entitled to be indemnified by the corporation.

### 8.6 LIMITATION ON INDEMNIFICATION

Subject to the requirements in Section 8.3 and the DGCL, the corporation shall not be obligated to indemnify any person pursuant to this Article VIII in connection with any Proceeding (or any part of any Proceeding):

(i) for which payment has actually been made to or on behalf of such person under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid;

(ii) for an accounting or disgorgement of profits pursuant to Section 16(b) of the 1934 Act, or similar provisions of federal, state or local statutory law or common law, if such person is held liable therefor (including pursuant to any settlement arrangements);

(iii) for any reimbursement of the corporation by such person of any bonus or other incentive-based or equity-based compensation or of any profits realized by such person from the sale of securities of the corporation, as required in each case under the 1934 Act (including any such reimbursements that arise from an accounting restatement of the corporation pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the “**Sarbanes-Oxley Act**”), or the payment to the corporation of profits arising from the purchase and sale by such person of securities in violation of Section 306 of the Sarbanes-Oxley Act), if such person is held liable therefor (including pursuant to any settlement arrangements);

(iv) initiated by such person against the corporation or its directors, officers, employees, agents or other indemnitees, unless (a) the board of directors authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (b) the corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the corporation under applicable law, (c) otherwise required to be made under Section 8.7 or (d) otherwise required by applicable law; or

(v) if prohibited by applicable law; *provided, however*, that if any provision or provisions of this Article VIII shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (1) the validity, legality and enforceability of the remaining provisions of this Article VIII (including, without limitation, each portion of any paragraph or clause containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (2) to the fullest extent possible, the provisions of this Article VIII (including, without limitation, each such portion of any paragraph or clause containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

#### 8.7 DETERMINATION; CLAIM

If a claim for indemnification or advancement of expenses under this Article VIII is not paid in full within 90 days after receipt by the corporation of the written request therefor, the claimant shall be entitled to an adjudication by a court of competent jurisdiction of his or her entitlement to such indemnification or advancement of expenses. The corporation shall indemnify such person against any and all expenses that are incurred by such person in connection with any action for indemnification or advancement of expenses from the corporation under this Article VIII, to the extent such person is successful in such action, and to the extent not prohibited by law. In any such suit, the corporation shall, to the fullest extent not prohibited by law, have the burden of proving that the claimant is not entitled to the requested indemnification or advancement of expenses.

#### 8.8 NON-EXCLUSIVITY OF RIGHTS

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the certificate of incorporation or any statute, bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person’s official capacity and as to action in another capacity while holding such office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advancement of expenses, to the fullest extent not prohibited by the DGCL or other applicable law.

## 8.9 INSURANCE

The corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under the provisions of the DGCL.

## 8.10 SURVIVAL

The rights to indemnification and advancement of expenses conferred by this Article VIII shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

## 8.11 EFFECT OF REPEAL OR MODIFICATION

Any amendment, alteration or repeal of this Article VIII shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to such amendment, alteration or repeal.

## 8.12 CERTAIN DEFINITIONS

For purposes of this Article VIII, references to the “**corporation**” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article VIII with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. For purposes of this Article VIII, references to “**other enterprises**” shall include employee benefit plans; references to “**finances**” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “**serving at the request of the corporation**” shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “**not opposed to the best interests of the corporation**” as referred to in this Article VIII.

# ARTICLE IX — GENERAL MATTERS

## 9.1 EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS

Except as otherwise provided by law, the certificate of incorporation or these bylaws, the board of directors may authorize any officer or officers, or agent or agents, to enter into any contract or execute any

document or instrument in the name of and on behalf of the corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

#### 9.2 FISCAL YEAR

The fiscal year of the corporation shall be fixed by resolution of the board of directors and may be changed by the board of directors.

#### 9.3 SEAL

The corporation may adopt a corporate seal, which shall be adopted and which may be altered by the board of directors. The corporation may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

#### 9.4 CONSTRUCTION; DEFINITIONS

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term “**person**” includes both an entity and a natural person.

### ARTICLE X — AMENDMENTS

These bylaws may be adopted, amended or repealed by the stockholders entitled to vote; *provided, however*, that the affirmative vote of the holders of at least 66 2/3% of the total voting power of outstanding voting securities, voting together as a single class, shall be required for the stockholders of the corporation to alter, amend or repeal, or adopt any bylaw inconsistent with, the following provisions of these bylaws: Article II, Sections 3.1, 3.2, 3.4 and 3.11 of Article III, Article VIII and this Article X (including, without limitation, any such Article or Section as renumbered as a result of any amendment, alteration, change, repeal, or adoption of any other Bylaw). The board of directors shall also have the power to adopt, amend or repeal bylaws; *provided, however*, that a bylaw amendment adopted by stockholders which specifies the votes that shall be necessary for the election of directors shall not be further amended or repealed by the board of directors.

**MIRAMAR LABS, INC.**

**CERTIFICATE OF AMENDMENT OF BYLAWS**

The undersigned hereby certifies that he or she is the duly elected, qualified, and acting Secretary or Assistant Secretary of Miramar Labs, Inc., a Delaware corporation and that the foregoing bylaws, comprising 23 pages, were amended and restated on June 7, 2016 by the corporation's board of directors.

IN WITNESS WHEREOF, the undersigned has hereunto set his or her hand this June 7, 2016.

/s/ Philip H. Oettinger  
*(signature)*

Philip H. Oettinger  
*(print name)*

Assistant Secretary  
*(title)*

**CERTIFICATE OF MERGER**  
**for the merger of**  
**MIRAMAR ACQUISITION CORP.**  
**with and into**  
**MIRAMAR TECHNOLOGIES, INC.**

**Pursuant to Section 251(c) of the**  
**General Corporation Law of the State of Delaware**

The undersigned corporation, organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the “DGCL”), does hereby certify:

**FIRST:** That the name and state of incorporation of each of the constituent corporations in the merger (the “Merger”) is as follows:

<u>Name</u>	<u>State of Incorporation</u>
(i) Miramar Acquisition Corp.	Delaware
(ii) Miramar Technologies, Inc.	Delaware

**SECOND:** That an Agreement and Plan of Merger and Reorganization, dated as of June 7, 2016 (the “Agreement and Plan of Merger”), between the parties to the Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the requirements of Section 251 of the DGCL.

**THIRD:** That Miramar Technologies, Inc. shall be the surviving corporation of the Merger and will continue its existence under the name Miramar Technologies, Inc.

**FOURTH:** That upon the effective time of the Merger, the Certificate of Incorporation of the surviving corporation shall be amended and restated in the form attached hereto as Exhibit A and as so amended, shall be the Certificate of Incorporation of the surviving corporation until amended as provided in such certificate of incorporation or applicable law.

**FIFTH:** That an executed copy of the Agreement and Plan of Merger is on file at an office of the surviving corporation. The address of such office is 2790 Walsh Avenue, Santa Clara, California 95051.

**SIXTH:** That a copy of the Agreement and Plan of Merger will be furnished by the surviving corporation, on request and without cost, to any stockholder of either of the constituent corporations.

**SEVENTH:** That the Merger shall be effective upon the filing of this Certificate of Merger with the Secretary of State of the State of Delaware.

*[Signature page follows]*

IN WITNESS WHEREOF, the undersigned has caused this Certificate of Merger to be signed by a duly authorized officer as of the 7th day of June, 2016.

**MIRAMAR TECHNOLOGIES, INC.**

By: /s/ R. Michael Kleine

Name: R. Michael Kleine

Title: President and Chief Executive Officer

## EXHIBIT A

### CERTIFICATE OF INCORPORATION

#### OF

#### MIRAMAR TECHNOLOGIES, INC.

The undersigned, for the purpose of forming a corporation pursuant to Section 102 of the General Corporation Law of the State of Delaware (the “DGCL”), hereby certifies as follows:

1. Name. The name of the corporation is Miramar Technologies, Inc.
2. Registered Office and Registered Agent. The address of the Corporation’s registered office in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle, 19801. The name of the registered agent at that address is The Corporation Trust Company.
3. Purposes. The purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.
4. Capital Stock. The total number of shares that the corporation is authorized to issue is 100 shares of common stock, par value \$0.001 per share.
5. Bylaws. The board of directors of the corporation is expressly authorized to adopt, amend or repeal bylaws of the corporation.
6. Board Rights. In furtherance and not in limitation of the powers conferred by statute, it is further provided that:
  - a. The business and affairs of the corporation shall be managed by or under the direction of the Board of Directors.
  - b. The Board of Directors is expressly authorized to adopt, alter, amend or repeal the bylaws of the Corporation.
7. Director Election. Election of directors need not be by written ballot unless the bylaws of the corporation shall so provide.
8. Amendment. Subject to such limitations as may be from time to time imposed by other provisions of this Certificate of Incorporation, by the bylaws of the corporation, by the DGCL or by other applicable law, or by any contract or agreement to which the corporation is or may become a party, the corporation reserves the right to amend or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this express reservation.

NOT VALID UNLESS COUNTERSIGNED BY TRANSFER AGENT  
INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE

miramarlabs®

CUSIP No. \_\_\_\_\_

AUTHORIZED COMMON STOCK: \_\_\_\_\_ SHARES PAR  
VALUE: \$ \_\_\_\_\_

THIS CERTIFIES THAT

IS THE RECORD HOLDER OF

— Shares of Miramar Labs, Inc. Common Stock —

transferable on the books of the Corporation in person or by duly authorized attorney upon surrender of this Certificate properly endorsed. This Certificate is not valid until countersigned by the Transfer Agent and registered by the Registrar.

Witness the facsimile seal of the Corporation and the facsimile signatures of its duly authorized officers.

Dated: \_\_\_\_\_

*Byrd A. Niles*  
\_\_\_\_\_  
SECRETARY



*[Signature]*  
\_\_\_\_\_  
PRESIDENT

Countersigned & Registered: Globex Transfer, LLC  
(813) 344-4490

By \_\_\_\_\_  
Authorized Signature

## REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this “**Agreement**”) is made and entered into effective as of \_\_\_\_\_, 20\_\_, among Miramar Labs, Inc. (formerly known as KTL Bamboo International Corp), a Delaware corporation (the “**Company**”), the persons who have purchased the Offering Shares and have executed omnibus or counterpart signature page(s) hereto (each, a “**Purchaser**” and collectively, the “**Purchasers**”), the persons or entities identified on Schedule 1 hereto holding Placement Agent Warrants (as defined below) (collectively, the “**Brokers**”), the persons or entities identified on Schedule 2 hereto holding Merger Shares (as defined below) and the persons or entities identified on Schedule 3 hereto holding Registrable Pre-Merger Shares (as defined below).

### **RECITALS:**

**WHEREAS**, the Company has offered and sold in compliance with Rule 506 of Regulation D promulgated under the Securities Act to accredited investors in a private placement offering (the “**Offering**”) shares of the common stock of the Company, par value \$0.001 per share, pursuant to that certain Subscription Agreement entered into by and between the Company and each of the subscribers for the Offering Shares (as defined below) set forth on the signature pages affixed thereto (the “**Subscription Agreement**”); and

**WHEREAS**, the Company has agreed to enter into a registration rights agreement with each of the Purchasers in the Offering who purchased the Offering Shares (as defined below) and with the Brokers who hold Placement Agent Warrants and certain other investors; and

**WHEREAS**, simultaneously with the initial closing of the Offering, a wholly-owned subsidiary of the Company will merge with and into Miramar Technologies, Inc. (formerly known as Miramar Labs, Inc.) (“**Miramar**”) (the “**Merger**”);

**NOW, THEREFORE**, in consideration of the mutual promises, representations, warranties, covenants, and conditions set forth herein, the parties mutually agree as follows:

1. Certain Definitions. As used in this Agreement, the following terms shall have the following respective meanings:

“Approved Market” means the OTC Markets Group, the Nasdaq Stock Market, the New York Stock Exchange or the NYSE MKT.

“Blackout Period” means, with respect to a registration, a period during which the Company, in the good faith judgment of its board of directors, determines (because of the existence of, or in anticipation of, any acquisition, financing activity, or other transaction involving the Company, or the unavailability for reasons beyond the Company’s control of any required financial statements, disclosure of information which is in its best interest not to publicly disclose, or any other event or condition of similar significance to the Company) that the registration and distribution of the Registrable Securities to be covered by such registration statement, if any, or the filing of an amendment to such registration statement in the circumstances described in Section 4(g), would be

seriously detrimental to the Company and its stockholders, in each case commencing on the day the Company notifies the Holders that they are required, because of the determination described above, to suspend offers and sales of Registrable Securities and ending on the earlier of (1) the date upon which the material non-public information resulting in the Blackout Period is disclosed to the public or ceases to be material and (2) such time as the Company notifies the selling Holders that sales pursuant to such Registration Statement or a new or amended Registration Statement may resume; provided, however, that no Blackout Period shall extend for a period of more than fifteen (15) consecutive Trading Days, and aggregate Blackout Periods shall not exceed forty-five (45) Trading Days in any twelve (12) month period.

“Business Day” means any day of the year, other than a Saturday, Sunday, or other day on which banks in the State of New York are required or authorized to close.

“Commission” means the U. S. Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

“Common Stock” means the common stock, par value \$0.001 per share, of the Company and any and all shares of capital stock or other equity securities of: (i) the Company which are added to or exchanged or substituted for the Common Stock by reason of the declaration of any stock dividend or stock split, the issuance of any distribution or the reclassification, readjustment, recapitalization or other such modification of the capital structure of the Company; and (ii) any other corporation, now or hereafter organized under the laws of any state or other governmental authority, with which the Company is merged, which results from any consolidation or reorganization to which the Company is a party, or to which is sold all or substantially all of the shares or assets of the Company, if immediately after such merger, consolidation, reorganization or sale, the Company or the stockholders of the Company own equity securities having in the aggregate more than 50% of the total voting power of such other corporation.

“Effective Date” means the date of the final closing of the Offering.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

“Family Member” means (a) with respect to any individual, such individual’s spouse, any descendants (whether natural or adopted), any trust all of the beneficial interests of which are owned by any of such individuals or by any of such individuals together with any organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, the estate of any such individual, and any corporation, association, partnership or limited liability company all of the equity interests of which are owned by those above described individuals, trusts or organizations and (b) with respect to any trust, the owners of the beneficial interests of such trust.

“Holder” means (i) each Purchaser or any of such Purchaser’s respective successors and Permitted Assignees who acquire rights in accordance with this Agreement with respect to any Registrable Securities directly or indirectly from a Purchaser or from any Permitted Assignee; (ii) each Broker or any of such Broker’s respective successors and Permitted Assignees who acquire rights in accordance with this Agreement with respect to any Registrable Securities directly or

indirectly from an Broker or from any Permitted Assignee; (iii) each Registrable Pre-Merger Stockholder; and (iv) each holder of the Merger Shares.

“Majority Holders” means, at any time, Holders of a majority of the Registrable Securities then outstanding.

“Merger Shares” means the shares of Common Stock issued in exchange for all of the equity securities of Miramar that are outstanding immediately prior to the closing of the Merger.

“Permitted Assignee” means (a) with respect to a partnership, its partners or former partners in accordance with their partnership interests, (b) with respect to a corporation, its stockholders in accordance with their interest in the corporation, (c) with respect to a limited liability company, its members or former members in accordance with their interest in the limited liability company, (d) with respect to an individual party, any Family Member of such party, (e) an entity that is controlled by, controls, or is under common control with a transferor, or (f) a party to this Agreement.

“Piggyback Registration” means, in any registration of Common Stock referenced in Section 3(b), the right of each Holder to include the Registrable Securities of such Holder in such registration.

“Placement Agent Warrants” shall have the meaning set forth in the Subscription Agreement.

“Offering Shares” means the shares of Common Stock issued to the Purchasers pursuant to the Subscription Agreement (including any Shares of Common Stock issued pursuant to Section 18 of the Subscription Agreement) and any shares of Common Stock issued or issuable with respect to such shares upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing.

The terms “register,” “registered,” and “registration” refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such registration statement.

“Registrable Pre-Merger Shares” means all shares of Common Stock of the Company held by any person who was a shareholder of the Company immediately prior to the Merger who at any time has beneficially owned 10% or more of the Company’s outstanding Common Stock.

“Registrable Pre-Merger Stockholder” means a person holding Registrable Pre-Merger Shares.

“Registrable Securities” means (a) the Offering Shares, (b) the shares of Common Stock issuable upon exercise of the Placement Agent Warrants, (c) the Merger Shares, and (d) if any, the Registrable Pre-Merger Shares; but, in each case, excluding any otherwise Registrable Securities that (i) have been sold or otherwise transferred other than to a Permitted Assignee, (ii) may be sold under the Securities Act without volume limitations either pursuant to Rule 144 of the Securities Act or otherwise during any ninety (90) day period, or (iii) are at the time subject to an effective registration statement under the Securities Act.

“Registration Default Period” means the period during which any Registration Event occurs and is continuing.

“Registration Effectiveness Date” means the date that is one hundred and eighty (180) calendar days after the Effective Date.

“Registration Event” means the occurrence of any of the following events:

(a) the Company fails to file with the Commission the Registration Statement on or before the Registration Filing Date;

(b) the Registration Statement is not declared effective by the Commission on or before the Registration Effectiveness Date;

(c) after the SEC Effective Date, the Registration Statement ceases for any reason to remain continuously effective or the Holders are otherwise not permitted to utilize the prospectus therein to resell the Registrable Securities for a period of more than fifteen (15) consecutive Trading Days, except (i) up to two Blackout Periods of up to twenty (20) consecutive Trading Days each in any calendar year, and (ii) as excused pursuant to Section 3(a); or

(d) the Registrable Securities, if issued, are not listed or included for quotation on an Approved Market, or trading of the Common Stock is suspended or halted on the Approved Market, which at the time constitutes the principal markets for the Common Stock, for more than three (3) full, consecutive Trading Days; provided, however, a Registration Event shall not be deemed to occur if all or substantially all trading in equity securities (including the Common Stock) is suspended or halted on the Approved Market for any length of time.

“Registration Filing Date” means the date that is ninety (90) calendar days after the Effective Date.

“Registration Statement” means the registration statement that the Company is required to file pursuant to Section 3(a) of this Agreement to register the Registrable Securities.

“Restricted Holders” means all officers and directors of the Company and certain stockholders of the Company who have entered into lock-up agreements with the Company, dated [\_\_\_\_\_], 2016, pursuant to which they agree to certain restrictions on the sale or disposition (including pledge) of the Common Stock held by (or issuable to) them.

“Rule 144” means Rule 144 promulgated by the Commission under the Securities Act, as such rule may be amended or supplemented from time to time, or any similar successor rule that may be promulgated by the Commission.

“Rule 145” means Rule 145 promulgated by the Commission under the Securities Act, as such rule may be amended or supplemented from time to time, or any similar successor rule that may be promulgated by the Commission.

“Rule 415” means Rule 415 promulgated by the Commission under the Securities Act, as such rule may be amended or supplemented from time to time, or any similar successor rule that may be promulgated by the Commission.

“Securities Act” means the Securities Act of 1933, as amended, or any similar federal statute promulgated in replacement thereof, and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

“SEC Effective Date” means the date the Registration Statement is declared effective by the Commission.

“Trading Day” means any day on which such national securities exchange, the OTC Markets Group or such other securities market or quotation system, which at the time constitutes the principal securities market for the Common Stock, is open for general trading of securities.

Capitalized terms used herein without definition have the meanings ascribed to them in the Subscription Agreement.

2. Term. This Agreement shall terminate with respect to each Holder on the earlier of: (i) the date that is the earlier of (x) two (2) years from the SEC Effective Date and (y) the date on which all Registrable Securities held by such Holder have been transferred other than to a Permitted Assignee or may be sold under Rule 144 without restriction (including, without limitation, volume restrictions) and without the need for current public information required by Rule 144(c)(1) or Rule 144(i)(2), if applicable; or (ii) the date otherwise terminated as provided herein.

3. Registration.

(a) Registration on Form S-1. The Company shall file with the Commission a Registration Statement on Form S-1, or any other form for which the Company then qualifies or which counsel for the Company shall deem appropriate and which form shall be available for the resale by the Holders of all of the Registrable Securities, and the Company shall (i) use its commercially reasonable efforts to make the initial filing of the Registration Statement no later than the Registration Filing Date, (ii) use its commercially reasonable efforts to cause such Registration Statement to be declared effective no later than the Registration Effectiveness Date and (iii) use its commercially reasonable efforts to keep such Registration Statement effective for a period of two (2) years after the SEC Effective Date or for such shorter period ending on the earlier to occur of (x) the date on which all Registrable Securities have been transferred other than to a Permitted Assignee and (y) the date as of which all of the Holders may sell all of the Registrable Securities without restriction pursuant to Rule 144 (including, without limitation, volume restrictions) and without the need for current public information required by Rule 144(c)(1) or Rule 144(i)(2), if applicable (the “**Effectiveness Period**”); provided, however, that the Company shall not be obligated to effect any such registration, qualification or compliance pursuant to this Section, or keep such registration effective pursuant to the terms hereunder, in any particular jurisdiction in which the Company would be required to qualify to do business as a foreign corporation or as a dealer in securities under the securities laws of such jurisdiction or to execute a general consent to service of process in effecting such registration, qualification or compliance, in each case where it has not

already done so. Notwithstanding the foregoing, in the event that the staff of the Commission (the “**Staff**”) should limit the number of Registrable Securities that may be sold pursuant to the Registration Statement, the Company may remove from the Registration Statement such number of Registrable Securities as specified by the Commission on behalf of all of the holders of Registrable Securities first from the shares of Common Stock issuable upon exercise of the Placement Agent Warrants, on a pro-rata basis among the holders thereof (and on an as-exercised basis with respect to any Placement Agent Warrants not then exercised), second, from the Merger Shares, on a pro-rata basis among the holders thereof; and third, from the other Registrable Securities, on a pro rata basis among the holders thereof. In such event, the Company shall give the Purchasers prompt notice of the number of Registrable Securities excluded therefrom. No liquidated damages shall accrue or be payable to any Holder pursuant to Section 3(d) with respect to any Registrable Securities that are excluded by reason of the foregoing sentence.

(b) Piggyback Registration. If, after the SEC Effective Date, the Company shall determine to register for sale for cash any of its Common Stock, for its own account or for the account of others (other than the Holders), other than (i) a registration relating solely to employee benefit plans or securities issued or issuable to employees, consultants (to the extent the securities owned or to be owned by such consultants could be registered on Form S-8 (or its then equivalent form) or any of their Family Members (including a registration on Form S-8 (or its then equivalent form)), (ii) a registration relating solely to a Securities Act Rule 145 transaction or a registration on Form S-4 (or its then equivalent form) in connection with a merger, acquisition, divestiture, reorganization or similar event, or (iii) a transaction relating solely to the sale of debt or convertible debt instruments, then the Company shall promptly give to each Holder written notice thereof (the “**Registration Rights Notice**”) (and in no event shall such notice be given less than twenty (20) calendar days prior to the filing of such registration statement), and shall, subject to Section 3(c), include as a Piggyback Registration all of the Registrable Securities (including any Registrable Securities that are removed from the Registration Statement as a result of a requirement by the Staff) specified in a written request delivered by the Holder thereof within ten (10) calendar days after delivery to the Holder of such written notice from the Company. However, the Company may, without the consent of such Holders, withdraw such registration statement prior to its becoming effective if the Company or such other selling stockholders have elected to abandon the proposal to register the securities proposed to be registered thereby. The right contained in this paragraph may be exercised by each Holder only with respect to two (2) qualifying registrations. The Holders acknowledge and agree that the stockholders of the Company prior to the consummation of the Merger and Offering (the “**Pre-Merger Stockholders**”) shall have “piggyback” registration rights identical to the foregoing for inclusion in any such registration together with the Holders.

(c) Underwriting. For purposes of this subsection (c), the term “Holders” shall include the Pre-Merger Stockholders. If a Piggyback Registration is for a registered public offering that is to be made by an underwriting, the Company shall so advise the Holders as part of the Registration Rights Notice. In that event, the right of any Holder to Piggyback Registration shall be conditioned upon such Holder’s participation in such underwriting and the inclusion of such Holder’s Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to sell any of their Registrable Securities through such underwriting shall (together with the Company and any other stockholders of the Company selling their securities through such

underwriting) enter into an underwriting agreement in customary form with the underwriter selected for such underwriting by the Company or such other selling stockholders, as applicable. Notwithstanding any other provision of this Section 3(c), if the underwriter or the Company determines that marketing factors require a limitation on the number of shares of Common Stock or the amount of other securities to be underwritten, the underwriter may exclude some or all Registrable Securities from such registration and underwriting. The Company shall so advise all Holders (except those Holders who failed to timely elect to include their Registrable Securities through such underwriting or have indicated to the Company their decision not to do so), and indicate to each such Holder the number of shares of Registrable Securities that may be included in the registration and underwriting, if any. The number of shares of Registrable Securities to be included in such registration and underwriting shall be allocated among such Holders as follows:

(i) If the Piggyback Registration was initiated by the Company, the number of shares that may be included in the registration and underwriting shall be allocated first to the Company and then, subject to obligations and commitments existing as of the date hereof, to all persons exercising piggyback registration rights (including the Holders) who have requested to sell in the registration on a pro rata basis according to the number of shares requested to be included therein; and

(ii) If the Piggyback Registration was initiated by the exercise of demand registration rights by a stockholder or stockholders of the Company, then the number of shares that may be included in the registration and underwriting shall be allocated first to such selling stockholders who exercised such demand to the extent of their demand registration rights, and then, subject to obligations and commitments existing as of the date hereof, to the Company and then, subject to obligations and commitments existing as of the date hereof, to all persons exercising piggyback registration rights (including the Holders) who have requested to sell in the registration on a pro rata basis according to the number of shares requested to be included therein.

No Registrable Securities excluded from the underwriting by reason of the underwriter's marketing limitation shall be included in such registration. If any Holder disapproves of the terms of any such underwriting, such Holder may elect to withdraw such Holder's Registrable Securities therefrom by delivering a written notice to the Company and the underwriter. The Registrable Securities so withdrawn from such underwriting shall also be withdrawn from such registration; provided, however, that, if by the withdrawal of such Registrable Securities, a greater number of Registrable Securities held by other Holders may be included in such registration (up to the maximum of any limitation imposed by the underwriters), then the Company shall offer to all Holders who have included Registrable Securities in the registration the right to include additional Registrable Securities pursuant to the terms and limitations set forth herein in the same proportion used above in determining the underwriter limitation.

(d) Liquidated Damages. If a Registration Event occurs, then the Company will make payments to each Holder of Registrable Securities, as liquidated damages to such Holder by reason of the Registration Event, a cash sum calculated at a rate of twelve percent (12%) per annum of: (i) the aggregate purchase price paid by such Holder pursuant to the Subscription Agreement,

(ii) upon exercise of Placement Agent Warrants (or in the case of unexercised Placement Agent Warrants, of the exercise price thereof), or (iii) to a Holder of Merger Shares or Registrable Pre-Merger Shares, the product of \$5.00 (as adjusted for stock splits, stock dividends, combinations, recapitalizations or similar events) multiplied by the number of Merger Shares or Registrable Pre-Merger Shares held by such Holder, but in each case of (i)-(iii), only with respect to such Holder's Registrable Securities that are affected by such Registration Event and only for the period during which such Registration Event continues to affect such Registrable Securities. Notwithstanding the foregoing, the maximum amount of liquidated damages that may be paid by the Company pursuant to this Section 3(d) shall be an amount equal to eight percent (8%) of the applicable foregoing amount with respect to such Holder's Registrable Securities that are affected by all Registration Events in the aggregate. Each payment of liquidated damages pursuant to this Section 3(d) shall be due and payable in arrears within five (5) days after the end of each full 30-day period of the Registration Default Period until the termination of the Registration Default Period and within five (5) days after such termination. Such payments shall constitute the Holder's exclusive remedy for any Registration Event. The Registration Default Period shall terminate upon the earlier of such time as the Registrable Securities that are affected by the Registration Event cease to be Registrable Securities or (i) the filing of the Registration Statement in the case of clause (a) of the definition of Registration Event, (ii) the SEC Effective Date in the case of clause (b) of the definition of Registration Event, (iii) the ability of the Holders to effect sales pursuant to the Registration Statement in the case of clause (c) of the definition of Registration Event, and (iv) the listing or inclusion and/or trading of the Common Stock on an Approved Market, as the case may be, in the case of clause (d) of the definition of Registration Event. The amounts payable as liquidated damages pursuant to this Section 3(d) shall be payable in lawful money of the United States. Notwithstanding the foregoing, the Company will not be liable for the payment of liquidated damages described in this Section 3(d) for any delay in registration of Registrable Securities that would otherwise be includable in the Registration Statement pursuant to Rule 415 solely as a result of a comment received by the Staff requiring a limit on the number of Registrable Securities included in such Registration Statement in order for such Registration Statement to be able to avail itself of Rule 415. In the event of any such delay, the Company will use its commercially reasonable efforts at the first opportunity that is permitted by the Commission to register for resale the Registrable Securities that have been cut back from being registered pursuant to Rule 415 only with respect to that portion of the Holders' Registrable Securities that are then Registrable Securities.

(e) Other Limitations. Notwithstanding the provisions of Section 3(d) above, if (i) the Commission does not declare the Registration Statement effective on or before the Registration Effectiveness Date, or (ii) the Commission allows the Registration Statement to be declared effective at any time before or after the Registration Effectiveness Date, subject to the withdrawal of certain Registrable Securities from the Registration Statement, and the reason for (i) or (ii) is the Commission's determination that (x) the offering of any of the Registrable Securities constitutes a primary offering of securities by the Company, (y) Rule 415 may not be relied upon for the registration of the resale of any or all of the Registrable Securities, and/or (z) a Holder of any Registrable Securities must be named as an underwriter, the Holders understand and agree that in the case of (ii) the Company may (notwithstanding anything to the contrary contained herein) reduce, on a pro rata basis, the total number of Registrable Securities to be registered on behalf of each such Holder, and in the case of (i) or (ii) the Holder shall not be entitled to liquidated damages

with respect to the Registrable Securities not registered for the reason set forth in (i) or so reduced on a pro rata basis as set forth above.

4. Registration Procedures. The Company will keep each Holder reasonably advised as to the filing and effectiveness of the Registration Statement. At its expense with respect to the Registration Statement, the Company will:

(a) prepare and file with the Commission with respect to the Registrable Securities, a Registration Statement in accordance with Section 3(a) hereof, and use its commercially reasonable efforts to cause such Registration Statement to become effective and to remain effective for the Effectiveness Period;

(b) not name any Holder in the Registration Statement as an underwriter without that Holder's prior written consent;

(c) if the Registration Statement is subject to review by the Commission, promptly respond to all comments and diligently pursue resolution of any comments to the satisfaction of the Commission;

(d) prepare and file with the Commission such amendments and supplements to such Registration Statement as may be necessary to keep such Registration Statement effective during the Effectiveness Period;

(e) furnish, without charge, to each Holder of Registrable Securities covered by such Registration Statement (i) a reasonable number of copies of such Registration Statement (including any exhibits thereto other than exhibits incorporated by reference), each amendment and supplement thereto as such Holder may reasonably request, (ii) such number of copies of the prospectus included in such Registration Statement (including each preliminary prospectus and any other prospectus filed under Rule 424 of the Securities Act) as such Holders may reasonably request, in conformity with the requirements of the Securities Act, and (iii) such other documents as such Holder may reasonably require to consummate the disposition of the Registrable Securities owned by such Holder, but only during the Effectiveness Period;

(f) use its commercially reasonable efforts to register or qualify such registration under such other applicable securities laws of such jurisdictions within the United States as any Holder of Registrable Securities covered by such Registration Statement reasonably requests and as may be necessary for the marketability of the Registrable Securities (such request to be made by the time the applicable Registration Statement is deemed effective by the Commission) and do any and all other acts and things necessary to enable such Holder to consummate the disposition in such jurisdictions of the Registrable Securities owned by such Holder; provided, that the Company shall not be required to (i) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this paragraph, (ii) subject itself to taxation in any such jurisdiction, or (iii) consent to general service of process in any such jurisdiction.

(g) as promptly as practicable after becoming aware of such event, notify each Holder of Registrable Securities, the disposition of which requires delivery of a prospectus relating

thereto under the Securities Act, of the happening of any event, which comes to the Company's attention, that will after the occurrence of such event cause the prospectus included in such Registration Statement, if not amended or supplemented, to contain an untrue statement of a material fact or an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading and the Company shall promptly thereafter prepare and furnish to such Holder a supplement or amendment to such prospectus (or prepare and file appropriate reports under the Exchange Act) so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus shall not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, unless suspension of the use of such prospectus otherwise is authorized herein or in the event of a Blackout Period, in which case no supplement or amendment need be furnished (or Exchange Act filing made) until the termination of such suspension or Blackout Period;

(h) comply, and continue to comply during the Effectiveness Period, in all material respects with the Securities Act and the Exchange Act and with all applicable rules and regulations of the Commission with respect to the disposition of all securities covered by such Registration Statement;

(i) as promptly as practicable after becoming aware of such event, notify each Holder of Registrable Securities being offered or sold pursuant to the Registration Statement of the issuance by the Commission of any stop order or other suspension of effectiveness of the Registration Statement;

(j) use its commercially reasonable efforts to cause all the Registrable Securities covered by the Registration Statement to be quoted on the OTC Markets Group or such other principal securities market or quotation system on which securities of the same class or series issued by the Company are then listed or traded or quoted;

(k) provide a transfer agent and registrar, which may be a single entity, for the shares of Common Stock at all times;

(l) cooperate with the Holders of Registrable Securities being offered pursuant to the Registration Statement to issue and deliver, or cause its transfer agent to issue and deliver, certificates representing Registrable Securities to be offered pursuant to the Registration Statement within a reasonable time after the delivery of certificates representing the Registrable Securities to the transfer agent or the Company, as applicable, and enable such certificates to be in such denominations or amounts as the Holders may reasonably request and registered in such names as the Holders may request;

(m) during the Effectiveness Period, refrain from bidding for or purchasing any Common Stock or any right to purchase Common Stock or attempting to induce any person to purchase any such security or right if such bid, purchase or attempt would in any way limit the right of the Holders to sell Registrable Securities by reason of the limitations set forth in Regulation M of the Exchange Act; and

(n) take all other commercially reasonable actions necessary to enable the Holders to sell the Registrable Securities by means of the Registration Statement during the term of this Agreement.

5. Obligations of the Holders.

(a) Each Holder agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 4(g) hereof or of the commencement of a Blackout Period, such Holder shall discontinue the disposition of Registrable Securities included in the Registration Statement until such Holder's receipt of the copies of the supplemented or amended prospectus contemplated by Section 4(g) hereof or notice of the end of the Blackout Period, and, if so directed by the Company, such Holder shall deliver to the Company (at the Company's expense) all copies (including, without limitation, any and all drafts), other than permanent file copies, then in such Holder's possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice.

(b) The Holders of the Registrable Securities shall provide such information as may reasonably be requested by the Company, or the managing underwriter, if any, in connection with the preparation of any registration statement, including amendments and supplements thereto, in order to effect the registration of any Registrable Securities under the Securities Act pursuant to Section 3(a) and/or 3(b) of this Agreement and in connection with the Company's obligation to comply with federal and applicable state securities laws, including a completed questionnaire in the form attached to this Agreement as Annex A (a "**Selling Securityholder Questionnaire**") or any update thereto not later than three (3) Business Days following a request therefore from the Company.

(c) Each Holder, by its acceptance of the Registrable Securities, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of any Registration Statement hereunder, unless such Holder has notified the Company in writing of its election to exclude all of its Registrable Securities from such Registration Statement.

6. Registration Expenses. The Company shall pay all expenses in connection with any registration obligation provided herein, including, without limitation, all registration, filing, stock exchange fees, printing expenses, all fees and expenses of complying with applicable securities laws, and the fees and disbursements of counsel for the Company (but not for the Holders) and of the Company's independent accountants; provided, that, in any underwritten registration, the Company shall have no obligation to pay any underwriting discounts, selling commissions or transfer taxes attributable to the Registrable Securities being sold by the Holders thereof, which underwriting discounts, selling commissions and transfer taxes shall be borne by such Holders. Additionally, in an underwritten offering, all selling stockholders and the Company shall bear the expenses of the underwriter pro rata in proportion to the respective amount of shares each is selling in such offering. Except as provided in this Section 6 and Section 8 of this Agreement, the Company shall not be responsible for the expenses of any attorney or other advisor employed by a Holder.

7. Assignment of Rights. No Holder may assign its rights under this Agreement to any party without the prior written consent of the Company; provided, however, that any Holder may assign its rights under this Agreement without such consent to a Permitted Assignee as long as (a) such transfer or assignment is effected in accordance with applicable securities laws; (b) such transferee or assignee agrees in writing to become bound by and subject to the terms of this Agreement; and (c) such Holder notifies the Company in writing of such transfer or assignment, stating the name and address of the transferee or assignee and identifying the Registrable Securities with respect to which such rights are being transferred or assigned. The Company may assign this Agreement or any rights or obligations hereunder without the prior written consent of the other party hereto.

8. Indemnification.

(a) In the event of the offer and sale of Registrable Securities under the Securities Act, the Company shall, and hereby does, indemnify and hold harmless, to the fullest extent permitted by law, each Holder, its directors, officers, partners, and each other person, if any, who controls or is under common control with such Holder within the meaning of Section 15 of the Securities Act, against any losses, claims, damages or liabilities, joint or several, and expenses to which the Holder or any such director, officer, partner or controlling person may become subject under the Securities Act or otherwise, insofar as such losses, claims, damages, liabilities or expenses (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon any untrue statement of any material fact contained in any registration statement prepared and filed by the Company under which Registrable Securities were registered under the Securities Act, any preliminary prospectus, final prospectus or summary prospectus contained therein, or any amendment or supplement thereto, or any omission to state therein a material fact required to be stated or necessary to make the statements therein in light of the circumstances in which they were made not misleading, and the Company shall reimburse the Holder, and each such director, officer, partner and controlling person for any legal or any other expenses reasonably incurred by them in connection with investigating, defending or settling any such loss, claim, damage, liability, action or proceeding; provided, however, that the Company shall not be liable in any such case (i) to the extent that any such loss, claim, damage, liability (or action or proceeding in respect thereof) or expense arises out of or is based upon (x) an untrue statement in or omission from such registration statement, any such preliminary prospectus, final prospectus, summary prospectus, amendment or supplement in reliance upon and in conformity with written information furnished by a Holder to the Company for use in the preparation thereof or (y) the failure of a Holder to comply with the covenants and agreements contained in Section 5 hereof respecting the sale of Registrable Securities; or (ii) if the person asserting any such loss, claim, damage, liability (or action or proceeding in respect thereof) who purchased the Registrable Securities that are the subject thereof did not receive a copy of an amended preliminary prospectus or the final prospectus (or the final prospectus as amended or supplemented) at or prior to the written confirmation of the sale of such Registrable Securities to such person because of the failure of such Holder to so provide such amended preliminary or final prospectus and the untrue statement or omission of a material fact made in such preliminary prospectus was corrected in the amended preliminary or final prospectus (or the final prospectus as amended or supplemented). Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Holders, or any such director, officer, partner or controlling person and shall survive the transfer of such shares by the Holder.

(b) As a condition to including Registrable Securities in any registration statement filed pursuant to this Agreement, each Holder agrees to be bound by the terms of this Section 8 and to indemnify and hold harmless, to the fullest extent permitted by law, the Company, each of its directors, officers, partners, legal counsel and accountants and each underwriter, if any, and each other person, if any, who controls the Company within the meaning of Section 15 of the Securities Act, against any losses, claims, damages or liabilities, joint or several, to which the Company or any such director or officer or controlling person may become subject under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon any untrue statement of a material fact or any omission of a material fact required to be stated in any registration statement, any preliminary prospectus, final prospectus, summary prospectus, amendment or supplement thereto or necessary to make the statements therein not misleading, to the extent that such untrue statement or omission is included or omitted in reliance upon and in conformity with written information furnished by the Holder to the Company for use in the preparation thereof, and such Holder shall reimburse the Company, and such Holders, directors, officers, partners, legal counsel and accountants, persons, underwriters, or control persons, each such director, officer, and controlling person for any legal or other expenses reasonably incurred by them in connection with investigating, defending, or settling any such loss, claim, damage, liability, action, or proceeding; provided, however, that indemnity obligation contained in this Section 8(b) shall in no event exceed the amount of the net proceeds received by such Holder as a result of the sale of such Holder's Registrable Securities pursuant to such registration statement. Such indemnity shall remain in full force and effect, regardless of any investigation made by or on behalf of the Company or any such director, officer or controlling person and shall survive the transfer by any Holder of such shares.

(c) Promptly after receipt by an indemnified party of notice of the commencement of any action or proceeding involving a claim referred to in this Section 8 (including any governmental action), such indemnified party shall, if a claim in respect thereof is to be made against an indemnifying party, give written notice to the indemnifying party of the commencement of such action; provided, that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of its obligations under this Section, except to the extent that the indemnifying party is actually prejudiced by such failure to give notice. In case any such action is brought against an indemnified party, unless in the reasonable judgment of counsel to such indemnified party a conflict of interest between such indemnified and indemnifying parties may exist or the indemnified party may have defenses not available to the indemnifying party in respect of such claim, the indemnifying party shall be entitled to participate in and to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party and, after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party for any legal or other expenses subsequently incurred by the latter in connection with the defense thereof, unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties arises in respect of such claim after the assumption of the defenses thereof or the indemnifying party fails to defend such claim in a diligent manner, other than reasonable costs of investigation. Neither an indemnified nor an indemnifying party shall be liable for any settlement of any action or proceeding effected without its consent. No indemnifying party shall, without the consent of the

indemnified party, consent to entry of any judgment or enter into any settlement, which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect of such claim or litigation. Notwithstanding anything to the contrary set forth herein, and without limiting any of the rights set forth above, in any event any party shall have the right to retain, at its own expense, counsel with respect to the defense of a claim. Each indemnified party shall furnish such information regarding itself or the claim in question as an indemnifying party may reasonably request in writing and as shall be reasonably required in connection with defense of such claim and litigation resulting therefrom.

(d) If an indemnifying party does not or is not permitted to assume the defense of an action pursuant to Sections 8(c) or in the case of the expense reimbursement obligation set forth in Sections 8(a) and 8(b), the indemnification required by Sections 8(a) and 8(b) shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or expenses, losses, damages, or liabilities are incurred.

(e) If the indemnification provided for in Section 8(a) or 8(b) is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage or expense referred to herein, the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage or expense (i) in such proportion as is appropriate to reflect the proportionate relative fault of the indemnifying party on the one hand and the indemnified party on the other (determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission relates to information supplied by the indemnifying party or the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission), or (ii) if the allocation provided by clause (i) above is not permitted by applicable law or provides a lesser sum to the indemnified party than the amount hereinafter calculated, then in such proportion as is appropriate to reflect not only the proportionate relative fault of the indemnifying party and the indemnified party, but also the relative benefits received by the indemnifying party on the one hand and the indemnified party on the other, as well as any other relevant equitable considerations. No indemnified party guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any indemnifying party who was not guilty of such fraudulent misrepresentation.

(f) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with an underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

9. Rule 144. The Company shall file with the Commission "Form 10 information" (as defined in Rule 144(i)(3) under the Securities Act) reflecting its status as an entity that is no longer an issuer described in Rule 144(i)(1)(i) promptly following the closing of the Merger. For a period of at least two (2) years following the Effective Date, the Company will use its commercially reasonable efforts to timely file all reports required to be filed by the Company after the date hereof under the Exchange Act and the rules and regulations adopted by the Commission thereunder, and

if the Company is not required to file reports pursuant to such sections, it will prepare and furnish to the Purchasers and make publicly available in accordance with Rule 144(c) such information as is required for the Purchasers to sell shares of Common Stock under Rule 144.

10. Independent Nature of Each Purchaser's Obligations and Rights. The obligations of each Purchaser and each Broker under this Agreement are several and not joint with the obligations of any other Purchaser or Broker, and each Purchaser and each Broker shall not be responsible in any way for the performance of the obligations of any other Purchaser or any Broker under this Agreement. Nothing contained herein and no action taken by any Purchaser or Broker pursuant hereto, shall be deemed to constitute such Purchasers and/or Brokers as a partnership, an association, a joint venture, or any other kind of entity, or create a presumption that the Purchasers and/or Brokers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by this Agreement. Each Purchaser and each Broker shall be entitled to independently protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it shall not be necessary for any other Purchaser or Broker to be joined as an additional party in any proceeding for such purpose.

11. Miscellaneous.

(a) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the United States of America and the State of New York, both substantive and remedial, without regard to New York conflicts of law principles. Any judicial proceeding brought against either of the parties to this Agreement or any dispute arising out of this Agreement or any matter related hereto shall be brought in the courts of the State of New York, New York County, or in the United States District Court for the Southern District of New York and, by its execution and delivery of this Agreement, each party to this Agreement accepts the jurisdiction of such courts. The foregoing consent to jurisdiction shall not be deemed to confer rights on any person other than the parties to this Agreement.

(b) Remedies. Except as otherwise specifically set forth herein with respect to a Registration Event, in the event of a breach by the Company or by a Holder of any of their respective obligations under this Agreement, each Holder or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, shall be entitled to specific performance of its rights under this Agreement. Except as otherwise specifically set forth herein with respect to a Registration Event, the Company and each Holder agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall not assert or shall waive the defense that a remedy at law would be adequate.

(c) Successors and Assigns. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, Permitted Assignees, executors and administrators of the parties hereto.

(d) No Inconsistent Agreements. The Company has not entered, as of the date hereof, and shall not enter, on or after the date of this Agreement, into any agreement with respect to its securities that would have the effect of impairing the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof.

(e) Entire Agreement. This Agreement and the documents, instruments and other agreements specifically referred to herein or delivered pursuant hereto constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof.

(f) Notices, etc. All notices, consents, waivers, and other communications which are required or permitted under this Agreement shall be in writing will be deemed given to a party (a) upon receipt, when personally delivered; (b) one (1) Business Day after deposit with an nationally recognized overnight courier service with next day delivery specified, costs prepaid) on the date of delivery, if delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); (c) the date of transmission if sent by facsimile or e-mail with confirmation of transmission by the transmitting equipment if such notice or communication is delivered prior to 5:00 P.M., New York City time, on a Trading Day, or the next Trading Day after the date of transmission, if such notice or communication is delivered on a day that is not a Trading Day or later than 5:00 P.M., New York City time, on any Trading Day, provided confirmation of facsimile is mechanically or electronically generated and kept on file by the sending party and confirmation of email is kept on file, whether electronically or otherwise, by the sending party and the sending party does not receive an automatically generated message from the recipients email server that such e-mail could not be delivered to such recipient; (d) the date received or rejected by the addressee, if sent by certified mail, return receipt requested, postage prepaid; or (e) seven days after the placement of the notice into the mails (first class postage prepaid), to the party at the address, facsimile number, or e-mail address furnished by the such party,

If to the Company, to:

Miramar Labs, Inc.  
2790 Walsh Avenue  
Santa Clara, CA 95051  
Attn: Michael Kleine  
Telephone Number: 408-579-8700  
Facsimile: \_\_\_\_\_  
E-mail Address: mkleine@miramarlabs.com

with copy to:

Wilson Sonsini Goodrich & Rosati, P.C.  
650 Page Mill Road  
Palo Alto, CA 94304  
Attention: Philip H. Oettinger  
Facsimile: 650-493-6811  
Telephone Number: 650-565-3564  
E-mail Address: poettinger@wsgr.com

if to a Purchaser or Broker, to:

such Purchaser or Broker at the address set forth on the signature page hereto;

or at such other address as any party shall have furnished to the other parties in writing in accordance with this Section 11(f).

(g) Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any Holder, upon any breach or default of the Company under this Agreement, shall impair any such right, power or remedy of such Holder nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of any similar breach or default thereunder occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any Holder of any breach or default under this Agreement, or any waiver on the part of any Holder of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, or by law or otherwise afforded to any holder, shall be cumulative and not alternative.

(h) Counterparts. This Agreement may be executed in any number of counterparts, and with respect to any Purchaser, by execution of an Omnibus Signature Page to this Agreement and the Subscription Agreement, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one instrument. In the event that any signature is delivered by facsimile transmission or by an e-mail, which contains a portable document format (.pdf) file of an executed signature page, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or e-mail of a .pdf signature page were an original thereof.

(i) Severability. In the case any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(j) Amendments. Except as otherwise provided herein, the provisions of this Agreement may be amended at any time and from time to time, and particular provisions of this Agreement may be waived, with and only with an agreement or consent in writing signed by the Company and the Majority Holders. The Purchasers and Brokers acknowledge that by the operation of this Section, the Majority Holders may have the right and power to diminish or eliminate all rights of the Purchasers and/or Brokers under this Agreement.

**[COMPANY SIGNATURE PAGE FOLLOWS]**

This Registration Rights Agreement is hereby executed as of the date first above written.

**THE COMPANY:**

**Miramar Labs, Inc.**

By: /s/ Andrey Zasoryn  
Name: Andrey Zasoryn  
Title: President

**PURCHASERS**

**See Omnibus Signature Pages to Subscription Agreement**

**BROKER (INDIVIDUAL):**

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

**REGISTRABLE PRE-MERGER STOCKHOLDER (INDIVIDUAL):**

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

**HOLDER OF MERGER SHARES (INDIVIDUAL):**

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

**All Holders: Address**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**BROKER (ENTITY):**

\_\_\_\_\_  
Print Name of Entity

By: \_\_\_\_\_  
Name:  
Title:

**REGISTRABLE PRE-MERGER STOCKHOLDER (ENTITY):**

\_\_\_\_\_  
Print Name of Entity

By: \_\_\_\_\_  
Name:  
Title:

**HOLDER OF MERGER SHARES (ENTITY):**

\_\_\_\_\_  
Print Name of Entity

By: \_\_\_\_\_  
Name:  
Title:

**HOLDER OF MERGER SHARES (ENTITY):**

**MORGENTHALER PARTNERS VIII, L.P.**

By: Morgenthaler Management Partners VIII,  
LLC  
Its: Managing Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**All Holders: Address**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**HOLDER OF MERGER SHARES (ENTITY):**

**DOMAIN PARTNERS VII, L.P.**

By: One Palmer Square Associates VII, L.L.C.  
Its: General Partner

By: \_\_\_\_\_  
Name:  
Title:

**All Holders: Address**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**HOLDER OF MERGER SHARES (ENTITY):**

**DP VII Associates, L.P.**

By: One Palmer Square Associates VII, L.L.C.  
Its: General Partner

By: \_\_\_\_\_  
Name:  
Title:

**All Holders: Address**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**HOLDER OF MERGER SHARES (ENTITY):**

**AISLING CAPITAL III, LP**

By: \_\_\_\_\_  
Name:  
Title:

**All Holders: Address**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**HOLDER OF MERGER SHARES (ENTITY):**

**RMI INVESTMENTS, S.R.L.**

By: \_\_\_\_\_  
Name:  
Title:

**All Holders: Address**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**HOLDER OF MERGER SHARES (ENTITY):**

**CROSS CREEK CAPITAL, L.P.**

By: Cross Creek Capital GP, L.P.  
Its: Sole General Partner

By: Cross Creek Capital, LLC  
Its: Sole General Partner

By: \_\_\_\_\_  
Name:  
Title:

**All Holders: Address**

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**HOLDER OF MERGER SHARES (ENTITY):**

**CROSS CREEK CAPITAL EMPLOYEES’  
FUND, L.P.**

By: Cross Creek Capital GP, L.P.  
Its: Sole General Partner

By: Cross Creek Capital, LLC  
Its: Sole General Partner

By: \_\_\_\_\_  
Name:  
Title:

**All Holders: Address**

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**HOLDER OF MERGER SHARES (ENTITY):**

**MICHAEL S. KAMINER 2004 REVOCABLE  
TRUST DTD. NOV 17, 2004**

By: \_\_\_\_\_  
Name:  
Title:

**All Holders: Address**

**HOLDER OF MERGER SHARES (ENTITY):**

**WS INVESTMENT COMPANY, LLC  
(2016A)**

By: \_\_\_\_\_  
Name:  
Title:

**All Holders: Address**

**Schedule 1**

**Brokers**

**Schedule 2**

**Holder of Merger Shares**

**Schedule 3**

Registrable Pre-Merger Shareholders

## Miramar Labs, Inc.

### Selling Securityholder Notice and Questionnaire

The undersigned beneficial owner of Registrable Securities of **Miramar Labs, Inc.** (formerly known as KTL Bamboo International Corp.), a Delaware corporation (the “Company”), understands that the Company has filed or intends to file with the U.S. Securities and Exchange Commission a registration statement (the “Registration Statement”) for the registration and resale under Rule 415 of the Securities Act of 1933, as amended, of the Registrable Securities, in accordance with the terms of the Registration Rights Agreement (the “Registration Rights Agreement”) to which this document is annexed. A copy of the Registration Rights Agreement is available from the Company upon request at the address set forth below. All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Registration Rights Agreement.

Certain legal consequences arise from being named as a selling security holder in the Registration Statement and the related prospectus. Accordingly, holders and beneficial owners of Registrable Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling security holder in the Registration Statement and the related prospectus.

### NOTICE

The undersigned beneficial owner (the “Selling Securityholder”) of Registrable Securities hereby elects to include the Registrable Securities owned by it in the Registration Statement.

The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate:

### QUESTIONNAIRE

#### 1. Name:

- (a) Full Legal Name of Selling Securityholder

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- (b) Full Legal Name of Registered Holder (holder of record) (if not the same as (a) above) through which Registrable Securities are held:

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- (c) If you are not a natural person, full Legal Name of Natural Control Person (which means a natural person who directly or indirectly alone or with others has power to vote or dispose of the securities covered by this Questionnaire):

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**2. Address for Notices to Selling Securityholder:**

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Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
Contact Person: \_\_\_\_\_

**3. Broker-Dealer Status:**

(a) Are you a broker-dealer?

Yes ★ No ★

(b) If “yes” to Section 3(a), did you receive your Registrable Securities as compensation for investment banking services to the Company?

Yes ★ No ★

Note: If “no” to Section 3(b), the Commission’s staff has indicated that you should be identified as an underwriter in the Registration Statement.

(c) Are you an affiliate of a broker-dealer?

Yes ★ No ★

(d) If you are an affiliate of a broker-dealer, do you certify that you purchased the Registrable Securities in the ordinary course of business, and at the time of the purchase of the Registrable Securities to be resold, you had no agreements or understandings, directly or indirectly, with any person to distribute the Registrable Securities?

Yes ★ No ★

Note: If “no” to Section 3(d), the Commission’s staff has indicated that you should be identified as an underwriter in the Registration Statement.

#### 4. Beneficial Ownership of Securities of the Company Owned by the Selling Securityholder:

*Except as set forth below in this Item 4, the undersigned is not the beneficial or registered owner of any securities of the Company.*

(a) Please list the type (common stock, warrants, etc.) and amount of all securities of the Company (including any Registrable Securities) beneficially owned<sup>1</sup> by the Selling Securityholder:

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#### 5. Relationships with the Company:

*Except as set forth below, neither you nor (if you are a natural person) any member of your immediate family, nor (if you are not a natural person) any of your affiliates<sup>2</sup>, officers, directors or principal equity holders (owners of 5% of more of the equity securities of the undersigned) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.*

State any exceptions here:

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<sup>1</sup> **Beneficially Owned:** A “beneficial owner” of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise has or shares (i) **voting power**, including the power to direct the voting of such security, or (ii) **investment power**, including the power to dispose of, or direct the disposition of, such security. In addition, a person is deemed to have “beneficial ownership” of a security of which such person has the right to acquire beneficial ownership at any time within 60 days, including, but not limited to, any right to acquire such security: (i) through the exercise of any option, warrant or right, (ii) through the conversion of any security or (iii) pursuant to the power to revoke, or the automatic termination of, a trust, discretionary account or similar arrangement.

It is possible that a security may have more than one “beneficial owner,” such as a trust, with two co-trustees sharing voting power, and the settlor or another third party having investment power, in which case each of the three would be the “beneficial owner” of the securities in the trust. The power to vote or direct the voting, or to invest or dispose of, or direct the investment or disposition of, a security may be indirect and arise from legal, economic, contractual or other rights, and the determination of beneficial ownership depends upon who ultimately possesses or shares the power to direct the voting or the disposition of the security.

The final determination of the existence of beneficial ownership depends upon the facts of each case. You may, if you believe the facts warrant it, disclaim beneficial ownership of securities that might otherwise be considered “beneficially owned” by you.

<sup>2</sup> **Affiliate:** An “affiliate” is a company or person that directly, or indirectly through one or more intermediaries, controls you, or is controlled by you, or is under common control with you.

The undersigned agrees to promptly notify the Company of any inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Registration Statement remains effective.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items 1 through 5 and the inclusion of such information in the Registration Statement and the related prospectus and any amendments or supplements thereto. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Registration Statement and the related prospectus and any amendments or supplements thereto.

IN WITNESS WHEREOF the undersigned, by authority duly given, has caused this Selling Securityholder Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

**BENEFICIAL OWNER** (individual)

**BENEFICIAL OWNER** (entity)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Entity

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature (if Joint Tenants or Tenants in Common)

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PLEASE E-MAIL OR FAX A COPY OF THE COMPLETED AND EXECUTED SELLING SECURITYHOLDER NOTICE AND QUESTIONNAIRE, AND RETURN THE ORIGINAL BY OVERNIGHT MAIL, TO:**

CKR Law LLP  
1330 Avenue of the Americas, 14<sup>th</sup> Floor  
New York, NY 10022  
Attention: Eleanor Osmanoff  
Facsimile: (212) 259-8200  
E-mail Address: eosmanoff@ckrlaw.com

October 14, 2016

Miramar Labs, Inc.  
2790 Walsh Avenue  
Santa Clara, California 95051

**Re: Registration Statement on Form S-1**

Ladies and Gentlemen:

We have acted as special counsel to Miramar Labs, Inc., a Delaware corporation (the “*Company*”), in connection with the resale from time to time by the selling stockholders named in the Registration Statement (as defined below) of up to 9,177,170 shares (the “*Shares*”) of the Company’s common stock, par value \$0.001 per share (the “*Common Stock*”), and 17,504 shares of Common Stock (the “*Warrant Shares*”) issuable upon exercise of warrants held by the selling stockholders (the “*Warrants*”). The Shares and Warrant Shares are included in a registration statement on Form S-1 under the Securities Act of 1933, as amended (the “*Act*”), filed with the Securities and Exchange Commission (the “*Commission*”) on the date hereof (the “*Registration Statement*”). This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or related prospectus (the “*Prospectus*”), other than as expressly stated herein with respect to the issue of the Shares and Warrant Shares.

As such counsel, we have examined such matters of fact and questions of law as we have considered appropriate for purposes of this letter. With your consent, we have relied upon certificates and other assurances of officers of the Company and others as to factual matters without having independently verified such factual matters. We are opining herein as to General Corporation Law of the State of Delaware, and we express no opinion with respect to any other laws.

Subject to the foregoing and the other matters set forth herein, it is our opinion that, as of the date hereof, (a) the issue and sale of the Shares have been duly authorized by all necessary corporate action of the Company, and the Shares are validly issued, fully paid and non-assessable, and (b) when the Warrant Shares shall have been duly registered on the books of the transfer agent and registrar therefor in the name or on behalf of the purchasers, the issue and sale of the Warrant Shares have been duly authorized by all necessary corporate action of the Company, and upon issuance, delivery and payment therefor in the manner contemplated by the Registration Statement and the Warrants, will be validly issued, fully paid and nonassessable. In rendering the foregoing opinion, we have assumed that the Company will comply with all applicable notice requirements regarding uncertificated shares provided in the General Corporation Law of the State of Delaware.

This opinion is for your benefit in connection with the Registration Statement and may be relied upon by you and by persons entitled to rely upon it pursuant to the applicable provisions of the Act. We consent to your filing this opinion as an exhibit to the Registration Statement and to the reference to our firm in the Prospectus under the heading “Legal Matters.” In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ WILSON SONSINI GOODRICH & ROSATI

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WILSON SONSINI GOODRICH & ROSATI

Professional Corporation

## **SPLIT-OFF AGREEMENT**

This **SPLIT-OFF AGREEMENT**, dated as of June 7, 2016 (this “**Agreement**”), is entered into by and among Miramar Labs, Inc. (formerly known as KTL Bamboo International Corp.), a Delaware corporation (the “**Seller**”), Spacepath Enterprise Corp., a Nevada corporation (“**Split-Off Subsidiary**”), and Andrey Zasoryn (“**Buyer**”).

### R E C I T A L S:

**WHEREAS**, Seller is the owner of all of the issued and outstanding capital stock of Split-Off Subsidiary; Split-Off Subsidiary is a wholly owned subsidiary of Seller which will acquire all of the business assets and liabilities previously held by Seller; and Seller has no other businesses or operations prior to the Merger (as defined herein);

**WHEREAS**, contemporaneously with the execution of this Agreement, Seller, Miramar Technologies, Inc. (f/k/a Miramar Labs, Inc.), a Delaware corporation (“**PrivateCo**”), and a newly formed wholly owned subsidiary of Seller, Miramar Acquisition Corp. (“**Acquisition Sub**”) will enter into an Agreement and Plan of Merger and Reorganization (the “**Merger Agreement**”) pursuant to which Acquisition Sub will merge with and into PrivateCo with PrivateCo remaining as the surviving entity (the “**Merger**”); and the equity holders of PrivateCo will receive securities of Seller in exchange for their equity interests in PrivateCo;

**WHEREAS**, the execution, delivery of this Agreement, and the consummation of the assignment, assumption, purchase and sale transactions contemplated by this Agreement are conditions to the completion of the Merger pursuant to the Merger Agreement, and Seller has represented to PrivateCo in the Merger Agreement that the transactions contemplated by this Agreement will be consummated prior to or contemporaneously with the closing of the Merger, and PrivateCo relied on such representation in entering into the Merger Agreement;

**WHEREAS**, Buyer desires to purchase the Shares (as defined in Section 2.1) from Seller, and to assume, as between Seller and Buyer, all responsibility for any debts, obligations and liabilities of Seller and Split-Off Subsidiary, on the terms and subject to the conditions specified in this Agreement; and

**WHEREAS**, Seller desires to sell and transfer the Shares to Buyer, on the terms and subject to the conditions specified in this Agreement;

**NOW, THEREFORE**, in consideration of the premises and the covenants, promises and agreements herein set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending legally to be bound, agree as follows:

### **I. ASSIGNMENT AND ASSUMPTION OF SELLER’S ASSETS AND LIABILITIES.**

Subject to the terms and conditions provided below:

1.1 Assignment of Assets. Seller hereby contributes, assigns, conveys and transfers to Split-Off Subsidiary, and Split-Off Subsidiary hereby receives, acquires and accepts, all assets, liabilities and properties of Seller as of the Closing Date (as defined below) immediately prior to giving effect to the Merger at the Effective Time, including but not limited to the following, **but excluding in all cases (i) the rights of Seller in, to and under the Transaction Documents, and (ii) the capital stock of Split-Off Subsidiary:**

- (a) all pre-Merger cash and cash equivalents;
- (b) all pre-Merger accounts receivable;
- (c) all pre-Merger inventories of raw materials, work in process, parts, supplies and finished products;
- (d) all right, title and interest, of record, beneficial or otherwise, in and to and stock, membership interests, partnership interests or other equity or ownership interests in any corporation, limited liability company, partnership or other entity, and all bonds, debentures, notes or other securities;
- (e) all of Seller's rights, title and interests in, to and under all contracts, agreements, leases, licenses (including software licenses), supply agreements, consulting agreements, commitments, purchase orders, customer orders and work orders, and including all of Seller's rights thereunder to use and possess equipment provided by third parties, and all representations, warranties, covenants and guarantees related to the foregoing;
- (f) all intellectual property, including but not limited to issued patents, patent applications (whether or not patents are issued thereon and whether modified, withdrawn or resubmitted), unpatented inventions, product designs, copyrights (whether registered or unregistered), know-how, technology, trade secrets, technical information, notebooks, drawings, software, computer coding (both object and source) and all documentation, manuals and drawings related thereto, trademarks or service marks and applications therefor, unregistered trademarks or service marks, trade names, logos and icons and all rights to sue or recover for the infringement or misappropriation thereof;
- (g) all fixed assets, including but not limited to the machinery, equipment, furniture, vehicles, office equipment and other tangible personal property owned or leased by Seller;
- (h) all customer lists, business records, customer records and files, customer financial records, and all other files and information related to customers, all customer proposals, all open service agreements with customers and all uncompleted customer contracts and agreements; and
- (i) all licenses, permits, certificates, approvals and authorizations issued by Governmental Entities, except those certificates, approvals and authorizations relating to Seller's incorporation, organization and securities;

all of the foregoing being referred to herein as the “**Assigned Assets.**”

1.2 *Assignment and Assumption of Liabilities.* Seller hereby assigns to Split-Off Subsidiary, and Split-Off Subsidiary hereby assumes and agrees to pay, honor and discharge all debts, adverse claims, liabilities, judgments and obligations, including tax obligations, of Seller as of the Closing Date immediately prior to the Effective Time, whether accrued, contingent or otherwise and whether known or unknown, including those that may arise post-Closing Date but were incurred prior to the Closing Date, and any liabilities associated with the Assigned Assets, including those arising under any law (including the common law) or any rule or regulation of any Governmental Entity or imposed by any court or any arbitrator in a binding arbitration resulting from, arising out of or relating to the assets, activities, operations, actions or omissions of Seller, or products manufactured or sold thereby or services provided thereby, or under contracts, agreements (whether written or oral), leases, commitments or undertakings thereof, **but excluding in all cases the obligations of Seller under the Transaction Documents** (all of the foregoing being referred to herein as the “**Assigned Liabilities**”).

The assignment and assumption of Seller’s assets and liabilities provided for in this Article I is referred to as the “**Assignment.**”

## II. PURCHASE AND SALE OF STOCK.

2.1 *Purchased Shares.* Subject to the terms and conditions provided below, Seller shall sell and transfer to Buyer and Buyer shall purchase from Seller, on the Closing Date (as defined in Section 3.1), all of the issued and outstanding shares of capital stock of Split-Off Subsidiary (the “Shares”), as set forth in Exhibit A attached hereto.

2.2 *Purchase Price.* The purchase price for the Shares shall consist of the transfer and delivery by Buyer to Seller of the type and number of shares of common stock and other securities of Seller that Buyer owns (the “**Purchase Price Securities**”), as set forth in Exhibit A attached hereto, deliverable as provided in Section 3.3.

## III. CLOSING.

3.1 *Closing.* The closing of the transactions contemplated in this Agreement (the “**Closing**”) shall take place prior to or contemporaneously with the closing of the Merger immediately prior to the Effective Time. The date on which the Closing occurs shall be referred to herein as the “**Closing Date.**”

3.2 *Transfer of Shares.* At the Closing, Seller shall deliver to Buyer certificates representing the Shares purchased by Buyer, duly endorsed to Buyer or as directed by Buyer, which delivery shall vest Buyer with good and marketable title to such Shares, free and clear of all liens and encumbrances.

3.3 *Payment of Purchase Price.* At the Closing, Buyer shall deliver to Seller a certificate or certificates representing Buyer’s Purchase Price Securities duly endorsed to Seller, which delivery

shall vest Seller with good and marketable title to the Purchase Price Securities, free and clear of all liens and encumbrances.

3.4 *Transfer of Records.* On or before the Closing, Seller shall transfer to Split-Off Subsidiary all existing corporate books and records in Seller's possession relating to Split-Off Subsidiary and its business, including but not limited to all agreements, litigation files, real estate files, personnel files and filings with governmental agencies; *provided, however*, when any such documents relate to both Seller and Split-Off Subsidiary, only copies of such documents need be furnished. On or before the Closing, Buyer and Split-Off Subsidiary shall transfer to Seller all existing corporate books and records in the possession of Buyer or Split-Off Subsidiary relating to Seller, including but not limited to all corporate minute books, stock ledgers, certificates and corporate seals of Seller and all agreements, litigation files, real property files, personnel files and filings with governmental agencies; *provided, however*, when any such documents relate to both Seller and Split-Off Subsidiary or its business, Buyer and Split-Off Subsidiary may keep a copy of such files for their records.

3.5 *Instruments of Assignment.* At the Closing, Seller and Split-Off Subsidiary shall deliver to each other such instruments providing for the Assignment as the other may reasonably request (the "**Instruments of Assignment**").

IV. **BUYER'S REPRESENTATIONS AND WARRANTIES.** Buyer represents and warrants to Seller and Split-Off Subsidiary that:

4.1 *Capacity and Enforceability.* Buyer has the legal capacity to execute and deliver this Agreement and the documents to be executed and delivered by Buyer at the Closing pursuant to the transactions contemplated hereby. This Agreement and all such documents constitute valid and binding agreements of Buyer, enforceable in accordance with their terms.

4.2 *Compliance.* Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby by Buyer will result in the breach of any term or provision of, or constitute a default under, or violate any agreement, indenture, instrument, order, law or regulation to which Buyer is a party or by which Buyer is bound.

4.3 *Purchase for Investment.* Buyer is financially able to bear the economic risks of acquiring the Shares and the other transactions contemplated hereby, and has no need for liquidity in his or her investment in the Shares. Buyer has such knowledge and experience in financial and business matters in general, and with respect to businesses of a nature similar to the business of Split-Off Subsidiary (after giving effect to the Assignment), so as to be capable of evaluating the merits and risks of, and making an informed business decision with regard to, the acquisition of the Shares and the other transactions contemplated hereby. Buyer is acquiring the Shares solely for his or her own account and not with a view to or for resale in connection with any distribution or public offering thereof, within the meaning of any applicable securities laws and regulations, unless such distribution or offering is registered under the Securities Act of 1933, as amended (the "**Securities Act**"), or an exemption from such registration is available. Buyer has (i) received all the information he or she has deemed necessary to make an informed decision with respect to the acquisition of the Shares and the other transactions contemplated hereby; (ii) had an opportunity to make such

investigation as he or she has desired pertaining to Split-Off Subsidiary (after giving effect to the Assignment) and the acquisition of an interest therein and the other transactions contemplated hereby, and to verify the information which is, and has been, made available to him or her; and (iii) had the opportunity to ask questions of Seller concerning Split-Off Subsidiary (after giving effect to the Assignment). Buyer acknowledges that Buyer has been a director and officer of Seller and Split-Off Subsidiary immediately prior to the Effective Time and, as such, has actual knowledge of the business, operations and financial affairs of Split-Off Subsidiary (after giving effect to the Assignment). Buyer has received no public solicitation or advertisement with respect to the offer or sale of the Shares. Buyer realizes that the Shares are “restricted securities” as that term is defined in Rule 144 promulgated by the Securities and Exchange Commission under the Securities Act, the resale of the Shares is restricted by federal and state securities laws and, accordingly, the Shares must be held indefinitely unless their resale is subsequently registered under the Securities Act or an exemption from such registration is available for their resale. Buyer understands that any resale of the Shares by him or her must be registered under the Securities Act (and any applicable state securities law) or be effected in circumstances that, in the opinion of counsel for Split-Off Subsidiary at the time, create an exemption or otherwise do not require registration under the Securities Act (or applicable state securities laws). Buyer acknowledges and consents that certificates now or hereafter issued for the Shares will bear a legend substantially as follows:

THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR QUALIFIED UNDER ANY APPLICABLE STATE SECURITIES LAWS (THE “STATE ACTS”), HAVE BEEN ACQUIRED FOR INVESTMENT AND MAY NOT BE SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO A REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND QUALIFICATION UNDER THE STATE ACTS OR PURSUANT TO EXEMPTIONS FROM SUCH REGISTRATION OR QUALIFICATION REQUIREMENTS (INCLUDING, IN THE CASE OF THE SECURITIES ACT, THE EXEMPTIONS AFFORDED BY SECTION 4(a)(1) OF THE SECURITIES ACT AND RULE 144 THEREUNDER). AS A PRECONDITION TO ANY SUCH TRANSFER, THE ISSUER OF THESE SECURITIES SHALL BE FURNISHED WITH AN OPINION OF COUNSEL OPINING AS TO THE AVAILABILITY OF EXEMPTIONS FROM SUCH REGISTRATION AND QUALIFICATION AND/OR SUCH OTHER EVIDENCE AS MAY BE SATISFACTORY THERETO THAT ANY SUCH TRANSFER WILL NOT VIOLATE THE SECURITIES LAWS.

Buyer understands that the Shares are being sold to him or her pursuant to the exemption from registration contained in Section 4(a)(1) of the Securities Act and that Seller is relying upon the representations made herein as one of the bases for claiming the Section 4(a)(1) exemption.

4.4 *Liabilities.* Following the Closing, Seller will have no liability for any debts, liabilities or obligations of Split-Off Subsidiary or its business or activities, or the business or activities of Seller prior to the Closing, and there are no outstanding guaranties, performance or payment bonds, letters of credit or other contingent contractual obligations that have been undertaken

by Seller directly or indirectly in relation to Split-Off Subsidiary or its business, or the business of Seller prior to the Closing, and that may survive the Closing.

4.5 *Title to Purchase Price Securities.* Buyer is the sole record and beneficial owner of the Purchase Price Securities. At Closing, Buyer will have good and marketable title to the Purchase Price Securities, which Purchase Price Securities are, and at the Closing will be, free and clear of all options, warrants, pledges, claims, liens and encumbrances, and any restrictions or limitations prohibiting or restricting transfer to Seller, except for restrictions on transfer as contemplated by applicable securities laws.

**V. SELLER'S AND SPLIT-OFF SUBSIDIARY'S REPRESENTATIONS AND WARRANTIES.** Seller and Split-Off Subsidiary, as applicable, represent and warrant to Buyer that:

5.1 *Organization and Good Standing.* Each of Seller and Split-Off Subsidiary is a corporation duly incorporated, validly existing, and in good standing under the laws of the State of their incorporation.

5.2 *Authority and Enforceability.* The execution and delivery of this Agreement and the documents to be executed and delivered at the Closing pursuant to the transactions contemplated hereby, and performance in accordance with the terms hereof and thereof, have been duly authorized by Seller and Split-Off Subsidiary and all such documents constitute valid and binding agreements of Seller and Split-Off Subsidiary enforceable in accordance with their terms.

5.3 *Title to Shares.* Seller is the sole record and beneficial owner of the Shares. At Closing, Seller will have good and marketable title to the Shares, which Shares are, and at the Closing will be, free and clear of all options, warrants, pledges, claims, liens and encumbrances, and any restrictions or limitations prohibiting or restricting transfer to Buyer, except for restrictions on transfer as contemplated by Section 4.3 above. The Shares constitute all of the issued and outstanding shares of capital stock of Split-Off Subsidiary.

**VI. SELLER'S AND SPLIT-OFF SUBSIDIARY'S CONDITIONS PRECEDENT TO CLOSING.** The obligations of Seller and Split-Off Subsidiary to close the transactions contemplated by this Agreement are subject to the satisfaction at or prior to the Closing of each of the following conditions precedent (any or all of which may be waived by Seller and PrivateCo in writing):

6.1 *Representations and Warranties; Performance.* All representations and warranties of Buyer contained in this Agreement shall have been true and correct, in all material respects, when made and shall be true and correct, in all material respects, at and as of the Closing, with the same effect as though such representations and warranties were made at and as of the Closing. Buyer shall have performed and complied with all covenants and agreements and satisfied all conditions, in all material respects, required by this Agreement to be performed or complied with or satisfied by Buyer at or prior to the Closing.

6.2 Additional Documents. Buyer shall deliver or cause to be delivered such additional documents as may be necessary in connection with the consummation of the transactions contemplated by this Agreement and the performance of their obligations hereunder.

6.3 Release by Split-Off Subsidiary. At the Closing, Split-Off Subsidiary shall execute and deliver to Seller a general release which in substance and effect releases Seller and PrivateCo from any and all liabilities and obligations that Seller and PrivateCo may owe to Split-Off Subsidiary in any capacity, and from any and all claims that Split-Off Subsidiary may have against Seller, PrivateCo or their respective managers, members, officers, directors, stockholders, employees and agents (other than those arising pursuant to this Agreement or any document delivered in connection with this Agreement).

6.4 Completion of Merger. The closing of the Merger pursuant to the Merger Agreement, and all of the transactions contemplated thereby, shall occur simultaneously.

VII. **BUYER'S CONDITIONS PRECEDENT TO CLOSING**. The obligation of Buyer to close the transactions contemplated by this Agreement is subject to the satisfaction at or prior to the Closing of each of the following conditions precedent (any and all of which may be waived by Buyer in writing):

7.1 Representations and Warranties; Performance. All representations and warranties of Seller and Split-Off Subsidiary contained in this Agreement shall have been true and correct, in all material respects, when made and shall be true and correct, in all material respects, at and as of the Closing with the same effect as though such representations and warranties were made at and as of the Closing. Seller and Split-Off Subsidiary shall have performed and complied with all covenants and agreements and satisfied all conditions, in all material respects, required by this Agreement to be performed or complied with or satisfied by them at or prior to the Closing.

VIII. **OTHER AGREEMENTS**.

8.1 Expenses. Each party hereto shall bear its expenses separately incurred in connection with this Agreement and with the performance of its obligations hereunder.

8.2 Confidentiality. Buyer shall not make any public announcements concerning this transaction without the prior written agreement of PrivateCo, other than as may be required by applicable law or judicial process. If for any reason the transactions contemplated hereby are not consummated, then Buyer shall return any information received by Buyer from Seller or Split-Off Subsidiary, and Buyer shall cause all confidential information obtained by Buyer concerning Split-Off Subsidiary and its business to be treated as such.

8.3 Brokers' Fees. In connection with the transaction specifically contemplated by this Agreement, no party to this Agreement has employed the services of a broker and each agrees to indemnify the other against all claims of any third parties for fees and commissions of any brokers claiming a fee or commission related to the transactions contemplated hereby.

8.4 Access to Information Post-Closing; Cooperation.

(a) Following the Closing, Buyer and Split-Off Subsidiary shall afford to Seller and its authorized accountants, counsel and other designated representatives, reasonable access (and including using reasonable efforts to give access to persons or firms possessing information) and duplicating rights during normal business hours to allow records, books, contracts, instruments, computer data and other data and information (collectively, “**Information**”) within the possession or control of Buyer or Split-Off Subsidiary insofar as such access is reasonably required by Seller. Information may be requested under this Section 8.4(a) for, without limitation, audit, accounting, claims, litigation and tax purposes, as well as for purposes of fulfilling disclosure and reporting obligations and performing this Agreement and the transactions contemplated hereby. No files, books or records of Split-Off Subsidiary existing at the Closing Date shall be destroyed by Buyer or Split-Off Subsidiary after Closing but prior to the expiration of any period during which such files, books or records are required to be maintained and preserved by applicable law without giving Seller at least 30 days’ prior written notice, during which time Seller shall have the right to examine and to remove any such files, books and records prior to their destruction.

(b) Following the Closing, Seller shall afford to Split-Off Subsidiary and its authorized accountants, counsel and other designated representatives reasonable access (including using reasonable efforts to give access to persons or firms possessing information) and duplicating rights during normal business hours to Information within Seller’s possession or control relating to the business of Split-Off Subsidiary insofar as such access is reasonably required by Buyer. Information may be requested under this Section 8.4(b) for, without limitation, audit, accounting, claims, litigation and tax purposes as well as for purposes of fulfilling disclosure and reporting obligations and for performing this Agreement and the transactions contemplated hereby. No files, books or records of Split-Off Subsidiary existing at the Closing Date shall be destroyed by Seller after Closing but prior to the expiration of any period during which such files, books or records are required to be maintained and preserved by applicable law without giving Buyer at least 30 days’ prior written notice, during which time Buyer shall have the right to examine and to remove any such files, books and records prior to their destruction.

(c) At all times following the Closing, Seller, Buyer and Split-Off Subsidiary shall use their reasonable efforts to make available to the other on written request, the current and former officers, directors, employees and agents of Seller or Split-Off Subsidiary for any of the purposes set forth in Section 8.4(a) or (b) above or as witnesses to the extent that such persons may reasonably be required in connection with any legal, administrative or other proceedings in which Seller or Split-Off Subsidiary may from time to time be involved.

(d) The party to whom any Information or witnesses are provided under this Section 8.4 shall reimburse the provider thereof for all out-of-pocket expenses actually and reasonably incurred in providing such Information or witnesses.

(e) Seller, Buyer, Split-Off Subsidiary and their respective employees and agents shall each hold in strict confidence all Information concerning the other party in their possession or furnished by the other or the other’s representative pursuant to this Agreement with the same degree of care as such party utilizes as to such party’s own confidential information (except to the

extent that such Information is (i) in the public domain through no fault of such party or (ii) later lawfully acquired from any other source by such party), and each party shall not release or disclose such Information to any other person, except such party's auditors, attorneys, financial advisors, bankers, other consultants and advisors or persons to whom such party has a valid obligation to disclose such Information, unless compelled to disclose such Information by judicial or administrative process or, as advised by its counsel, by other requirements of law.

(f) Seller, Buyer and Split-Off Subsidiary shall each use their best efforts to forward promptly to the other party all notices, claims, correspondence and other materials which are received and determined to pertain to the other party.

8.5 Guarantees, Surety Bonds and Letter of Credit Obligations. In the event that Seller is obligated for any debts, obligations or liabilities of Buyer or Split-Off Subsidiary by virtue of any outstanding guarantee, performance or surety bond or letter of credit provided or arranged by Seller or Buyer on or prior to the Closing Date, Buyer and Split-Off Subsidiary shall use their best efforts to cause to be issued replacements of such bonds, letters of credit and guarantees and to obtain any amendments, novations, releases and approvals necessary to release and discharge fully Seller from any liability thereunder following the Closing. Buyer and Split-Off Subsidiary, jointly and severally, shall be responsible for, and shall indemnify, hold harmless and defend the Seller Indemnified Parties (as defined in Section 9.1 below) from and against, any Losses (as defined in Section 9.1 below) incurred by such Seller Indemnified Parties arising from such bonds, letters of credit and guarantees and any liabilities arising therefrom and shall reimburse such Seller Indemnified Parties for any payments that such Seller Indemnified Parties may be required to pay pursuant to enforcement of its obligations relating to such bonds, letters of credit and guarantees.

8.6 Filings and Consents. Buyer, at his risk, shall determine what, if any, filings and consents must be made and/or obtained prior to Closing to consummate the purchase and sale of the Shares. Buyer shall indemnify the Seller Indemnified Parties against any Losses incurred by such Seller Indemnified Parties by virtue of the failure to make and/or obtain any such filings or consents. Recognizing that the failure to make and/or obtain any filings or consents may cause Seller to incur Losses or otherwise adversely affect Seller, Buyer and Split-Off Subsidiary confirm that the provisions of this Section 8.6 will not limit Seller's right to treat such failure as the failure of a condition precedent to Seller's obligation to close pursuant to Article VI above.

8.7 Insurance. Buyer acknowledges that on the Closing Date, effective as of the Closing, any insurance coverage and bonds provided by Seller for Buyer or for Split-Off Subsidiary, and all certificates of insurance evidencing that Buyer or Split-Off Subsidiary maintain any required insurance by virtue of insurance provided by Seller, will terminate with respect to any insured damages resulting from matters occurring subsequent to Closing.

8.8 Agreements Regarding Taxes.

(a) Tax Sharing Agreements. Any tax sharing agreement between Seller and Split-Off Subsidiary is terminated as of the Closing Date and will have no further effect for any taxable year (whether the current year, a future year or a past year).

(b) Returns for Periods Through the Closing Date. Seller will include the income and loss of Split-Off Subsidiary (including any deferred income triggered into income by Reg. §1.1502-13 and any excess loss accounts taken into income under Reg. §1.1502-19) on Seller's consolidated federal income tax returns for all periods through the Closing Date and pay any federal income taxes attributable to such income. Seller and Split-Off Subsidiary agree to allocate income, gain, loss, deductions and credits between the period up to Closing (the "**Pre-Closing Period**") and the period after Closing (the "**Post-Closing Period**") based on a closing of the books of Split-Off Subsidiary, and both Seller and Split-Off Subsidiary agree not to make an election under Reg. §1.1502-76(b)(2)(ii) to ratably allocate the year's items of income, gain, loss, deduction and credit. Seller, Split-Off Subsidiary and Buyer agree to report all transactions not in the ordinary course of business occurring on the Closing Date after Buyer's purchase of the Shares on Split-Off Subsidiary's tax returns to the extent permitted by Reg. §1.1502-76(b)(1)(ii)(B). Buyer agrees to indemnify Seller for any additional tax owed by Seller (including tax owed by Seller due to this indemnification payment) resulting from any transaction engaged in by Split-Off Subsidiary or Seller (not related to the Merger). Split-Off Subsidiary will furnish tax information to Seller for inclusion in Seller's consolidated federal income tax return for the period which includes the Closing Date in accordance with Split-Off Subsidiary's past custom and practice.

(c) Audits. Seller will allow Split-Off Subsidiary and its counsel to participate at Split-Off Subsidiary's expense in any audit of Seller's consolidated federal income tax returns to the extent that such audit raises issues that relate to and increase the tax liability of Split-Off Subsidiary. Seller shall have the absolute right, in its sole discretion, to engage professionals and direct the representation of Seller in connection with any such audit and the resolution thereof, without receiving the consent of Buyer or Split-Off Subsidiary or any other party acting on behalf of Buyer or Split-Off Subsidiary, provided that Seller will not settle any such audit in a manner which would materially adversely affect Split-Off Subsidiary after the Closing Date unless such settlement would be reasonable in the case of a person that owned Split-Off Subsidiary both before and after the Closing Date. In the event that after Closing any tax authority informs Buyer or Split-Off Subsidiary of any notice of proposed audit, claim, assessment or other dispute concerning an amount of taxes which pertain to Seller, or to Split-Off Subsidiary during the period prior to Closing, Buyer or Split-Off Subsidiary must promptly notify Seller of the same within 15 calendar days of the date of the notice from the tax authority. In the event Buyers or Split-Off Subsidiary do not notify Seller within such 15 day period, Buyer and Split-Off Subsidiary, jointly and severally, will indemnify Seller for any incremental interest, penalty or other assessments resulting from the delay in giving notice. To the extent of any conflict or inconsistency, the provisions of this Section 8.8 shall control over the provisions of Section 9.2 below.

(d) Cooperation on Tax Matters. Buyer, Seller and Split-Off Subsidiary shall cooperate fully, as and to the extent reasonably requested by any party, in connection with the filing of tax returns pursuant to this Section and any audit, litigation or other proceeding with respect to taxes. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information which are reasonably relevant to any such audit, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Split-Off Subsidiary shall (i) retain all books and records with respect to tax matters pertinent to Split-Off Subsidiary and Seller relating

to any taxable period beginning before the Closing Date until the expiration of the statute of limitations (and, to the extent notified by Seller, any extensions thereof) of the respective taxable periods, and abide by all record retention agreements entered into with any taxing authority, and (ii) give Seller reasonable written notice prior to transferring, destroying or discarding any such books and records and, if Seller so requests, Buyer agrees to cause Split-Off Subsidiary to allow Seller to take possession of such books and records.

8.9 *ERISA*. Effective as of the Closing Date, Split-Off Subsidiary shall terminate its participation in, and withdraw from, any employee benefit plans sponsored by Seller, and Seller and Buyer shall cooperate fully in such termination and withdrawal. Without limitation, Split-Off Subsidiary shall be solely responsible for (i) all liabilities under those employee benefit plans notwithstanding any status as an employee benefit plan sponsored by Seller, and (ii) all liabilities for the payment of vacation pay, severance benefits, and similar obligations, including, without limitation, amounts which are accrued but unpaid as of the Closing Date with respect thereto. Buyer and Split-Off Subsidiary acknowledge and agree that Split-Off Subsidiary is solely responsible for providing continuation health coverage, as required under the Consolidated Omnibus Reconciliation Act of 1985, as amended (“**COBRA**”), to each person, if any, participating in an employee benefit plan subject to COBRA with respect to such employee benefit plan as of the Closing Date, including, without limitation, any person whose employment with Split-Off Subsidiary is terminated after the Closing Date.

## IX. INDEMNIFICATION.

9.1 *Indemnification by Buyer and Split-Off Subsidiary*. Buyer and Split-Off Subsidiary, jointly and severally, covenant and agree to indemnify, defend, protect and hold harmless Seller and PrivateCo, and their respective officers, directors, employees, stockholders, agents, representatives and Affiliates (collectively, the “**Seller Indemnified Parties**”) at all times from and after the date of this Agreement from and against all losses, liabilities, damages, claims, actions, suits, proceedings, demands, assessments, adjustments, costs and expenses (including specifically, but without limitation, reasonable attorneys’ fees and expenses of investigation), whether or not involving a third party claim and regardless of any negligence of any Seller Indemnified Party (collectively, “**Losses**”), incurred by any Seller Indemnified Party as a result of or arising from (i) any breach of the representations and warranties of Buyer set forth herein or in certificates delivered in connection herewith, (ii) any breach or nonfulfillment of any covenant or agreement (including any other agreement of Buyer to indemnify set forth in this Agreement) on the part of Buyer under this Agreement, (iii) any Assigned Asset or Assigned Liability or any other debt, liability or obligation of Split-Off Subsidiary or Buyer, (iv) the conduct and operations, (A) prior to Closing, of the business of Seller unrelated to the assets that are the subject of the Merger, (B) whether before or after Closing, of (X) the business of Seller pertaining to the Assigned Assets and Assigned Liabilities or (Y) the business of Split-Off Subsidiary, (v) claims asserted (including claims for payment of taxes), whether before or after Closing, (A) against Split-Off Subsidiary or Buyer or (B) pertaining to the Assigned Assets and Assigned Liabilities or to the business of Seller prior to the Closing, or (vi) any federal or state income tax payable by Seller or PrivateCo and attributable to the transactions contemplated by this Agreement, the business of Seller, or to the Buyer prior to the Closing. For the purposes of this Agreement, an “Affiliate” is a person or entity that directly,

or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, another specified person or entity.

## 9.2 Third Party Claims.

(a) Defense. If any claim or liability (a “**Third-Party Claim**”) should be asserted against any of the Seller Indemnified Parties (the “**Indemnitees**”) by a third party after the Closing for which Buyer has an indemnification obligation under the terms of Section 9.1, then the Indemnitee shall notify Buyer (the “**Indemnitor**”) within 20 days after the Third-Party Claim is asserted by a third party (said notification being referred to as a “**Claim Notice**”) and give the Indemnitor a reasonable opportunity to take part in any examination of the books and records of the Indemnitee relating to such Third-Party Claim and to assume the defense of such Third-Party Claim and, in connection therewith, to conduct any proceedings or negotiations relating thereto and necessary or appropriate to defend the Indemnitee and/or settle the Third-Party Claim. The expenses (including reasonable attorneys’ fees) of all negotiations, proceedings, contests, lawsuits or settlements with respect to any Third-Party Claim shall be borne by the Indemnitor. If the Indemnitor agrees to assume the defense of any Third-Party Claim in writing within 20 days after the Claim Notice of such Third-Party Claim has been delivered, through counsel reasonably satisfactory to Indemnitee, then the Indemnitor shall be entitled to control the conduct of such defense, and any decision to settle such Third-Party Claim, and shall be responsible for any expenses of the Indemnitee in connection with the defense of such Third-Party Claim so long as the Indemnitor continues such defense until the final resolution of such Third-Party Claim. The Indemnitor shall be responsible for paying all settlements made or judgments entered with respect to any Third-Party Claim the defense of which has been assumed by the Indemnitor. Except as provided in subsection (b) below, both the Indemnitor and the Indemnitee must approve any settlement of a Third-Party Claim. A failure by the Indemnitee to timely give the Claim Notice shall not excuse Indemnitor from any indemnification liability except only to the extent that the Indemnitor is materially and adversely prejudiced by such failure.

(b) Failure to Defend. If the Indemnitor does not agree to assume the defense of any Third-Party Claim in writing within 20 days after the Claim Notice of such Third-Party Claim has been delivered, or fails to continue such defense until the final resolution of such Third-Party Claim, then the Indemnitee may defend against such Third-Party Claim in such manner as it may deem appropriate and the Indemnitee may settle such Third-Party Claim, in its sole discretion, on such terms as it may deem appropriate; provided however, that the Indemnitor shall, in the Indemnitee’s sole discretion, (i) promptly reimburse the Indemnitee for the amount of all settlement payments and expenses, legal and otherwise, incurred by the Indemnitee in connection with the defense or settlement of such Third-Party Claim, or (ii) pay, in advance of any settlement or proceedings and in installments as reasonably agreed to by the parties, such sums and expenses reasonably expected to be incurred in connection with the defense of the Third-Party Claim and any settlement thereof. If no settlement of such Third-Party Claim is made, then the Indemnitor shall satisfy any judgment rendered with respect to such Third-Party Claim before the Indemnitee is required to do so, and pay all expenses, legal or otherwise, incurred by the Indemnitee in the defense against such Third-Party Claim.

9.3 Non-Third-Party Claims. Upon discovery of any claim for which Buyer has an indemnification obligation under the terms of Section 9.1 which does not involve a claim by a third party against Indemnitee, the Indemnitee shall give prompt notice to Buyer of such claim and, in any case, shall give Buyer such notice within 30 days of such discovery. A failure by Indemnitee to timely give the foregoing notice to Buyer shall not excuse Buyer from any indemnification liability except to the extent that Buyer is materially and adversely prejudiced by such failure.

9.4 Survival. Except as otherwise provided in this Section 9.4, all representations and warranties made by Buyer, Split-Off Subsidiary and Seller in connection with this Agreement shall survive the Closing. Anything in this Agreement to the contrary notwithstanding, the liability of all Indemnitors under this Article IX shall terminate on the third (3rd) anniversary of the Closing Date, except with respect to (a) liability for any item as to which, prior to the third (3rd) anniversary of the Closing Date, any Indemnitee shall have asserted a Claim in writing, which Claim shall identify its basis with reasonable specificity, in which case the liability for such Claim shall continue until it shall have been finally settled, decided or adjudicated, (b) liability of any party for Losses for which such party has an indemnification obligation, incurred as a result of such party's breach of any covenant or agreement to be performed by such party after the Closing, (c) liability of Buyer for Losses incurred by a Seller Indemnified Party due to breaches of its representations and warranties in Article IV of this Agreement, and (d) liability of Buyer for Losses arising out of Third-Party Claims for which Buyer has an indemnification obligation, which liability shall survive until the statute of limitation applicable to any third party's right to assert a Third-Party Claim bars assertion of such claim.

X. MISCELLANEOUS.

10.1 Definitions. Capitalized terms used herein without definition have the meanings ascribed to them in the Merger Agreement.

10.2 Notices. All notices and communications required or permitted hereunder shall be in writing and deemed given when received by means of the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested, or personal delivery, or overnight courier, as follows:

(a) If to Seller, addressed to:

Miramar Labs, Inc.  
2790 Walsh Avenue  
Santa Clara, CA 95051  
Attn: Michael Kleine, CEO  
Facsimile: (408) 579-8795

With a copy to (which shall not constitute notice hereunder):

Wilson Sonsini Goodrich & Rosati, P.C.  
650 Page Mill Road  
Palo Alto, CA 94304

Attn: Philip H. Oettinger  
Facsimile: (650) 493-6811

(b) If to Buyer or Split-Off Subsidiary, addressed to:

Spacepath Enterprise Corp.  
7 Mayakovskogo Street  
Birobidjan, Russian Federation 679016  
Attn: Andrey Zasoryn

or to such other address as any party hereto shall specify pursuant to this Section 10.2 from time to time.

10.3 Exercise of Rights and Remedies. Except as otherwise provided herein, no delay of or omission in the exercise of any right, power or remedy accruing to any party as a result of any breach or default by any other party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of any similar breach or default occurring later; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default occurring before or after that waiver.

10.4 Time. Time is of the essence with respect to this Agreement.

10.5 Reformation and Severability. In case any provision of this Agreement shall be invalid, illegal or unenforceable, it shall, to the extent possible, be modified in such manner as to be valid, legal and enforceable but so as to most nearly retain the intent of the parties, and if such modification is not possible, such provision shall be severed from this Agreement, and in either case the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

10.6 Further Acts and Assurances. From and after the Closing, Seller, Buyer and Split-Off Subsidiary agree that each will act in a manner supporting compliance, including compliance by its Affiliates, with all of its obligations under this Agreement and, from time to time, shall, at the request of another party hereto, and without further consideration, cause the execution and delivery of such other instruments of conveyance, transfer, assignment or assumption and take such other action or execute such other documents as such party may reasonably request in order more effectively to convey, transfer to and vest in Buyer, and to put Split-Off Subsidiary in possession of, all Assigned Assets and Assigned Liabilities, and to convey, transfer to and vest in Seller and Buyer, and to them in possession of, the Purchase Price Securities and the Shares (respectively).

10.7 Entire Agreement; Amendments. This Agreement contains the entire understanding of the parties relating to the subject matter contained herein. This Agreement cannot be amended or changed except through a written instrument signed by all of the parties hereto and by PrivateCo. No provisions of this Agreement or any rights hereunder may be waived by any party without the prior written consent of PrivateCo.

10.8 Assignment. No party may assign his, her or its rights or obligations hereunder, in whole or in part, without the prior written consent of the other parties.

10.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to principles of conflicts or choice of laws thereof.

10.10 Counterparts. This Agreement may be executed in one or more counterparts, with the same effect as if all parties had signed the same document. Each such counterpart shall be an original, but all such counterparts taken together shall constitute a single agreement. In the event that any signature is delivered by facsimile transmission, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) the same with the same force and effect as if such facsimile signature page was an original thereof.

10.11 Section Headings and Gender. The section headings used herein are inserted for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other genders, whether used in the masculine, feminine or neuter and the singular shall include the plural, and vice versa, whenever and as often as may be appropriate.

10.12 Third-Party Beneficiary. Each of Seller, Buyer and Split-Off Subsidiary acknowledges and agrees that this Agreement is entered into for the express benefit of PrivateCo, and that PrivateCo is relying hereon and on the consummation of the transactions contemplated by this Agreement in entering into and performing its obligations under the Merger Agreement, and that PrivateCo shall be in all respects entitled to the benefit hereof and to enforce this Agreement as a result of any breach hereof.

10.13 Specific Performance; Remedies. Each of the parties to this Agreement acknowledges and agrees that, if any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached, irreparable damages would be incurred by the other parties to this Agreement and by PrivateCo. Accordingly, the parties to this Agreement agree that any party or PrivateCo will be entitled to seek an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and its terms and provisions in any action instituted in any court of the United States or any state thereof having jurisdiction over the parties and the matter, subject to Section 10.9, in addition to any other remedy to which they may be entitled, at law or in equity. Except as expressly provided herein, the rights, obligations and remedies created by this Agreement are cumulative and are in addition to any other rights, obligations or remedies otherwise available at law or in equity, and nothing herein will be considered an election of remedies.

10.14 Submission to Jurisdiction; Process Agent; No Jury Trial.

(a) Each party to the Agreement hereby submits to the jurisdiction of any state or federal court sitting in the Borough of Manhattan, City and State of New York, in any action arising out of or relating to this Agreement, and agrees that all claims in respect of the action may be heard and determined in any such court. Each party to the Agreement also agrees not to bring

any action arising out of or relating to this Agreement in any other court. Each party to the Agreement agrees that a final judgment in any action so brought will be conclusive and may be enforced by action on the judgment or in any other manner provided at law or in equity. Each party to the Agreement waives any defense of inconvenient forum to the maintenance of any action so brought and waives any bond, surety or other security that might be required of any other party with respect thereto.

(b) EACH PARTY TO THIS AGREEMENT HEREBY AGREES TO WAIVE ITS RIGHTS TO JURY TRIAL OF ANY DISPUTE BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OTHER AGREEMENTS RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT OR ANY DEALINGS AMONG THEM RELATING TO THE TRANSACTIONS CONTEMPLATED HEREBY. The scope of this waiver is intended to be all encompassing of any and all actions that may be filed in any court and that relate to the subject matter of the transactions, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. Each party to the Agreement hereby acknowledges that this waiver is a material inducement to enter into a business relationship and that they will continue to rely on the waiver in their related future dealings. Each party to the Agreement further represents and warrants that it has reviewed this waiver with its legal counsel, and that each knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED ORALLY OR IN WRITING, AND THE WAIVER WILL APPLY TO ANY AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING HERETO. In the event of commencement of any action, this Agreement may be filed as a written consent to trial by a court.

10.15 Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties hereto and no presumption or burden of proof will arise favoring or disfavoring any party because of the authorship of any provision of this Agreement. Any reference to any federal, state, local or foreign law will be deemed also to refer to law as amended and all rules and regulations promulgated thereunder, unless the context requires otherwise. The words “**include**,” “**includes**,” and “**including**” will be deemed to be followed by “**without limitation**.” The words “**this Agreement**,” “**herein**,” “**hereof**,” “**hereby**,” “**hereunder**,” and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. The parties hereto intend that each representation, warranty and covenant contained herein will have independent significance. If any party hereto has breached any representation, warranty or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) which that party has not breached will not detract from or mitigate the fact that such party is in breach of the first representation, warranty or covenant.

*[Signature page follows this page.]*

IN WITNESS WHEREOF, the parties hereto have duly executed this Split-Off Agreement as of the day and year first above written.

**SELLER**

By:           /s/ Andrey Zasoryn            
Name: Andrey Zasoryn  
Title: President

**SPLIT OFF SUBSIDIARY**

By:           /s/ Andrey Zasoryn            
Name: Andrey Zasoryn  
Title: President

**BUYER**

          /s/ Andrey Zasoryn            
Andrey Zasoryn

**EXHIBIT A**

<b>Buyer</b>	<b>Purchase Price Security</b>	<b>Number of Shares</b>	<b>Certificate No(s).</b>
Andrey Zasoryn	Common Stock of Miramar Labs, Inc.	3,603,602	Book Entry

<b>Split-Off Subsidiary</b>	<b>Shares</b>	<b>Number of Shares</b>	<b>Certificate No(s).</b>
Spacepath Enterprise Corp.	Common Stock	100	1

## **GENERAL RELEASE AGREEMENT**

This **GENERAL RELEASE AGREEMENT** (this “**Agreement**”), dated as of June 7, 2016, is entered into by and among Miramar Labs, Inc., formerly known as KTL Bamboo International Corp., a Delaware corporation (“**Seller**”), Spacepath Enterprise Corp, a Nevada corporation and a wholly owned subsidiary of Seller (“**Split-Off Subsidiary**”), and Andrey Zasoryn (“**Buyer**”). In consideration of the mutual benefits to be derived from this Agreement, the covenants and agreements set forth herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the execution and delivery hereof, the parties hereto hereby agree as follows:

**1. Split-Off Agreement.** This Agreement is executed and delivered by Split-Off Subsidiary pursuant to the requirements of Section 6.3 of that certain Split-Off Agreement (the “**Split-Off Agreement**”) by and among Seller, Split-Off Subsidiary and Buyer, as a condition to the closing of the purchase and sale transaction contemplated thereby (the “**Transaction**”).

**2. Release and Waiver by Split-Off Subsidiary.** For and in consideration of the covenants and promises contained herein and in the Split-Off Agreement, the receipt and sufficiency of which are hereby acknowledged, Split-Off Subsidiary, on behalf of itself and its assigns, representatives and agents, if any, hereby covenants not to sue and fully, finally and forever completely releases Seller, and Miramar Technologies, Inc., a Delaware corporation (“**PrivateCo**”), along with their respective present, future and former officers, directors, stockholders, members, employees, agents, attorneys and representatives (collectively, the “**Seller Released Parties**”), of and from any and all claims, actions, obligations, liabilities, demands and/or causes of action, of whatever kind or character, whether now known or unknown, which Split-Off Subsidiary has or might claim to have against the Seller Released Parties for any and all injuries, harm, damages (actual and punitive), costs, losses, expenses, attorneys’ fees and/or liability or other detriment, if any, whenever incurred or suffered by Split-Off Subsidiary arising from, relating to, or in any way connected with, any fact, event, transaction, action or omission that occurred or failed to occur at or prior to the closing of the Transaction.

**3. Release and Waiver by Buyer.** For and in consideration of the covenants and promises contained herein and in the Split-Off Agreement, the receipt and sufficiency of which are hereby acknowledged, Buyer on behalf of herself and her assigns, representatives and agents, if any, hereby covenants not to sue and fully, finally and forever completely releases the Seller Released Parties of and from any and all claims, actions, obligations, liabilities, demands and/or causes of action, of whatever kind or character, whether now known or unknown, which Buyer has or might claim to have against the Seller Released Parties for any and all injuries, harm, damages (actual and punitive), costs, losses, expenses, attorneys’ fees and/or liability or other detriment, if any, whenever incurred or suffered by such Buyer arising from, relating to, or in any way connected with, any fact, event, transaction, action or omission that occurred or failed to occur on or prior to the closing of the Transaction.

**4. Additional Covenants and Agreements.**

(a) Each of Split-Off Subsidiary and Buyer, on the one hand, and Seller, on the other hand, waives and releases the other from any claims that this Agreement was procured by fraud or signed under duress or coercion so as to make this Agreement not binding.

(b) Each of the parties hereto acknowledges and agrees that the releases set forth herein do not include any claims the other party hereto may have against such party for such party's failure to comply with or breach of any provision in this Agreement or the Split-Off Agreement.

(c) Notwithstanding anything contained herein to the contrary, this Agreement shall not release or waive, or in any manner affect or void, any party's rights and obligations under the following:

(i) the Split-Off Agreement; and

(ii) the Agreement and Plan of Merger and Reorganization among Seller, PrivateCo, and Miramar Acquisition Corp., a Delaware corporation and wholly owned subsidiary of Seller (the "**Merger Agreement**"), and the other the Transaction Documents.

**5. Modification.** This Agreement cannot be modified orally and can only be modified through a written document signed by all parties and PrivateCo.

**6. Severability.** If any provision contained in this Agreement is determined to be void, illegal or unenforceable, in whole or in part, then the other provisions contained herein shall remain in full force and effect as if the provision that was determined to be void, illegal or unenforceable had not been contained herein.

**7. Expenses.** The parties hereto agree that each party shall pay its respective costs, including attorneys' fees, if any, associated with this Agreement.

**8. Further Acts and Assurances.** Each of Split-Off Subsidiary and Buyer agrees that it will act in a manner supporting compliance, including compliance by its Affiliates, with all of its obligations under this Agreement and, from time to time, shall, at the request of Seller or PrivateCo, and without further consideration, cause the execution and delivery of such other instruments of release or waiver and take such other action or execute such other documents as such party may reasonably request in order to confirm or effect the releases, waivers and covenants contained herein, and, in the case of any claims, actions, obligations, liabilities, demands and/or causes of action that cannot be effectively released or waived without the consent or approval of other Persons that is unobtainable, to use its best reasonable efforts to ensure that the Seller Released Parties receive the benefits thereof to the maximum extent permissible in accordance with applicable law or other applicable restrictions, and shall perform such other acts which may be reasonably necessary to effectuate the purposes of this Agreement.

9. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to principles of conflicts or choice of laws thereof.

10. **Third-Party Beneficiary.** Each of Seller, Buyers and Split-Off Subsidiary acknowledges and agrees that this Agreement is entered into for the express benefit of PrivateCo, and that each PrivateCo is relying hereon and on the consummation of the transactions contemplated by this Agreement in entering into and performing its obligations under the Merger Agreement, and that PrivateCo shall be in all respects entitled to the benefit hereof and to enforce this Agreement as a result of any breach hereof.

11. **Specific Performance; Remedies.** Each of Seller, Buyer and Split-Off Subsidiary acknowledges and agrees that each PrivateCo would be damaged irreparably if any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached. Accordingly, each of Seller, Buyer and Split-Off Subsidiary agrees that PrivateCo will be entitled to seek an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and its terms and provisions in any action instituted in any court of the United States or any state thereof having jurisdiction over the parties and the matter, subject to Section 9, in addition to any other remedy to which they may be entitled, at law or in equity. Except as expressly provided herein, the rights, obligations and remedies created by this Agreement are cumulative and are in addition to any other rights, obligations or remedies otherwise available at law or in equity, and nothing herein will be considered an election of remedies.

12. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement of Seller, Split-Off Subsidiary and Buyer and supersedes prior understandings and agreements, if any, among or between Seller, Split-Off Subsidiary and Buyer with respect to the subject matter of this Agreement, other than as specifically referenced herein. This Agreement does not, however, operate to supersede or extinguish any confidentiality, non-solicitation, non-disclosure or non-competition obligations owed by Split-Off Subsidiary to Seller under any prior agreement.

13. **Definitions.** Capitalized terms used herein without definition have the meanings ascribed to them in the Merger Agreement.

*[Signature page follows this page.]*



## LOCK-UP AGREEMENT

This LOCK-UP AGREEMENT (this “Agreement”) is made as of June \_\_, 2016 by and between the undersigned person or entity (the “Restricted Holder”) and Miramar Labs, Inc. (formerly KTL Bamboo International Corp.), a Delaware corporation (the “Parent”). Capitalized terms used and not otherwise defined herein shall have the meanings given to such terms in the Merger Agreement (as defined below).

WHEREAS, pursuant to the transactions contemplated under that certain Agreement and Plan of Merger and Reorganization, dated as of June \_\_, 2016 (the “Merger Agreement”), by and among the Parent, Miramar Acquisition Corp., a Delaware corporation (the “Acquisition Subsidiary”), and Miramar Technologies, Inc., a Delaware corporation (the “Company”), the Acquisition Subsidiary will merge with and into the Company, with the Company remaining as the surviving entity after the merger as a wholly-owned subsidiary of the Parent, and the stockholders of the Company will receive shares of Parent Common Stock (as defined below) in exchange for their capital stock of the Company pursuant to the terms of the Merger Agreement (the “Merger”);

WHEREAS, simultaneously with the closing of the Merger, Parent will complete a private placement offering (the “Private Placement Offering”) of a minimum of 1,800,000 shares of common stock of the Parent, par value \$0.0001 per share (the “Parent Common Stock”), at a purchase price of \$5.00 per share;

WHEREAS, in connection with the Merger and Private Placement Offering, the Parent will enter into a Registration Rights Agreement with the investors in the Private Placement Offering, Placement Agents in the Private Placement Offering, and certain Restricted Holders (the “Registration Rights Agreement”); and

WHEREAS, the Merger Agreement provides that, among other things, all the shares of Parent Common Stock owned by the Restricted Holder and all securities held by the Restricted Holder that are convertible into or exercisable or exchangeable for Parent Common Stock, in each case whether held on the date of closing of the Merger or thereafter acquired, and whether held beneficially or of record, including, without limitation, any shares of Parent Common Stock acquired pursuant to the Merger or Private Placement Offering (collectively, the “Restricted Securities”), shall be subject to certain restrictions on Disposition (as defined herein), and the Restricted Holder will be subject to certain other restrictions relating to the Parent Common Stock, subject to certain conditions all as more fully set forth herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Restrictions.

(a) “Restricted Period” means the period of six (6) months commencing on the Closing Date the Merger, if applicable; provided, however, that the Restricted Period shall terminate prior to such date upon (a) the listing of the Parent Common Stock on the New York Stock Exchange, NYSE MKT or NASDAQ or (b) the closing of any underwritten public offering of the Parent’s

securities for gross proceeds of at least \$25 million, with the written approval of the lead underwriter of such offering.

(b) During the Restricted Period, the Restricted Holder will not, directly or indirectly: (i) offer, sell, assign, transfer, pledge, hypothecate, contract to sell, grant an option to purchase or otherwise dispose of, or announce the intention to so dispose of, any Restricted Securities or (ii) enter into any swap, hedge or similar agreement or arrangement that transfers, in whole or in part, the economic consequence of ownership of any Restricted Securities (the actions described in clause (i) or (ii) above being hereinafter referred to as a “Disposition”).

(c) In addition, during the period of twelve (12) months commencing on the Closing Date of the Merger, the Restricted Holder will not, directly or indirectly, effect or agree to effect any short sale (as defined in Rule 200 under Regulation SHO of the Securities Exchange Act of 1934, as amended, (the “Exchange Act”)) with respect to any shares of Parent Common Stock, whether or not against the box, establish any “put equivalent position” (as defined in Rule 16a-1 (h) under the Exchange Act) with respect to any shares of Parent Common Stock, borrow or pre-borrow any shares of Parent Common Stock, or grant any other right (including, without limitation, any put or call option) with respect to shares of the Parent Common Stock or with respect to any security that includes, is convertible into or exercisable for or derives any significant part of its value from shares of the Parent Common Stock or otherwise seek to hedge the Restricted Holder’s position in the Parent Common Stock.

(d) Notwithstanding anything contained herein to the contrary, the restrictions set forth in Section 1(b) shall not apply to:

- (i) if the Restricted Holder is a natural person, any transfers made by the Restricted Holder (A) to any member of the immediate family (as defined below) of the Restricted Holder or to a trust the beneficiaries of which are exclusively the Restricted Holder or members of the Restricted Holder’s immediate family, or (B) by bona fide gift, will or intestacy;
- (ii) if the Restricted Holder is a corporation, partnership, limited liability company or other business entity, any transfers to a charitable organization, or to any stockholder, partner, manager, director, officer, employee or member of, or owner of a similar equity interest in, the Restricted Holder or its affiliates, as the case may be;
- (iii) if the Restricted Holder is a corporation, partnership, limited liability company or other business entity, any transfer made by the Restricted Holder:
  - (A) in connection with the sale or other bona fide transfer in a single transaction of all or substantially all of the Restricted Holder’s capital stock, partnership interests, membership interests or other similar equity interests, as the case may be, or all or substantially all of the Restricted Holder’s assets, in any such case not undertaken for the purpose of avoiding the restrictions imposed by this Agreement,

- (B) to another corporation, partnership, limited liability company or other business entity so long as the transferee is an affiliate (as defined below) of the Restricted Holder, or
  - (C) to any investment fund or other entity that controls or manages the Restricted Holder (including, for the avoidance of doubt, a fund managed by the same manager or managing member or general partner or management company or by an entity controlling, controlled by, or under common control with such manager or managing member or general partner or management company as the Restricted Holder) if such transfer is not for value;
- (iv) if the Restricted Holder is a trust, to a trustor or beneficiary of the trust if such transfer is not for value;
  - (v) any transfers of Restricted Securities to the Parent upon a vesting event or upon the exercise of options or warrants to purchase the Parent's securities, in each case on a "cashless" or "net exercise" basis to cover tax withholding obligations of the Restricted Holder in connection with such vesting or exercise;
  - (vi) any transfers of the Restricted Securities by operation of law, including pursuant to a domestic order or a negotiated divorce settlement;
  - (vii) any transfers of the Restricted Securities to the Parent pursuant to agreements under which the Parent has the option to repurchase such Restricted Securities or the Parent has a right of first refusal with respect to transfers of such Restricted Securities;
  - (viii) any transfers of the Restricted Securities pursuant to a bona fide third-party tender offer, merger, consolidation or other similar transaction made to all holders of Restricted Securities involving a change of control of the Parent, provided that such transaction has been approved by the Board of Directors of Parent;
  - (ix) the exercise of any right with respect to, or the taking of any other action in preparation for, a registration by the Parent of Restricted Securities;
  - (x) any Disposition by a Restricted Holder where the other party to such Disposition is another Restricted Holder; or
  - (xi) any Disposition by a Restricted Holder to any of the following entities Bloomage Biotechnology, Valeant Pharmaceuticals, and Shanghai Fosun Pharmaceuticals Group.

*provided, however, that*

- (A) in the case of any transfer described in clause (i), (ii), (iii), (iv), (vi) or (xi) above, it shall be a condition to the transfer that the transferee executes and delivers to the Parent not later than one Business Day prior to such transfer, a written agreement in substantially the form of this Agreement covering the transferred Restricted Securities for the balance of the Restricted Period (it being understood that any references to “immediate family” in the agreement executed by such transferee shall expressly refer only to the immediate family of the Restricted Holder and not to the immediate family of the transferee) and otherwise reasonably satisfactory in form and substance to the Parent;
- (B) in the case of any transfer described in clause (i), (ii), (iii), (iv), (vi), (x) or (xi) above, such transfers are not required to be reported under Section 16 of the Exchange Act, and the Restricted Holder does not otherwise voluntarily effect any public filing or report regarding such transfers during the Restricted Period (other than a filing on Form 5);
- (C) in the case of any transfer to the Parent described in clause (v) above, if the transfer is required to be reported under Section 16 of the Exchange Act, any filing under Section 16 of the Exchange Act related to such transfer shall clearly indicate in the footnotes thereto that (a) the filing relates to the circumstances described in clause (v) above, (b) no shares were sold by the reporting person and (c) any remaining shares received upon exercise of an option or a warrant (net of any shares transferred in connection with such “cashless” or “net exercise” to cover tax withholding obligations) or the remaining vested shares are subject to a written agreement with the Parent in substantially the form of this Agreement for the balance of the Restricted Period;
- (D) in the case of any transfer described in clause (viii) above, in the event that the tender offer, merger, consolidation or other such transaction is not completed, the Restricted Securities owned by the Restricted Holder shall remain subject to the restrictions contained in this Agreement; and
- (E) in the case of clause (ix) above, no actual transfer or other Disposition of the Restricted Holder’s Restricted Securities registered pursuant to the exercise of such rights under clause (ix) shall occur during the Restricted Period.

For purposes of clause (viii), “change of control” shall mean the transfer (whether by tender offer, merger, consolidation or other similar transaction), in one transaction or a series of related transactions, to a person or group of affiliated persons, of the Parent’s voting securities if, after such transfer, such person or group of affiliated persons would hold more than 50% of the outstanding voting securities of the Parent (or the surviving entity).

For purposes of this subsection (d), “immediate family” shall mean any relationship by blood, domestic partnership, marriage or adoption, not more remote than first cousin; and “affiliate” shall have the meaning set forth in Rule 405 under the Securities Act of 1933, as amended (the “Securities Act”).

(e) Furthermore, during the Restricted Period, the Restricted Holder may exercise any rights to purchase, exchange or convert any stock options granted to the Restricted Holder pursuant to the Parent's equity incentive plans existing as of the date of the Merger or warrants or any other securities held by the Restricted Holder as of the date of the Merger, which securities are convertible into or exchangeable or exercisable for Parent Common Stock, and the Restricted Holder agrees that the shares of Parent Common Stock received upon such exercise, purchase, exchange or conversion shall be and remain Restricted Securities subject to the terms of this Agreement.

(f) In addition, the restrictions set forth in Section 1(b) shall not apply to the repurchase of Restricted Securities by the Parent in connection with the termination of the Restricted Holder's employment or other service with the Parent or any of its subsidiaries.

(g) Notwithstanding anything herein to the contrary, nothing herein shall prevent the Restricted Holder from establishing a 10b5-1 trading plan that complies with Rule 10b5-1 under the Exchange Act ("10b5-1 Trading Plan") or from amending an existing 10b5-1 Trading Plan so long as there are no sales or other Dispositions of Restricted Securities under such plans during the Restricted Period; and *provided* that no public announcement or filing under the Exchange Act, if any, is required or voluntarily made by or on behalf of the Restricted Holder or the Parent during the Restricted Period regarding the establishment of a 10b5-1 Trading Plan or the amendment of a 10b5-1 Trading Plan.

## 2. Legends; Stop Transfer Instructions.

(a) In addition to any legends to reflect applicable transfer restrictions under federal or state securities laws, each certificate representing Restricted Securities shall be stamped or otherwise imprinted with the following legend:

“THE SECURITIES REPRESENTED HEREBY ARE SUBJECT TO THE TERMS AND CONDITIONS OF A LOCK-UP AGREEMENT, DATED AS OF [\_\_\_\_\_, 2016, BETWEEN THE HOLDER HEREOF AND THE ISSUER, AND MAY ONLY BE SOLD OR TRANSFERRED IN ACCORDANCE WITH THE TERMS THEREOF.”

(b) The Restricted Holder hereby agrees and consents to the entry of stop transfer instructions with the Parent's transfer agent and registrar against the transfer of the Restricted Securities except in compliance with this Agreement.

## 3. Miscellaneous.

(a) Specific Performance. The Restricted Holder agrees that in the event of any breach or threatened breach by the Restricted Holder of any covenant, obligation or other provision contained in this Agreement, then the Parent shall be entitled (in addition to any other remedy that may be available to the Parent) to: (i) a decree or order of specific performance or mandamus to enforce the observance and performance of such covenant, obligation or other provision; and (ii) an injunction restraining such breach or threatened breach. The Restricted Holder further agrees that neither the Parent nor any other person or entity shall be required to obtain, furnish or post any

bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 3, and the Restricted Holder irrevocably waives any right that he, she, or it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

(b) Other Agreements. Nothing in this Agreement shall limit any of the rights or remedies of the Parent under the Merger Agreement, or any of the rights or remedies of the Parent or any of the obligations of the Restricted Holder under any other agreement between the Restricted Holder and the Parent or any certificate or instrument executed by the Restricted Holder in favor of the Parent; and nothing in the Merger Agreement or in any other agreement, certificate or instrument shall limit any of the rights or remedies of the Parent or any of the obligations of the Restricted Holder under this Agreement.

(c) Notices. All notices, consents, waivers, and other communications which are required or permitted under this Agreement shall be in writing and will be deemed given to a party (a) on the date of delivery, if delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); (b) the date of transmission if sent by facsimile or e-mail with confirmation of transmission by the transmitting equipment if such notice or communication is delivered prior to 5:00 P.M., Pacific Time, on a business day, or the next business day after the date of transmission, if such notice or communication is delivered on a day that is not a business day or later than 5:00 P.M., Pacific Time, on a business day; (c) the date received or rejected by the addressee, if sent by certified mail, return receipt requested; or (d) seven days after the placement of the notice into the mails (first class postage prepaid), to the party at the address, facsimile number, or e-mail address furnished by the such party,

If to the Parent:

With a copy (which copy shall not constitute notice hereunder) to:

Miramar Labs, Inc.  
2790 Walsh Avenue  
Santa Clara, CA 95051  
Attn: Michael Kleine, CEO  
Facsimile: (408) 579-8795

Wilson Sonsini Goodrich & Rosati, P.C.  
650 Page Mill Road  
Palo Alto, CA 94304  
Attn: Philip H. Oettinger  
Facsimile: (650) 493-6811

If to the Restricted Holder:

To the address set forth on the signature page hereto.

Any party may give any notice, request, demand, claim or other communication hereunder using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail or electronic mail), but no such notice, request, demand, claim or other communication shall be deemed to have been duly given unless and until it actually is received by the party for whom it is intended. Any party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Parties notice in the manner herein set forth.

(d) Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the parties hereto agree that the court making such determination shall have the power to limit the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the parties hereto agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term.

(e) Applicable Law; Jurisdiction. THIS AGREEMENT IS MADE UNDER, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED SOLELY THEREIN, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW. In any action between or among any of the parties arising out of this Agreement, (i) each of the parties irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the courts of the State of California sitting in Santa Clara County, California, and the United States District Court for the Northern District of California sitting in San Francisco; (ii) if any such action is properly commenced in a state court, then, subject to applicable law, no party shall object to the removal of such action to such United States District Court; (iii) EACH OF THE PARTIES IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY; and (iv) each of the parties irrevocably consents to service of process (in addition to any other means of service authorized by law) by first class certified mail, return receipt requested, postage prepared, to the address at which such party is to receive notice in accordance with this Agreement.

(f) Waiver; Termination. No failure on the part of the Parent to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of the Parent in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. The Parent shall not be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of the Parent; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given. If the Merger Agreement is terminated, this Agreement shall thereupon terminate.

(g) Captions. The captions contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

(h) Further Assurances. The Restricted Holder hereby represents and warrants that the Restricted Holder has full power and authority to enter into this Agreement and that this Agreement has been duly authorized (if the Restricted Holder is not a natural person), executed and delivered by the Restricted Holder and is a valid and binding agreement of the Restricted Holder.

(i) Entire Agreement. This Agreement sets forth the entire understanding of the Parent and the Restricted Holder relating to the subject matter hereof and supersedes all other prior agreements and understandings between the Parent and the Restricted Holder relating to the subject matter hereof.

(j) Non-Exclusivity. The rights and remedies of the Parent hereunder are not exclusive of or limited by any other rights or remedies which the Parent may have, whether at law, in equity, by contract or otherwise, all of which shall be cumulative (and not alternative).

(k) Amendments. This Agreement may not be amended, modified, altered or supplemented other than by means of a written instrument duly executed and delivered on behalf of the Parent and the Restricted Holder.

(l) Binding Nature. This Agreement and all authority herein conferred are irrevocable and shall survive the death or incapacity of the Restricted Holder (if a natural person) and shall be binding upon the heirs, personal representatives, successors and assigns of the Restricted Holder.

(m) Survival. Each of the representations, warranties, covenants and obligations contained in this Agreement shall survive the consummation of the Merger.

(n) Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original and both of which shall constitute one and the same instrument.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the undersigned has executed and delivered this Agreement as of the date first set forth above.

**MIRAMAR LABS, INC.**

By: \_\_\_\_\_

Name: R. Michael Kleine

Title: President

**RESTRICTED HOLDER:**

*If an individual:*

*If an entity:*

Print Name of Entity:

Sign: \_\_\_\_\_

\_\_\_\_\_

Print Name:

By (sign): \_\_\_\_\_

\_\_\_\_\_  
Signature (if Joint Tenants or Tenants in  
Common)

Print Name:

Print Title:

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## SUBSCRIPTION AGREEMENT

This Subscription Agreement (this “*Agreement*”) has been executed by the purchaser set forth on the signature page hereof (the “*Purchaser*”) in connection with the private placement offering (the “*Offering*”) by **KTL Bamboo International Corp.** (intended to be renamed **Miramar Labs, Inc.**), a Nevada corporation (the “*Company*”) of a minimum of \$9,000,000 (the “*Minimum Offering*”) and a maximum of \$15,000,000 (the “*Maximum Offering*”) <sup>1</sup> of shares (the “*Shares*”) of the Company’s common stock, par value \$0.001 per share (“*Common Stock*”) issued, at a purchase price of \$5.00 per Share (the “*Purchase Price*”), plus up to an additional \$20,000,000 of Shares at the Purchase Price to cover over-allotments, with the consent of the Company, in the event the Offering is oversubscribed. This subscription is being submitted to you in accordance with and subject to the terms and conditions described in this Agreement, the Confidential and Non-Binding Summary Term Sheet of the Company dated May 17, 2016, relating to the Offering (as the same may be amended or supplemented, the “*Term Sheet*”), and any other Disclosure Materials (as defined below). The minimum subscription is \$50,000 (10,000 Shares). The Company may accept subscriptions for less than \$50,000 in its sole discretion.

The Shares being subscribed for pursuant to this Agreement have not been registered under the Securities Act of 1933, as amended (the “*Securities Act*”). The Offering is being made on a reasonable best efforts basis to “accredited investors,” as defined in Regulation D under the Securities Act.

The Shares are being offered and sold in connection with a reverse triangular merger (the “*Merger*”) between a subsidiary of the Company and **Miramar Technologies, Inc. (formerly Miramar Labs, Inc.)**, a Delaware corporation (“*Miramar*”), and certain other transactions, on the terms and conditions described in the Term Sheet, pursuant to which Miramar will become a wholly owned subsidiary of the Company, and all of the outstanding Miramar stock will be converted into shares of the Company’s Common Stock, and Miramar stock options and warrants (if any) will be converted into options and warrants to purchase the Company’s Common Stock, as further described in the Term Sheet. Prior to the first Closing (as defined below), the Company intends to change its name to “Miramar Labs, Inc.” or another name that reflects its intended new business, and to reincorporate in the State of Delaware.

The undersigned acknowledges receipt of a copy of the Registration Rights Agreement, substantially in the form of Exhibit A hereto (the “*Registration Rights Agreement*”).

Each closing of the Offering (a “*Closing*,” and the date on which such Closing occurs hereinafter referred to as the “*Closing Date*”) shall take place at the offices of CKR Law LLP, at 1330 Avenue of the Americas, New York, New York 10019 (or such other place as is mutually agreed to by the Company and the Placement Agents (as defined below)).

The initial Closing will not occur unless:

- a. funds deposited in escrow as described in Section 2(b) below equal to at least the Minimum Offering, and corresponding documentation with respect to such amounts, have been delivered by the Purchaser and other “Purchasers” under Subscription Agreements of like tenor with this Agreement (collectively, the “Purchasers”) as described in Section 2(a) below; an

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<sup>1</sup> Upon the Closing of the Merger and the Minimum Offering, up to \$2,000,000 outstanding principal amount of (plus accrued interest on) certain convertible bridge notes of Miramar (the “Convertible Notes”) will be converted into shares of Common Stock at a conversion price per share equal to the Purchase Price, and the aggregate principal amount so converted will be included in the gross proceeds of the Offering for purposes of meeting the Minimum Offering and Maximum Offering amounts.

- b. the Merger shall have been effected (or is simultaneously effected).

Thereafter, the Company may conduct one or more additional Closings for the sale of the Shares until the termination of the Offering. Unless terminated earlier by the Company, the Offering shall continue until June 6, 2016, which period may be extended by the Company until a date not later than August 8, 2016, without notice to any Purchaser, past, current or prospective.

The Term Sheet and any supplement or amendment thereto, and any disclosure schedule or other information document, delivered to the Purchaser prior to Purchaser's execution of this Agreement, and any such document delivered to the Purchaser after Purchaser's execution of this Agreement and prior to the Closing of the Purchaser's subscription hereunder (including, without limitation, a draft of the Current Report on Form 8-K to be filed with the Company with the Securities and Exchange Commission (the "SEC") within four Business Days after the closing of the Merger and the initial closing of the Offering (the "Super 8-K")), are collectively referred to as the "Disclosure Materials." ("Business Day" means a day, other than a Saturday or Sunday, on which banks in New York City are open for the general transaction of business.)

1. **Subscription.** The undersigned Purchaser hereby subscribes to purchase the number of Shares set forth on the Omnibus Signature Page attached hereto, for the aggregate Purchase Price as set forth on such Omnibus Signature Page, subject to the terms and conditions of this Agreement and on the basis of the representations, warranties, covenants and agreements contained herein.
2. **Subscription Procedure.** To complete a subscription for the Shares, the Purchaser must fully comply with the subscription procedure provided in paragraphs a. through c. of this Section on or before the Closing Date.
  - a. Subscription Documents. On or before the Closing Date, the Purchaser shall review, complete and execute the Omnibus Signature Page to this Agreement and the Registration Rights Agreement, the Investor Profile, Anti-Money Laundering Form and Investor Certification, attached hereto following the Omnibus Signature Page (collectively, the "Subscription Documents"), and deliver the Subscription Documents to the Company's attorneys, CKR Law LLP ("CKR"), at the address set forth under the caption "*How to subscribe for Shares in the private offering of Miramar.*" below. Executed documents may be delivered to CKR by facsimile or .pdf sent by electronic mail (e-mail), if the Purchaser delivers the original copies of the documents to CKR as soon as practicable thereafter.
  - b. Purchase Price. Simultaneously with the delivery of the Subscription Documents to CKR as provided herein, and in any event on or prior to the Closing Date, the Purchaser shall deliver to Delaware Trust Company, in its capacity as escrow agent (the "Escrow Agent"), the full Purchase Price by certified or other bank check or by wire transfer of immediately available funds, pursuant to the instructions set forth under the caption "*How to subscribe for Shares in the private offering of Miramar*" below. Such funds will be held for the Purchaser's benefit in the escrow account established for the Offering (the "Escrow Account") and will be returned promptly, without interest or offset, if this Agreement is not accepted by the Company or the Offering is terminated pursuant to its terms by the Company prior to the Closing. The Company may in its sole discretion accept the delivery of the Purchase Price in the form of the cancellation of indebtedness, in whole or in part.
  - c. Company Discretion. The Purchaser understands and agrees that the Company in its sole discretion reserves the right to accept or reject this or any other subscription for Shares, in whole

or in part, notwithstanding prior receipt by the Purchaser of notice of acceptance of this subscription. The Company shall have no obligation hereunder until the Company shall execute and deliver to the Purchaser an executed copy of this Agreement. If this subscription is rejected in whole, or the Offering is terminated, all funds received from the Purchaser will be returned without interest or offset, and this Agreement shall thereafter be of no further force or effect. If this subscription is rejected in part, the funds for the rejected portion of this subscription will be returned without interest or offset, and this Agreement will continue in full force and effect to the extent this subscription was accepted.

3. **Placement Agents.** The Benchmark Company, LLC and Katalyst Securities, LLC, each a broker-dealer licensed with FINRA, have been engaged on a co-exclusive basis as placement agents (the “Placement Agents”) for the Offering on a reasonable best efforts basis. The Placement Agents will be paid at closing from the proceeds in the Escrow Account, a cash commission of Eight Percent (8%) of the gross funds raised from investors in the Offering introduced by them (“Cash Fee”) and will receive warrants to purchase a number of shares of Common Stock equal to Eight Percent (8%) of the number of Shares sold to the investors in the Offering introduced by the Placement Agents, with a term of five (5) years from each Closing and an exercise price of \$5.00 per share (the “Placement Agent Warrants”), except for proceeds raised from existing shareholders of Miramar or from the conversion of the Convertible Notes (attached hereto as Exhibit 1), and new accredited investors who have a relationship with Miramar and subscribe to cause the Minimum Offering or the Maximum Offering to be fully subscribed (the “*Friends and Family Investors*”), for which the Placement Agents shall not be entitled to receive a Cash Fee or to receive Placement Agent Warrants; *provided however*, Katalyst Securities LLC will be paid a non-accountable administrative fee of \$50,000 (in addition to any Cash Fee it may earn for other investors) upon the first closing of the Offering paid from the proceeds in the Escrow Account. The Placement Agent Warrants will have “weighted average” anti-dilution protection, subject to customary exceptions. Any sub-agent of a Placement Agent that introduces investors to the Offering will be entitled to share in the Cash Fees and Placement Agent Warrants attributable to those investors as described above, pursuant to the terms of an executed sub-agent agreement.
4. **Representations and Warranties of the Company.** The Company hereby represents and warrants to the Purchaser, as of the Closing Date and after giving effect to the Merger (unless otherwise specified), the following:
  - a. Organization and Qualification. The Company and each of its subsidiaries is a corporation or other business entity duly organized and validly existing in good standing under the laws of the jurisdiction of its formation, and has the requisite corporate power to own its properties and to carry on its business as now being conducted. The Company and each of its subsidiaries is duly qualified as a foreign corporation to do business and is in good standing in every jurisdiction in which the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not have a material adverse effect on the assets, business, condition (financial or otherwise), results of operations or future prospects of the Company and its subsidiaries taken as a whole (a “Material Adverse Effect”). Each subsidiary of the Company is identified on Schedule 4a attached hereto.

- b. Authorization, Enforcement, Compliance with Other Instruments. (i) The Company has the requisite corporate power and authority to enter into and perform its obligations under this Agreement, the Registration Rights Agreement and each of the other agreements and documents that are exhibits hereto or thereto or are contemplated hereby or thereby or necessary or desirable to effect the transactions contemplated hereby or thereby (the “*Transaction Documents*”) and to issue the Shares, in accordance with the terms hereof and thereof, (ii) the execution and delivery by the Company of each of the Transaction Documents and the consummation by it of the transactions contemplated hereby and thereby, including, without limitation, the issuance of the Shares, have been, or will be at the time of execution of such Transaction Document, duly authorized by the Company’s Board of Directors, and no further consent or authorization is, or will be at the time of execution of such Transaction Document, required by the Company, its respective Board of Directors or its stockholders, (iii) each of the Transaction Documents will be duly executed and delivered by the Company, and (iv) the Transaction Documents when executed will constitute the valid and binding obligations of the Company enforceable against the Company in accordance with their terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of creditors’ rights and remedies.
- c. Capitalization. The authorized capital stock of the Company consists of 300,000,000 shares of Common Stock and 10,000,000 shares of preferred stock. Immediately before giving effect to the Merger and the initial Closing of the Offering, the Company has 900,000 shares of Common Stock and no preferred stock issued and outstanding. All of the outstanding shares of Common Stock and of the stock of each of the Company’s subsidiaries have been duly authorized, validly issued and are fully paid and nonassessable. Immediately after giving effect to the Merger and the Closing of the Minimum Offering or the Maximum Offering, the pro forma outstanding capitalization of the Company will be as set forth under “*Pro Forma Capitalization*” in **Schedule 4c**. After giving effect to the Merger: (i) no shares of capital stock of the Company or any of its subsidiaries will be subject to preemptive rights or any other similar rights or any liens or encumbrances suffered or permitted by the Company; (ii) except as set forth on **Schedule 4c(ii)** there will be no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, any shares of capital stock of the Company or any of its subsidiaries, or contracts, commitments, understandings or arrangements by which the Company or any of its subsidiaries is or may become bound to issue additional shares of capital stock of the Company or any of its subsidiaries, (iii) there will be no outstanding debt securities other than indebtedness as set forth in **Schedule 4c(iii)**, (iv) other than pursuant to the Registration Rights Agreement or as set forth in **Schedule 4c(iv)**, there will be no agreements or arrangements under which the Company or any of its subsidiaries is obligated to register the sale of any of their securities under the Securities Act, (v) there will be no outstanding registration statements, and there will be no outstanding comment letters from the SEC or any other regulatory agency; (vi) except as provided in this Agreement or as set forth in **Schedule 4c(vi)**, there will be no securities or instruments containing anti-dilution or similar provisions, including the right to adjust the exercise, exchange or reset price under such securities, that will be triggered by the issuance of the Shares as described in this Agreement; and (vii) no co-sale right, right of first refusal or other similar right will exist with respect to the Shares or the issuance and sale thereof. Upon request, the Company will make available to the Purchaser true and correct copies of the Company’s Certificate of Incorporation, and as in effect on the date hereof (the “*Certificate of Incorporation*”), and the Company’s By-laws, as in effect on the date hereof (the “*By-laws*”), and the terms of all securities exercisable

for Common Stock and the material rights of the holders thereof in respect thereto other than stock options issued to officers, directors, employees and consultants.

- d. Issuance of Shares. The Shares are duly authorized and, upon issuance in accordance with the terms hereof, shall be duly issued, fully paid and nonassessable, and are free from all taxes, liens and charges with respect to the issue thereof.
- e. No Conflicts. The execution, delivery and performance of each of the Transaction Documents by the Company, and the consummation by the Company of the transactions contemplated hereby and thereby will not (i) result in a violation of the Certificate of Incorporation or the By-laws (or equivalent constitutive document) of the Company or any of its subsidiaries or (ii) violate or conflict with, or result in a breach of any provision of, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any subsidiary is a party, except for those which would not reasonably be expected to have a Material Adverse Effect, or (iii) result in a material violation of any law, rule, regulation, order, judgment or decree (including U.S. federal and state securities laws and regulations) applicable to the Company or any subsidiary or by which any property or asset of the Company or any subsidiary is bound or affected. Neither the Company nor any subsidiary is in violation of any term of or in default under its Certificate of Incorporation or By-laws. Except for those violations or defaults which would not reasonably be expected to have a Material Adverse Effect, neither the Company nor any subsidiary is in violation of any term of or in default under any material contract, agreement, mortgage, indebtedness, indenture, instrument, judgment, decree or order or any statute, rule or regulation applicable to the Company or any subsidiary. The business of the Company and its subsidiaries is not being conducted, and shall not be conducted in violation of any law, ordinance, or regulation of any governmental entity, except for any violation which would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. Except as specifically contemplated by this Agreement and as required under the Securities Act and any applicable state securities laws, neither the Company nor any of its subsidiaries is required to obtain any consent, authorization or order of, or make any filing or registration with, any court or governmental agency in order for it to execute, deliver or perform any of its obligations under or contemplated by this Agreement or the other Transaction Documents in accordance with the terms hereof or thereof. Except as set forth on **Schedule 4e**, neither the execution and delivery by the Company of the Transaction Documents, nor the consummation by the Company of the transactions contemplated hereby or thereby, will require any notice, consent or waiver under any contract or instrument to which the Company or any subsidiary is a party or by which the Company or any subsidiary is bound or to which any of their assets is subject. All consents, authorizations, orders, filings and registrations which the Company or any of its subsidiaries is required to obtain pursuant to the preceding two sentences have been or will be obtained or effected on or prior to the Closing. The Company is unaware of any facts or circumstance, which might give rise to any of the foregoing.
- f. Absence of Litigation. Except as set forth on **Schedule 4f**, there is no *action, suit, claim, inquiry, notice of violation, proceeding* (including any partial proceeding such as a deposition) or investigation before or by any court, public board, governmental or administrative agency, self-regulatory organization, arbitrator, regulatory authority, stock market, stock exchange or trading facility (an "*Action*") now pending or, to the knowledge of the Company, threatened, against or affecting the Company or any of its subsidiaries.

- g. Acknowledgment Regarding Purchaser's Purchase of the Shares. The Company acknowledges and agrees that each Purchaser is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated hereby and thereby. The Company further acknowledges that no Purchaser is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by any Purchaser or any of their respective representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to the Purchaser's purchase of the Shares.
- h. No General Solicitation. Neither the Company, nor any of its Affiliates, nor, to the knowledge of the Company, any person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Shares. "Affiliate" means, with respect to any person, any other person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such person, as such terms are used in and construed under Rule 144 under the Securities Act ("Rule 144"). With respect to a Purchaser, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Purchaser will be deemed to be an Affiliate of such Purchaser.
- i. No Integrated Offering. Neither the Company, nor any of its Affiliates, nor to the knowledge of the Company, any person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would require registration of the Shares under the Securities Act or cause this offering of the Shares to be integrated with prior offerings by the Company for purposes of the Securities Act.
- j. Employee Relations. Neither Company nor any subsidiary is involved in any labor dispute nor, to the knowledge of the Company, is any such dispute threatened. Neither Company nor any subsidiary is party to any collective bargaining agreement. The Company's and/or its subsidiaries' employees are not members of any union, and the Company believes that its and its subsidiaries' relationship with their respective employees is good.
- k. Intellectual Property Rights. Except as set forth on **Schedule 4k**, the Company and its subsidiaries own or possess sufficient rights to all patents, trademarks, domain names (whether or not registered) and any patentable improvements or copyrightable derivative works thereof, websites and intellectual property rights relating thereto, service marks, trade names, copyrights, licenses, authorizations, inventions, trade secrets, technology and other proprietary rights and processes (collectively, the "Intellectual Property"), and all rights with respect to the foregoing, which are necessary for the conduct of its business as now conducted without any conflict with the rights of others except for such conflicts that would not result in a Material Adverse Effect. Except where any such violations or infringements would not be reasonably expected to have a Material Adverse Effect, to the Company's knowledge (i) the Company's or its subsidiaries' use of any such Intellectual Property in the conduct of its business as presently conducted does not infringe upon the rights of any third parties; (ii) there is no infringement by third parties of any such Intellectual Property; (iii) there is no pending or threatened Action challenging the Company's rights in or to any such Intellectual Property; (iv) there is no pending or threatened Action challenging the validity or scope of any such Intellectual Property; and (v) there is no pending or threatened Action that the Company infringes or otherwise violates any patent, trademark, copyright, trade secret or other proprietary rights of others.

I. Environmental Laws.

- (i) The Company and each subsidiary has complied with all applicable Environmental Laws (as defined below), except for violations of Environmental Laws that, individually or in the aggregate, have not had and would not reasonably be expected to have a Material Adverse Effect. There is no pending or, to the knowledge of the Company, threatened civil or criminal litigation, written notice of violation, formal administrative proceeding, or investigation, inquiry or information request, relating to any Environmental Law involving the Company or any subsidiary, except for litigation, notices of violations, formal administrative proceedings or investigations, inquiries or information requests that, individually or in the aggregate, have not had and would not reasonably be expected to have a Material Adverse Effect. For purposes of this Agreement, “Environmental Law” means any national, state, provincial or local law, statute, rule or regulation or the common law relating to the environment or occupational health and safety, including without limitation any statute, regulation, administrative decision or order pertaining to (i) treatment, storage, disposal, generation and transportation of industrial, toxic or hazardous materials or substances or solid or hazardous waste; (ii) air, water and noise pollution; (iii) groundwater and soil contamination; (iv) the release or threatened release into the environment of industrial, toxic or hazardous materials or substances, or solid or hazardous waste, including without limitation emissions, discharges, injections, spills, escapes or dumping of pollutants, contaminants or chemicals; (v) the protection of wild life, marine life and wetlands, including without limitation all endangered and threatened species; (vi) storage tanks, vessels, containers, abandoned or discarded barrels, and other closed receptacles; (vii) health and safety of employees and other persons; and (viii) manufacturing, processing, using, distributing, treating, storing, disposing, transporting or handling of materials regulated under any law as pollutants, contaminants, toxic or hazardous materials or substances or oil or petroleum products or solid or hazardous waste. As used above, the terms “release” and “environment” shall have the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.
- (ii) To the knowledge of the Company there is no material environmental liability with respect to any solid or hazardous waste transporter or treatment, storage or disposal facility that has been used by the Company or any subsidiary.
- (iii) The Company and its subsidiaries (i) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses except to the extent that the failure to have such permits, licenses or other approvals would not have a Material Adverse Effect and (ii) are in compliance, in all material respects, with all terms and conditions of any such permit, license or approval.
- m. Permits; Regulatory Compliance. The Company and its subsidiaries have all authorizations, approvals, clearances, licenses, permits, certificates or exemptions (including manufacturing approvals and authorizations, pricing and reimbursement approvals, labeling approvals, registration notifications or their foreign equivalent) issued by any regulatory authority or governmental agency (collectively, “*Permits*”) required to conduct their respective businesses as currently conducted except to the extent that the failure to have such Permits would not have a Material Adverse Effect. The conduct of business by the Company complies, and at all times has substantially complied, in all material respects, with the Food, Drug, and Cosmetic Act of

1938, as amended, and other federal, state and foreign laws applicable to the evaluation, testing, manufacturing, distribution, advertising and marketing of each of the Company's products, in whatever stage of development or commercialization, except to the extent that the failure to so comply would not have a Material Adverse Effect. To the knowledge of the Company, as of the date hereof, neither the U.S. Food and Drug Administration (the "FDA") nor any comparable regulatory authority or governmental agency is considering limiting, suspending or revoking any such Permit or changing the marketing classification or labeling of the products of the Company or any of its subsidiaries. To the knowledge of the Company, there is no false or misleading information or material omission in any product application or other submission by the Company or any of its subsidiaries to the FDA or any comparable regulatory authority or governmental agency. The Company or its subsidiaries have fulfilled and performed in all material respects their obligations under each Permit, and, as of the date hereof, to the knowledge of the Company, no event has occurred or condition or state of facts exists which would constitute a breach or default or would cause revocation or termination of any such Permit except to the extent that such breach, default, revocation or termination would not have a Material Adverse Effect. To the knowledge of the Company, any third party that is a manufacturer or contractor for the Company or any of its subsidiaries is in compliance in all material respects with all Permits insofar as they pertain to the manufacture of product components or products for the Company. The Company and its subsidiaries have not received any notice of adverse finding, warning letter, notice of violation, notice of action or any other notice from the FDA or other governmental agency alleging or asserting noncompliance with any applicable laws or Permits. The Company and its subsidiaries have made all notifications, submissions and reports required by applicable federal, state and foreign laws, except to the extent that the failure to make such notifications, submission or reports would not have a Material Adverse Effect.

- n. Title. Neither the Company nor any of its subsidiaries owns any real property. Except as set forth on Schedule 4n, each of the Company and its subsidiaries has good and marketable title to all of its personal property and assets, free and clear of any material restriction, mortgage, deed of trust, pledge, lien, security interest or other charge, claim or encumbrance which would have a Material Adverse Effect. Except as set forth on Schedule 4n, with respect to properties and assets it leases, each of the Company and its subsidiaries is in material compliance with such leases and holds a valid leasehold interest free of any liens, claims or encumbrances which would have a Material Adverse Effect.
- o. No Material Adverse Breaches, etc. Neither Company nor any subsidiary is subject to any charter, corporate or other legal restriction, or any judgment, decree, order, rule or regulation which in the judgment of the Company's officers has had, or is reasonably expected in the future to have, a Material Adverse Effect. Neither Company nor any subsidiary is in breach of any contract or agreement which breach, in the judgment of the Company's officers, has had, or is reasonably expected to have a Material Adverse Effect.
- p. Tax Status. The Company and each subsidiary has made and filed (taking into account any valid extensions) all federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject and (unless and only to the extent that the Company or such subsidiary has set aside on its books provisions reasonably adequate for the payment of all unpaid and unreported taxes) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and has set aside on its books provision reasonably adequate for the payment of all taxes for periods subsequent to the periods to which

such returns, reports or declarations apply. To the knowledge of the Company, there are no unpaid taxes in any material amount claimed to be due from the Company or any subsidiary by the taxing authority of any jurisdiction, and the officers of the Company know of no basis for any such claim.

- q. Certain Transactions. Except for arm's length transactions pursuant to which the Company or any subsidiary makes payments in the ordinary course of business upon terms no less favorable than it could obtain from third parties, none of the officers, directors, or employees of the Company or any subsidiary is presently a party to any transaction with the Company or any subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any corporation, partnership, trust or other entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner.
- r. Rights of First Refusal. Except as set forth on Schedule 4c(i) or Schedule 4r, the Company is not obligated to offer the securities offered hereunder on a right of first refusal basis or otherwise to any third parties including, but not limited to, current or former stockholders of the Company, underwriters, brokers, agents or other third parties.
- s. Insurance. The Company has insurance policies of the type and in amounts customarily carried by organizations conducting businesses or owning assets similar to those of the Company and its subsidiaries. There is no material claim pending under any such policy as to which coverage has been questioned, denied or disputed by the underwriter of such policy.
- t. SEC Reports. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by the Company under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), including pursuant to Section 15(d) thereof (or that it would have been required to file by Section 15(d) of the Exchange Act if its duty to file thereunder had not been automatically suspended) (collectively, together with the Super 8-K, the "*SEC Reports*") for the two years preceding the date hereof (or such shorter period since the Company was first required by law or regulation to file such material).
- u. Financial Statements. The financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the SEC with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with GAAP applied on a consistent basis during the periods involved, except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company and its consolidated subsidiaries taken as a whole as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, year-end audit adjustments.
- v. Material Changes. Since the date of the latest balance sheet included in the financial statements contained within the SEC Reports, except as specifically disclosed in the SEC Reports, (i) there have been no events, occurrences or developments that have had or would reasonably be expected to have a Material Adverse Effect, (ii) the Company has not incurred any material liabilities

(contingent or otherwise) other than (A) trade payables, accrued expenses and other liabilities incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP or to be disclosed in filings made with the SEC, (iii) the Company has not materially altered its method of accounting or the manner in which it keeps its accounting books and records, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock (other than in connection with repurchases of unvested stock issued to employees of the Company), (v) the Company has not issued any equity securities to any officer, director or Affiliate, except Common Stock issued in the ordinary course pursuant to existing Company stock option or stock purchase plans or executive and director corporate arrangements disclosed in the SEC Reports and Common Stock issued pursuant to the Share Exchange Transaction, (vi) there has not been any material change or amendment to, or any waiver of any material right under, any material contract under which the Company or any of its assets is bound or subject, and (vii) except for the issuance of the Securities contemplated by this Agreement, no event, liability or development has occurred or exists with respect to the Company or its business, properties, operations or financial condition that would be required to be disclosed by the Company under applicable securities laws at the time this representation is made that has not been publicly disclosed in the SEC Reports.

- w. Transactions With Affiliates and Employees. None of the officers or directors of the Company and, to the Company's knowledge, none of the employees of the Company, is presently a party to any transaction with the Company or to a transaction presently contemplated by the Company (other than for services as employees, officers and directors) that would be required to be disclosed by the Company pursuant to Item 404 of Regulation S-K promulgated under the Securities Act, except as contemplated by the Transaction Documents or set forth in the SEC Reports.
- x. Sarbanes-Oxley. Except as disclosed in the SEC Reports, the Company is in compliance in all material respects with all of the provisions of the Sarbanes-Oxley Act of 2002 which are applicable to it.
- y. Off Balance Sheet Arrangements. There is no transaction, arrangement, or other relationship between the Company and an unconsolidated or other off balance sheet entity that is required to be disclosed by the Company in its SEC Reports (including, for purposes hereof, any that are required to be disclosed in a Form 10) and is not so disclosed or that otherwise would have a Material Adverse Effect.
- z. Foreign Corrupt Practices. Neither the Company, nor to the Company's knowledge, any agent or other person acting on behalf of the Company, has: (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company (or made by any person acting on its behalf of which the Company is aware) which is in violation of law or (iv) violated in any material respect any provision of the Foreign Corrupt Practices Act of 1977, as amended.

- aa. Brokers' Fees. The Company does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement, except for the payment of fees to the Placement Agents as described in Section 3 above.
  - bb. Disclosure Materials. The SEC Reports and the Disclosure Materials taken as a whole do not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.
  - cc. Investment Company. The Company is not required to be registered as, and is not an Affiliate of, and immediately following the Closing will not be required to register as, an “investment company” within the meaning of the Investment Company Act of 1940, as amended.
  - dd. Reliance. The Company acknowledges that the Purchaser is relying on the representations and warranties made by the Company hereunder and that such representations and warranties are a material inducement to the Purchaser purchasing the Shares. The Company further acknowledges that without such representations and warranties of the Company made hereunder, the Purchaser would not enter into this Agreement.
5. **Representations, Warranties and Agreements of the Purchaser.** The Purchaser, severally and not jointly with any other Purchaser, represents and warrants to, and agrees with, the Company the following:
- a. The Purchaser has the knowledge and experience in financial and business matters necessary to evaluate the merits and risks of its prospective investment in the Company, and has carefully reviewed and understands the risks of, and other considerations relating to, the purchase of Shares and the tax consequences of the investment, and has the ability to bear the economic risks of the investment. The Purchaser can afford the loss of their entire investment.
  - b. The Purchaser is acquiring the Shares for investment for its own account and not with the view to, or for resale in connection with, any distribution thereof. The Purchaser understands and acknowledges that the Shares have not been registered under the Securities Act or any state securities laws, by reason of a specific exemption from the registration provisions of the Securities Act and applicable state securities laws, which depends upon, among other things, the bona fide nature of the investment intent as expressed herein. The Purchaser further represents that it does not have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participation to any third person with respect to any of the Shares. The Purchaser understands and acknowledges that the offering of the Shares pursuant to this Agreement will not be registered under the Securities Act nor under the state securities laws on the ground that the sale provided for in this Agreement and the issuance of securities hereunder is exempt from the registration requirements of the Securities Act and any applicable state securities laws.
  - c. The Purchaser is an “accredited investor” as defined in Rule 501 of Regulation D as promulgated by the SEC under the Securities Act, for the reason(s) specified on the **Accredited Investor Certification** attached hereto as completed by Purchaser, and Purchaser shall submit to the Company such further assurances of such status as may be reasonably requested by the Company.

The Purchaser resides in the jurisdiction set forth on the Purchaser's Omnibus Signature Page affixed hereto.

- d. The Purchaser (i) if a natural person, represents that he or she is the greater of (A) 21 years of age or (B) the age of legal majority in his or her jurisdiction of residence, and has full power and authority to execute and deliver this Agreement and all other related agreements or certificates and to carry out the provisions hereof and thereof; (ii) if a corporation, partnership, or limited liability company or partnership, or association, joint stock company, trust, unincorporated organization or other entity, represents that such entity was not formed for the specific purpose of acquiring the Shares, such entity is duly organized, validly existing and in good standing under the laws of the state or jurisdiction of its organization, the consummation of the transactions contemplated hereby is authorized by, and will not result in a violation of state law or its charter or other organizational documents, such entity has full power and authority to execute and deliver this Agreement and all other related agreements or certificates and to carry out the provisions hereof and thereof and to purchase and hold the Shares, the execution and delivery of this Agreement has been duly authorized by all necessary action, this Agreement has been duly executed and delivered on behalf of such entity and is a legal, valid and binding obligation of such entity; or (iii) if executing this Agreement in a representative or fiduciary capacity, represents that it has full power and authority to execute and deliver this Agreement in such capacity and on behalf of the subscribing individual, ward, partnership, trust, estate, corporation, or limited liability company or partnership, or other entity for whom the Purchaser is executing this Agreement, and such individual, partnership, ward, trust, estate, corporation, or limited liability company or partnership, or other entity has full right and power to perform pursuant to this Agreement and make an investment in the Company, and represents that this Agreement constitutes a legal, valid and binding obligation of such entity. The execution and delivery of this Agreement will not violate or be in conflict with any order, judgment, injunction, agreement or controlling document to which the Purchaser is a party or by which it is bound.
- e. The Purchaser understands that the Shares are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and such Purchaser's compliance with, the representations, warranties, agreements, acknowledgments and understandings of such Purchaser set forth herein in order to determine the availability of such exemptions and the eligibility of such Purchaser to acquire such securities. The Purchaser further acknowledges and understands that the Company is relying on the representations and warranties made by the Purchaser hereunder and that such representations and warranties are a material inducement to the Company to sell the Shares to the Purchaser. The Purchaser further acknowledges that without such representations and warranties of the Purchaser made hereunder, the Company would not enter into this Agreement with the Purchaser.
- f. The Purchaser understands that no public market exists for the Company's Common Stock and that there can be no assurance that any public market for the Common Stock will exist or continue to exist.
- g. The Purchaser has received and reviewed information about the Company, including all Disclosure Materials, and has had an opportunity to discuss the Company's business, management and financial affairs with the Company's management. The Purchaser understands that such discussions, as well as any Disclosure Materials provided by the Company, were intended to describe the aspects of the Company's business and prospects which the Company believes to be material, but were not necessarily a thorough or exhaustive description, and except

as expressly set forth in this Agreement, the Company makes no representation or warranty with respect to the completeness of such information and makes no representation or warranty of any kind with respect to any information provided by any entity other than the Company. Some of such information may include projections as to the future performance of the Company, which projections may not be realized, may be based on assumptions which may not be correct and may be subject to numerous factors beyond the Company's control. Additionally, the Purchaser understands and represents that it is purchasing the Shares notwithstanding the fact that the Company may disclose in the future certain material information the Purchaser has not received, including (without limitation) financial statements of the Company and/or Miramar for the current or prior fiscal periods, and any subsequent period financial statements that will be filed with the SEC, that it is not relying on any such information in connection with its purchase of the Shares and that it waives any right of action with respect to the nondisclosure to it prior to its purchase of the Shares of any such information. Each Purchaser has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Shares.

- h. The Purchaser acknowledges that none of the Company or the Placement Agents is acting as a financial advisor or fiduciary of the Purchaser (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated hereby and thereby, and no investment advice has been given by the Company, the Placement Agents or any of their respective representatives or agents in connection with the Transaction Documents and the transactions contemplated hereby and thereby. The Purchaser further represents to the Company that the Purchaser's decision to enter into the Transaction Documents has been based solely on the independent evaluation by the Purchaser and its representatives.
- i. As of the Closing, all actions on the part of Purchaser, and its officers, directors and partners, if applicable, necessary for the authorization, execution and delivery of this Agreement and the Registration Rights Agreement and the performance of all obligations of the Purchaser hereunder and thereunder shall have been taken, and this Agreement and the Registration Rights Agreement, assuming due execution by the parties hereto and thereto, constitute valid and legally binding obligations of the Purchaser, enforceable in accordance with their respective terms, subject to: (i) judicial principles limiting the availability of specific performance, injunctive relief, and other equitable remedies and (ii) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect generally relating to or affecting creditors' rights.
- j. Purchaser represents that neither it nor, to its knowledge, any person or entity controlling, controlled by or under common control with it, nor any person having a beneficial interest in it, nor any person on whose behalf the Purchaser is acting: (i) is a person listed in the Annex to Executive Order No. 13224 (2001) issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism); (ii) is named on the List of Specially Designated Nationals and Blocked Persons maintained by the U.S. Office of Foreign Assets Control; (iii) is a non-U.S. shell bank or is providing banking services indirectly to a non-U.S. shell bank; (iv) is a senior non-U.S. political figure or an immediate family member or close associate of such figure; or (v) is otherwise prohibited from investing in the Company pursuant to applicable U.S. anti-money laundering, anti-terrorist and asset control laws, regulations, rules or orders (categories (i) through (v), each a "*Prohibited Purchaser*"). The Purchaser agrees to provide the Company, promptly upon request, all information that the Company reasonably deems necessary or appropriate to comply with applicable U.S. anti-money laundering, anti-terrorist and asset

control laws, regulations, rules and orders. The Purchaser consents to the disclosure to U.S. regulators and law enforcement authorities by the Company and its Affiliates and agents of such information about the Purchaser as the Company reasonably deems necessary or appropriate to comply with applicable U.S. antimony laundering, anti-terrorist and asset control laws, regulations, rules and orders. If the Purchaser is a financial institution that is subject to the USA Patriot Act, the Purchaser represents that it has met all of its obligations under the USA Patriot Act. The Purchaser acknowledges that if, following its investment in the Company, the Company reasonably believes that the Purchaser is a Prohibited Purchaser or is otherwise engaged in suspicious activity or refuses to promptly provide information that the Company requests, the Company has the right or may be obligated to prohibit additional investments, segregate the assets constituting the investment in accordance with applicable regulations or immediately require the Purchaser to transfer the Shares. The Purchaser further acknowledges that the Purchaser will have no claim against the Company or any of its Affiliates or agents for any form of damages as a result of any of the foregoing actions.

If the Purchaser is Affiliated with a non-U.S. banking institution (a “*Foreign Bank*”), or if the Purchaser receives deposits from, makes payments on behalf of, or handles other financial transactions related to a Foreign Bank, the Purchaser represents and warrants to the Company that: (1) the Foreign Bank has a fixed address, other than solely an electronic address, in a country in which the Foreign Bank is authorized to conduct banking activities; (2) the Foreign Bank maintains operating records related to its banking activities; (3) the Foreign Bank is subject to inspection by the banking authority that licensed the Foreign Bank to conduct banking activities; and (4) the Foreign Bank does not provide banking services to any other Foreign Bank that does not have a physical presence in any country and that is not a regulated Affiliate.

- k. The Purchaser or its duly authorized representative realizes that because of the inherently speculative nature of businesses of the kind conducted and contemplated by the Company, the Company’s financial results may be expected to fluctuate from month to month and from period to period and will, generally, involve a high degree of financial and market risk that could result in substantial or, at times, even total losses for investors in securities of the Company.
- l. The Purchaser has adequate means of providing for its current and anticipated financial needs and contingencies, is able to bear the economic risk for an indefinite period of time and has no need for liquidity of the investment in the Shares and could afford complete loss of such investment.
- m. The Purchaser is not subscribing for Shares as a result of or subsequent to any advertisement, article, notice or other communication, published in any newspaper, magazine or similar media or broadcast over television, radio, or the internet, or presented at any seminar or meeting, or any solicitation of a subscription by a person not previously known to the Purchaser in connection with investments in securities generally.
- n. The Purchaser acknowledges that no U.S. federal or state agency or any other government or governmental agency has passed upon the Shares or made any finding or determination as to the fairness, suitability or wisdom of any investments therein.
- o. The Purchaser agrees to be bound by all of the terms and conditions of the Registration Rights Agreement and to perform all obligations thereby imposed upon it.

- p. All of the information that the Purchaser has heretofore furnished or which is set forth herein is true, correct and complete as of the date of this Agreement, and, if there should be any material change in such information prior to the admission of the undersigned to the Company, the Purchaser will immediately furnish revised or corrected information to the Company.
- q. **(For ERISA plans only)** The fiduciary of the Employee Retirement Income Security Act of 1974 (“ERISA”) plan (the “*Plan*”) represents that such fiduciary has been informed of and understands the Company’s investment objectives, policies and strategies, and that the decision to invest “plan assets” (as such term is defined in ERISA) in the Company is consistent with the provisions of ERISA that require diversification of plan assets and impose other fiduciary responsibilities. The Purchaser fiduciary or Plan (a) is responsible for the decision to invest in the Company; (b) is independent of the Company or any of its Affiliates; (c) is qualified to make such investment decision; and (d) in making such decision, the Purchaser fiduciary or Plan has not relied primarily on any advice or recommendation of the Company or any of its Affiliates.

6. **Transfer Restrictions.** The Purchaser acknowledges and agrees as follows:

- a. The Shares have not been registered for sale under the Securities Act, in reliance on the private offering exemption in Section 4(a)(2) thereof; other than as expressly provided in the Registration Rights Agreement, the Company does not currently intend to register the Shares under the Securities Act at any time in the future; and the undersigned will not immediately be entitled to the benefits of Rule 144 with respect to the Shares.
- b. The Purchaser understands that there are substantial restrictions on the transferability of the Shares that the certificates representing the Shares shall bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such certificates or other instruments):

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE SECURITIES LAWS, AND NEITHER SUCH SECURITIES NOR ANY INTEREST THEREIN MAY BE OFFERED, SOLD, PLEDGED, ASSIGNED OR OTHERWISE TRANSFERRED UNLESS (1) A REGISTRATION STATEMENT WITH RESPECT THERETO IS EFFECTIVE UNDER THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES LAWS, OR (2) AN EXEMPTION FROM SUCH REGISTRATION EXISTS AND THE COMPANY RECEIVES AN OPINION OF COUNSEL TO THE HOLDER OF SUCH SECURITIES, WHICH COUNSEL AND OPINION ARE SATISFACTORY TO THE COMPANY, THAT SUCH SECURITIES MAY BE OFFERED, SOLD, PLEDGED, ASSIGNED OR TRANSFERRED IN THE MANNER CONTEMPLATED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR APPLICABLE STATE SECURITIES LAWS. HEDGING TRANSACTIONS INVOLVING THESE SECURITIES MAY NOT BE CONDUCTED UNLESS IN COMPLIANCE WITH THE SECURITIES ACT.

In addition, if any Purchaser is an Affiliate of the Company, certificates evidencing the Shares issued to such Purchaser shall bear a customary “Affiliates” legend.

The legend set forth above shall be removed and the Company shall issue a certificate without such legend to the holder of the Shares upon which it is stamped, if (a) such Shares are sold

pursuant to a registration statement under the Securities Act, or (b) such holder delivers to the Company an opinion of counsel, reasonably acceptable to the Company, that a disposition of the Shares is being made pursuant to an exemption from such registration and that the Shares, after such transfer, shall no longer be “restricted securities” within the meaning of Rule 144.

- c. Subject to the Company’s right to request an opinion of counsel as set forth in Section 6(b), the legend set forth in Section 6(b) above shall be removable and the Company shall issue or cause to be issued a certificate without such legend or any other legend (except for any “Affiliates” legend as set forth in Section 6(b)) to the holder of the applicable Shares upon which it is stamped or issue or cause to be issued to such holder by electronic delivery at the applicable balance account at The Depository Trust Company (“DTC”) as provided in this Section 6(c), if (i) such Shares are registered for resale under the Securities Act (provided that, if the Purchaser is selling pursuant to the effective registration statement registering the Shares for resale, the Purchaser agrees to only sell such Shares during such time that such registration statement is effective and not withdrawn or suspended, and only as permitted by such registration statement), or (ii) such Shares are sold or transferred in compliance with Rule 144 (if the transferor is not an Affiliate of the Company), including without limitation in compliance with the current public information requirements of Rule 144 if applicable to the Company at the time of such sale or transfer, and the holder and its broker have delivered customary documents reasonably requested by the Company’s transfer agent and/or Company counsel in connection with such sale or transfer. Any fees (with respect to the transfer agent, Company counsel or otherwise) associated with the removal of such legend shall be borne by the Company. Following the date on which the Registration Statement (as defined in the Registration Rights Agreement) is first declared effective by the SEC, or at such other time as a legend is no longer required for certain Shares, the Company will no later than five (5) Trading Days (as defined below) following the delivery by a Purchaser to the Company or the transfer agent (with concurrent notice and delivery of copies to the Company) of a legended certificate representing such Shares (endorsed or with stock powers attached, signatures guaranteed, and otherwise in form necessary to affect the reissuance and/or transfer, and together with such other customary documents as the transfer agent and/or Company counsel shall reasonably request), deliver or cause to be delivered to the transferee of such Purchaser or such Purchaser, as applicable, a certificate representing such Shares that is free from all restrictive and other legends. The Company may not make any notation on its records or give instructions to the transfer agent that enlarge the restrictions on transfer set forth in this Section 6. Certificates for Shares subject to legend removal hereunder shall be transmitted by the transfer agent to the Purchaser by crediting the account of the transferee’s Purchaser’s prime broker with DTC. “*Trading Day*” means (i) a day on which the Common Stock is listed or quoted and traded on its principal trading market (unless the principal trading market is the OTC Bulletin Board or the OTC Pink tier of the OTC Markets Group, Inc.), or (ii) if the Common Stock is not listed on a trading market (other than the OTC Bulletin Board or the OTC QB, OTC QX or OTC Pink tier of the OTC Markets Group, Inc.), a day on which the Common Stock is traded in the over-the-counter market, as reported by the OTC Bulletin Board, or (iii) if the Common Stock is not quoted on any Trading Market (other than the OTC QB, OTC QX or OTC Pink tier of the OTC Markets Group, Inc.), a day on which the Common Stock is quoted in the over-the-counter market as reported by the OTC QB, OTC QX or OTC Pink tier of the OTC Markets Group, Inc. (or any similar organization or agency succeeding to its functions of reporting prices); provided, that in the event that the Common Stock is not listed or quoted as set forth in (i), (ii) and (iii) hereof, then Trading Day shall mean a Business Day.

- d. If the Company shall fail for any reason or for no reason to issue to a Purchaser a certificate not bearing the legend set forth in Section 6(b) within five (5) Trading Days after receipt by the Company and the Transfer Agent of all documents necessary for the removal of the legend as set forth in Section 6(c) at a time at which such removal is not prohibited under applicable law (the “Deadline Date”) (such certificate, the “Unlegended Certificate”), then, in addition to all other remedies available to such Purchaser, if on or after the Trading Day immediately following such five (5) Trading Day period, such Purchaser purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such Purchaser of the shares of Common Stock to be represented by the Unlegended Certificate that such Purchaser anticipated receiving from the Company without any restrictive legend as a result of such Purchaser’s full compliance with Section 6(c) (a “Buy-In”), then the Company shall, within five (5) Trading Days after such Purchaser’s request and in such Purchaser’s sole discretion, either (i) pay cash to the Purchaser in an amount equal to such Purchaser’s total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased (the “Buy-In Price”), at which point the Company’s obligation to deliver such certificate (and to issue such shares of Common Stock) shall terminate, or (ii) promptly honor its obligation to deliver to such Purchaser a certificate or certificates representing such shares of Common Stock and pay cash to the Purchaser in an amount equal to the excess (if any) of the Buy-In Price over the product of (a) such number of shares of Common Stock, times (b) the closing price of the Common Stock on the Deadline Date as reported by the principal trading market on which the Common Stock is primarily listed or quoted for trading. The Purchaser of shares of Common Stock shall provide the Company written notice indicating the amounts payable to such Purchaser in respect of the Buy-In, together with applicable confirmations and other evidence reasonably requested by the Company.
- e. **Each Purchaser understands that the Company is a “shell company” as defined in Rule 12b-2 under the Exchange Act, and that upon filing of the Super 8-K reporting the consummation of the Merger and the Transactions and otherwise containing Form 10 information discussed below, the Company will reflect therein that it is no longer a shell company. Pursuant to Rule 144(i), securities issued by a current or former shell company (that is, the Shares) that otherwise meet the holding period and other requirements of Rule 144 nevertheless cannot be sold in reliance on Rule 144 until one year after the Company (a) is no longer a shell company; and (b) has filed current “Form 10 information“ (as defined in Rule 144(i)) with the SEC reflecting that it is no longer a shell company, and provided that at the time of a proposed sale pursuant to Rule 144, the Company is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act and has filed all reports and other materials required to be filed by Section 13 or 15(d) of the Exchange Act, as applicable, during the preceding 12 months (or for such shorter period that the issuer was required to file such reports and materials), other than Form 8-K reports. As a result, the restrictive legends on certificates for the Shares cannot be removed except in connection with an actual sale meeting the foregoing requirements or pursuant to an effective registration statement. Notwithstanding the foregoing, the Company shall file a Form 8-A with the SEC within one year of the Closing if the Company is not otherwise a mandatory reporting entity pursuant to Section 15(d) of the Exchange Act.**

## 7. Indemnification.

- a. The Purchaser agrees to indemnify and hold harmless the Company, the Placement Agents and any other broker, agent or finder engaged by the Company for the Offering, and their respective

directors, officers, shareholders, members, partners, employees and agents (and any other persons with a functionally equivalent role of a person holding such titles notwithstanding a lack of such title or any other title), each person who controls such indemnified person (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, shareholders, agents, members, partners or employees (and any other persons with a functionally equivalent role of a person holding such titles notwithstanding a lack of such title or any other title) of such controlling person, from and against all losses, liabilities, claims, damages, costs, fees and expenses whatsoever (including, but not limited to, any and all expenses incurred in investigating, preparing or defending against any litigation commenced or threatened) based upon or arising out of the Purchaser's actual or alleged false acknowledgment, representation or warranty, or misrepresentation or omission to state a material fact, or breach by the Purchaser of any covenant or agreement made by the Purchaser, contained herein or in any other document delivered by the Purchaser in connection with this Agreement. The liability of the Purchaser under this paragraph shall not exceed the aggregate Purchase Price paid by the Purchaser for Shares hereunder.

- b. The Company agrees to indemnify and hold harmless the Purchaser, and its directors, officers, shareholders, members, partners, employees and agents (and any other persons with a functionally equivalent role of a person holding such titles notwithstanding a lack of such title or any other title), each person who controls such Purchaser (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, shareholders, agents, members, partners or employees (and any other persons with a functionally equivalent role of a person holding such titles notwithstanding a lack of such title or any other title) of such controlling person, from and against all losses, liabilities, claims, damages, costs, fees and expenses whatsoever (including, but not limited to, any and all expenses incurred in investigating, preparing or defending against any litigation commenced or threatened) based upon or arising out of the Company's actual or alleged false acknowledgment, representation or warranty, or misrepresentation or omission to state a material fact, or breach by the Company of any covenant or agreement made by the Company, contained herein or in any other any other Disclosure Materials.
- c. Promptly after receipt by an indemnified party under this Section 7 of notice of the commencement of any Action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 7, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party otherwise than under this Section 7. In case any such Action is brought against any indemnified party, and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein, and to the extent that it may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof, with counsel satisfactory to such indemnified party; provided, however, if the defendants in any such Action include both the indemnified party and the indemnifying party and either (i) the indemnifying party or parties and the indemnified party or parties mutually agree or (ii) representation of both the indemnifying party or parties and the indemnified party or parties by the same counsel is inappropriate under applicable standards of professional conduct due to actual or potential differing interests between them, the indemnified party or parties shall have the right to select separate counsel to assume such legal defenses and to otherwise participate in the defense of such Action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of its

election so to assume the defense of such Action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section 7 for any reasonable legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed counsel in connection with the assumption of legal defenses in accordance with the proviso to the next preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the expenses of more than one separate counsel in such circumstance), (ii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of the Action or (iii) the indemnifying party has authorized the employment of counsel for the indemnified party at the expense of the indemnifying party. No indemnifying party shall (i) without the prior written consent of the indemnified parties (which consent shall not be unreasonably withheld), settle or compromise or consent to the entry of any judgment with respect to any pending or threatened Action in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such Action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such Action, or (ii) be liable for any settlement of any such Action effected without its written consent (which consent shall not be unreasonably withheld), but if settled with its written consent or if there be a final judgment of the plaintiff in any such Action, the indemnifying party agrees to indemnify and hold harmless any indemnified party from and against any loss or liability by reason of such settlement or judgment.

8. **Revocability; Binding Effect.** The subscription hereunder may be revoked prior to the Closing thereon, provided that written notice of revocation is sent and is received by the Company or a Placement Agent at least three Business Days prior to the Closing on such subscription. The Purchaser hereby acknowledges and agrees that this Agreement shall survive the death or disability of the Purchaser and shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, successors, legal representatives and permitted assigns. If the Purchaser is more than one person, the obligations of the Purchaser hereunder shall be joint and several and the agreements, representations, warranties and acknowledgments herein shall be deemed to be made by and be binding upon each such person and such person's heirs, executors, administrators, successors, legal representatives and permitted assigns.
9. **Modification.** This Agreement shall not be modified or waived except by an instrument in writing signed by the party against whom any such modification or waiver is sought to be enforced.
10. **Immaterial Modifications to the Registration Rights Agreement.** The Company may, at any time prior to the initial Closing, amend the Registration Rights Agreement if necessary to clarify any provision therein, without first providing notice or obtaining prior consent of the Purchaser.
11. **Notices.** Any notice, consents, waivers or other communication required or permitted to be given hereunder shall be in writing and will be deemed to have been delivered: (i) upon receipt, when personally delivered; (ii) upon receipt when sent by certified mail, return receipt requested, postage prepaid; (iii) upon receipt, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); (iv) when sent, if by e-mail, (provided that such sent e-mail is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient's e-mail server that such e-mail could not be delivered to such recipient); (v) one (1)

Business Day after deposit with an overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. The addresses, facsimile numbers and email addresses for such communications shall be:

(a) if to the Company, at

Miramar Labs, Inc.  
2790 Walsh Avenue  
Santa Clara, CA 95051  
Attention: Michael Kleine  
Facsimile +1-408-579-8795  
Email: mkleine@miramarlabs.com

with copies to:

CKR Law LLP  
1330 Avenue of the Americas  
New York, NY 10019  
Attention: Barrett S. DiPaolo  
Facsimile +1-212-259-8200  
E-mail: bdipaolo@ckrlaw.com

Wilson Sonsini Goodrich & Rosati, P.C.  
650 Page Mill Road  
Palo Alto, CA 94304-1050  
Attention: Philip Oettinger  
Facsimile +1-650-493-6811  
Email: poettinger@wsgr.com

(b) if to the Purchaser, at the address set forth on the Omnibus Signature Page hereof

(or, in either case, to such other address as the party shall have furnished in writing in accordance with the provisions of this Section). Any notice or other communication given by certified mail shall be deemed given at the time of certification thereof, except for a notice changing a party's address which shall be deemed given at the time of receipt thereof.

12. **Assignability.** This Agreement and the rights, interests and obligations hereunder are not transferable or assignable by the Purchaser, and the transfer or assignment of the Shares shall be made only in accordance with all applicable laws.
13. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without reference to the principles thereof relating to the conflict of laws.
14. **Arbitration.** The parties agree to submit all controversies to arbitration in accordance with the provisions set forth below and understand that:
  - a. Arbitration shall be final and binding on the parties.
  - b. The parties are waiving their right to seek remedies in court, including the right to a jury trial.

- c. Pre-arbitration discovery is generally more limited and different from court proceedings.
  - d. The arbitrator's award is not required to include factual findings or legal reasoning and any party's right to appeal or to seek modification of rulings by arbitrators is strictly limited.
  - e. The panel of arbitrators will typically include a minority of arbitrators who were or are Affiliated with the securities industry.
  - f. All controversies which may arise between the parties concerning this Agreement shall be determined by arbitration pursuant to the rules then pertaining to the American Arbitration Association in New York, New York. Judgment on any award of any such arbitration may be entered in the Supreme Court of the State of New York or in any other court having jurisdiction of the person or persons against whom such award is rendered. Any notice of such arbitration or for the confirmation of any award in any arbitration shall be sufficient if given in accordance with the provisions of this Agreement. The parties agree that the determination of the arbitrators shall be binding and conclusive upon them. The prevailing party, as determined by such arbitrators, in a legal proceeding shall be entitled to collect any costs, disbursements and reasonable attorney's fees from the other party. Prior to filing an arbitration, the parties hereby agree that they will attempt to resolve their differences first by submitting the matter for resolution to a mediator, acceptable to all parties, and whose expenses will be borne equally by all parties. The mediation will be held in the County of New York, State of New York, on an expedited basis. If the parties cannot successfully resolve their differences through mediation, the matter will be resolved by arbitration. The arbitration shall take place in the County of New York, State of New York, on an expedited basis.
15. **Blue Sky Qualification.** The purchase of Shares under this Agreement is expressly conditioned upon the exemption from qualification of the offer and sale of the Shares from applicable federal and state securities laws. The Company shall not be required to qualify this transaction under the securities laws of any jurisdiction and, should qualification be necessary, the Company shall be released from any and all obligations to maintain its offer, and may rescind any sale contracted, in the jurisdiction.
16. **Use of Pronouns.** All pronouns and any variations thereof used herein shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons referred to may require.
17. **Confidentiality.** The Purchaser acknowledges and agrees that any information or data the Purchaser has acquired from or about the Company or may acquire in the future, not otherwise properly in the public domain, including, without limitation, the Disclosure Materials, was received in confidence. The Purchaser agrees not to divulge, communicate or disclose, except as may be required by law or for the performance of this Agreement, or use to the detriment of the Company or for the benefit of any other person, or misuse in any way, any confidential information of the Company, including any scientific, technical, trade or business secrets of the Company and any scientific, technical, trade or business materials that are treated by the Company as confidential or proprietary, including, but not limited to, internal personnel and financial information of the Company or its Affiliates, the manner and methods of conducting the business of the Company or its Affiliates and confidential information obtained by or given to the Company about or belonging to third parties. The Purchaser understands that the Company may rely on Purchaser's agreement of confidentiality to comply with the exemptive

provisions of Regulation FD under the Securities Act as set forth in Rule 100(a)(b)(2)(ii) of Regulation FD. In addition, the Purchaser acknowledges that it is aware that the United States securities laws generally prohibit any person who is in possession of material nonpublic information about a public company such as the Company from purchasing or selling securities of such company. The provisions of this Section 17 are in addition to and not in replacement of any other confidentiality agreement between the Company and the Purchaser.

18. **Securities Laws Disclosure; Publicity.** The Company shall file the Super 8-K, including as exhibits thereto this Agreement, the Registration Rights Agreement and any other agreements required by the applicable rules to be filed as exhibits to Form 8-K, with the SEC within the time required by the Exchange Act. From and after the filing of the Super 8-K, the Company [(a)] represents to the Purchaser that it shall have publicly disclosed all material non-public information delivered to the Purchaser by the Company, or any of its officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents and (b) covenants that it will not thereafter disclose to the Purchaser (if the Purchaser is not, or is not affiliated with, an officer, director, employee, consultant, advisor or affiliate of the Company) any material non-public information regarding the Company and its subsidiaries without the prior written consent of the Purchaser.
19. **Anti-Dilution.** The Purchaser shall have anti-dilution protection such that if within six (6) months after the initial Closing of the Offering the Company shall issue Additional Shares of Common Stock (as defined below) for a consideration per share, or with an exercise or conversion price per share, less than the Purchase Price (as adjusted for any stock dividend, stock split, split-up or other distribution on shares of Common Stock relating to any recapitalization, reclassification or reorganization of the capital stock of the Company, or any consolidation or merger of the Company with another corporation, occurring after the initial Closing of the Offering) (the “Lower Price”), the Purchaser shall be entitled to receive from the Company (for no additional consideration) additional Shares in an amount such that, when added to the number of shares of Common Stock initially purchased by the Purchaser in the Offering, will equal the number of shares of Common Stock that such Purchaser’s aggregate Purchase Price would have purchased at the Lower Price.

“*Additional Shares of Common Stock*” shall mean all shares of Common Stock issued by the Company after the first Closing of the Offering (including without limitation any shares of Common Stock issuable upon conversion or exchange of any convertible securities or upon exercise of any option or warrant, on an as-converted basis), other than: (i) shares of Common Stock issued or issuable upon conversion or exchange of any convertible securities or exercise of any options or warrants outstanding as of immediately following the Merger and the initial Closing; (ii) shares of Common Stock issued or issuable upon exercise of the Placement Agent Warrants; (iii) shares of Common Stock issued or issuable by reason of a stock dividend, stock split, split-up or other distribution on shares of Common Stock relating to any recapitalization, reclassification or reorganization of the capital stock of the Company, or any consolidation or merger of the Company with another corporation, or the sale of all or substantially all of its assets or other transaction effected in such a way that there is no change of control; (iv) shares of Common Stock issued or issuable pursuant to the acquisition of another entity or business by the Company by merger, purchase of substantially all of the assets or other reorganization or pursuant to a joint venture or technology license agreement, but not including a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities; (v) shares of Common Stock issued or issuable to officers, directors and employees of, or consultants to, the Company pursuant to stock grants, option plans, purchase plans or other employee stock incentive programs or arrangements approved by the Board of Directors, or upon exercise of options or warrants

granted to such parties pursuant to any such plan or arrangement; (vi) any securities issued or issuable by the Company pursuant to the Subscription Agreements; and (vii) securities issued to financial institutions, institutional investors or lessors in connection with credit arrangements, equipment financings, lease arrangements or similar transactions, in the aggregate not exceeding five percent (5%) of the number of shares of Common Stock outstanding at any time, and in case of clauses (iii) through (vii) above, such issuance is approved by a majority of disinterested directors of the Company and includes no “death spiral” provision of any kind.

## 20. **Miscellaneous.**

- a. This Agreement, together with the Registration Rights Agreement and any confidentiality agreement between the Purchaser and the Company, constitute the entire agreement between the Purchaser and the Company with respect to the Offering and supersede all prior oral or written agreements and understandings, if any, relating to the subject matter hereof. The terms and provisions of this Agreement may be waived, or consent for the departure therefrom granted, only by a written document executed by the party entitled to the benefits of such terms or provisions.
- b. The representations and warranties of the Company and the Purchaser made in this Agreement shall survive the execution and delivery hereof and delivery of the Shares for a period of twelve (12) months following the Closing Date.
- c. Each of the parties hereto shall pay its own fees and expenses (including the fees of any attorneys, accountants, appraisers or others engaged by such party) in connection with this Agreement and the transactions contemplated hereby, whether or not the transactions contemplated hereby are consummated.
- d. This Agreement may be executed in one or more original or facsimile or by an e-mail which contains a portable document format (.pdf) file of an executed signature page counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument and which shall be enforceable against the parties actually executing such counterparts. The exchange of copies of this Agreement and of signature pages by facsimile transmission or in .pdf format shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or by e-mail of a document in pdf format shall be deemed to be their original signatures for all purposes.
- e. Each provision of this Agreement shall be considered separable and, if for any reason any provision or provisions hereof are determined to be invalid or contrary to applicable law, such invalidity or illegality shall not impair the operation of or affect the remaining portions of this Agreement.
- f. Paragraph titles are for descriptive purposes only and shall not control or alter the meaning of this Agreement as set forth in the text.
- g. The Purchaser understands and acknowledges that there may be multiple Closings for the Offering.

h. The Purchaser hereby agrees to furnish the Company such other information as the Company may request prior to the Closing with respect to its subscription hereunder.

21. **Omnibus Signature Page.** This Agreement is intended to be read and construed in conjunction with the Registration Rights Agreement. Accordingly, pursuant to the terms and conditions of this Agreement and the Registration Rights Agreement, it is hereby agreed that the execution by the Purchaser of this Agreement, in the place set forth on the Omnibus Signature Page below, shall constitute agreement to be bound by the terms and conditions hereof and the terms and conditions of the Registration Rights Agreement, with the same effect as if each of such separate but related agreement were separately signed.
22. **Public Disclosure.** Neither the Purchaser nor any officer, manager, director, member, partner, stockholder, employee, Affiliate, Affiliated person or entity of the Purchaser shall make or issue any press releases or otherwise make any public statements or make any disclosures to any third person or entity with respect to the transactions contemplated herein and will not make or issue any press releases or otherwise make any public statements of any nature whatsoever with respect to the Company without the Company's express prior approval. The Company has the right to withhold such approval in its sole discretion.
23. **Potential Conflicts.** The Placement Agents, their sub-agents, legal counsel to the Company or Miramar and/or their respective Affiliates, principals, representatives or employees may now or hereafter own shares of the Company.
24. **Independent Nature of Each Purchaser's Obligations and Rights.** For avoidance of doubt, the obligations of the Purchaser under this Agreement are several and not joint with the obligations of any other Purchaser, and the Purchaser shall not be responsible in any way for the performance of the obligations of any other Purchaser under any other Subscription Agreement. Nothing contained herein and no action taken by the Purchaser shall be deemed to constitute the Purchaser as a partnership, an association, a joint venture, or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by this Agreement and any other Subscription Agreements. The Purchaser shall be entitled to independently protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it shall not be necessary for any other Purchaser to be joined as an additional party in any proceeding for such purpose.

*[Signature page follows.]*

IN WITNESS WHEREOF, the Company has duly executed this Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 2016.

**KTL BAMBOO INTERNATIONAL CORP.**

By: \_\_\_\_\_  
Name:  
Title:

**How to subscribe for Shares in the private offering of  
KTL Bamboo International Corp.  
(intended to be renamed Miramar Labs, Inc.):**

1. **Date and Fill** in the number of Shares being purchased and **Complete and Sign** the Omnibus Signature Page.
2. **Initial** the Accredited Investor Certification in the appropriate place or places.
3. **Complete and sign** the Investor Profile.
4. **Complete and sign** the Anti-Money Laundering Information Form.
5. **Fax or email** all forms and then send all signed original documents to:

Wilson Sonsini Goodrich & Rosati, P.C.  
650 Page Mill Road  
Palo Alto, CA 94304  
Facsimile Number: (650) 493-6811  
Telephone Number: (650) 493-9300  
Attn: Lily Gregerson and Julia Dietrich  
E-mail Address: [lgregerson@wsgr.com](mailto:lgregerson@wsgr.com) and [jdietrich@wsgr.com](mailto:jdietrich@wsgr.com)

**If you are paying the Purchase Price by check**, a certified or other bank check for the exact dollar amount of the Purchase Price for the number of Shares you are purchasing should be made payable to the order of “**Miramar Labs, Inc.**” and should be sent directly to : Wilson Sonsini Goodrich & Rosati, P.C., 650 Page Mill Road, Palo Alto, CA 94304, Attn: Lily Gregerson and Julia Dietrich.

**Checks take up to 5 business days to clear. A check must be received by the Escrow Agent at least 6 business days before the closing date.**

6. **If you are paying the Purchase Price by wire transfer**, you should send a wire transfer for the exact dollar amount of the Purchase Price for the number of Shares you are purchasing according to the following instructions:

<b>Bank:</b>	Bank of America 530 Lytton Avenue Palo Alto, CA 94301
<b>ABA Routing #:</b>	26009593
<b>SWIFT CODE:</b>	BOFAUS3N
<b>Account Name:</b>	Wilson Sonsini Goodrich & Rosati Transactions Trust Account
<b>Account #:</b>	16645-62842
<b>Reference:</b>	Miramar Labs, Inc. 33646.022 Philip Oettinger/Julia Dietrich/Lily Gregerson

Thank you for your interest,

KTL Bamboo International Corp.

**KTL Bamboo International Corp. (intended to be renamed Miramar Labs, Inc.)**  
**OMNIBUS SIGNATURE PAGE TO**  
**SUBSCRIPTION AGREEMENT AND REGISTRATION RIGHTS AGREEMENT**

The undersigned, desiring to: (i) enter into the Subscription Agreement, dated as of \_\_\_\_\_, 2016 (the "Subscription Agreement"), between the undersigned, **KTL Bamboo International Corp.**, a Nevada corporation (the "Company"), and the other parties thereto, in or substantially in the form furnished to the undersigned, (ii) enter into the Registration Rights Agreement (the "Registration Rights Agreement"), among the undersigned, the Company and the other parties thereto, in or substantially in the form furnished to the undersigned and (iii) purchase the Shares of the Company's securities as set forth in the Subscription Agreement and below, hereby agrees to purchase such Shares from the Company and further agrees to join the Subscription Agreement and the Registration Rights Agreement as a party thereto, with all the rights and privileges appertaining thereto, and to be bound in all respects by the terms and conditions thereof. The undersigned specifically acknowledges having read the representations section in the Subscription Agreement entitled "Representations and Warranties of the Purchaser" and hereby represents that the statements contained therein are complete and accurate with respect to the undersigned as a Purchaser.

IN WITNESS WHEREOF, the Purchaser hereby executes this Agreement and the Registration Rights Agreement.

Dated: \_\_\_\_\_, 2016

_____	X	5.00	=	\$ _____
Number of Shares		Purchase Price per Share		Total Purchase Price

**SUBSCRIBER (individual)**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature (if Joint Tenants or Tenants in Common)

\_\_\_\_\_  
Address of Principal Residence:  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Social Security Number(s):

\_\_\_\_\_  
Telephone Number:

\_\_\_\_\_  
Facsimile Number:

\_\_\_\_\_  
E-mail Address:

**SUBSCRIBER (entity)**

\_\_\_\_\_  
Name of Entity

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Address of Executive Offices:  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
IRS Tax Identification Number:

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Facsimile Number:

\_\_\_\_\_  
E-mail Address:

**AKTL Bamboo International Corp. (intended to be renamed Miramar Labs, Inc.)**

**ACCREDITED INVESTOR CERTIFICATION**

**For Individual Investors Only**

**(all Individual Investors must *INITIAL* where appropriate):**

**Initial** \_\_\_\_\_ I have a net worth of at least US\$1 million either individually or through aggregating my individual holdings and those in which I have a joint, community property or other similar shared ownership interest with my spouse. *(For purposes of calculating your net worth under this paragraph, (a) your primary residence shall not be included as an asset; (b) indebtedness secured by your primary residence, up to the estimated fair market value of your primary residence at the time of your purchase of the securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of your purchase of the securities exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of your primary residence, the amount of such excess shall be included as a liability); and (c) indebtedness that is secured by your primary residence in excess of the estimated fair market value of your primary residence at the time of your purchase of the securities shall be included as a liability.)*

**Initial** \_\_\_\_\_ I have had an annual gross income for the past two years of at least US\$200,000 (or US\$300,000 jointly with my spouse) and expect my income (or joint income, as appropriate) to reach the same level in the current year.

**Initial** \_\_\_\_\_ I am a director or executive officer of Miramar Labs, Inc.

**For Non-Individual Investors (Entities)**

**(all Non-Individual Investors must *INITIAL* where appropriate):**

**Initial** \_\_\_\_\_ The investor certifies that it is a partnership, corporation, limited liability company or business trust that is 100% owned by persons who meet at least one of the criteria for Individual Investors set forth above (in which case each such person must complete the Accreditor Investor Certification for Individuals above as well the remainder of this questionnaire) .

**Initial** \_\_\_\_\_ The investor certifies that it is a partnership, corporation, limited liability company or business trust that has total assets of at least US\$5 million and was not formed for the purpose of investing the Company.

**Initial** \_\_\_\_\_ The investor certifies that it is an employee benefit plan whose investment decision is made by a plan fiduciary (as defined in ERISA §3(21)) that is a bank, savings and loan association, insurance company or registered investment advisor.

**Initial** \_\_\_\_\_ The investor certifies that it is an employee benefit plan whose total assets exceed US\$5,000,000 as of the date of this Agreement.

**Initial** \_\_\_\_\_ The undersigned certifies that it is a self-directed employee benefit plan whose investment decisions are made solely by persons who meet at least one of the criteria for Individual Investors.

**Initial** \_\_\_\_\_ The investor certifies that it is a U.S. bank, U.S. savings and loan association or other similar U.S. institution acting in its individual or fiduciary capacity.

**Initial** \_\_\_\_\_ The undersigned certifies that it is a broker-dealer registered pursuant to §15 of the Securities Exchange Act of 1934.

**Initial** \_\_\_\_\_ The investor certifies that it is an organization described in §501(c)(3) of the Internal Revenue Code with total assets exceeding US\$5,000,000 and not formed for the specific purpose of investing in the Company.

**Initial** \_\_\_\_\_ The investor certifies that it is a trust with total assets of at least US\$5,000,000, not formed for the specific purpose of investing in the Company, and whose purchase is directed by a person with such knowledge and experience in financial and business matters that such person is capable of evaluating the merits and risks of the prospective investment.

**Initial** \_\_\_\_\_ The investor certifies that it is a plan established and maintained by a state or its political subdivisions, or any agency or instrumentality thereof, for the benefit of its employees, and which has total assets in excess of US \$5,000,000.

**Initial** \_\_\_\_\_ The investor certifies that it is an insurance company as defined in §2(13) of the Securities Act of 1933, or a registered investment company.

**KTL Bamboo International Corp. (intended to be renamed Miramar Labs, Inc.)**

**Investor Profile**

*(Must be completed by Investor)*

**Section A - Personal Investor Information**

Investor Name(s): \_\_\_\_\_

Individual executing Profile or Trustee: \_\_\_\_\_

Social Security Numbers / Federal I.D. Number: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Marital Status: \_\_\_\_\_

Joint Party Date of Birth: \_\_\_\_\_

Investment Experience (Years): \_\_\_\_\_

Annual Income: \_\_\_\_\_

Liquid Net Worth: \_\_\_\_\_

Net Worth\*: \_\_\_\_\_

Tax Bracket: \_\_\_\_\_ 15% or below \_\_\_\_\_ 25% - 27.5% \_\_\_\_\_ Over 27.5%

Home Street Address: \_\_\_\_\_

Home City, State & Zip Code: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Home Fax: \_\_\_\_\_ Home Email: \_\_\_\_\_

Employer: \_\_\_\_\_

Employer Street Address: \_\_\_\_\_

Employer City, State & Zip Code: \_\_\_\_\_

Bus. Phone: \_\_\_\_\_ Bus. Fax: \_\_\_\_\_ Bus. Email: \_\_\_\_\_

Type of Business: \_\_\_\_\_

Outside Broker/Dealer: \_\_\_\_\_

**Section B – Certificate Delivery Instructions**

\_\_\_\_ Please deliver certificate to the Employer Address listed in Section A.

\_\_\_\_ Please deliver certificate to the Home Address listed in Section A.

\_\_\_\_ Please deliver certificate to the following address:

**Section C – Form of Payment – Check or Wire Transfer**

\_\_\_\_ Check payable to **Miramar Labs, Inc.**

\_\_\_\_ Wire funds from my outside account according to Section 2(b) of the Subscription Agreement.

\_\_\_\_ The funds for this investment are rolled over, tax deferred from \_\_\_\_\_ within the allowed 60 day window.

Please check if you are a FINRA member or Affiliate of a FINRA member firm: \_\_\_\_\_

\_\_\_\_\_  
**Investor Signature**

\_\_\_\_\_  
**Date**

\* **For purposes of calculating your net worth in this form, (a) your primary residence shall not be included as an asset; (b) indebtedness secured by your primary residence, up to the estimated fair market value of your primary residence at the time of your purchase of the securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of your purchase of the securities exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of your primary residence, the amount of such excess shall be included as a liability); and (c) indebtedness that is secured by your primary residence in excess of the estimated fair market value of your primary residence at the time of your purchase of the securities shall be included as a liability.**

## **ANTI MONEY LAUNDERING REQUIREMENTS**

### **The USA PATRIOT Act**

The USA PATRIOT Act is designed to detect, deter, and punish terrorists in the United States and abroad. The Act imposes new anti-money laundering requirements on brokerage firms and financial institutions. Since April 24, 2002 all brokerage firms have been required to have new, comprehensive anti-money laundering programs.

To help you understand these efforts, we want to provide you with some information about money laundering and our steps to implement the USA PATRIOT Act.

### **What is money laundering?**

Money laundering is the process of disguising illegally obtained money so that the funds appear to come from legitimate sources or activities. Money laundering occurs in connection with a wide variety of crimes, including illegal arms sales, drug trafficking, robbery, fraud, racketeering, and terrorism.

### **How big is the problem and why is it important?**

The use of the U.S. financial system by criminals to facilitate terrorism or other crimes could well taint our financial markets. According to the U.S. State Department, one recent estimate puts the amount of worldwide money laundering activity at \$1 trillion a year.

### **What are we required to do to eliminate money laundering?**

Under rules required by the USA PATRIOT Act, our anti-money laundering program must designate a special compliance officer, set up employee training, conduct independent audits, and establish policies and procedures to detect and report suspicious transaction and ensure compliance with such laws. As part of our required program, we may ask you to provide various identification documents or other information. Until you provide the information or documents we need, we may not be able to effect any transactions for you.

**ANTI-MONEY LAUNDERING INFORMATION FORM**

**The following is required in accordance with the AML provision of the USA PATRIOT ACT.**

*(Please fill out and return with requested documentation.)*

INVESTOR NAME: \_\_\_\_\_  
 LEGAL ADDRESS: \_\_\_\_\_  
 SSN# or TAX ID# \_\_\_\_\_  
 OF INVESTOR: \_\_\_\_\_  
 YEARLY INCOME: \_\_\_\_\_  
 NET WORTH: \_\_\_\_\_ \*

\* For purposes of calculating your net worth in this form, (a) your primary residence shall not be included as an asset; (b) indebtedness secured by your primary residence, up to the estimated fair market value of your primary residence at the time of your purchase of the securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of your purchase of the securities exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of your primary residence, the amount of such excess shall be included as a liability); and (c) indebtedness that is secured by your primary residence in excess of the estimated fair market value of your primary residence at the time of your purchase of the securities shall be included as a liability.

**INVESTMENT OBJECTIVE(S) (FOR ALL INVESTORS):**

ADDRESS OF BUSINESS OR OF EMPLOYER: \_\_\_\_\_

FOR INVESTORS WHO ARE INDIVIDUALS: AGE: \_\_\_\_\_

FOR INVESTORS WHO ARE INDIVIDUALS: OCCUPATION: \_\_\_\_\_

FOR INVESTORS WHO ARE ENTITIES: TYPE OF BUSINESS: \_\_\_\_\_

**IDENTIFICATION & DOCUMENTATION AND SOURCE OF FUNDS:**

- Please submit a copy of non-expired identification for the authorized signatory(ies) on the investment documents, showing name, date of birth, address and signature. **The address shown on the identification document MUST match the Investor's address shown on the Investor Signature Page.**

Current Driver's License                      or                      Valid Passport                      or                      Identity Card

*(Circle one or more)*

- If the Investor is a corporation, limited liability company, trust or other type of entity, please submit the following requisite documents: (i) Certificate of Incorporation, By-Laws, Certificate of Formation, Operating Agreement, Trust or other similar documents for the type of entity; and (ii) Corporate Resolution or power of attorney or other similar document granting authority to signatory(ies) and designating that they are permitted to make the proposed investment.

- Please advise where the funds were derived from to make the proposed investment:

Investments                                      Savings                                      Proceeds of Sale                                      Other \_\_\_\_\_

*(Circle one or more)*

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title (if applicable): \_\_\_\_\_

Date: \_\_\_\_\_

## DISCLOSURE SCHEDULE

[subject to completion]

June \_\_\_, 2016

This Disclosure Schedule is being furnished by KTL Bamboo International Corp. (intended to be renamed Miramar Labs, Inc. (the “Company”) to those purchasers set forth on the signature page (collectively, the “Purchasers”) in connection with the execution and delivery of that certain Subscription Agreement dated as of \_\_\_, 2016 (the “Subscription Agreement”). The items set forth in the attached Disclosure Schedule represent exceptions, qualifications, permitted items and disclosures pursuant to and upon the terms set forth in the Subscription Agreement. Capitalized terms used herein and not defined herein shall have the meanings ascribed to such terms in the Subscription Agreement. This Disclosure Schedule may be supplemented from time to time as permitted by the terms of the Subscription Agreement.

No reference to or disclosure of any item or other matter in this Disclosure Schedule shall be construed as an admission or indication that such item or other matter is material or that such item or other matter is required to be referred to or disclosed in this Disclosure Schedule. No reference in this Disclosure Schedule to any agreement or document shall be construed as an admission or indication that such agreement or document is enforceable or currently in effect or that there are any obligations remaining to be performed or any rights that may be exercised under such agreement or document. No disclosure in this Disclosure Schedule relating to any possible breach or violation of any agreement, law or regulation shall be construed as an admission or indication that any such breach or violation exists or has actually occurred.

This Disclosure Schedule and the information and disclosures contained in this Disclosure Schedule are intended only to qualify and limit the representations, warranties and covenants of Company contained in the Subscription Agreement and shall not be deemed to expand in any way the scope or effect of any of such representations, warranties or covenants.

The contents of all documents referred to in this Disclosure Schedule are incorporated by reference in this Disclosure Schedule as though fully set forth in this Disclosure Schedule. Notwithstanding anything to the contrary contained in this Disclosure Schedule or in the Subscription Agreement, the information and disclosures contained in each section of this Disclosure Schedule shall be deemed to be disclosed and incorporated by reference in each of the other sections of this Disclosure Schedule as though fully set forth in such other sections (whether or not specific cross-references are made), where such incorporation by reference would be reasonably and readily apparent from the face of such disclosure.

The bold-faced headings contained in this Disclosure Schedule are included for convenience only, and are not intended to limit the effect of the disclosures contained in this Disclosure Schedule or to expand the scope of the information required to be disclosed in this Disclosure Schedule.

**Schedule 4a**

**Subsidiaries**

Miramar Labs HK Limited

**Schedule 4c**

**Capitalization**

**PRO FORMA CAPITALIZATION<sup>1</sup>**

**Minimum Offering<sup>2</sup>**

	<b>Actual</b>		<b>Fully Diluted</b>	
	<b>Shares</b>	<b>% Ownership</b>	<b>Shares</b>	<b>% Ownership</b>
Miramar pre-Merger Stockholders <sup>3</sup>	6,500,270	70.7%	6,500,270	60.7%
Offering Shares @ \$5.00				
Existing Shareholders <sup>4</sup>	1,800,000	19.6%	1,800,000	16.8%
New Shareholders				
Placement Agent Warrants @ \$5.00				
Issuer Pre-Merger Stockholders	900,000	9.8%	900,000	8.5%
Equity Incentive Plan <sup>5</sup>			1,500,000	14%
Total	<u>9,200,270</u>	<u>100.00%</u>	<u>10,700,270</u>	<u>100.00%</u>

**Maximum Offering**

	<b>Actual</b>		<b>Fully Diluted</b>	
	<b>Shares</b>	<b>% Ownership</b>	<b>Shares</b>	<b>% Ownership</b>
Miramar pre-Merger Stockholders <sup>3</sup>	6,500,270	62.5%	6,500,270	54.2%
Offering Shares @ \$5.00				
Existing Shareholders <sup>4</sup>	1,800,000	17.3%	1,800,000	15.0%
New Shareholders	1,200,000	11.5%	1,200,000	10.0%
Placement Agent Warrants @ \$5.00			96,000	0.8%
Issuer Pre-Merger Stockholders	900,000	8.7%	900,000	7.5%
Equity Incentive Plan <sup>5</sup>			1,500,000	12.5%
Total	<u>10,400,270</u>	<u>100.00%</u>	<u>11,996,270</u>	<u>100.00%</u>

<sup>1</sup> Assumes no sales pursuant to the Over-Allotment Option and no exercise of the Issuer's counsel's option to receive up to 50% of its fees and expenses relating to the Transactions in Common Stock.

<sup>2</sup> The merger will close upon closing of the Minimum Offering.

<sup>3</sup> Including outstanding Miramar warrants and convertible notes, if any

<sup>4</sup> Assumes minimum Offering participation of \$9,000,000 by existing Miramar stockholders. Includes conversion of up to \$2,000,000 outstanding principal amount of convertible bridge notes of Miramar, which will convert into shares of Common Stock at the Offering Price of the Merger and Minimum Offering and will be included in the gross proceeds of the Offering for purposes of meeting the Minimum Offering and Maximum Offering amounts.

<sup>5</sup> Including outstanding Miramar options.

**Remainder of schedules to come**

**EXHIBIT A**

**Form of Registration Rights Agreement**

June 1, 2016

**STRICTLY CONFIDENTIAL**

Miramar Labs, Inc.  
Mr. R. Michael Kleine, President & CEO  
2790 Walsh Avenue  
Santa Clara, CA 95051

**Re: Private Placement Engagement Agreement**

Dear Mr. Kleine:

This letter will confirm our understanding that Miramar Labs, Inc. its subsidiaries, affiliates, or successor (the “Company”) has engaged Katalyst Securities LLC (“Katalyst”) and The Benchmark Company, LLC (“Benchmark”), registered broker-dealers and members of the Financial Industry Regulatory Authority (“FINRA”), (hereinafter collectively referred to as the “Placement Agents”), as its exclusive co-placement agents in connection with the matters described below, subject to the terms and conditions set forth in this letter agreement (the “Agreement”).

The Company proposes to enter into a reverse triangular merger (the “Merger”) with a public shell company selected by the Company (the “Public Entity”) and related prospective private placement financing (the “Offering(s)”), including any offering of equity or equity-linked securities (the “Securities”) by the Company immediately preceding the Merger or by the Public Entity simultaneously with or immediately after the Merger. The terms and conditions of the Merger will be negotiated between the Company and the Public Entity. The terms of the transactions described herein shall be mutually agreed upon by the Company, the Public Entity and the other parties thereto and nothing herein implies that the Placement Agents would have the power or authority to bind the Company or the Public Entity or an obligation of the Company or the Public Entity to accept a proposed Merger, issue any Securities, or complete an Offering. The proposed Offering will be made pursuant to the exemptions afforded by Section 4(2) of the Securities Act of 1933, as amended (the “Securities Act”), and Regulation D promulgated thereunder and applicable state securities laws. Following the Merger, the “Company” shall be deemed to include the Public Entity.

**A. ENGAGEMENT AS PLACEMENT AGENTS.**

During the Term (as defined below), the Company hereby engages the Placement Agents to serve as (i) its advisor in connection with the Merger and (ii) co-exclusive placement agents in connection with the Offering(s). The Placement Agents hereby accept such engagement on a “reasonable best efforts” basis upon the terms and conditions set forth herein. The Company acknowledges and agrees that the Placement Agents will be entitled to provide services, in whole or in part, through any current or future affiliate or sub-agent(s) selected by the Placement Agents and references to the Placement Agents shall, where the context so requires, include reference to any such affiliate or sub-agent(s).

**B. TERMS OF THE PROPOSED OFFERING.**

The Public Entity will be renamed Miramar Labs, Inc. (“Issuer”). The proposed Offering will raise a minimum of gross proceeds of Nine Million Dollars (\$9,000,000) through the sale of One Million Eight Hundred Thousand (1,800,000) shares of the Issuer’s common stock, par value \$0.0001 per share (the “Common Stock”), (the “Minimum Offering”) and a maximum of gross proceeds of Fifteen Million Dollars (\$15,000,000) through the sale of Three Million (3,000,000) shares of the Issuer’s Common Stock, (the “Maximum Offering”), at the Purchase Price of \$5.00 per share (the “Offering Price”). If the Offering is oversubscribed, the Issuer, with the consent of the Company, can raise an additional Twenty Million Dollars (\$20,000,000) through the sale of Four Million (4,000,000) shares of Common Stock of the Issuer at the Offering Price per share to cover over-allotments (the “Over-Allotment Option”). The minimum subscription is Fifty Thousand United States Dollars (\$50,000 USD), Ten Thousand (10,000 shares), *provided, however*, that subscriptions in lesser amounts may be accepted by the Company in its sole discretion. Existing shareholders of the Company will purchase a minimum of Nine Million Dollars (\$9,000,000) in this Offering.

The closing of the Merger and at least the Minimum Offering is anticipated on or before June 7, 2016 (the “Initial Closing”). Any subsequent closings in connection with the Offering will occur on or before August 8, 2016 and will include the closing of the Over-Allotment Option, if exercised in whole or in part (each, a “Closing”).

**C. COMPENSATION.**

In consideration for the services described above, the Placement Agents shall be entitled to receive, and the Company agrees to pay the following:

(a) Placement Agents’ Cash Fee: In connection with the Offering, the Company will pay a cash fee (the “Broker Cash Fee”) to the Placement Agents at each Closing equal to Eight Percent (8%) of each Closing’s gross proceeds from any sale of Securities in the Offering to investors introduced by them during the Term. The Broker Cash Fee shall be paid to the Placement Agents in cash by wire transfer from the escrow account established for the Offering, and as a condition to closing, simultaneous with the distribution of funds to the Company.

(b) Broker Warrants: Also at each Closing, the Company hereby agrees to deliver to the Placement Agents (or their designees), a warrant to purchase shares of the Issuer’s Common Stock equal to Eight Percent (8%) of the number of Securities sold in the Offering to investors introduced by them, which warrants shall have an initial exercise price of \$5.00 per share of the Common Stock (“Brokers Warrants”) with a term of five (5) years from the date of each Closing of the Offering. To the extent permitted by applicable laws, all warrants shall permit unencumbered transfer to the Placement Agents’ employees and affiliates and the warrants may be issued directly to the Placement Agents’ employees and affiliates at the Placement Agents’ request. The Broker Cash Fee and the Broker Warrants are sometimes referred to collectively as the “Brokers Fees”.

(c) Any subagent(s) of the Placement Agents that introduce investors to the Offering will be entitled to share in the Brokers Fees attributable to those investors described above, pursuant to the terms of an executed sub-agent agreement.

(d) To the extent there is more than one Closing, payment of the proportional amount of the Broker Cash Fees will be made out of the gross proceeds from any sale of Securities sold at each Closing and the Company will issue to the Placement Agents the corresponding number of Brokers Warrants. All cash compensation and warrants under this Agreement shall be paid directly by the Company to and in the name provided to the Company by the Placement Agents.

(e) The Placement Agents shall be entitled to the Broker Fees, calculated in the manner provided in Paragraphs C (a) and (b), with respect to any subsequent public or private offering or other financing or capital-raising transaction of any kind other than an underwritten public offering (“Subsequent Financing”), to the extent that such financing or capital is provided to either the Company or the post-Merger Public Entity, or to any Affiliate of either the Company or the post-Merger Public Entity, by investors whom the Placement Agents had “introduced” (as defined below), directly or indirectly, to the Company during the Term if such Subsequent Financing is consummated at any time within the six (6) month period following the closing of an Offering (the “Tail Period”).

(f) For the purposes of this Agreement, the investors listed on Appendix II shall be considered “introduced”, which list shall be updated from time-to-time during the Term. Introduced Investors includes the names or their Affiliates currently identified on Appendix II attached hereto, as well as new investors the Placement Agents introduce to the proposed transaction, including, but not limited to, investors who either (i) participated in the proposed Offering, (ii) met with the Company and/or had a conversation with the Company either in person or via telephone regarding the Offering or (iii) was provided by the Placement Agents with a copy of the Company’s offering memorandum (or other materials prepared and/or approved by the Company in connection with the Offering) based upon such investor expressing an interest to the Placement Agents or their subagents in investing in the Offering. An “Affiliate” of an entity shall mean any individual or entity controlling, controlled by or under common control with such entity and any officer, director, employee, stockholder, partner, member or agent of such entity.

(g) The Placement Agents shall not be entitled to Broker Fees for a purchase of shares of Common Stock sold in the Offering to: (i) existing Miramar stockholders, (ii) those investors who were not introduced by the Placement Agents, or (iii) the entities identified on Appendix III attached hereto, which list shall be updated from time-to-time during the Term.

#### **D. EXPENSES.**

Except for reimbursement of fees and expenses set forth in Appendix 1 relating to indemnification and contribution, the Company shall not pay the expenses of the Placement Agents incurred with this specific Offering identified herein, including the legal fees and expenses of their legal counsels. The Company will pay any expenses related to the Blue Sky and other regulatory filings to be made in connection with the Offering(s), including, but not limited to, legal counsel and filing fees.

Katalyst Securities LLC will be entitled to a non-accountable administrative fee of \$50,000 in addition to any Broker Cash Fee it may earn for investors introduced to the Offering by it, payable from the proceeds in the Escrow Account upon the first closing of the Offering.

**E. TERM AND TERMINATION.**

The term of this Agreement begins on the date of this Agreement and shall end upon the earlier of (i) six (6) months from the date of this Agreement, or (ii) upon thirty (30) days prior written notice delivered by the Company or the Placement Agents (the “Term”), provided, that that no such notice may be given by the Company until two (2) months from the date of the Agreement (the “Initial Outside Date”). Notwithstanding any such expiration or termination, the terms of this Agreement, including Sections C, G through W, including Appendix I and Appendix II attached hereto, shall all remain in full force and effect and be binding on the parties hereto, including the exculpation, indemnification and contribution obligations of the Company, the confidentiality obligations, the right of the Placement Agents to receive any fees payable hereunder and the right of the Placement Agents to receive reimbursement for their expenses; provided however, that in the event that the Merger and Offering does not close during the Term, Placement Agents shall only be entitled to Broker Fees related to any public or private offering or other financing or capital-raising transaction of any kind, other than an underwritten public offering, during the six month period following such termination date.

**F. RELATED AGREEMENTS.** At each Offering, the Company shall enter into the following additional agreements:

a. Private Placement Documentation. The sale of Securities to the investors in the Offering will be evidenced by a subscription agreement (“Subscription Agreement”) between the Company (or Public Entity) and such investors in a form reasonably satisfactory to the Company, the Placement Agents and the investors. Prior to the signing of any Subscription Agreement, officers and employees of the Company with responsibility for financial affairs will be reasonably available to answer inquiries from prospective investors. The Company and/or the Public Entity and the Placement Agents shall enter into a customary placement agency agreement in form and substance reasonably satisfactory to the Placement Agents, the Public Entity and the Company. The placement agency agreement will include representations and warranties upon which the Placement Agents may rely (which shall be substantially identical to the representations and warranties provided by the Company and/or Public Entity to investors) and shall provide for the delivery of copies of legal opinions reasonably satisfactory to the Placement Agents by counsel to the Company and Public Entity to the Placement Agents.

b. Escrow. In respect of each Offering, the Company and/or the Public Entity, on the one hand, and the Placement Agents, on the other hand, shall enter into an escrow agreement with a third party escrow agent selected by the Placement Agents and reasonably acceptable to the Company pursuant to which the Placement Agents’ compensation shall be paid from the gross proceeds of the Securities sold at the time of closing, and as a condition to closing. The Company shall (or shall cause the Public Entity to) bear the cost of the escrow agent.

c. FINRA Amendments. Notwithstanding anything herein to the contrary, in the event that the Placement Agents determine that any of the terms provided for hereunder shall not comply with a FINRA rule, including but not limited to FINRA Rule 5110, then the Company shall agree to amend this Agreement (or include such revisions in the final placement agency agreement) in writing upon the request of the Placement Agents to comply with any such rules;

provided that any such amendments shall not provide for terms that are less favorable to the Company.

**G. REPRESENTATIONS, WARRANTIES AND COVENANTS.** The Company represents and warrants to, and agrees with, the Placement Agents that:

a. It has all requisite power and authority to enter into and carry out the terms and provisions of this Agreement. The execution, delivery and performance of this Agreement, the Merger, and the Offering of Securities will not violate or conflict with any provision of the charter or bylaws of the Company or any agreement or other instrument to which the Company is a party or by which it or any of its properties is bound. Any necessary approvals, governmental and private, will be obtained by the Company prior to any closing, except as may be waived and except, in the case of private approvals, where the failure to obtain any such approval would not have a material adverse effect.

b. The Securities will be offered and sold by the Company or Public Entity in compliance with the requirements for the exemption from registration pursuant to Section 5 of the Securities Act (including any applicable exemption therefrom), and with all other securities laws and regulations. The Company or Public Entity will file appropriate notices with the Securities and Exchange Commission and with other applicable securities authorities.

c. At each closing of an Offering and the closing of the Merger, the Company or the Public Entity will provide the Placement Agents with a certificate indicating the foregoing are true and correct as of such closing as well as an opinion of counsel reasonably satisfactory to the Placement Agents and their counsel as is customary for such Offering. The Company hereby permits the Placement Agents to rely on the representations and warranties made or given by the Company or the Public Entity to any acquirer of Securities in any agreement, certificate or otherwise in connection with an Offering.

d. The Company will promptly inform the Placement Agents if, during the Term, the Company is contacted by or on behalf of any party concerning any offering of equity securities, reverse merger or similar type of going-public transaction, divestiture, equity financing and/or joint venture involving the Company or other transaction that would preclude the consummation of the Offering(s) and the Merger, except for agreements in the ordinary course of business.

**H. INDEMNIFICATION AND CONTRIBUTION.** The Company agrees to (and will cause the Public Entity, upon consummation of the Merger, to undertake to) indemnify the Placement Agents, jointly and severally, their sub agent(s), and their controlling persons, representatives and agents in accordance with the indemnification provisions set forth in Appendix I. These provisions will apply regardless of whether any Offering is consummated.

**I. LIMITATION OF ENGAGEMENT TO THE COMPANY.** The Company acknowledges that the Placement Agents have been retained only by the Company, and that the Placement Agents are providing services hereunder as independent contractors (and not in any fiduciary or agency capacity) and that the Company's engagement of the Placement Agents is not deemed to be on behalf of, and is not intended to confer rights upon, any shareholder, owner or partner of the Company or any other person not a party hereto as against the Placement Agents or any of their affiliates, or any of their officers, directors, controlling persons (within the meaning of

Section 15 of the Securities Act or Section 20 of the Exchange Act), employees or agents. Unless otherwise expressly agreed in writing by the Placement Agents, no one other than the Company is authorized to rely upon this Agreement or any other statements or conduct of the Placement Agents, and no one other than the Company is intended to be a beneficiary of this Agreement. The Placement Agents shall not have the authority to make any commitment binding on the Company. The Company, in its sole discretion, shall have the right to reject any investor introduced to it by the Placement Agents, or their respective designees, affiliates or sub-dealers.

**J. LIMITATION OF PLACEMENT AGENTS' LIABILITY TO THE COMPANY.** The Placement Agents, severally, not jointly, and the Company further agree that neither Placement Agents nor any of their affiliates or any of their respective officers, directors, controlling persons (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act), employees or agents shall have any liability to the Company or the Public Entity, either of respective security holders or creditors, or any person asserting claims on behalf of or in the right of the Company or the Public Entity (whether direct or indirect, in contract, tort, for an act of negligence or otherwise) for any losses, fees, damages, liabilities, costs, expenses or equitable relief arising out of or relating to this Agreement or the services rendered hereunder, except for losses, fees, damages, liabilities, costs or expenses (collectively, "Losses") that arise out of or are based on any action of or failure to act by the respective Placement Agent and that are finally judicially determined to have resulted solely from the gross negligence, intentional misrepresentation or willful misconduct of the respective Placement Agent.

**K. NO LIMITATIONS.** Nothing in this Agreement shall be construed to limit the ability of the Placement Agents or their affiliates to (a) trade in the Company's or the Public Entity's or any other company's securities, subject to applicable law, or (b) pursue or engage in investment banking, financial advisory or other business relationships with entities that may be engaged in or contemplate engaging in, or acquiring or disposing of, businesses that are similar to or competitive with the business of the Company.

**L. GOVERNING LAW.** This Agreement shall be deemed to have been made and delivered in New York City and shall be governed as to validity, interpretation, construction, effect and in all other respects by the internal laws of the State of New York applicable to contracts to be wholly performed in said state.

**THE PARTIES HERETO AGREE TO SUBMIT ALL CONTROVERSIES TO THE EXCLUSIVE JURISDICTION OF FINRA ARBITRATION IN ACCORDANCE WITH THE PROVISIONS SET FORTH BELOW AND UNDERSTAND THAT (A) ARBITRATION IS FINAL AND BINDING ON THE PARTIES, (B) THE PARTIES ARE WAIVING THEIR RIGHTS TO SEEK REMEDIES IN COURT, INCLUDING THE RIGHT TO A JURY TRIAL, (C) PRE-ARBITRATION DISCOVERY IS GENERALLY MORE LIMITED AND DIFFERENT FROM COURT PROCEEDINGS, (D) THE ARBITRATOR'S AWARD IS NOT REQUIRED TO INCLUDE FACTUAL FINDINGS OR LEGAL REASONING AND ANY PARTY'S RIGHT TO APPEAL OR TO SEEK MODIFICATION OF RULES BY ARBITRATORS IS STRICTLY LIMITED, (E) THE PANEL OF FINRA ARBITRATORS WILL TYPICALLY INCLUDE A MINORITY OF ARBITRATORS WHO WERE OR ARE AFFILIATED WITH THE SECURITIES INDUSTRY, AND (F) ALL CONTROVERSIES**

**WHICH MAY ARISE BETWEEN THE PARTIES CONCERNING THIS AGREEMENT SHALL BE DETERMINED BY ARBITRATION PURSUANT TO THE RULES THEN PERTAINING TO FINRA. ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. JUDGMENT ON ANY AWARD OF ANY SUCH ARBITRATION MAY BE ENTERED IN THE SUPREME COURT OF THE STATE OF NEW YORK OR IN ANY OTHER COURT HAVING JURISDICTION OVER THE PERSON OR PERSONS AGAINST WHOM SUCH AWARD IS RENDERED. THE PARTIES AGREE THAT THE DETERMINATION OF THE ARBITRATORS SHALL BE BINDING AND CONCLUSIVE UPON THEM. THE PREVAILING PARTY, AS DETERMINED BY SUCH ARBITRATORS, IN A LEGAL PROCEEDING SHALL BE ENTITLED TO COLLECT ANY COSTS, DISBURSEMENTS AND REASONABLE ATTORNEY'S FEES FROM THE OTHER PARTY. PRIOR TO FILING AN ARBITRATION, THE PARTIES HEREBY AGREE THAT THEY WILL ATTEMPT TO RESOLVE THEIR DIFFERENCES FIRST BY SUBMITTING THE MATTER FOR RESOLUTION TO A MEDIATOR, ACCEPTABLE TO ALL PARTIES, AND WHOSE EXPENSES WILL BE BORNE EQUALLY BY ALL PARTIES. THE MEDIATION WILL BE HELD IN THE COUNTY OF NEW YORK, STATE OF NEW YORK, ON AN EXPEDITED BASIS. IF THE PARTIES CANNOT SUCCESSFULLY RESOLVE THEIR DIFFERENCES THROUGH MEDIATION, THE MATTER WILL BE RESOLVED BY ARBITRATION. THE ARBITRATION SHALL TAKE PLACE IN THE COUNTY OF NEW YORK, THE STATE OF NEW YORK, ON AN EXPEDITED BASIS.**

**M. INFORMATION; RELIANCE.**

(a) The Company shall furnish, or cause to be furnished, to the Placement Agents all information reasonably requested by the Placement Agents for the purpose of rendering services hereunder and shall further make available to the Placement Agents all such information to the same extent and on the same terms as such information is available to the Company and potential lenders and investors (all such information being the "Information"). The Company shall notify the Placement Agents of any material adverse change, or development that may lead to a material adverse change, in the business, properties, operations or financial condition or prospects of the Company, the Public Entity or any other material Information. In addition, the Company agrees to make available to the Placement Agents upon request from time to time the officers, directors, accountants, counsel and other advisors of the Company. The Company recognizes and confirms that the Placement Agents (a) will use and rely on the Information, including any documents provided to investors in each Offering and in connection with the Merger (the "Offering Documents," which shall include any Subscription Agreement) and any private placement memorandum, and on information available from generally recognized public sources in performing the services contemplated by this Agreement without having independently verified the same; (b) does not assume responsibility for the accuracy or completeness of the Offering Documents or the Information and such other information, except for any written information furnished to the Company by the Placement Agents specifically for inclusion in the Offering Documents; and (c)

will not make an appraisal of any of the assets or liabilities of the Company. Upon reasonable request, the Company will meet with the Placement Agents or their representatives to discuss all information relevant for disclosure in the Offering Documents and will cooperate in any investigation undertaken by the Placement Agents thereof, including any document included therein.

(b) The Company authorizes the Placement Agents to transmit to the prospective purchasers of Securities the Company's power point presentation prepared by the Company, private placement memorandum (if any, and if prepared by the Company) and publicly filed reports with the Securities and Exchange Commission, with such exhibits and supplements as may from time to time be required or appropriate (the "Presentation Materials"). The Company represents and warrants that the Presentation Materials (i) will be prepared by the management of the Company; and (ii) will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The Company will advise the Placement Agents promptly if it becomes aware of the occurrence of any event or any other change known to the Company which results in the Presentation Materials containing an untrue statement of a material fact or omitting to state a material fact required to be stated therein or necessary to make the statements therein or previously made, in light of the circumstances under which they were made, not misleading.

**N. ANNOUNCEMENT OF TRANSACTION.** The Company and the Placement Agents acknowledge and agree that the Placement Agents may, subsequent to the closing of a Merger or Offering, make public their involvement with the Company and Public Entity; provided that any such public announcement (other than customary tombstone presentations containing only publicly available information) shall be approved by the Company and the Public Entity, which approval shall not be unreasonably withheld.

**O. ADVICE TO THE BOARD.** The Company acknowledges that any advice given by the Placement Agents to the Company is solely for the benefit and use of the Company's board of directors and officers, who will make all decisions regarding whether and how to pursue any opportunity or transaction, including a potential Merger or Offering. The Company's board of directors and senior management may consider the Placement Agents' advice, but will also base their decisions on the advice of legal, tax and other business advisors and other factors which they consider appropriate. Accordingly, as independent contractors, the Placement Agents will not assume the responsibilities of a fiduciary to the Company or its stockholders in connection with the performance of its services. Any advice provided may not be used, reproduced, disseminated, quoted or referred to without the Placement Agents' prior written consent. The Placement Agents do not provide accounting, tax, or legal advice. The Placement Agents are not responsible for the success of any Offering.

**P. ENTIRE AGREEMENT.** This Agreement was drafted by the Company and the Placement Agents' respective counsels and constitutes the entire Agreement between the parties and supersedes and cancels any and all prior or contemporaneous arrangements, understandings and agreements, written or oral, between them relating to the subject matter hereof. The Placement Agents and their affiliates and their respective officers, directors, employees, agents and controlling persons are intended third party beneficiaries of this Agreement.

**Q. AMENDMENT.**

(a) This Agreement may not be modified except in writing signed by each of the parties hereto.

(b) Each party shall, without payment of any additional consideration by any other party, at any time on or after the date of any Closings, take such further action and execute such other and further documents and instruments as the other party may reasonably request in order to provide the other party with the benefits of this Agreement.

(c) The Parties to this Agreement each hereby confirm that they will cooperate with each other to the extent that it may become necessary to enter into any revisions or amendments to this Agreement, in the future to conform to any federal or state regulations as long as such revisions or amendments do not materially alter the obligations or benefits of either party under this Agreement.

**R. NO PARTNERSHIP.** The Company is a sophisticated business enterprise that has retained the Placement Agents for the limited purposes set forth in this Agreement. The parties acknowledge and agree that their respective rights and obligations are contractual in nature. Each party disclaims an intention to impose fiduciary obligations on the other by virtue of the engagement contemplated by this Agreement.

**S. NOTICE.** All notices and other communications required hereunder shall be in writing and shall be deemed effectively given to a party by (a) personal delivery; (b) upon deposit with the United States Post Office, by certified mail, return receipt requested, first-class mail, postage prepaid; (c) delivered by hand or by messenger or overnight courier, addressee signature required, to the addresses below or at such other address and/or to such other persons as shall have been furnished by the parties;

If to the Company:                      Miramar Labs, Inc.  
2790 Walsh Avenue  
Santa Clara, CA 95051  
Attn: Mr. R. Michael Kleine, President & CEO

With a copy to (which shall  
not constitute notice):              Wilson Sonsini Goodrich & Rosati, P.C.  
650 Page Mill Rd.  
Palo Alto, CA 94304-1050  
Attn: Philip H. Oettinger

If to Katalyst Securities LLC:  
Katalyst Securities, LLC  
1330 Avenue of the Americas, 14<sup>th</sup> Floor  
New York, NY 10019  
Attention: Michael Silverman  
Managing Director

With a copy to (which shall not constitute notice):

Barbara J. Glenss, Esq.  
Law Office of Barbara J. Glenss, Esq.  
30 Waterside Plaza, Suite 25G  
New York, NY 10010

If to The Benchmark Company, LLC:

The Benchmark Company, LLC  
150 E. 58<sup>th</sup> Street, 17<sup>th</sup> Floor  
New York, NY 10155  
Attn: John J. Borer  
Head of Investment Banking  
Senior Managing Director

**T. SEVERABILITY.** If any term, provision, covenant or restriction herein is held by a court of competent jurisdiction to be invalid, void or unenforceable or against public policy, the remainder of the terms, provisions and restrictions contained herein will remain in full force and effect and will in no way be affected, impaired or invalidated.

**U. OTHER INVESTMENT BANKING SERVICES.** The Company acknowledges that the Placement Agents and their affiliates are securities firms that may engage in securities trading and brokerage activities and provide investment banking and financial advisory services. In the ordinary course of business, the Placement Agents and their affiliates, registered representatives and employees may at any time hold long or short positions, and may trade or otherwise effect transactions, for their own account or the accounts of customers, in the Company's or the Public Entity's debt or equity securities, the Company's affiliates or other entities that may be involved in the transactions contemplated by this Agreement. In addition, the Placement Agents and their affiliates may from time to time perform various investment banking and financial advisory services for other clients and customers who may have conflicting interests with respect to the Company, the Public Entity, the Merger, or an Offering. The Company also acknowledges that the Placement Agents and their affiliates have no obligation to use in connection with this engagement or to furnish to the Company, confidential information obtained from other companies. Furthermore, the Company acknowledges the Placement Agents may have fiduciary or other relationships whereby the Placement Agents or their affiliates may exercise voting power over securities of various persons, which securities may from time to time include securities of the Company or the Public Entity or others with interests in respect of any Merger or Offering. The Company acknowledges that the Placement Agents or such affiliates may exercise such powers and otherwise perform their functions in connection with such fiduciary or other relationships without regard to the defined relationship to the Company hereunder.

**V. CONFIDENTIALITY.**

(a) The Placement Agents will maintain the confidentiality of the Information and, unless and until such information shall have been made publicly available by the Company or by others without breach of a confidentiality agreement, shall disclose the Information only as provided for herein, authorized by the Company or as required by law or by order of a governmental authority

or court of competent jurisdiction. In the event the Placement Agents are legally required to make disclosure of any of the Information, the Placement Agents will give prompt notice to the Company prior to such disclosure, to the extent the Placement Agents can practically do so.

(b) The foregoing paragraph shall not apply to information that:

(i) at the time of disclosure by the Company, is or thereafter becomes, generally available to the public or within the industries in which the Company conducts business, other than as a result of a breach by the Placement Agents of their obligations under this Agreement; or

(ii) prior to or at the time of disclosure by the Company, was already in the possession of, the Placement Agents or any of their affiliates, or could have been developed by them from information then lawfully in their possession, by the application of other information or techniques in their possession, generally available to the public; at the time of disclosure by the Company thereafter, is obtained by the Placement Agents or any of their affiliates from a third party who the Placement Agents reasonably believe to be in possession of the information not in violation of any contractual, legal or fiduciary obligation to the Company with respect to that information; or is independently developed by the Placement Agents or their affiliates.

The exclusions set forth in sub-section (b) above shall not apply to pro forma financial information of the Company, which pro forma Information shall in all events be subject to sub-section (a) above.

(c) Nothing in this Agreement shall be construed to limit the ability of the Placement Agents or their affiliates to pursue, investigate, analyze, invest in, or engage in investment banking, financial advisory or any other business relationship with entities other than the Company, notwithstanding that such entities may be engaged in a business which is similar to or competitive with the business of the Company, and notwithstanding that such entities may have actual or potential operations, products, services, plans, ideas, customers or supplies similar or identical to the Company's, or may have been identified by the Company as potential merger or acquisition targets or potential candidates for some other business combination, cooperation or relationship. The Company expressly acknowledges and agrees that it does not claim any proprietary interest in the identity of any other entity in its industry or otherwise, and that the identity of any such entity is not confidential information.

**W. No Disqualification Events.**

(a) The Company represents and warrants the following:

(i) None of Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the Offering, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the Securities Act) connected with the Company in any capacity at the time of sale (each, an "Issuer Covered Person" and, together, "Issuer Covered Persons") is subject to any Disqualification Event (as defined below), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3) or has been involved in any matter which

would be a Disqualification Event except for the fact that it occurred before September 23, 2013. The Company has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to the Placement Agents a copy of any disclosures provided thereunder.

(ii) The Company is not aware of any person (other than any Issuer Covered Person or Placement Agent Covered Person (as defined below)) that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the sale of any of the Securities.

(iii) The Company will promptly notify the Placement Agents in writing of (A) any Disqualification Event relating to any Issuer Covered Person and (B) any event that would, with the passage of time, become a Disqualification Event relating to any Issuer Covered Person.

i. Each Placement Agent represents and warrants the following:

(i) No Disqualification Events. Neither it, nor to its knowledge, any of its directors, executive officers, general partners, managing members or other officers participating in the Offering (each, a “Placement Agent Covered Person” and, together, “Placement Agent Covered Persons”), is subject to any of the “Bad Actor” disqualifications currently described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a “Disqualification Event”) or has been involved in any matter which would be a Disqualification Event except for the fact that it occurred before September 23, 2013.

(ii) Other Covered Persons. It is not aware of any person (other than any Issuer Covered Person or Placement Agent Covered Person) that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the sale of any Securities.

(iii) Notice of Disqualification Events. The Placement Agents will notify the Company promptly in writing of (A) any Disqualification Event relating to any Placement Agent Covered Person not previously disclosed to the Company in accordance with the provisions of this Section and (B) any event that would, with the passage of time, become a Disqualification Event relating to any Placement Agent Covered Person.

## **X. SUCCESSORS.**

This Agreement shall be binding upon and inure to the benefit of the Company and the Placement Agents, each Indemnified Person (as defined in Appendix I attached hereto), (including any party that acquires the Company or all or substantially all of its assets or merges with the Company) and their respective assigns, successors, and legal representatives. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person or corporation, other than the parties hereto and parties expressly referred to herein, any legal or equitable right, remedy or claim under or in respect to this Agreement or any provision hereof. The term “successors” shall not include any purchaser of the Securities merely by reason or such purchase. No subrogee of a benefitted party shall be entitled to any benefits hereunder.

**Y. Counterparts.** This Agreement may be executed in multiple counterparts, each of which may be executed by less than all of the parties and shall be deemed to be an original instrument which shall be enforceable against the parties actually executing such counterparts and all of which together shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile transmission or in pdf format shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or in pdf format shall be deemed to be their original signatures for all purposes.

*[Signatures on following page.]*

If the foregoing is in accordance with your understanding of the agreement among the Company and the Placement Agents, kindly sign and return this Agreement, whereupon it will become a binding agreement as provided herein, between the Company and the Placement Agents in accordance with its terms.

**This Agreement contains a predispute arbitration provision in Paragraph L.**

**MIRAMAR LABS, INC.**

By: /s/ R. Michael Kleine  
R. Michael Kleine  
President & CEO

**KATALYST SECURITIES LLC**

By: /s/ Michael A. Silverman  
Michael A. Silverman  
Managing Director

**THE BENCHMARK COMPANY, LLC**

By: /s/ John J. Borer  
John J. Borer  
Head of Investment Banking  
Senior Managing Director

## APPENDIX I

### Indemnification Provisions

The Company agrees to indemnify and hold harmless the Placement Agents, jointly and severally, and their affiliates (as defined in Rule 405 under the Securities Act of 1933, as amended) and their respective directors, officers, employees, agents and controlling persons (the Placement Agents and each such person being an “Indemnified Party”) from and against all losses, claims, damages and liabilities (or actions, including shareholder actions, in respect thereof), joint or several, to which such Indemnified Party may become subject under any applicable federal or state law, or otherwise, which are related to or result from the performance by the Placement Agents of the services contemplated by or the engagement of the Placement Agents pursuant to this Agreement and will promptly reimburse any Indemnified Party for all reasonable expenses (including reasonable counsel fees and expenses) as they are incurred in connection with the investigation of, preparation for or defense arising from any threatened or pending claim, whether or not such Indemnified Party is a party and whether or not such claim, action or proceeding is initiated or brought by the Company. The Company will not be liable to any Indemnified Party under the foregoing indemnification and reimbursement provisions (i) for any settlement by an Indemnified Party effected without its prior written consent (not to be unreasonably withheld); or (ii) to the extent that any loss, claim, damage or liability is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted primarily from Indemnified Party’s willful misconduct or gross negligence. The Company also agrees that no Indemnified Party shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Company or its security holders or creditors related to or arising out of the engagement of the Placement Agents pursuant to, or the performance by the Placement Agents of the services contemplated by, this Agreement except to the extent that any loss, claim, damage or liability is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted primarily from the such Indemnified Party’s willful misconduct or gross negligence.

Promptly after receipt by an Indemnified Party of notice of any intention or threat to commence an action, suit or proceeding or notice of the commencement of any action, suit or proceeding, such Indemnified Party will, if a claim in respect thereof is to be made against the Company pursuant hereto, promptly notify the Company in writing of the same. Any failure or delay by an Indemnified Party to give the notice referred to in this paragraph shall not affect such Indemnified Party’s right to be indemnified hereunder, except to the extent that such failure or delay causes actual material harm to the Company, or materially prejudices its ability to defend such action, suit or proceeding on behalf of such Indemnified Party. In case any such action is brought against any Indemnified Party and such Indemnified Party notifies the Company of the commencement thereof, the Company may elect to assume the defense thereof, with counsel reasonably satisfactory to such Indemnified Party, and an Indemnified Party may employ counsel to participate in the defense of any such action provided, that the employment of such counsel shall be at the Indemnified Party’s own expense, unless (i) the employment of such counsel has been authorized in writing by the Company, (ii) the Indemnified Party has reasonably concluded (based upon advice of counsel to the Indemnified Party) that there are legal defenses available to the Indemnification Party that are not available to the Company, or that there exists a conflict or potential conflict of interest (based upon advice of counsel to the Indemnified Party) between the Indemnified Party and the Company that makes it impossible or inadvisable for counsel to the Company to conduct the defense of both the Company and the Indemnified Party (in which case the Company will not have the right to direct the defense of such action on behalf of the Indemnified Party), or (iii) the Company has not in fact employed counsel reasonably satisfactory to the Indemnified Party to assume the defense of such action within a reasonable time after receiving notice of the action, suit or proceeding, in each of which cases the reasonable fees, disbursements and other charges of such counsel will be at the

expense of the Company; provided, further, that in no event shall the Company be required to pay fees and expenses for more than one firm of attorneys (in addition to any local counsel) representing Indemnified Parties.

If the indemnification provided for in this Agreement is for any reason held unenforceable by an Indemnified Party, the Company agrees to contribute to the losses, claims, damages and liabilities for which such indemnification is held unenforceable (i) in such proportion as is appropriate to reflect the relative benefits to the Company, on the one hand, and the Placement Agents on the other hand, of the Private Placement as contemplated whether or not the Offering is consummated or, (ii) if (but only if) the allocation provided for in clause (i) is for any reason unenforceable, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) but also the relative fault of the Company, on the one hand and the Placement Agents, on the other hand, as well as any other relevant equitable considerations. The Company agrees that for the purposes of this paragraph the relative benefits to the Company and the Placement Agents of the Offering as contemplated shall be deemed to be in the same proportion that the total value received or contemplated to be received by the Company in connection with the Private Placement bear to the fees paid or to be paid to the Placement Agents under this Agreement. Notwithstanding the foregoing, the Company expressly agrees that the Placement Agents shall not be required to contribute any amount in excess of the amount by which fees paid to the Placement Agents hereunder (excluding reimbursable expenses), exceeds the amount of any damages which the Placement Agents as otherwise been required to pay.

The Company agrees that without the Placement Agents' prior written consent, which shall not be unreasonably withheld, it will not settle, compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding in respect of which indemnification could be sought under the indemnification provisions of this Agreement (whether or not the Placement Agents or any other Indemnified Party is an actual or potential party to such claim, action or proceeding), unless such settlement, compromise or consent includes an unconditional release of each Indemnified Party from all liability arising out of such claim, action or proceeding.

In the event that an Indemnified Party is requested or required to appear as a witness in any action brought by or on behalf of or against the Company in which such Indemnified Party is not named as a defendant, the Company agrees to promptly reimburse the Placement Agents on a monthly basis for all expenses incurred by it in connection with such Indemnified Party's appearing and preparing to appear as such a witness, including, without limitation, the reasonable fees and disbursements of their legal counsel.

If multiple claims are brought with respect to at least one of which indemnification is permitted under applicable law and provided for under this Agreement, the Company agrees that any judgment or arbitration award shall be conclusively deemed to be based on claims as to which indemnification is permitted and provided for, except to the extent the judgment or arbitration award expressly states that it, or any portion thereof, is based solely on a claim as to which indemnification is not available.

## APPENDIX II

### LIST OF INVESTORS CONTACTED BY THE BENCHMARK CAPITAL, LLC AND KATALYST SECURITIES LLC

1492 Capital Management  
5 am Ventures  
Aberdare Ventures  
Accuitive Medical Ventures  
Actin Biomed  
Adage Capital Partners GP, LLC  
AH Lisanti  
AIGH  
Aju IB Investments  
Aspire  
Atika Capital Management, LLC  
ATP  
Attentive Investing  
Auriga Capital Management  
The B Group  
Bay City Capital LLC  
BB Biotech  
Beacon BioVentures / F-Prime  
BlackRock  
Brio and its affiliates  
Bristol  
Burrage  
Canaan Partners  
Casdin Capital  
Centrecort  
Charlestown Capital  
Chicago Venture  
Clarus  
Cormorant Asset Management LLC  
Correlation Ventures LLC  
Cormorant Asset Management, LLC  
Cranshire Capital Advisors, LLC  
Craig Drill  
Cranshire / IntraCoastal  
CRG Capital Partners, Inc.  
Crossover Capital Management, LLC  
DAFNA Capital Management, LLC  
Deerfield Partners LLC  
Dolphin Asset Management  
Eagle Asset  
EcoR1  
Emerald Advisers  
Empery Asset Management LP  
Essex Investment Management Company, LLC  
Essex Woodlands Health Ventures, Inc.

Fidelity Management & Research Corporation  
FirstFire  
Foresite Capital  
Frazier Healthcare Partners  
Fred Alger  
Froley Revi  
GE Capital/Capital One  
Greenspring Associates  
Hale Capital Management L.P.  
HealthCare Royalty  
HealthCor Management, LP  
Heights Capital Management, Inc.  
HGT Capital LLC  
H.I.G. BioVentures  
H.I.G. Capital, LLC  
Highland Capital Management L.P.  
Hudson Bay Capital Management LP  
Hudson East Capital LLC  
Iguana Healthcare Partners, LP.  
Index Ventures  
InterWest Partners  
Iroquois Capital LP  
LH Financial Services Corp.  
Life Sciences Alternative Funding  
Lincoln Park Capital, LLC  
LOMA  
Longitude  
Longside Ventures  
Magna  
Manchester Funds  
Merlin Nexus  
MidsummerMPM Asset Management LLC  
New Biology Ventures  
New Enterprise Associates, Inc.  
New Leaf  
Next View  
NGN Capital  
North Sound Management  
Ocean Road Advisors  
Opaleye Management, Inc.  
Orbimed Advisors, LLC  
Paizon / Crown Predator  
Parallel Ventures Holdings Ltd.  
Park City Capital, LLC  
Perceptive Advisors, LLC  
Polaris Partners  
Prettybrook  
ProQuest  
Pure Vida  
Questmark Partners, L.P.  
QVT Financial LP  
RA Capital Management, LLC  
RHO Ventures  
River Cities  
RTW Investment LLC

Sabby Management, LLC  
Signet  
The Singletary Group, LLC  
Sio Capital Management, LLC  
Sofinnova  
Sprout Capital Partners, LLC  
Sprout Group, LLC  
SV Life Sciences Advisers, LLC  
Tavistock Life Sciences  
Tekla Capital Management LLC  
Tenor Capital Management Company, LP  
Tom Roh @ Athertaon Pacific  
V2M  
Venbio Select Advisor  
Venrock  
Versant  
Visium Asset Management , L.P.  
Vivo Capital, LLC  
WFD  
WindhamYorkville Advisors, LLC

### **Appendix III**

#### **List of Investors for which Placement Agents are not entitled to Broker Fees as per Section 3(g)**

Leerink Revelation Partners  
Advanced Technology Ventures  
Vertex Healthcare  
Broadfin Capital, LLC

## **ASSIGNMENT AND ASSUMPTION OF ENGAGEMENT LETTER**

This Assignment and Assumption of Engagement Letter (“Assignment”), effective as of the Effective Date (as defined below), is made by and between Katalyst Securities LLC (“Katalyst”) and The Benchmark Company, LLC (“Benchmark” and collectively the “Placement Agents”), Miramar Technologies, Inc., a Delaware corporation (“Assignor”) and Miramar Labs, Inc., a Delaware corporation (“Assignee”).

### **RECITALS:**

WHEREAS, Assignor has entered into that certain Private Placement Engagement Agreement dated as of June 1, 2016 with the Placement Agents to provide Assignor with certain professional services (the “Engagement Letter”);

WHEREAS, as of the Effective Date, a subsidiary of Assignee merged with and into Assignor, which resulted in Assignor becoming a wholly-owned subsidiary of Assignee (the “Merger”);

WHEREAS, pursuant to the terms of the Engagement Letter, Assignee will enter into that certain Subscription Agreement with each of the purchasers identified on the signature pages thereto (the “Subscription Agreement”) in connection with a private placement offering by Assignee (the “Offering”) in one or more closings (the first of any such closings, the “Initial Closing”);

WHEREAS, the effective date of this Assignment shall be the date of the Initial Closing under the Subscription Agreement (the “Effective Date”); and

WHEREAS, the assignment of the Engagement Letter by Assignor and the assumption by the Assignee as provided herein is desired to be effected by the parties hereto in connection with the Merger.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto mutually agree, effective as of the Effective Date, as follows:

1. Assignment. Assignor hereby conveys, transfers, assigns, sets over to and vests in Assignee all of Assignor’s entire right, title and interest in, to and under the Engagement Letter.

2. Assumption. Assignor does hereby delegate to Assignee, and Assignee hereby accepts such assignment and does hereby assume and agree to pay, discharge and perform when due, all duties, agreements, obligations and liabilities of Assignor arising under the Engagement Letter, including, without limitation, all fees and expenses payable by the Assignor thereunder, all liabilities arising under those certain representations and warranties outlined in Item G of the Engagement Letter and all obligations arising under those certain indemnification and contribution provisions outlined in Appendix I of the Engagement Letter.

3. Placement Agents’ Consent. Each of the Placement Agents hereby consents to the assignment of the Engagement Letter by Assignor to Assignee pursuant to the terms hereof.

4. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

5. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to principles of conflicts or choice of laws thereof.

6. Certain Representations.

(a) No Disqualification Events. The Assignee hereby represents and warrants to the Placement Agents that the representations and warranties set forth in Section W(a) of the Engagement Letter are true, correct and complete with respect to the Assignee as of the date hereof and as of the Effective Date.

(b) Power and Authority. Each party represents and warrants to the other that it is fully empowered and authorized to execute and deliver this Assignment and the individual signing this Assignment on behalf of such party represents and warrants to the other party that he or she is fully empowered and authorized to do so.

7. Counterparts. This Assignment may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same Assignment.

*[Signature page follows]*

IN WITNESS WHEREOF, Katalyst, Benchmark, Assignor and Assignee have executed and delivered this Assignment as of the Effective Date.

ASSIGNOR:

MIRAMAR TECHNOLOGIES, INC.  
a Delaware corporation

By: /s/ R. Michael Kleine

Name: R. Michael Kleine

Title: President & Chief Executive Officer

ASSIGNEE:

MIRAMAR LABS, INC.  
a Delaware corporation

By: /s/ Andrey Zasoryn

Name: Andrey Zasoryn

Title: President

KATALYST:

KATALYST SECURITIES LLC

By: /s/ Michael A. Silverman

Name: Michael A. Silverman

Title: Managing Director

BENCHMARK:

THE BENCHMARK COMPANY, LLC

By: /s/ John J. Borer

Name: John J. Borer

Title: Senior Managing Director

THIS WARRANT AND THE SECURITIES ISSUABLE UPON THE EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED UNDER SUCH ACT OR UNLESS SOLD IN ACCORDANCE WITH RULE 144 UNDER SUCH ACT.

WARRANT NO. [ ]

NUMBER OF SHARES: [ ]

DATE OF ISSUANCE: [ ]

(subject to adjustment hereunder)

EXPIRATION DATE: [ ]

WARRANT TO PURCHASE SHARES  
OF COMMON STOCK OF

**MIRAMAR LABS, INC.**

This Warrant is issued to [ ], or its registered assigns (including any successors or assigns, the “**Warrantholder**”), in connection with that certain Subscription Agreement, dated as of [ ], by and among Miramar Labs, Inc. (f/k/a KTL Bamboo International Corp), a Delaware corporation (the “**Company**”), and each of those persons and entities listed as a Purchaser on Annex A thereto (the “**Purchase Agreement**”).

1. EXERCISE OF WARRANT.

(a) Number and Exercise Price of Warrant Shares; Expiration Date. Subject to the terms and conditions set forth herein and set forth in the Purchase Agreement, the Warrantholder is entitled to purchase from the Company up to [ ] shares (the “**Warrant Shares**”) of the Company’s Common Stock, \$0.001 par value per share (the “**Common Stock**”), at a purchase price of \$5.00 per share (as adjusted from time to time pursuant to the provisions of this Warrant) (the “**Exercise Price**”), on or before 5:00 p.m. New York City time on [ ], 2021 (the “**Expiration Date**”) (subject to earlier termination of this Warrant as set forth herein).

(b) Method of Exercise. While this Warrant remains outstanding and exercisable in accordance with Section 1(a) above, the Warrantholder may exercise this Warrant in accordance with Section 5 herein, by either:

(1) wire transfer to the Company or cashier’s check drawn on a United States bank made payable to the order of the Company, or

(2) exercising of the right to credit the Exercise Price against the Fair Market Value of the Warrant Shares (as defined below) at the time of exercise (the “**Net Exercise**”) pursuant to Section 1(c).

Notwithstanding anything herein to the contrary, the Warrantholder shall not be required to physically surrender this Warrant to the Company until the Warrantholder has purchased all of the

Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Warrantholder shall surrender this Warrant to the Company for cancellation within three (3) trading days of the date the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Warrantholder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases.

(c) Net Exercise. If the Company shall receive written notice from the Warrantholder at the time of exercise of this Warrant that the holder elects to Net Exercise the Warrant, the Company shall deliver to such Warrantholder (without payment by the Warrantholder of any exercise price in cash) that number of Warrant Shares computed using the following formula:

$$X = \frac{Y (A - B)}{A}$$

Where

- X = The number of Warrant Shares to be issued to the Warrantholder.
- Y = The number of Warrant Shares purchasable under this Warrant or, if only a portion of the Warrant is being exercised, the portion of the Warrant being exercised (at the date of such calculation).
- A = The Fair Market Value of one (1) share of Common Stock on the trading date immediately preceding the date on which Warrantholder elects to exercise this Warrant.
- B = The Exercise Price (as adjusted hereunder).

The “**Fair Market Value**” of one share of Common Stock shall mean (x) the last reported sale price and, if there are no sales, the last reported bid price, of the Common Stock on the business day prior to the date of exercise on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg Financial Markets (or a comparable reporting service of national reputation selected by the Company and reasonably acceptable to the holder if Bloomberg Financial Markets is not then reporting sales prices of the Common Stock) (collectively, “**Bloomberg**”), (y) if the foregoing does not apply, the last sales price of the Common Stock in the over-the-counter market on the pink sheets or bulletin board for such security as reported by Bloomberg, and, if there are no sales, the last reported bid price of the Common Stock as reported by Bloomberg or, (z) if fair market value cannot be calculated as of such date on either of the foregoing bases, the price determined in good faith by the Company’s Board of Directors.

“**OTC Markets**” shall mean either OTC QX, OTC QB or OTC Pink tier of the OTC Markets Group, Inc.

“**Trading Market**” shall mean any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE MKT, the NASDAQ Capital Market, the NASDAQ Global Market, the NASDAQ Global Select Market, the New York Stock Exchange or the OTC Markets (or any successors to any of the foregoing).

(d) Deemed Exercise. In the event that immediately prior to the close of business on the Expiration Date, the Fair Market Value of one share of Common Stock (as determined in accordance with Section 1(c) above) is greater than the then applicable Exercise Price, this Warrant shall be deemed to be automatically exercised on a net exercise issue basis pursuant to Section 1(c) above, and the Company shall deliver the applicable number of Warrant Shares to the Warrantholder pursuant to the provisions of Section 1(c) above and this Section 1(d).

## 2. CERTAIN ADJUSTMENTS.

(a) Adjustment of Number of Warrant Shares and Exercise Price. The number and kind of Warrant Shares purchasable upon exercise of this Warrant and the Exercise Price shall be subject to adjustment from time to time as follows:

(3) Subdivisions, Combinations and Other Issuances. If the Company shall at any time after the Date of Issuance but prior to the Expiration Date subdivide its shares of capital stock of the same class as the Warrant Shares, by split-up or otherwise, or combine such shares of capital stock, or issue additional shares of capital stock as a dividend with respect to any shares of such capital stock, the number of Warrant Shares issuable on the exercise of this Warrant shall forthwith be proportionately increased in the case of a subdivision or stock dividend, or proportionately decreased in the case of a combination. Appropriate adjustments shall also be made to the Exercise Price payable per share, but the aggregate Exercise Price payable for the total number of Warrant Shares purchasable under this Warrant (as adjusted) shall remain the same. Any adjustment under this Section 2(a)(1) shall become effective at the close of business on the date the subdivision or combination becomes effective, or as of the record date of such dividend, or in the event that no record date is fixed, upon the making of such dividend.

(4) Reclassification, Reorganizations and Consolidation. In case of any reclassification, capital reorganization or change in the capital stock of the Company (other than as a result of a subdivision, combination or stock dividend provided for in Section 2(a)(1) above) that occurs after the Date of Issuance, then, as a condition of such reclassification, reorganization or change, lawful provision shall be made, and duly executed documents evidencing the same from the Company or its successor shall be delivered to the Warrantholder, so that the Warrantholder shall thereafter have the right at any time prior to the expiration of this Warrant to purchase, at a total price equal to that payable upon the exercise of this Warrant, the kind and amount of shares of stock and/or other securities or property (including, if applicable, cash) receivable in connection with such reclassification, reorganization or change by a holder of the same number and type of securities as were purchasable as Warrant Shares by the Warrantholder immediately prior to such reclassification, reorganization or change. In any such case appropriate provisions shall be made with respect to the rights and interest of the Warrantholder so that the provisions hereof shall thereafter be applicable with respect to any shares of stock or other securities or property deliverable

upon exercise hereof, and appropriate adjustments shall be made to the Exercise Price payable hereunder, provided the aggregate Exercise Price shall remain the same (and, for the avoidance of doubt, this Warrant shall be exclusively exercisable for such shares of stock and/or other securities or property from and after the consummation of such reclassification or other change in the capital stock of the Company).

(5) Adjustment of Exercise Price Upon Subsequent Equity Sales. In the event the Company shall within six months after the original issuance date of this Warrant make any issuance, sale, grant of any option or right to purchase or other disposition of any equity security or any equity-linked or related security (including, without limitation, any “equity security” as that term is defined under Rule 405 promulgated under the Securities Act of 1933, as amended (the “**Securities Act**”), any securities convertible into Additional Shares of Common Stock (as such term is defined in the Purchase Agreement) (the “**Additional Securities**”), for a consideration per share that is less than the Exercise Price (adjusted for stock splits, combinations, dividends and the like occurring after the date hereof) (the foregoing, a “**Dilutive Issuance**”), then the then Exercise Price shall be reduced, concurrently with such Dilutive Issuance, to a price (calculated to the nearest cent) determined in accordance with the following formula:

$$CP2 = CP1 * (A + B) \div (A + C).$$

For purposes of the foregoing formula, the following definitions shall apply:

(1) “**CP2**” shall mean the Exercise Price in effect immediately after such issuance of Additional Securities;

(2) “**CP1**” shall mean the Exercise Price in effect immediately prior to such issuance of Additional Securities;

(3) “**A**” shall mean the number of shares of Common Stock outstanding immediately prior to such issuance of Additional Securities (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of the Company’s convertible securities outstanding immediately prior to such issuance or upon conversion or exchange of convertible securities (including the Warrants) outstanding (assuming exercise of any outstanding convertible securities therefor) immediately prior to such issuance);

(4) “**B**” shall mean the number of shares of Common Stock that would have been issued if such Additional Securities had been issued at a price per share equal to CP1 (determined by dividing the aggregate consideration received by the Company in respect of such issuance by CP1); and

(5) “**C**” shall mean the number of such Additional Securities issued in such transaction.

(b) Notice to Warrantholder. If, while this Warrant is outstanding, the Company (i) declares a dividend or any other distribution of cash, securities or other property in respect of its Common Stock, including, without limitation, any granting of rights or warrants to subscribe

for or purchase any capital stock of the Company or any subsidiary, (ii) authorizes or approves, enters into any agreement contemplating or solicits stockholder approval for any Change of Control or (iii) authorizes the voluntary dissolution, liquidation or winding up of the affairs of the Company, then the Company shall deliver to the Warrantholder a notice of such transaction at least ten (10) business days prior to the applicable record or effective date on which a person would need to hold Common Stock in order to participate in or vote with respect to such transaction; provided, however, that the failure to deliver such notice or any defect therein shall not affect the validity of the corporate action required to be described in such notice.

(c) Calculations. All calculations under this Section 2 shall be made to the nearest cent or the nearest whole share, as the case may be. For purposes of this Section 2, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

(d) Treatment of Warrant upon a Change of Control.

(1) If, at any time while this Warrant is outstanding, the Company consummates a Change of Control, then a holder shall have the right thereafter to receive, upon exercise of this Warrant, the same amount and kind of securities, cash or property as it would have been entitled to receive upon the occurrence of such Change of Control if it had been, immediately prior to such Change of Control, a holder of the number of Warrant Shares then issuable upon exercise in full of this Warrant (the “**Alternate Consideration**”). The Company shall not effect any such Change of Control unless prior to or simultaneously with the consummation thereof, any successor to the Company, surviving entity or the corporation purchasing or otherwise acquiring such assets or other appropriate corporation or entity shall assume the obligation to deliver to the holder, such Alternate Consideration as, in accordance with the foregoing provisions, the holder may be entitled to purchase, and the other obligations under this Warrant.

(2) As used in this Warrant, a “**Change of Control**” shall mean (i) a merger or consolidation of the Company with another corporation (other than a merger effected exclusively for the purpose of changing the domicile of the Company), (ii) the sale, assignment, transfer, conveyance or other disposal of all or substantially all of the properties or assets or all or a majority of the outstanding voting shares of capital stock of the Company, (iii) a purchase, tender or exchange offer accepted by the holders of a majority of the outstanding voting shares of capital stock of the Company, or (iv) a “person” or “group” (as these terms are used for purposes of Section 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”)) is or shall become the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly at least a majority of the voting power of the capital stock of the Company.

3. **NO FRACTIONAL SHARES**. No fractional Warrant Shares or scrip representing fractional shares will be issued upon exercise of this Warrant. In lieu of any fractional shares which would otherwise be issuable, the Company shall pay cash equal to the product of such fraction multiplied by the Fair Market Value of one Warrant Share.

4. **NO STOCKHOLDER RIGHTS.** Until the exercise of this Warrant or any portion of this Warrant, the Warrantholder shall not have, nor exercise, any rights as a stockholder of the Company (including without limitation the right to notification of stockholder meetings or the right to receive any notice or other communication concerning the business and affairs of the Company) except as provided in Section 8 below.

5. **MECHANICS OF EXERCISE.**

(a) **Delivery of Warrant Shares Upon Exercise.** This Warrant may be exercised by the holder hereof, in whole or in part, by delivering to the Company (or such other office or agency of the Company as it may designate by notice in writing to the registered Warrantholder at the address of the Warrantholder appearing on the books of the Company) of a duly executed copy of the Notice of Exercise in the form attached hereto as Exhibit A by facsimile or e-mail attachment and paying the Exercise Price (unless the Warrantholder has elected to Net Exercise) then in effect with respect to the number of Warrant Shares as to which the Warrant is being exercised. This Warrant shall be deemed to have been exercised immediately prior to the close of business on the date of the delivery to the Company of the Notice of Exercise as provided above, and the person entitled to receive the Warrant Shares issuable upon such exercise shall be treated for all purposes as the holder of such shares of record as of the close of business on such date. Warrant Shares purchased hereunder shall be transmitted by the Company's transfer agent to the holder by crediting the account of the holder's prime broker with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by the holder or (B) the shares are eligible for resale by the holder without volume or manner-of-sale limitations pursuant to Rule 144, and otherwise by physical delivery to the address specified by the holder in the Notice of Exercise by the end of the day on the date that is three (3) trading days from the delivery to the Company of the Notice of Exercise and payment of the aggregate Exercise Price (unless exercised by means of a cashless exercise pursuant to Section 1(c)). The Warrant Shares shall be deemed to have been issued, and the holder or any other person so designated to be named therein shall be deemed to have become a holder of record of such shares for all purposes, as of the date the Warrant has been exercised, with payment to the Company of the Exercise Price (or by Net Exercise) and all taxes required to be paid by the holder, if any, prior to the issuance of such shares, having been paid.

(b) **Rescission Rights.** If the Company fails to cause the transfer agent to transmit to the Warrantholder the Warrant Shares pursuant to Section 5(a) by the Warrant Share Delivery Date, then the Warrantholder will have the right to rescind such exercise.

(c) **Warrantholder's Exercise Limitations.** A holder shall not have the right to exercise this Warrant, pursuant to Section 1 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the holder (together with the holder's affiliates, and any other persons acting as a group together with the holder or any of the holder's affiliates), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the holder and its affiliates shall include the number of shares of Common

Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the holder or any of its affiliates and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other convertible notes or convertible preferred stock or warrants) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the holder or any of its affiliates. Except as set forth in the preceding sentence, for purposes of this section, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the holder that the Company is not representing to the holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 5(c) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the holder together with any affiliates) and of which portion of this Warrant is exercisable shall be in the sole discretion of the holder, and the submission of a Notice of Exercise shall be deemed to be the holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the holder together with any affiliates) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination and shall have no liability for exercise of the Warrant that are not in compliance with the Beneficial Ownership Limitation. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 5(c), in determining the number of outstanding shares of Common Stock, a holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the U.S. Securities and Exchange Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Company's transfer agent setting forth the number of shares of Common Stock outstanding. Upon the written request of a holder, the Company shall within two (2) trading days confirm in writing to the holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the holder or its affiliates since the date as of which such number of outstanding shares of Common Stock was reported. The "**Beneficial Ownership Limitation**" shall be 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. Any such increase or decrease will not be effective until the 61st day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in strict conformity with the terms of this Section 5(c) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

6. CERTIFICATE OF ADJUSTMENT. Whenever the Exercise Price or number or type of securities issuable upon exercise of this Warrant is adjusted, as herein provided, the Company

shall, at its expense, promptly deliver to the Warrantholder a certificate of an officer of the Company setting forth the nature of such adjustment and showing in detail the facts upon which such adjustment is based.

## 7. COMPLIANCE WITH SECURITIES LAWS.

(a) The Warrantholder understands that this Warrant and the Warrant Shares are characterized as “restricted securities” under the federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations this Warrant and the Warrant Shares may be resold without registration under the Securities Act only in certain limited circumstances. In this connection, the Warrantholder represents that it is familiar with Rule 144 under the Securities Act, as presently in effect, and understands the resale limitations imposed thereby and by the Securities Act.

(b) Prior and as a condition to the sale or transfer of the Warrant Shares issuable upon exercise of this Warrant, the Warrantholder shall furnish to the Company such certificates, representations, agreements and other information, including an opinion of counsel, as the Company or the Company’s transfer agent reasonably may require to confirm that such sale or transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act, unless such Warrant Shares are being sold or transferred pursuant to an effective registration statement.

(c) The Warrantholder acknowledges that the Company may place a restrictive legend on the Warrant Shares issuable upon exercise of this Warrant in order to comply with applicable securities laws, in substantially the following form and substance, unless such Warrant Shares are otherwise freely tradable under Rule 144 of the Securities Act:

“THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY OTHER APPLICABLE SECURITIES LAWS AND HAVE BEEN ISSUED IN RELIANCE UPON AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH OTHER SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED, HYPOTHECATED OR OTHERWISE DISPOSED OF, EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO A TRANSACTION WHICH IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION, IN EACH CASE IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS, AND IN THE CASE OF A TRANSACTION EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION, UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO IT THAT SUCH TRANSACTION DOES NOT REQUIRE REGISTRATION

UNDER THE SECURITIES ACT AND SUCH OTHER APPLICABLE LAWS.”

8. **REPLACEMENT OF WARRANTS.** On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of any such loss, theft or destruction of this Warrant, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of any such mutilation, on surrender and cancellation of such Warrant, the Company at its expense will execute and deliver, in lieu thereof, a new Warrant of like tenor.

9. **NO IMPAIRMENT.** Except to the extent as may be waived by the holder of this Warrant, the Company will not, by amendment of its charter or through a Change of Control, dissolution, sale of assets or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Warrantholder against impairment.

10. **TRADING DAYS.** If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall be other than a day on which the Common Stock is traded on the Trading Market, then such action may be taken or such right may be exercised on the next succeeding day on which the Common Stock is so traded.

11. **TRANSFERS; EXCHANGES.**

(a) Subject to compliance with applicable federal and state securities laws and Section 7 hereof, this Warrant may be transferred by the Warrantholder to any Affiliate (as defined below) with respect to any or all of the Warrant Shares purchasable hereunder (a “**Permitted Transfer**”). For a transfer of this Warrant as an entirety by the Warrantholder, upon surrender of this Warrant to the Company, together with the Notice of Assignment in the form attached hereto as Exhibit B duly completed and executed on behalf of the Warrantholder, the Company shall issue a new Warrant of the same denomination to the assignee. For a transfer of this Warrant with respect to a portion of the Warrant Shares purchasable hereunder, upon surrender of this Warrant to the Company, together with the Notice of Assignment in the form attached hereto as Exhibit B duly completed and executed on behalf of the Warrantholder, the Company shall issue a new Warrant to the assignee, in such denomination as shall be requested by the Warrantholder, and shall issue to the Warrantholder a new Warrant covering the number of shares in respect of which this Warrant shall not have been transferred. The term “**Affiliate**” as used herein means, with respect to any person, any other person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such person, and any officers, employees or partners of the Warrantholder.

(b) Upon any Permitted Transfer, this Warrant is exchangeable, without expense, at the option of the Warrantholder, upon presentation and surrender hereof to the Company for other warrants of different denominations entitling the holder thereof to purchase in the aggregate the same number of shares of Common Stock purchasable hereunder. This Warrant may be divided or combined with other warrants that carry the same rights upon presentation hereof at the principal office of the Company together with a written notice specifying the denominations in which new

warrants are to be issued to the Warrantholder and signed by the Warrantholder hereof. The term “Warrants” as used herein includes any warrants into which this Warrant may be divided or exchanged.

12. **AUTHORIZED SHARES.** The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be quoted or listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

### 13. MISCELLANEOUS

(a) This Agreement shall be governed by and construed in accordance with the laws of the United States of America and the State of New York, both substantive and remedial, without regard to New York conflicts of law principles. Any judicial proceeding brought under this Agreement or any dispute arising out of this Agreement or any matter related hereto shall be brought in the courts of the State of New York, New York County, or in the United States District Court for the Southern District of New York.

(b) All notices, requests, consents and other communications hereunder shall be in writing, shall be sent by confirmed facsimile or electronic mail, or mailed by first-class registered or certified airmail, or nationally recognized overnight express courier, postage prepaid, and shall be deemed given when so sent in the case of facsimile or electronic mail transmission, or when so received in the case of mail or courier, and addressed as follows: (a) if to the Company, at 2790 Walsh Avenue, Santa Clara, CA 95051, Attention: Chief Executive Officer, Facsimile: (408) 579-8795, Email: mkleine@miramarlabs.com; with a copy to (which shall not constitute notice) Wilson Sonsini Goodrich & Rosati, P.C., 650 Page Mill Road Palo Alto, CA 94304, Attention: Philip Oettinger, Esq., Facsimile: (650) 493-6811, E-Mail: poettinger@wsgr.com; and (b) if to the Warrantholder, at such address or addresses (including copies to counsel) as may have been furnished by the Warrantholder to the Company in writing.

(c) The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provisions.

*[Signature Page Follows]*



IN WITNESS WHEREOF, this Common Stock Purchase Warrant is issued effective as of the date first set forth above.

**MIRAMAR LABS, INC.**

By

Name: R. Michael Kleine

Title: Chief Executive Officer

**EXHIBIT A**

NOTICE OF EXERCISE  
(To be signed only upon exercise of Warrant)

To: Miramar Labs, Inc.

The undersigned, the Warrantholder of the attached Warrant, hereby irrevocably elects to exercise the purchase right represented by such Warrant for, and to purchase thereunder, \_\_\_\_\_ (\_\_\_\_\_) shares of Common Stock of Miramar Labs, Inc. and (choose one)

\_\_\_\_\_ herewith makes payment of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) thereof

or

\_\_\_\_\_ elects to Net Exercise the Warrant pursuant to Section 1(b)(2) thereof.

The undersigned requests that the certificates or book entry position evidencing the shares to be acquired pursuant to such exercise be issued in the name of, and delivered to \_\_\_\_\_, whose address is

\_\_\_\_\_  
\_\_\_\_\_.

By its signature below the undersigned hereby represents and warrants that it is an “accredited investor” as defined in Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended, and agrees to be bound by the terms and conditions of the attached Warrant as of the date hereof, including Section 7 thereof.

DATED:

(Signature must conform in all respects to name of the Warrantholder as specified on the face of the Warrant)

\_\_\_\_\_  
[\_\_\_\_\_]

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT B**

NOTICE OF ASSIGNMENT FORM

FOR VALUE RECEIVED, [ \_\_\_\_\_ ] (the “Assignor”) hereby sells, assigns and transfers all of the rights of the undersigned Assignor under the attached Warrant with respect to the number of shares of common stock of Miramar Labs, Inc. (the “Company”) covered thereby set forth below, to the following “Assignee” and, in connection with such transfer, represents and warrants to the Company that the transfer is in compliance with Section 7 of the Warrant and applicable federal and state securities laws:

NAME OF ASSIGNEE

ADDRESS/FAX NUMBER

Number of shares: \_\_\_\_\_

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Witness: \_\_\_\_\_

ASSIGNEE ACKNOWLEDGMENT

The undersigned Assignee acknowledges that it has reviewed the attached Warrant and by its signature below it hereby represents and warrants that it is an “accredited investor” as defined in Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended, and agrees to be bound by the terms and conditions of the Warrant as of the date hereof, including Section 7 thereof.

Signature: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## ASSIGNMENT AND LICENSE AGREEMENT

THIS ASSIGNMENT AND LICENSE AGREEMENT (“**Agreement**”) is entered into and effective this 31<sup>st</sup> day of December, 2008 (“**Effective Date**”), by and between The Foundry, Inc., a Delaware corporation, having a place of business at 199 Jefferson Drive, Menlo Park, CA 94025 (“**The Foundry**”), and Miramar Labs, Inc. (previously known as Foundry Newco X, Inc.), a Delaware corporation, having a place of business at 199 Jefferson Drive, Menlo Park, CA 94025 (“**Miramar**”).

### RECITALS

The Foundry is the owner or co-owner of certain patent applications defined below as the Assigned Patents; and

The Foundry is the owner or co-owner of certain inventions, trade secrets and know-how, defined below as the Assigned Technology; and

The Foundry has certain obligations to Cabochon Aesthetics, Inc. a company having a place of business at 127 Independence Drive, Menlo Park, California (“**Cabochon**”); and

Miramar desires to obtain an assignment of the Assigned Patents and Assigned Technology, subject to a license back to The Foundry, the terms of which are set forth in the attached agreement; and

Miramar and The Foundry entered into a Technology Agreement dated April 18, 2006 (“**Technology Agreement**”) which was terminated by its terms on April 18<sup>th</sup>, 2008; and

Miramar and The Foundry entered into a Technology License and Royalty Agreement effective November 12, 2007 (“**License and Royalty Agreement**”); and

Miramar and The Foundry desire that, upon execution of this Agreement, the License and Royalty Agreement will be terminated along with all of the rights and obligations set forth therein; and

Miramar and The Foundry desire that that their rights and obligations with respect to the Assigned Patents (defined below) and Assigned Technology (defined below) shall be fully defined by the terms of this Agreement.

NOW, THEREFORE, in consideration of the assignments, licenses, premises, mutual promises and covenants contained herein, the parties agree as follows:

#### 1. DEFINITIONS

For purposes of this Agreement, the following terms shall have the meanings set forth below:

#### ATTORNEY CLIENT AND/OR WORK PRODUCT PRIVILEGED COMMUNICATION

These materials are protected by the attorney-client and/or the work product privilege and should be treated as confidential.

1.1 “**Affiliate**” shall mean corporations and other legal entities that own or are at least 50% owned and/or controlled by a party hereto, its successors and/or assignees.

1.2 “**Assigned Patents**” shall mean the patents and patent applications listed in Exhibit A of this Agreement and other presently existing or subsequently obtained continuations, divisionals and continuations-in-part thereof, all patents issuing on any of the preceding applications, any reissue certificates or certificates of correction for the foregoing patents, any patents issuing from reexamination or interference of the foregoing patents and patent applications, and any foreign counterparts claiming priority to the foregoing.

1.3 “**Assigned Technology**” shall mean all Inventions, trade secrets and Know-How owned by or developed by or for The Foundry on or before November 9th, 2009, wherein such Assigned Technology is:

- (a) described or claimed in the Assigned Patents; or
- (b) in Miramar’s Field.

1.4 “**Cabocho**” is defined in the Recitals.

1.5 “**Cellulite**” (also known as adiposis edematosa, dermopanniculosis deformans, status protrusus cutis, and gynoid lipodystrophy) shall mean dimpling of the skin.

1.6 “**Cellulite License**” shall mean the license granted in Section 2.3(b).

1.7 “**Cellulite Treatment**” shall mean any treatment which would require approval by the FDA or other appropriate regulatory body, if used for the reduction of the appearance of Cellulite.

1.8 “**Combination Element**” shall mean any product, component or service that has independent value but for which no payment would be due hereunder if sold separately from a Covered Product.

1.9 “**Combined Product**” shall mean a Covered Product sold in combination with a Combination Element.

1.10 “**Compensation Payment**” is defined in Section 3.1.

1.11 “**Confidential Information**” is defined in Section 9.3(a).

1.12 “**Contingent Net Sales**” shall mean gross receipts derived by Miramar its Affiliates, Covered Licensees, successor(s) and/or assigns from sales of products or services less:

- (a) any discounts, rebates or allowances to customers;

- (b) any refunds for returned goods;
- (c) any retroactive price reductions;
- (d) any excise, sales, use, value added and similar taxes and duties; and
- (e) any packaging costs, handling fees and prepaid freight.

Sales of products or services between or among Miramar, its Affiliates and Covered Licensees shall be excluded from the computation of Contingent Net Sales if such sales are not intended for end use, but Contingent Net Sales shall include the subsequent final sales to third party customers or end users by Miramar or any such Affiliates or Covered Licensees.

1.13 “**Contingent Payment(s)**” is defined in Section 3.4.

1.14 “**Covered Licensees**” shall mean any entity authorized by Miramar, its successors and/or assigns to make, have made, sell or offer to sell a Covered Product. For clarity, a Covered Licensee shall not include any entity that distributes Covered Products, but Contingent Net Sales shall include amounts received from such a distributing entity upon the sale of Covered Products to such distributing entity for resale.

1.15 “**Covered Product(s)**” shall mean, except as expressly set forth herein: (a) all Patented Products and (b) any product or service intended for application in Miramar’s Field. Except as expressly set forth in the next sentence, in no event shall Covered Product be interpreted or construed to include a product or service acquired from a third party unless such product or service is also a Patented Product. Notwithstanding the foregoing, products and services developed by third party developers, consultants or design contractors under contract to Miramar or any Miramar Affiliate shall be Covered Products.

1.16 “**Designee**” is defined in Section 3.8(b).

1.17 “**Early Payment**” is defined in Section 3.2.

1.18 “**Effective Date**” is defined in the Preamble.

1.19 “**Exclusive Cellulite License**” shall mean the license granted in Section 2.3(b)(ii).

1.20 “**Exclusive Grantback License**” shall mean the license granted in Section 2.3(a)(ii).

1.21 “**Exclusive Ultrasound License**” shall mean the license granted in Section 2.3(a)(iii).

1.22 “**Grantback License**” shall mean the license granted in Section 2.3(a).

1.23 “**Invention(s)**” shall mean, collectively and individually, any idea, design, concept, technique, apparatus, method, discovery or improvement, whether or not patentable, that is conceived or reduced to practice.

1.24 “**Know-How**” shall mean data, instructions, processes, formulas, expert opinions and information.

1.25 “**Licensed Applications**” shall mean US Provisional Application Serial Number 60/912,899, Methods and Apparatus for Sweat Reduction and US Provisional Application Serial Number 61/013,274, Methods, Devices and Systems for Non-Invasive Delivery of Microwave Therapy.

1.26 “**Licensed Claim(s)**” shall mean any claim of the Assigned Patents which is fully supported by the disclosure of the Licensed Applications.

1.27 “**Licensed Technology**” shall mean Assigned Technology which is fully described in the Licensed Applications.

1.28 “**License and Royalty Agreement**” is defined in the Recitals.

1.29 “**Microwave Energy**” shall mean electromagnetic energy having a fundamental frequency between 100MHz and 30GHz.

1.30 “**Miramar**” is defined in the Preamble.

1.31 “**Miramar’s Field**” shall mean Miramar’s Alternate Field and/or Miramar’s Microwave Field.

1.32 “**Miramar’s Alternate Field**” shall mean energy-based treatments, other than Ultrasonic Energy or Microwave Energy, for sweat reduction, acne, hair removal, skin tightening and spider veins.

1.33 “**Miramar’s Microwave Field**” shall mean the delivery of Microwave Energy to epidermal, dermal and subdermal tissue, including, without limitation, microwave based treatments for sweat reduction, acne, hair removal, skin tightening and spider veins.

1.34 “**Miramar Product**” is defined in Section 2.3(a).

1.35 “**Net Selling Price**” shall mean the selling price of an individual product or service after taking into account the deductions set forth in the definition of Contingent Net Sales and the calculation for Combined Products set forth in Section 3.6, if applicable.

1.36 “**New Owner**” is defined in Section 9.6(a).

1.37 “**Non-Exclusive Cellulite License**” shall mean the license granted in Section 2.3(b)(i).

1.38 “**Non-Exclusive Grantback License**” shall mean the license granted in Section 2.3(a)(i).

1.39 “**Original Notice**” is defined in Section 2.4(a).

1.40 “**Patented Product Payment**” is defined in Section 3.4(b).

1.41 “**Patented Products**” shall mean any product or service, the sale of which would, but for the licenses thereto or Miramar’s ownership thereof, infringe one or more Valid Claim(s) of the Assigned Patents in the United States, its territories and possessions and any other countries in which Valid Claims are granted under the Assigned Patents, including export sales originating in the United States.

1.42 “**Related Documentation**” shall mean notebooks (or relevant portions thereof), Confidential Information, and other similar documentation owned or controlled by The Foundry and relating to, or reasonably necessary for the practice of any service, process, product or method which is in Miramar’s Field and is covered by or described in the Assigned Patents or the Assigned Technology.

1.43 “**Retained Technology**” shall mean all patents, patent applications, Inventions, trade secrets, Know-How or documentation owned or controlled by The Foundry, but excluding the Assigned Patents and Assigned Technology, as of the Effective Date or developed by or for The Foundry on or before November 9<sup>th</sup>, 2009, wherein use of such patents, patent applications, Inventions, trade secrets, Know-How or documentation is reasonably necessary for the practice of any service, process, product or method which is in Miramar’s Field and is covered by or described in the Assigned Patents or Assigned Technology. Retained Technology shall further include any patents or patent applications assigned to The Foundry pursuant to Section 5.3.

1.44 “**Settlement Date**” shall mean the date Miramar fully satisfies the payment obligations set forth in Section 3.1 below.

1.45 “**Technology Agreement**” is defined in the Recitals.

1.46 “**The Foundry**” is defined in the Preamble.

1.47 “**Ultrasonic Energy**” shall mean acoustic energy having a frequency between 10 Kilohertz and 200 Megahertz .

1.48 “**Valid Claim**” shall mean any issued claim of a patent included within the Assigned Patent(s). Notwithstanding the foregoing, the term “Valid Claim” shall not include:

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- (a) any claim that has been declared or rendered invalid or has otherwise become unenforceable by reissue, or a decision or judgment of a court of competent jurisdiction;
- (b) any claim that has expired;
- (c) any claim that has been rejected by the appropriate patent office in a final action from which all available appeals have been taken; or
- (d) any claim that, with the written consent of The Foundry, which consent shall not be unreasonably withheld, has been disclaimed, lapsed, or abandoned.

## 2. GRANT OF RIGHTS

2.1 Assignment. The Foundry hereby agrees to assign and hereby does assign to Miramar, its entire right, title and interest in and to the Assigned Patents, Assigned Technology and Related Documentation. The Foundry agrees to execute a patent assignment substantially in the form of the document attached as Exhibit B. The Foundry further agrees to execute and to require its employees, contractors and agents to execute and deliver all documentation which may be reasonably necessary to effectuate the assignment(s) set forth herein. Without limiting the foregoing, The Foundry shall be entitled to retain copies of such Related Documentation.

2.2 Miramar License. The Foundry hereby grants to Miramar, and Miramar hereby accepts, a non-exclusive, worldwide, irrevocable, royalty-free license under the Retained Technology to make, have made, use, import, offer for sale and sell any and all products, and to practice any and all methods in Miramar's Field. Miramar shall have the right to sublicense any of the rights provided to it by the terms of this Section 2.2. Miramar shall, subject only to its obligations under Section 9.6(a), have the right to transfer or assign any of the rights granted under this Section 2.2.

2.3 Foundry Licenses. Miramar hereby grants to The Foundry, and The Foundry hereby accepts the following licenses.

(a) Grantback License. Miramar hereby grants to The Foundry, and The Foundry hereby accepts a worldwide, royalty-free license under the Licensed Claims and under the Licensed Technology to make, have made, use, import, offer for sale and sell any and all services, processes or products outside Miramar's Field. Miramar hereby grants to The Foundry, and The Foundry hereby accepts a worldwide, royalty-free license under the Licensed Claims and under the Licensed Technology to practice any and all methods included within Miramar's Field so long as such methods are practiced solely outside Miramar's Field. The Foundry shall, subject to the restrictions set forth herein, have the right to transfer or sublicense any of the rights provided to it by the terms of this Section 2.3(a) to any third party. In no event shall anything in this Section 2.3(a) be interpreted or construed to grant The Foundry a license to make, have made, use, import, offer for sale and sell any service, process, product or practice any method within Miramar's Field (each, a "Miramar Product") solely because such a service, process,

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product or method licensed under this Section 2.3(a) is included as a component of such Miramar Product.

(i) **Non-Exclusive Grantback License.** Except as expressly set forth in Section 2.3(a)(iii), The Foundry's license to make, have made, use, import and practice under this Section 2.3(a) shall be non-exclusive. Notwithstanding the foregoing, aside from conducting research, development and clinical trials for Miramar and its Affiliates, Miramar shall not have the right to grant to any third party, but excluding any Affiliate, any license under the Licensed Claims or under the Licensed Technology (a) to make, have made, use, or import any services, processes or products outside Miramar's Field, or (b) to practice outside Miramar's Field any methods included within Miramar's Field.

(ii) **Exclusive Grantback License.** The Foundry's license to offer for sale and sell under this Section 2.3(a) shall be exclusive. The Foundry's license under this Section 2.3(a) shall include the exclusive right to advertise and promote services, processes and products outside Miramar's Field.

(iii) **Exclusive Ultrasound License.** The Foundry's license to make, have made, use, import, offer for sale and sell services, processes, and products using Ultrasonic Energy for the treatment of biological tissue and to practice methods using Ultrasonic Energy for the treatment of biological tissue under Section 2.3(a) shall be exclusive, transferable, and irrevocable. In no event shall this Section 2.3(a)(iii) be interpreted or construed to preclude Miramar from incorporating any ultrasonic visualization technology into its services, processes, products or methods.

(b) **Cellulite License.** Miramar hereby grants to The Foundry, and The Foundry hereby accepts, a worldwide, royalty-free license in Miramar's Microwave Field under the Licensed Claims and under the Licensed Technology (i) to make, have made, use, import, offer for sale and sell services, processes or products for Cellulite Treatment, and (ii) to practice methods for Cellulite Treatment. The Foundry shall, subject to the restrictions set forth herein, have the right to sublicense any of the rights provided under this Section 2.3(b) to Cabochon or to any entity acquiring substantially all of the assets of Cabochon to which this license pertains, whether by merger, reorganization, acquisition, operation of law or otherwise.

(i) **Non-Exclusive Cellulite License.** The Foundry's license to make, have made, use, import and practice under this Section 2.3(b) shall be non-exclusive. Notwithstanding the foregoing, aside from conducting research, development and clinical trials for Miramar and its Affiliates, Miramar shall not have the right to grant to any third party, but excluding any Affiliate, any license in Miramar's Microwave Field under the Licensed Claims or under the Licensed Technology (a) to make, have made, use, or import any services, processes or products for Cellulite Treatment, or (b) to practice any methods for Cellulite Treatment.

(ii) **Exclusive Cellulite License.** The Foundry's license to offer for sale and sell under this Section 2.3(b) shall be exclusive. The Foundry's license under this Section 2.3

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(b)(ii) shall include the exclusive right to advertise and promote services, processes and products which are covered by the Licensed Claims or described in the Licensed Technology for Cellulite Treatment. In no event shall the license granted in this Section 2.3(b)(ii) be interpreted or construed to preclude Miramar from offering for sale, selling, advertising or promoting any services, processes or products or practicing any methods for any indication other than Cellulite Treatment.

2.4 **Right of First Negotiation and Reversion.** With respect to the licenses set forth in Section 2.3 above Miramar and The Foundry hereby agree as follows:

(a) **Right of First Negotiation.** Except with respect to the Exclusive Ultrasound License set forth in Section 2.3(a)(iii), in the event that The Foundry wishes to transfer or sublicense all or a portion of its rights under the Grantback License set forth in Section 2.3(a) to any third party, including, without limitation, any Affiliate of The Foundry, The Foundry shall provide Miramar with written notice (“Original Notice”) of its intention to transfer or sublicense such rights and the proposed scope of such sublicense or transfer. Miramar shall, thereafter, have forty-five (45) days to notify The Foundry of its desire to negotiate for the return of such rights. Miramar and The Foundry shall, thereafter have forty-five (45) days to negotiate in good faith mutually agreeable terms for such rights. In the event that Miramar and The Foundry are unable to negotiate mutually agreeable terms within ninety (90) days of the date Miramar receives such Original Notice, The Foundry shall have the right, subject to its obligations under this Agreement, to transfer or sublicense the rights identified in the Original Notice to any such third party.

(b) **Reversion.** The Foundry shall, subject to the restrictions set forth herein, have the right to sublicense any of the rights set forth in Section 2.3(b) to Cabochon or any entity acquiring substantially all of the assets of Cabochon to which this license pertains, whether by merger, reorganization, acquisition, operation of law or otherwise. The Foundry shall have no right to sublicense any of the rights set forth in Section 2.3(b) to any company other than Cabochon or any entity acquiring substantially all of the assets of Cabochon. The Foundry shall have no right to transfer the rights set forth in Section 2.3(b). In the event that Cabochon has not used Microwave Energy for Cellulite Treatment in patients in a clinical trial setting wherein such clinical trial is approved by an appropriate ethics committee or investigational review board (IRB) on or before May 1, 2010, the Cellulite License granted under Section 2.3(b) shall be terminated and all rights granted to The Foundry under Section 2.3(b) shall revert to Miramar. Notwithstanding the achievement of the milestone set forth in the preceding sentence, in the event that Cabochon has not obtained either CE approval or FDA clearance for Cellulite Treatment using Microwave Energy in patients on or before three (3) years from the Effective Date, the Cellulite License granted under Section 2.3(b) shall be terminated and all rights granted to The Foundry under Section 2.3(b) shall revert to Miramar.

2.5 **Option.** Miramar shall, at any time during the term of this Agreement, have the right to terminate the Grantback License upon payment of a one time fee, such fee to be determined by mutual agreement of The Foundry and Miramar at the time of Miramar’s exercise of such right. Such termination shall not result in the revocation of the Exclusive Ultrasound

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License, the Cellulite License or any rights previously sublicensed or transferred by The Foundry pursuant to the procedure set forth in Section 2.4. In the event that Miramar exercises its option under this Section 2.5, Miramar's Field shall be expanded to include all fields not previously sublicensed or transferred by The Foundry pursuant to the procedure set forth in Section 2.4. For avoidance of doubt, upon Miramar's exercise of the option in this Section 2.5, any Covered Products within such expanded field shall be subject to Contingent Payments in accordance with Section 3.4. In no event shall anything in this Section 2.5 be interpreted or construed to expand Miramar's Field to include the use of Ultrasonic Energy for the treatment of biological tissue. Notwithstanding the foregoing, Miramar may not exercise its option under this Section 2.5 during any time in which The Foundry is in negotiations with a potential sublicensee, transferee, or assignee of any of The Foundry's rights under this Agreement, without the Foundry's written consent.

2.6 **Access to Related Documentation.** In the event and to the extent necessary to exercise its rights or meet its obligations under this Agreement, The Foundry shall have the right, during normal business hours and at Miramar's facilities, to inspect and copy Related Documentation and Miramar shall make such Related Documentation available to The Foundry, provided that The Foundry gives Miramar at least two (2) business days notice of its desire to review the Related Documentation and the purpose of that review. Nothing herein shall be interpreted or construed to require Miramar to retain any particular documents or documentation or to obtain The Foundry's consent to discard or destroy any Related Documentation.

### 3. **PAYMENT**

3.1 **Compensation Payment.** Miramar shall pay The Foundry up to Thirty Million US Dollars (\$30,000,000.00) in consideration for the assignment and other rights granted and obligations undertaken by The Foundry pursuant to the terms of this Agreement ("**Compensation Payment**"). Except as expressly set forth in Section 3.2, the Compensation Payment shall be made as a series of Contingent Payments in accordance with the provisions of Section 3.4.

3.2 **Early Payment.** Provided that Miramar fully complies with its obligations under Section 3.4, Miramar may, at any time and in its sole discretion, make a payment or series of payments ("**Early Payment**") in full or partial satisfaction of its obligation to make the Compensation Payment set forth in Section 3.1 above.

3.3 **Satisfaction.** In the event that Early Payment(s) under Section 3.2 and Contingent Payments under Section 3.4 total Thirty Million US Dollars (\$30,000,000.00), Miramar's obligation to make the Compensation Payment set forth in Section 3.1 shall be fully satisfied. Except where Miramar chooses to exercise its rights under Section 2.5 or where interest is payable pursuant to Section 3.11, in no event shall Miramar's total financial obligation under this Agreement exceed Thirty Million US Dollars (\$30,000,000.00). For avoidance of doubt, any amounts paid pursuant to Section 2.5 or interest paid pursuant to Section 3.11 shall not apply towards satisfaction of the Compensation Payment otherwise due The Foundry.

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3.4 **Contingent Payments.** In satisfaction of its obligation under Section 3.1 hereinabove, Miramar agrees to pay The Foundry quarterly non-refundable Contingent Payments (“**Contingent Payments**”) equal to:

(a) one and one-half percent (1.5%) of Miramar’s Contingent Net Sales of Covered Products; and

(b) one and one-half percent (1.5%) of Miramar’s Contingent Net Sales of Patented Products (“**Patented Product Payment**”).

3.5 **Patented Product Payment Reduction.** Miramar’s obligation to pay any Patented Product Payment on a Patented Product under Section 3.4(b) shall be reduced by any reasonable and necessary royalties, patent licensing fees or other amounts Miramar, its Covered Licensees, Affiliates, successor(s) or assigns are obligated to pay any third party licensor on such Patented Product. For avoidance of doubt, any Patent Product Payment reductions permitted under this Section 3.5 shall not reduce the amount of Early Payments and/or Contingent Payments required for satisfaction of the Thirty Million US Dollars (\$30,000,000.00) pursuant to Section 3.3 above.

3.6 **Combined Product.** Notwithstanding anything to the contrary herein, in the event that a Covered Product or Patented Product is sold as part of a Combined Product, Contingent Net Sales for the purposes of Sections 3.4(a) and 3.4(b) shall be calculated by multiplying the Contingent Net Sales of the Combined Product by the fraction  $A/(A+B)$ , where A is the average gross selling price during the previous calendar quarter of the Covered Product and B is the average gross selling price during the previous calendar quarter of the Combination Element. In the event that a substantial number of separate sales of the Covered Product or the Combination Element were not made during the previous calendar quarter, then the Contingent Net Sales shall be reasonably allocated by Miramar Labs between such Covered Product and such Combination Element based upon their relative importance and proprietary protection.

3.7 **Multiple Payment.** In no event shall any Covered Product be subject to the payment of more than one Contingent Payment under Section 3.4(a). In no event shall any Patented Product be subject to the payment of more than one Contingent Payment under Section 3.4(b). In no event shall the total Contingent Payments payable on any product sold pursuant to the terms of this agreement exceed three percent (3.0%) of the Net Selling Price of such product. For avoidance of doubt, if a product is both a Covered Product and a Patented Product, Miramar shall, subject to any setoff allowed under Section 3.5, pay both Contingent Payments under Sections 3.4(a) and 3.4(b) for a total payment of three percent (3.0%).

3.8 **Remittance of Contingent Payments and Early Payments.**

(a) **Payment Dates.** Miramar shall, prior to the Settlement Date, pay to The Foundry all Contingent Payments due under Section 3.4 within sixty (60) days after the end of each calendar quarter of each year in which Covered Products or Patented Products are sold. For

the purposes of this Section 3.8, the end of each calendar quarter shall take place on the following dates, respectively: March 31, June 30, September 30, and December 31.

(b) **Payment Designees.** The Foundry may, at any time, request in writing that Miramar remit Contingent Payments and Early Payments directly to third parties designated by The Foundry (each, a “Designee”), and Miramar shall, subject to all applicable laws, regulations (including applicable tax withholding) and court or administrative orders, distribute such Contingent Payments and/or Early Payments to such Designees. For avoidance of doubt, The Foundry shall have the right to add, delete or change Designees at any time upon written notice to Miramar.

3.9 **Contingent Payment Accounting.** Each Contingent Payment made hereunder will be accompanied by a statement, signed by an executive officer of Miramar, specifying the Contingent Net Sales on which Contingent Payments are based. Such a statement will be provided within sixty (60) days after the end of each calendar quarter (as defined above) of each year after the first commercial sale of a Covered Product, whether or not any Contingent Payments are due for that quarter. Miramar will keep books and records in sufficient detail to enable the Contingent Payments due hereunder to be adequately determined, and Miramar will permit such books and records to be examined on behalf of The Foundry, at The Foundry’s expense, from time to time, but in no event more than once annually, during normal business hours and upon reasonable notice, to the extent necessary to verify the computations of all Contingent Payments or other payments made or payable hereunder.

3.10 **Payment Form.** Except as expressly set forth herein or as required under applicable law, all amounts payable hereunder by Miramar or any successor or assignee, shall be payable in United States Dollars without deductions for taxes, assessments, fees, or charges of any kind attributable to The Foundry; provided that if any payment on account of Contingent Net Sales is received in a foreign currency, such amount shall be converted to United States Dollars at the buying rate for the transfer of such other currency as quoted by The Wall Street Journal (Internet edition available at [www.wsj.com](http://www.wsj.com)) on the last day of the applicable accounting period, or the next business day thereafter if such last day shall be other than a business day, and the Contingent Payment shall be computed on the net amount of United States funds received by Miramar after payment of the costs of conversion.

3.11 **Interest on Late Payment.** In the event that any payment due hereunder is not made when due, the payment shall accrue interest beginning on the first day following the calendar quarter to which such payment relates, calculated at the annual rate of the sum of (a) one percent (1%) plus (b) the prime interest rate quoted by The Wall Street Journal (Internet edition available at [www.wsj.com](http://www.wsj.com)) on the date said payment is due, or on the date the payment is made, whichever is higher, the interest being compounded on the last day of each calendar quarter, provided that in no event shall said annual rate exceed the maximum legal interest rate for corporations. Such delinquent Contingent Payment when made shall be accompanied by all interest so accrued.

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3.12 **Taxes.** Any withholding or other tax that is required by law to be withheld on behalf of The Foundry with respect to payments owed by Miramar pursuant to this Agreement shall be deducted by Miramar from such payment prior to remittance. Miramar shall promptly furnish The Foundry evidence of any such taxes withheld.

#### 4. **TERM**

4.1 **Expiration.** This Agreement shall remain in effect until the Settlement Date or the expiration date of the last to expire of the Assigned Patents, whichever is later.

4.2 **Survival.** The following provisions of this Agreement necessary to carry out the intent of the parties shall survive expiration of this Agreement: Article 1 (Definitions); Section 2.2 (Miramar License); Section 2.3 (a)(iii) (Exclusive Ultrasound License); Section 2.6 (Access to Related Documentation); Article 3 (Payment), but only until the Settlement Date; Section 5.1 (Patent Prosecution; Costs), but only until the Settlement Date; Section 5.2 (Cooperation), but only until the Settlement Date; Section 5.3 (Payment of Maintenance Fees), but only until expiration of all Assigned Patents; Article 6 (Enforcement), but only until expiration of all Assigned Patents; Section 7.3 (Warranty Disclaimer); Article 8 (Indemnification); and Article 9 (General Provisions). Except where Miramar has exercised its option under Section 2.5, Section 2.3(a) (Grantback License) shall survive expiration of this Agreement and shall, subsequent to such expiration, include the right to sublicense or transfer rights under the Grantback License without obligation to Miramar. Except where the Cellulite License has reverted to Miramar under Section 2.4(b) (Reversion), Section 2.3(b) (Cellulite License) shall survive expiration of this Agreement.

#### 5. **PROSECUTION AND MAINTENANCE**

5.1 **Patent Prosecution; Costs.** Miramar shall, at its own expense, direct the strategy and direct and perform the prosecution and maintenance of the Assigned Patents. For purposes of this Article 5, “prosecution and maintenance” of patents and patent applications shall be deemed to include, without limitation, the preparation, filing for and conduct of interferences or oppositions, and/or requests for re-examinations, reissues or extensions of patent terms with respect thereto.

5.2 **Cooperation.** Miramar will provide The Foundry with copies of all documents relating to prosecution and maintenance of the Assigned Patents and shall allow The Foundry to provide input and comment on any patent office action, such input and comment shall, where appropriate, be included in the prosecution and maintenance of the Assigned Patents. Any costs associated with such cooperation may be billed to The Foundry. Further, The Foundry shall cooperate with Miramar in the prosecution and enforcement of the Assigned Patents, including prompt execution of all legal papers that may be submitted to The Foundry with respect to any patent prosecution and maintenance, including but not limited to powers of attorney, declarations and assignments, and any other documents necessary to prosecute and maintain the Assigned Patents.

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5.3 **Payment of Maintenance Fees.** If Miramar elects not to pay any maintenance fee on any of the Assigned Patents, Miramar shall notify The Foundry in writing of its decision not to pay such maintenance fee not less than thirty (30) days before such maintenance fee is due. Upon receiving such notice, The Foundry shall have the option of (a) consenting in writing to the decision of Miramar not to pay the maintenance fee; or (b) paying the fee at its discretion, upon which payment Miramar shall assign such patent application or patent to The Foundry and, except as expressly set forth herein, all rights and obligations of Miramar with respect thereto shall terminate and revert to The Foundry. Absent an express written agreement between the parties, in no event shall the assignment of any patent or patent application to The Foundry under this Section 5.3 relieve Miramar of its obligations under Section 3.4(b) with respect to any Valid Claims of such patent or patent application.

## 6. **ENFORCEMENT**

6.1 **Notice.** If either party determines that a third party is making, using or selling a product that may infringe any claims of the Assigned Patents, that party shall notify the other party in writing.

### 6.2 **Enforcement.**

(a) The Foundry shall have the first right (itself or through others), at its sole option, to bring suit under the Assigned Patents for infringement of the Licensed Claims against infringers outside Miramar's Field and/or to defend any declaratory judgment action solely related to the Licensed Claims with respect to infringers outside Miramar's Field; provided, however, that The Foundry shall keep Miramar reasonably informed as to the defense and/or settlement of such action. Miramar shall have the right to participate in any such action with counsel of its own choice at its own expense. All recoveries received by The Foundry for enforcement of the Assigned Patents authorized by this Section 6.2(a):

(i) shall be first applied to reimburse The Foundry's un-reimbursed expenses, including without limitation, any patent expenses incurred by The Foundry under Section 5.2, reasonable attorney's fees and court costs;

(ii) shall be next applied to reimburse Miramar's un-reimbursed expenses, including without limitation, reasonable attorney's fees, court costs and any patent expenses incurred by Miramar under Section 5.1;

(iii) shall, to the extent the same pertains to an infringement of the Assigned Patents, be next shared between The Foundry and Miramar, with seventy-five percent to The Foundry and twenty-five percent to Miramar; and

(iv) any remainder shall be retained by The Foundry.

(b) Miramar shall have the first right (itself or through others), at its sole option, to bring suit under the Assigned Patents, including, without limitation the Licensed

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Claims, against infringers in Miramar's Field and/or to defend any declaratory judgment action with respect thereto; provided, however, that Miramar shall keep The Foundry reasonably informed as to the defense and/or settlement of such action. The Foundry shall, prior to the Settlement Date, have the right to participate in any such action with counsel of its own choice at its own expense. All recoveries received by Miramar from an action to enforce the Patent Rights or declaratory judgment action:

(i) shall be first applied to reimburse Miramar's un-reimbursed expenses, including without limitation, reasonable attorney's fees, court costs and any patent expenses incurred by Miramar under Section 5.1;

(ii) shall be next applied to reimburse The Foundry's un-reimbursed expenses, including without limitation, any patent expenses incurred by The Foundry under Section 5.2, reasonable attorney's fees and court costs;

(iii) shall, prior to the Settlement Date and to the extent the same pertains to an infringement of the Assigned Patents in Miramar's Field, next be treated as Contingent Net Sales; and

(iv) any remainder shall be retained by Miramar.

(c) In the event that, prior to the Settlement Date, Miramar elects not to initiate an action to enforce the Assigned Patents against a commercially significant infringement by a third party in Miramar's Field or to license such third party under the Assigned Patents, within six (6) months of a request by The Foundry to initiate an action, (or within such shorter period which may be required to preserve the legal rights of The Foundry under the laws of the relevant jurisdiction), The Foundry may initiate such action at its expense with Miramar's prior written consent, which consent shall not be unreasonably withheld. Miramar shall have the right to participate in any such action with counsel of its own choice at its own expense. All recoveries received by The Foundry from an action to enforce the Assigned Patents against infringers in Miramar's Field:

(i) shall be first applied to reimburse The Foundry's un-reimbursed expenses, including without limitation, any patent expenses incurred by The Foundry under Section 5.2, reasonable attorney's fees, court costs ;

(ii) shall be next applied to reimburse Miramar's un-reimbursed expenses, including without limitation, reasonable attorney's fees, court costs any patent expenses incurred by Miramar under Section 5.1;

(iii) any remainder shall, to the extent the same pertains to an infringement of the Assigned Patents in Miramar's Field, be divided seventy-five percent (75%) to The Foundry and twenty-five percent (25%) to Miramar.

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(d) Except as expressly set forth in Sections 6.2(a)-(c), Miramar shall have the sole right (itself or through others), at its sole option, to bring suit under the Assigned Patents, including, without limitation, the Licensed Claims. All recoveries received by Miramar from an action under this Section 6.2(d) shall be retained by Miramar

6.3 **Cooperation.** In any suit, action or other proceeding in connection with enforcement and/or defense of the Assigned Patents, the parties shall cooperate fully with each other, including without limitation by joining as a party plaintiff and executing such documents as the other party may reasonably request. Upon the request of and, at the expense of a party, each party shall make available at reasonable times and under appropriate conditions all relevant personnel, records, papers, information, samples, specimens and other similar materials in each of its possession.

6.4 **No Implied Obligations.** Except as expressly provided in this Article 6, neither party has any obligation to bring or prosecute actions or suits against any third party for patent infringement

## **7. REPRESENTATIONS AND WARRANTIES**

7.1 **Foundry Representations and Warranties.** The Foundry hereby represents and warrants that:

(e) excluding Miramar's rights and interests and The Foundry's obligations to Cabochon which are within the scope of the Grantback License, The Foundry is the exclusive owner of the entire right, title and interest in the Assigned Patents and Assigned Technology, and has sufficient right, title and interest to grant all assignments, rights and licenses granted by The Foundry in this Agreement;

(f) except with respect to The Foundry's obligations to Cabochon which are within the scope of the Grantback License, no other assignments, licenses, security interests or other encumbrances have previously been granted with respect to the Assigned Patents or Assigned Technology, nor are there any presently outstanding obligations, licenses, agreements or claims of any kind related to the Assigned Patents or Assigned Technology;

(g) The Foundry does not own or control any other patent or intellectual property rights which would prevent or conflict with the practice of the Assigned Patents or Assigned Technology in Miramar's Field;

(h) The Foundry has no actual knowledge of any grounds for invalidity of or unenforceability of the Assigned Patents; and

(i) the execution delivery, or performance of this Agreement will not constitute a violation of, be in conflict with, or result in a breach of, any agreement or contract to which The Foundry is a party or to which The Foundry is bound.

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7.2 **Miramar Representations and Warranties.** Miramar hereby represents and warrants that:

- (a) Miramar has full power and authority to execute, deliver and perform this Agreement;
- (b) the execution, delivery and performance of this Agreement does not contravene any law, regulation, rule or order binding Miramar and does not contravene the provisions of or constitute a default under any contract or other agreement binding Miramar;
- (c) Miramar is a duly organized corporation under the laws of Delaware and the undersigned officer has authority to commit Miramar to its obligations hereunder; and
- (d) Miramar has not granted any rights to any third party in conflict or otherwise inconsistent with the licenses granted to The Foundry hereunder.

7.3 **Warranty Disclaimer.** EXCEPT AS PROVIDED IN THIS ARTICLE 7, NEITHER PARTY MAKES ANY OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, PATENTABILITY, NON-INFRINGEMENT OR ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE ASSIGNED PATENTS, ASSIGNED TECHNOLOGY, LICENSED CLAIMS OR LICENSED TECHNOLOGY, AND EACH PARTY HEREBY DISCLAIMS THE SAME.

## **8. INDEMNIFICATION**

8.1 **Indemnification by The Foundry.** The Foundry shall indemnify, defend and hold harmless Miramar and its shareholders, trustees, officers, and professional staff, employees and their respective successors, heirs and assigns (collectively, the “**Miramar Indemnitees**”), against any liability, damage, loss, or expense incurred by or imposed upon the Miramar Indemnitees or any one of them in connection with any third party claims, suits, actions, demands or judgments arising out of:

- (e) any material breach of The Foundry’s obligations under this Agreement;
- (f) any breach of the representations made by The Foundry in this Agreement;
- (g) the operation of The Foundry’s business;
- (h) Miramar’s payment of Contingent Payments or Early Payments to Designees in accordance with The Foundry’s instructions under Section 3.8(b); or
- (i) any exercise of The Foundry’s rights under this Agreement, including, without limitation:

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(i) any exercise by The Foundry, its sub-licensees or transferees, of its rights under the Grantback License;

(ii) the manufacture or sale of products or services licensed hereunder, including, without limitation, any claim of infringement or misappropriation of any third party intellectual property rights resulting therefrom; or

(iii) the assertion by The Foundry of its rights under the Assigned Patents.

8.2 **Indemnification by Miramar.** Miramar shall indemnify, defend and hold harmless The Foundry and its shareholders, trustees, officers, and professional staff, employees and their respective successors, heirs and assigns (collectively, the “**Foundry Indemnitees**”), against liability, damage, loss, or expense incurred by or imposed upon The Foundry Indemnitees or any one of them in connection with any third party claims, suits, actions, demands or judgments arising out of:

(a) any material breach of Miramar’s obligations under this Agreement;

(b) any breach of the representations made by Miramar in this Agreement;

(c) the operation of Miramar’s business; or

(d) any exercise of Miramar’s rights under this Agreement, including, without limitation:

(i) the manufacture or sale of products or services licensed hereunder, including, without limitation, any claim of infringement or misappropriation of any third party intellectual property rights resulting therefrom;

(ii) the assertion by Miramar of its rights under the Assigned Patents;  
or

(iii) any exercise by Miramar, its sub-licensees or transferees, of its rights under the Retained Technology license in Section 2.2.

8.3 **Indemnification Procedures.** If any party entitled to indemnification under this Article 8 (“**Indemnified Party**”) makes an indemnification request to the other, the Indemnified Party shall permit the other party (“**Indemnifying Party**”) to control the defense, disposition or settlement of the matter at its own expense; provided that the Indemnifying Party shall not, without the consent of the Indemnified Party, enter into any settlement or agree to any disposition that imposes any conditions or obligations on the Indemnified Party other than the payment of monies that are readily measurable for purposes of determining the monetary indemnification or reimbursement obligations of the Indemnifying Party. The Indemnified Party shall notify the Indemnifying Party promptly of any claim for which the Indemnifying Party is responsible and shall reasonably cooperate with the Indemnifying Party to facilitate defense of

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any such claim. An Indemnified Party shall at all times have the option to participate in any matter or litigation, including but not limited to participation through counsel of its own selection, if desired, the hiring of such separate counsel being at Indemnified Party's own expense.

## 9. GENERAL PROVISIONS

9.1 **Interpretation; Enforcement of Provisions; Headings.** If any provision of this Agreement shall be found by a court of competent jurisdiction to be void, invalid or unenforceable, the same shall either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement. Headings included herein are for convenience only, and shall not be used to construe this Agreement.

9.2 **Applicable Law.** This Agreement is made and entered into pursuant to the laws of the United States of America and the laws of the State of Delaware.

### 9.3 **Confidential Information.**

(a) During the term of this Agreement and for five (5) years thereafter, except as provided herein, each party shall maintain in confidence, and shall not use for any purpose or disclose to any third party, information disclosed by the other party in writing and marked "Confidential" or that is disclosed orally and confirmed in writing as confidential within forty-five (45) days following such disclosure (collectively, "**Confidential Information**"). Confidential Information shall include all confidential and proprietary information disclosed by the parties under the terms of the Technology Agreement and the License and Royalty Agreement. Confidential Information shall not include any information that:

(i) is already known to the receiving party at the time of disclosure by the disclosing party under this Agreement, but excluding confidential and proprietary information disclosed by the disclosing party under the Technology Agreement and/or the License and Royalty Agreement;

(ii) was already known to the receiving party prior to the time of its initial disclosure by the disclosing party under the Technology Agreement or the License and Royalty Agreement, whichever initial disclosure occurred earlier;

(iii) is now or hereafter becomes publicly known other than through acts or omissions of the receiving party; or

(iv) is disclosed to the receiving party by a third party under no obligation of confidentiality to the disclosing party; or

(v) is independently developed by the receiving party without reliance on the Confidential Information of the disclosing party.

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(b) Notwithstanding the provisions of Section 9.3(a) above, the receiving party may use or disclose Confidential Information of the disclosing party to the extent necessary to exercise its rights hereunder (including commercialization and/or sublicensing) or fulfill its obligations and/or duties hereunder and in filing for, prosecuting or maintaining any proprietary rights, prosecuting or defending litigation, complying with applicable governmental regulations and/or submitting information to tax or other governmental authorities; provided that if the receiving party is required by law to make any public disclosures of Confidential Information of the disclosing party, to the extent it may legally do so, it will give reasonable advance notice to the disclosing party of such disclosure and will use its reasonable efforts to secure confidential treatment of Confidential Information prior to its disclosure (whether through protective orders or otherwise).

9.4 **Waiver.** The waiver by either of the parties hereto of any breach of any provision hereof by the other party will not be construed to be a waiver of any subsequent breach of such provision or a waiver of the provision itself.

9.5 **Notices.** All notices, demands, statements, Contingent Payments or Early Payments or other communications made hereunder will be in writing and will be deemed to have been given: (a) when delivered personally, by telex or telecopier, with accompanying confirmation or (b) when received if sent by overnight express or mailed, by registered mail or certified mail, with a return receipt requested and addressed to the party from whom signatures are required. The addresses of the parties hereto are listed below and are subject to change from time to time upon written notice thereof to the other party:

To Miramar:	Miramar Labs, Inc. Attn: CEO 199 Jefferson Drive Menlo Park, CA 94025 Fax: (650) 326-3108
To The Foundry:	The Foundry, Inc. Attn: CEO 199 Jefferson Drive Menlo Park, CA 94025 Fax: (650) 326-3108

9.6 **Successors and Assigns.** This Agreement and all of the rights and obligation hereunder will inure to the benefit of and will be binding upon the parties and their respective successors and assigns. Any attempted assignment by either party in violation of this Section 9.6 will be void.

(a) **Miramar's Rights.** Miramar may freely assign, or otherwise transfer its rights and obligations hereunder to any third party, provided that: (a) any such assignment or transfer shall obligate the third party to all terms and conditions of this Agreement, and (b) all rights and obligations under this Agreement shall inure to the benefit of and will be binding upon the third party and their respective successors and assigns. Notwithstanding anything to the

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contrary herein, Miramar shall have the right to sell, transfer or assign the Assigned Patents Assigned Technology and Related Documentation, or any portion thereof, to new owners (“**New Owner(s)**”), provided that all of Miramar’s obligations to The Foundry in connection with such Assigned Patents, Assigned Technology and Related Documentation are delegated to and assumed by the respective New Owner(s) and such New Owner(s) agree in writing to be bound by the terms and conditions of this Agreement. Miramar agrees to promptly notify The Foundry of its sale, assignment or transfer of ownership of any Assigned Patent(s), Assigned Technology or Related Documentation, and shall provide to The Foundry a redacted copy of such sale, assignment or transfer agreement.

(b) **The Foundry’s Rights.** Except as expressly set forth herein, The Foundry may not assign its rights and obligations hereunder without the prior written consent of Miramar, except that the Foundry may assign its rights and obligations without such consent to a person or entity that acquires all or substantially all of the business or assets of the Foundry (or that portion thereof to which this Agreement pertains), in each case whether by merger, acquisition, reorganization, operation of law or otherwise, provided that such assignee agrees in writing to be bound by the terms and conditions of this Agreement.

9.7 **Entire Agreement.** This Agreement and the Technology Agreement constitute the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and shall supersede and cancel any contrary or inconsistent matter contained in any prior understanding or agreement with respect thereto. This Agreement may not be altered, amended or modified in any manner, except by mutual written agreement of the parties.

9.8 **License and Royalty Agreement.** The License and Royalty Agreement between the parties, and all rights and obligations thereunder, is hereby terminated as of the Effective Date.

9.9 **Multiple Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute an original document, but all of which shall constitute the same agreement.

9.10 **Arbitration.**

(a) **Notice of Breach.** In the event either party fails to comply with any material term or condition of this Agreement, the non-defaulting party may initiate arbitration under this Section 9.10, provided that the non-defaulting party has given the defaulting party sixty (60) days written notice of such failure and the defaulting party has not remedied such failure within the sixty (60) day notice period. In the event that either party chooses to exercise its option to invoke the provisions of Section 9.10, the sixty (60) day notice period shall be extended for the duration of any arbitration proceedings between the parties.

(b) **Procedure.** Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach or termination thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect on the

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date of this Agreement, and the Patent Arbitration Rules of the American Arbitration Association, as applicable. Any arbitrator selected shall be experienced in the medical device industry and practice of intellectual property and licensing, shall be appointed in accordance with such rules, and shall be acceptable to both parties. The arbitration award shall be final and binding on the parties hereto and shall be in writing and include the findings of fact and conclusions of law upon which it is based. Judgment upon the award rendered may be entered in any court having jurisdiction. The place of arbitration shall be San Francisco, California.

9.11 **Limitation of Liability.** EXCEPT FOR CONSEQUENTIAL DAMAGE CLAIMS ARISING OUT OF SECTION 9.3, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL OR RELIANCE DAMAGES ARISING OUT OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION: LOSS OF PROFITS, REVENUE, OR BUSINESS, LOSS OF DATA, INTERRUPTION OF BUSINESS OR LOSS OF USE, OR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, IRRESPECTIVE OF WHETHER SUCH PARTY HAS ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. THE PARTIES ACKNOWLEDGE THAT THESE LIMITATIONS ON POTENTIAL LIABILITIES WERE AN ESSENTIAL ELEMENT IN SETTING CONSIDERATION UNDER THIS AGREEMENT.

9.12 **Independent Contractors.** The parties hereby agree that the relationship between the parties is that of independent contractors. No agency, joint venture or partnership is created by this Agreement, and neither party shall have the right to incur obligations in the name of the other party.

9.13 **Further Assurances.** Each party shall perform such further acts and sign and deliver such further documents that are reasonably necessary to effectuate the provisions of this Agreement.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed, effective as of the Effective Date.

**THE FOUNDRY, INC.**

**MIRAMAR LABS, INC.**

By: /s/ Hanson Gifford

By: /s/ Darrell Zoromski

Printed: Hanson Gifford

Printed: Darrel Zoromski

Title: President & CEO

Title: CEO

Date: 4/2/09

Date: 4/7/09

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**EXHIBIT A**

**ASSIGNED PATENTS**

<b>KMOB Ref. No.</b>	<b>Title</b>	<b>App. No. /Patent No.</b>	<b>Filing/Issue Date</b>
FOUNDRY.001PR	METHODS AND APPARATUS FOR REDUCING SWEAT PRODUCTION	60/912,899	April 19, 2008
FOUNDRY.007PR	METHODS, DEVICES AND SYSTEMS FOR NON-INVASIVE DELIVERY OF MICROWAVE THERAPY	61/013,274	December 12, 2007
FOLTNDRY.019PR	SYSTEMS AND METHODS FOR CREATING AN EFFECT USING MICROWAVE ENERGY IN SPECIFIED TISSUE	61/045,937	April 17, 2008
FOLTNDRY.001VPC	METHODS AN APPARATUS FOR REDUCING SWEAT PRODUCTION	PCT/US2008/60935	April 18, 2008
FOUNDRY.007VPC	METHODS, DEVICES, AND SYSTEMS FOR NON-INVASIVE DELIVERY OF MICROWAVE THERAPY	PCT/US2008/60929	April 18, 2008
FOUNDRY.019VPC	SYSTEMS AND METHODS FOR CREATING AN EFFECT USING MICROWAVE ENERGY TO SPECIFIED TISSUE	PCT/US2008/60940	April 18, 2008
FOUNDRY.019VPC2	SYSTEMS AND METHODS FOR CREATING AN EFFECT USING MICROWAVE ENERGY TO SPECIFIED TISSUE	PCT/US2008/60922	April 18, 2008
FOUNDRY.019A	SYSTEMS AND METHODS FOR CREATING AN EFFECT USING MICROWAVE ENERGY TO SPECIFIED TISSUE	12/107,025	April 21, 2008

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These materials are protected by the attorney-client and/or the work product privilege and should be treated as confidential.

<b>RKM Ref. No.</b>	<b>Title</b>	<b>App. No. /Patent No.</b>	<b>Filing/Issue Date</b>
9853.20607-PROV	SYSTEMS AND METHODS FOR CREATING AN EFFECT USING MICROWAVE ENERGY TO SPECIFIED TISSUE, SUCH AS SWEAT GLANDS	61/196,948	10/22/2008
9853.20759-PCT	SYSTEMS, APPARATUS, METHODS AND PROCEDURES FOR THE NONINVASIVE TREATMENT OF TISSUE USING MICROWAVE ENERGY	PCT/US2008/013650	12/12/2008
9853.20835-PROV	SYSTEMS, APPARATUS, METHODS AND PROCEDURES FOR THE NONINVASIVE TREATMENT OF TISSUE USING MICROWAVE ENERGY	61/208,315	2/23/2009

ATTORNEY CLIENT AND/OR WORK PRODUCT PRIVILEGED COMMUNICATION  
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**EXHIBIT B**

**FORM OF ASSIGNMENT**

This Assignment is made as of the \_\_ day of \_\_\_\_\_, 2008 by The Foundry, Inc., a Delaware corporation having a principal place of business at 199 Jefferson Drive, Menlo Park, CA 94025 (“**ASSIGNOR**”), to Miramar Labs, Inc., a Delaware corporation having a principal place of business at 199 Jefferson Drive, Menlo Park, CA 94025 (“**ASSIGNEE**”).

**WHEREAS**, the ASSIGNOR is the owner of those patents and patent applications listed on Schedule A attached hereto (collectively, the “**PATENTS**”);

**WHEREAS**, the ASSIGNEE is desirous of acquiring the entire right, title, and interest of ASSIGNOR in and to said PATENTS; and

**WHEREAS**, the ASSIGNOR and ASSIGNEE have entered into an Assignment and License Agreement, effective January 31, 2008.

**NOW, THEREFORE**, for good and valuable consideration paid by the ASSIGNEE, receipt of which is hereby acknowledged, the ASSIGNOR does hereby agree as follows:

1. Assignment. ASSIGNOR hereby sells, assigns, transfers, and sets over to the ASSIGNEE and its successors and assigns all of ASSIGNOR’s worldwide right, title, and interest in and to the PATENTS, including, without limitation, all (i) reissues, divisions, renewals, extensions, provisionals, continuations, and continuations-in-part of the PATENTS, and (ii) rights to apply in any or all countries of the world for patents, certificates of invention, or other governmental grants for the PATENTS, including without limitation under the Paris Convention for the Protection of Industrial Property, the International Patent Cooperation Treaty, or any other convention, treaty, agreement, or understanding.

2. Authorization. ASSIGNOR also hereby authorizes the respective patent office or governmental agency in each jurisdiction to issue any and all patents or certificates of invention which may be granted upon any of the PATENTS in the name of ASSIGNEE, as the ASSIGNEE to the entire interest therein.

*Signature page follows*



June 10, 2010

Bernard Shay  
Vice President Law and General Counsel  
Miramar Labs, Inc.  
445 Indio Way  
Sunnyvale, CA 94085

**Re: Assignment and License Agreement between The Foundry, Inc. (“Inc.”) and Miramar Labs, Inc. (“Miramar”) dated December 31, 2008 (the “Agreement”).**

Dear Mr. Shay:

As discussed, The Foundry, LLC (“LLC”) and Miramar wish to clarify any ambiguity regarding Miramar’s rights in and to certain patents and related technology under the Agreement as a result of Inc.’s transfer of assets to LLC as set forth in the following agreements between Inc. and LLC effective as of December 31, 2008: the Bill of Sale, the Assumption Agreement and the Revised and Restated Assignment Agreement (collectively, the “Asset Documents”). This letter sets forth the agreement and understanding of LLC and Miramar with regard to Inc.’s assignment and license of certain patent rights and related technology to Miramar under the Agreement. All capitalized terms not otherwise defined herein shall have the meaning assigned to them in the Agreement.

1. LLC hereby confirms and agrees that the Assigned Patents, Assigned Technology and Related Documentation were in fact assigned to Miramar, subject to the terms of the Agreement, prior to Inc.’s transfer of assets to LLC pursuant to the Asset Documents.

2. LLC and Miramar hereby agree that the Agreement was effectively assigned by Inc. to LLC pursuant to the Asset Documents, and accordingly LLC hereby agrees to be bound by the terms of the Agreement, including, without limitation, all assignments, licenses and obligations of Inc. set forth therein, and Miramar agrees to perform its obligations to Inc. set forth therein, as if LLC were the named party thereto.

We appreciate your time and attention to this matter and look forward to continuing our business relationship with Miramar.

Sincerely,

/s/ Hanson S. Gifford  
Hanson S. Gifford  
President and CEO  
The Foundry, LLC

**ASSET PURCHASE AGREEMENT**

by and between

**MIRAMAR LABS, INC.**

and

**JAN WALLACE**

Dated as of January 18, 2008

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## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “**Agreement**”) is entered into as of January 18, 2008 by and between Miramar Labs, Inc., a Delaware corporation (“**Buyer**”), and Jan Wallace, an individual (“**Seller**”). Capitalized terms used in this Agreement and not otherwise defined have the meanings stated in **Exhibit A**. The parties agree as follows:

### BACKGROUND

- A. Seller is engaged in the business of utilizing microwave technology for various medical treatments (the “**Business**”).
- B. Seller desires to sell, transfer and assign to Buyer, and Buyer desires to purchase from Seller, certain assets of the Business (the specific assets to be set forth herein in more detail) (the “**Asset Purchase**”) on the terms and conditions set forth in this Agreement.

### ARTICLE I PURCHASE AND SALE OF ASSETS; NO ASSUMPTION OF LIABILITIES

#### 1.1 Purchase and Sale of Assets.

1.1.1 Purchase and Sale of Assets. Subject to the terms and conditions of this Agreement, at the Closing, Seller will sell, convey, assign, transfer and deliver to Buyer, and Buyer will purchase, acquire and accept from Seller, all right, title and interest in and to all assets, properties, rights, privileges, claims, tangible and intangible, absolute or contingent, that are material to or primarily related to the operation of the Business, wherever located, free and clear of all Encumbrances (collectively, the “**Purchased Assets**”) including but, not limited to:

- (a) all corporate records, including corporate correspondence, legal records, device designs, schematics, and specifications;
- (b) all device inventory including handpieces, generator units and housings, coaxial cables and coolant tubing;
- (c) all clinical and regulatory records, including filings and correspondence with the U.S. Food & Drug Administration; and
- (d) all Technology and Intellectual Property Rights therein including the patents and patent applications as set forth on Exhibit D and all causes of action and enforcement rights for the Technology and such Intellectual Property Rights including all rights to pursue damages, injunctive relief and other remedies for past and future infringement or misappropriation of the Technology and Intellectual Property Rights (collectively, the “**IP Rights**”).

- 1.2 Assumption of Liabilities.** Subject to the terms and conditions of this Agreement, at the Closing, Buyer will assume and agree to pay, perform and discharge as and when due the following, and only the following, liabilities (collectively, the “**Assumed Liabilities**”): any liabilities or obligations incurred, arising from or out of, in connection with or as a result of claims made by or against Buyer or Seller with respect to the use of the Purchased Assets by or on behalf of Buyer that arise out of events occurring on or after the Closing Date.
- 1.3 Excluded Liabilities.** Except for the Assumed Liabilities specifically set forth in **Section 1.2** above, Buyer is not assuming, the Assumed Liabilities expressly exclude, and Seller will retain, any debt, liability, duty or obligation, whether known or unknown, fixed or contingent, of Seller (the “**Excluded Liabilities**”). Without limiting the foregoing, Excluded Liabilities include liabilities arising from or related to:
- (a) Seller’s ownership or operation of the Business and Purchased Assets through the Closing Date;
  - (b) any employment related claim that accrues or arises as of or prior to the Closing Date, or any of Seller’s other agents, consultants, independent contractors, former employees, whenever arising, in each case including workers’ compensation, paid time off/accrued vacation, severance, salary, bonuses or under any Plan, whether or not the person in question accepts employment with Buyer in connection with the Asset Purchase;
  - (c) any Orders or Actions arising from or out of, or in connection the operation of the Business prior to the Closing Date;
  - (d) liabilities for noncompliance with the bulk-transfer provisions of the Uniform Commercial Code (or any similar law); and
  - (e) liabilities for Taxes of Seller or Taxes attributable to the ownership of the Purchased Assets or operation of the Business for any taxable period (or portion of any period) including, but not limited to, those Taxes resulting from the Asset Purchase hereunder.
- 1.4 Waiver of Bulk Sales Laws.** To the extent applicable to this transaction, Seller and Buyer hereby waive compliance with the bulk-transfer provisions of the Uniform Commercial Code (or any similar law) in connection with the Asset Purchase contemplated hereunder.

## ARTICLE II

### PURCHASE CONSIDERATION

#### 2.1 Payment

##### 2.1.1 Purchase Price and Milestone Payments

Subject to the terms and conditions hereof, Buyer will pay Seller for the Purchased Assets and Assumed Liabilities as per the following:

- (a) an aggregate cash purchase payment of \$20,000 (the “Purchase Price”) on the Closing and up to \$15,000 of Seller’s expenses incurred to date for the revival of the patents and patent applications set forth in Exhibit D as evidenced by invoices attached as Exhibit G;
- (b) promptly following notice to Buyer from the United States Patent and Trademark Office (“USPTO”) of revival of Patent 6,104,959 (“First Milestone”), a payment of \$30,000;
- (c) promptly following notice to Buyer from the USPTO of revival of Patent 6,334,074 (“Second Milestone”), a payment of \$30,000;
- (d) promptly following notice to Buyer from the USPTO of revival of Patent Application 09/637,923, a payment of \$15,000 (“Third Milestone”); and
- (e) promptly following the issuance of a first Patent from Patent Application 09/637,923 (“Fourth Milestone”), a payment of \$15,000.

##### 2.1.2 Issuance of Warrant

Upon achievement of each Milestone referenced in **Section 2.1.1**, Buyer shall issue to Seller, in substantially the form attached hereto as **Exhibit C**, a Warrant to Purchase Shares of Preferred Stock in Buyer (the “**Warrant**”).

##### 2.1.3 Third Party Agreements

Seller shall be entitled to fifty percent (50%) of all profits earned by Buyer as a result of any license or assignment agreement with a third party stemming from any application, use, process or variation of the IP Rights on a worldwide basis. Notwithstanding the foregoing, this **Section 2.1.3** shall terminate upon the occurrence of a bona fide Change of Control transaction.

- 2.2 **Tax Allocation**. Before the Closing, by mutual agreement of the parties, the consideration will be allocated to broad categories constituting components of the Purchased Assets (the “Allocation”). Each party will report the Asset Purchase in accordance with the agreed upon

Allocation for all federal, state, local and other tax purposes, but such allocation will not constrain reporting for other purposes.

### **ARTICLE III CLOSING**

- 3.1 Closing Date.** The closing of the Asset Purchase (the “**Closing**”) will take place at 10 A.M. California time on January 18, 2008, after the satisfaction, or waiver by the party for whom such action is a condition to the Closing, of the conditions in **Article IV**, or at such other time as Seller and Buyer may mutually agree. The date upon which the Closing occurs is herein called the “**Closing Date.**”
- 3.2 Location of Closing.** The Closing will take place at the offices of Buyer’s counsel, Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, CA, 94304-1050 or at such other location as the parties mutually agree.
- 3.3 Deliveries by Seller.** At least three (3) days prior to the Closing, Seller shall, at Seller’s sole cost, make available to Buyer or Buyer’s representative, for inspection, collection, and transport, title to and possession of all of the Purchased Assets, or in the case of intangible property, such instruments (other than third-party consents) as are necessary or desirable to document and to transfer such assets from Seller to Buyer in accordance with this **Section 3.3.** Without limiting the foregoing, any tangible embodiments of the IP Rights, shall be delivered to Buyer in a medium reasonably requested by Buyer. To the extent that Buyer cannot be granted title to or possession of certain Purchased Assets as of the Closing, those assets shall be held by Seller for and on behalf of Buyer until such time as Buyer or its designee is granted title or possession thereof and during such period Seller shall bear all risk of loss with respect to such assets. Without limiting the foregoing, at or prior to the Closing, Seller will deliver to Buyer:
- (a) Duly executed copies of the Bill of Sale, and all other instruments and documents executed and delivered by any Person in connection with the consummation of any of the Asset Purchase contemplated hereby and thereby (collectively, the “Transaction Documents”).
  - (b) Duly executed copies of the Patent Rights Agreement dated January 18, 2008, by and between the Seller and Buyer in substantially the form attached hereto as Exhibit E.
  - (c) A certificate of Seller certifying that the conditions set forth in Sections 4.1.1 and 4.1.2 have been satisfied by Seller.
  - (d) Such other good and sufficient instruments of conveyance, assignment and transfer, excluding any consents to assign or acknowledgments of assignment, in form and substance reasonably acceptable to Buyer’s counsel, as shall be effective to vest in Buyer good and valid title in and to the Purchased Assets.

- (e) Such certificates, filings or other documents necessary or appropriate to evidence that Seller is delivering good and valid title to each of the Purchased Assets free and clear of any Encumbrances. However Seller has previously notified Buyer that the IP Rights for Canada and Australia cannot be revived and Buyer acknowledges and accepts this.

**3.4 Deliveries by Buyer.** At or prior to the Closing, Buyer will deliver to Seller:

- (a) The Purchase Price as described in Section 2.1.1(a).
- (b) Duly executed copies of the Transaction Documents to which Buyer is a Party.
- (c) A certificate of Buyer certifying that the conditions set forth in Sections 4.2.1 and 4.2.2 have been satisfied by Buyer.

#### **ARTICLE IV CONDITIONS OF CLOSING**

**4.1 Conditions to Obligations of Buyer.** The obligation of Buyer to effect the Closing is subject to the satisfaction (or waiver by Buyer) at or before the Closing of the following conditions:

**4.1.1 Representation and Warranties.** The representations and warranties of Seller contained herein on the date hereof (excluding any updates to a Disclosure Schedule), must be true and correct in all material respects as of the Closing, other than those qualified by materiality, which must be true in all respects, as if made as of the Closing.

**4.1.2 Covenants.** Seller must have in all material respects performed all obligations and complied with all covenants and conditions required by this Agreement to be performed or complied with by it at or prior to the Closing Date.

**4.1.3 Deliveries.** Seller must have delivered to Buyer all items required by **Section 3.3**.

**4.2 Conditions to Obligations of Seller.** The obligation of Seller to effect the Closing is subject to the satisfaction (or waiver by Seller) on or before the Closing of the following conditions:

- 4.2.1 Representations and Warranties.** The representations and warranties of Buyer contained herein on the date hereof, must be true and correct in all material respects as of the Closing, other than those qualified by materiality, which must be true in all respects, as if made as of the Closing.
- 4.2.2 Covenants.** Buyer must have in all material respects performed all obligations and complied with all covenants and conditions required by this Agreement to be performed or complied with by it at or prior to the Closing Date.
- 4.2.3 Deliveries.** Buyer must have delivered to Seller all items required by **Section 3.4**.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer that except as otherwise indicated on a Disclosure Schedule attached hereto as **Exhibit F**:

- 5.1 Organization and Related Matters.** Seller has all necessary power and authority to own her properties and to carry on the Business and to own and use the Purchased Assets in the Business as presently conducted.
- 5.2 Authorization; No Conflicts.** Seller has all necessary power and authority to execute, deliver and perform this Agreement and the Transaction Documents to which she is a party and to sell, convey and assign the Purchased Assets in accordance with the terms hereof. The execution, delivery and performance of this Agreement and the Transaction Documents by Seller has been duly and validly authorized by all necessary action on Seller's part. This Agreement and the Transaction Documents have been duly executed and delivered by Seller and constitute Seller's legally valid and binding obligations, enforceable against Seller in accordance with their respective terms except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws and equitable principles relating to or limiting creditors rights generally. Seller's execution, delivery and performance of this Agreement and the Transaction Documents will not conflict with, or result in any violation of, or default under, or give rise to a right of termination, cancellation, modification, or acceleration of any obligation or loss of any benefit under any bankruptcy proceeding, order or ruling or any Contract to which Seller is a party or by which the Purchased Assets are bound.
- 5.3 Approvals.** No Approvals by any Governmental Entity and no material Approvals by any Person not a party (including a party to any agreement with Seller) to this Agreement are required in connection with the execution or performance of this Agreement by Seller or the consummation of the Asset Purchase.
- 5.4 No Brokers or Finders.** No agent, broker, finder, investment or commercial banker or other firm engaged by or acting on behalf of Seller in connection with the negotiation, execution or performance of this Agreement or the consummation of the Asset Purchase, is or will be

entitled to any broker's or finder's or similar fees or other commissions payable by Buyer as a result of this Agreement or the Asset Purchase.

- 5.5 Legal Proceedings.** There is no Order or Action pending or, to Seller's Knowledge, threatened against or affecting Seller that individually or when aggregated with one or more other Orders or Actions has or if determined adversely would reasonably be expected to have (a) a Material Adverse Effect, (b) constitute an Assumed Liability, (c) prevent the transfer of or encumber the Purchased Assets.
- 5.6 Title; Purchased Assets.** Seller has good and marketable title to, or valid leasehold interests in, each of the Purchased Assets, free and clear of any Encumbrances. Without limiting the foregoing, the Seller is the sole and exclusive owners of all right, title and interest in and to the IP Rights. Seller has all rights, power and authority to sell, convey, assign, transfer and deliver to Buyer, in accordance with the terms of this Agreement, all of Seller's right, title and interest (including leasehold interests) in the Purchased Assets. No Purchased Assets are leased by Seller. At the Closing, Seller will deliver title to, and all of Seller's rights and interests (including leasehold interests) in, the Purchased Assets to Buyer, and Buyer will have acquired good and marketable title in and to, and all of Seller's rights and interests (including leasehold interests) in, each of the Purchased Assets, free and clear of any Encumbrance.
- 5.7 Compliance with Law.** Seller has materially complied with, and is in material compliance with, all Regulations applicable to Seller in connection with the Business or by which any of the Purchased Assets is bound or affected.
- 5.8 Disclosure.** Seller has provided Buyer with all the information regarding the Seller reasonably available to her without undue expense that such Buyer has requested for deciding whether to enter into the Asset Purchase.

## **ARTICLE VI REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller that:

- 6.1 Organization and Related Matters.** Buyer is a corporation duly incorporated, validly existing and in good standing under the laws of State of Delaware.
- 6.2 Authorization; No Conflicts.** Buyer has all necessary corporate authority and power to execute, deliver and perform this Agreement and the Transaction Documents. The execution, delivery and performance of this Agreement and the Transaction Documents by Buyer have been duly and validly authorized by all necessary action on Buyer's part. This Agreement and the Transaction Documents have been duly executed and delivered by Buyer and constitute Buyer's legally valid and binding obligations, enforceable against Buyer in accordance with their respective terms except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws and equitable

principles relating to or limiting creditors' rights generally. Buyer's execution, delivery and performance of this Agreement and the Transaction Documents will not violate, or constitute a breach or default under, Buyer's Amended and Restated Certificate of Incorporation or Bylaws and will not conflict with, or result in any violation or default under, or give rise to a right of termination, cancellation, modification, or acceleration of any obligation or loss of any benefit under any Contract to which Buyer is a party.

- 6.3 Approvals.** Except for any Approvals that Seller may be required to obtain pursuant to this Agreement, no Approvals by any Governmental Entity and no material Approvals by any Person not a party to this Agreement are required in connection with the execution or performance of this Agreement by Buyer or the consummation of the Asset Purchase by Buyer.
- 6.4 No Brokers or Finders.** No agent, broker, finder, investment or commercial banker or other firm engaged by or acting on behalf of Buyer in connection with the negotiation, execution or performance of this Agreement or the consummation of the Asset Purchase, is or will be entitled to any broker's or finder's or similar fees or other commissions payable by Seller as a result of this Agreement or the Asset Purchase.
- 6.5 Legal Proceedings.** There is no Order or Action pending or, to Buyer's Knowledge, threatened against or affecting Buyer that individually or when aggregated with one or more other Orders or Actions has or if determined adversely would reasonably be expected to have a material adverse effect on Buyer's ability to consummate the Asset Purchase.

## ARTICLE VII ADDITIONAL CONTINUING COVENANTS

Seller and Buyer hereby agree to the following:

- 7.1 Sales and Use Taxes.** Seller will be responsible for the payment of, and will pay when due, any sales, use, excise, or similar transfer taxes (the "**Transfer Taxes**") that may be payable in connection with the sale or purchase of the Purchased Assets; provided that if any law or regulation requires that Buyer (and not the Seller) pay any portion of such Transfer Taxes, Buyer shall pay those Transfer Taxes and shall be promptly reimbursed by the Seller for the amount of those Transfer Taxes paid by Buyer. The parties hereto will cooperate with each other and use Commercially Reasonable Efforts to minimize the Transfer Taxes.
- 7.2 Ownership and Assignment.** Seller agrees that all copyrightable material, notes, records, drawings, designs, inventions, improvements, developments, discoveries and trade secrets conceived, discovered, developed or reduced to practice by Seller, solely or in collaboration with others, during the term of this Agreement that relate in any manner to the business of the Buyer that Seller may be directed to undertake, investigate or experiment with or that Seller may become associated with in work, investigation or experimentation in the Buyer's line of business in performing under this Agreement (collectively, "**Inventions**"), are the sole property of the Buyer. Seller also agrees to assign (or cause to be assigned) and hereby

assigns fully to the Buyer all such Inventions and Intellectual Property Rights in or comprising or otherwise relating to such Inventions.

- 7.3 Reversion Rights:** Buyer agrees that if within five (5) years from the date of the Closing, it has not utilized or marketed the microwave therapy system to produce sales revenue then, if such delay is not caused by any action or inaction of the Seller, the Purchased Assets including all IP Rights under this Agreement shall revert to the Seller. Buyer agrees to execute any and all documentation required to return ownership of the Purchased Assets including the IP rights. Seller shall notify the Buyer in writing of the right to reversion.
- 7.4 Further Assurances.** At any time or from time to time after the Closing, at Buyer's request and without further consideration, Seller shall: (i) execute any documents necessary to perfect the assignment of any and all IP Rights, (ii) execute and deliver to Buyer such other instruments of sale, transfer, conveyance, assignment and confirmation in furtherance of the Asset Purchase; (iii) provide materials and information reasonably requested by Buyer in connection with the Purchased Assets; and (iv) take such other actions, as Buyer may reasonably deem necessary or desirable and reasonably request in order more effectively to transfer, convey and assign to Buyer, to confirm Buyer's title to, all of the Purchased Assets, to enforce Buyer's Rights thereunder and, to the full extent permitted by law, to put Buyer in actual possession and operating control of the Purchased Assets and to assist Buyer in exercising all rights with respect thereto. Without limiting the foregoing, the Seller shall: (a) assist in the transfer and answer questions relating to Seller's records including regulatory filings and clinical data, (b) cooperate in any and all ongoing efforts by Buyer to revive the IP Rights, and (c) cooperate in any efforts to perfect Buyer's title to and ownership in any of the Purchased Assets.
- 7.5 Noncompete.** Seller acknowledges that the nature of the Buyer's business is such that if Seller were to become employed by, or substantially involved in, the business of a competitor of the Buyer beginning on the date of this Agreement and for a period of three (3) years following the completion of the Fourth Milestone, it would be very difficult for the Seller not to rely on or use the Buyer's trade secrets and confidential information. Thus, to avoid the inevitable disclosure of the Buyer's trade secrets and confidential information, Seller agrees and acknowledges that her right to receive the Purchase Price and Milestone Payments set forth in **Section 2.1** (to the extent Seller is otherwise entitled to such payments) shall be conditioned upon Seller not directly or indirectly engaging in (whether as an employee, consultant, agent, proprietor, principal, partner, stockholder, corporate officer, director or otherwise), nor having any ownership interest in or participating in the financing, operation, management or control of, any person, firm, corporation or business that competes with Buyer or is a customer of the Buyer. Upon any breach of this **Section 7.5**, Seller shall refund the Purchase Price and any Milestone Payments received pursuant to this Agreement and Buyer shall no longer have any obligation to make such payments.

**7.6** **Nonsolicitation**. Beginning on the date of this Agreement and ending on the third (3rd) anniversary of the Closing, Seller will not directly or indirectly, make, offer, solicit, induce or encourage or take any other action that is intended to induce or encourage, or has the effect of inducing or encouraging, any of Buyer's employees to terminate his or her employment with Buyer. The parties agree that in the event of a breach or threatened breach by Seller of any of the covenants set forth in this **Section 7.6**, monetary damages alone would be inadequate to fully protect Buyer from, and compensate Buyer for, the harm caused by such breach or threatened breach. Accordingly, Seller agrees that if she breaches or threatens breach of any provision of this **Section 7.6**, Buyer will be entitled to seek, in addition to any other right or remedy otherwise available, the right to injunctive relief restraining such breach or threatened breach and to specific performance of any such provision of this **Section 7.6**

## ARTICLE VIII INDEMNIFICATION

### **8.1** **Seller's Indemnification**

Subject to **Section 9.1** and the limitations set forth in this **Section 8.1**, from and after the Closing, Seller shall indemnify and hold harmless Buyer and its Affiliates and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the "**Buyer Indemnified Parties**") from and against any and all losses (whether or not involving a Third Party Claim) of the Buyer Indemnified Parties (collectively the "**Buyer Losses**") arising out of or incurred with respect to:

- 8.1.1** any breach of any or all of Seller's own representations and warranties in the Agreement or the nonperformance of any or all of its covenants or obligations to be performed by Seller under the Agreement;
- 8.1.2** any breach of any or all of the representations and warranties of the Seller in the Agreement;
- 8.1.3** the breach or nonperformance of any covenant or obligation to be performed by the Seller under the Agreement;
- 8.1.4** any Pre Closing Tax Liabilities;
- 8.1.5** any amounts which become due and payable by the Seller as a result of this Agreement or pursuant to any other agreement between the Seller and other Person; and
- 8.1.6** any Seller expenses on cover under this agreement.

Notwithstanding the above, Seller's obligations under this **Section 8.1** shall not exceed the amount of the Purchase Price and Milestone Payments due and payable under **Section 2.1.1** of this Agreement.

## **8.2 Buyer's Indemnification**

Subject to **Section 9.1** and the limitations set forth in this **Section 8.2**, from and after the Closing, Buyer shall indemnify and hold harmless Seller and each of her heirs, executors, successors and assigns of any of the foregoing (collectively, the "**Seller Indemnified Parties**") from and against any and all losses (whether or not involving a Third Party Claim) of the Seller Indemnified Parties (collectively the "**Seller Losses**") arising out of or incurred with respect to:

- 8.2.1** any breach of any or all of Buyer's own representations and warranties in the Agreement or the nonperformance of any or all of its covenants or obligations to be performed by Buyer under the Agreement;
- 8.2.2** any breach of any or all of the representations and warranties of the Buyer in the Agreement; and
- 8.2.3** the breach or nonperformance of any covenant or obligation to be performed by the Buyer under the Agreement;

Notwithstanding the above, Buyer's obligations under this **Section 8.2** shall not exceed the amount of the Purchase Price and Milestone Payments due and payable under **Section 2.1.1** of this Agreement.

## **ARTICLE IX GENERAL**

**9.1 Survival of Representations and Warranties and Covenants.** Each of the representations and warranties made in this Agreement will terminate on the date that is two years after the Closing Date, except that those representations and warranties made in **Sections 5.1** (Organization and Related Matters), **5.2** (Authorization; No Conflicts), **5.6** (Title; Purchased Assets), **6.1** (Organization and Related Matters) and **6.2** (Authorization; No Conflicts) will survive the Closing and remain in full force and effect for the applicable statute of limitations. The covenants and agreements of the parties set forth in this Agreement and the indemnification obligations of the parties hereunder will survive for the applicable statute of limitations, except as expressly provided herein.

**9.2 General Rules of Construction.** For all purposes of this Agreement and the Exhibits and the Disclosure Schedule delivered pursuant to this Agreement, except as otherwise expressly provided or unless the context otherwise requires: (a) terms include the plural as well as the singular; (b) all accounting terms not otherwise defined have the meanings assigned under

GAAP; (c) all references in this Agreement to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of the body of this Agreement; (d) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision; (e) ”or” is not exclusive; and (f) ”including” and “includes” will be deemed to be followed by “but not limited to” and “but is not limited to,” respectively.

- 9.3 Amendments; Waivers.** Except as expressly provided herein, this Agreement and the attached Disclosure Schedule or any Exhibit may be amended only by agreement in writing of all parties. No waiver of any provision nor consent to any exception to the terms of this Agreement or any agreement contemplated hereby will be effective unless in writing and signed by the party to be bound and then only to the specific purpose, extent and instance so provided.
- 9.4 Schedules; Exhibits; Integration.** The Disclosure Schedule and each Exhibit delivered pursuant to the terms of this Agreement must be in writing and will constitute a part of this Agreement. This Agreement, together with the Disclosure Schedule and Exhibits and the Non Disclosure Agreement dated September 4, 2007 by and between the parties, and the other agreements and instruments delivered at the Closing, constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, of the parties in connection therewith.
- 9.5 Governing Law.** This Agreement and the legal relations between the parties will be governed by and construed in accordance with the laws of the State of California applicable to contracts made and performed in such State and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.
- 9.6 No Assignment.** Unless otherwise expressly provided, neither this Agreement nor any rights or obligations under it are assignable by one party without the prior written consent of the other party other than in connection with a Change of Control of party.
- 9.7 Headings**The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.
- 9.8 Counterparts.** This Agreement and any amendment hereto or any other agreement delivered pursuant hereto may be executed in one or more counterparts and by different parties in separate counterparts. All counterparts will constitute one and the same agreement and will become effective when one or more counterparts have been signed by each party and delivered to the other party. A facsimile signature page will be deemed an original.
- 9.9 Successors and Assigns; No Third Party Beneficiaries.** This Agreement, except for **Section 2.1.3**, is binding upon and will inure to the benefit of each party and their respective successors or assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other Person or Governmental Entity any rights or remedies of any nature whatsoever under or by reason of this Agreement.

**9.10 Notices.** All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement must be in writing and will be deemed to have been given: (a) immediately when personally delivered or delivery is refused; (b) when received by first class mail, return receipt requested; (c) one day after being sent by Federal Express or other overnight delivery service; or (d) when receipt is acknowledged, either electronically or otherwise, if sent by facsimile, telecopy or other electronic transmission device. Notices, demands and communications to Buyer and Seller will, unless another address is specified by Buyer or Seller hereafter in writing, be sent to the address indicated below:

If to Buyer, addressed to:

Miramar Labs, Inc.  
199 Jefferson Drive  
Menlo Park, CA 94025  
Attention: President and Chief Executive Officer

with a copy to (which will not constitute notice):

Wilson Sonsini Goodrich & Rosati  
Professional Corporation  
650 Page Mill Road  
Palo Alto, CA 9434-1050  
Attention: Philip H. Oettinger  
Facsimile: 650-493-6811  
Email: poettinger@wsgr.com

If to Seller, addressed to:

Jan Wallace  
4223 Glencoe Avenue, Suite B130  
Marina Del Rey, California 90292  
Facsimile: 310-827-0600

with a copy to (which will not constitute notice):

Claire C. Ambrosio, Attorney at Law  
4223 Glencoe Avenue, Suite B130  
Marina Del Rey, California 90292  
Facsimile: 310-827-0600

- 9.11 Expenses.** Except as otherwise set forth herein, Seller and Buyer will each pay their own expenses incident to the negotiation, preparation and performance of this Agreement and the Asset Purchase, including, the fees, expenses and disbursements of their respective accountants and counsel.
- 9.12 Attorney Fees.** In the event of any Action for the breach of this Agreement or for misrepresentation by any party, the prevailing party will be entitled to reasonable attorney's fees, costs and expenses incurred in such Action. Attorneys fees incurred in enforcing any judgment in respect of this Agreement are recoverable as a separate item. The preceding sentence is intended to be severable from the other provisions of this Agreement and to survive any judgment and, to the maximum extent permitted by law, will not be deemed merged into any such judgment.
- 9.13 Waiver.** No failure on the part of any party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.
- 9.14 Other Remedies.** Any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy.
- 9.15 Representation By Counsel; Interpretation.** Seller and Buyer each acknowledge that each has been represented by counsel in connection with this Agreement and the Asset Purchase. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the party that drafted it has no application and is expressly waived. The provisions of this Agreement will be interpreted in a reasonable manner to effect the intent of Buyer and Seller.
- 9.16 Severability.** If any provision of this Agreement is held to be unenforceable for any reason, it will be adjusted rather than voided, if possible, to achieve the intent of the parties. All other provisions of this Agreement will be deemed valid and enforceable to the extent possible.

[signature page to follow]

**IN WITNESS WHEREOF**, each of the parties hereto has caused this Agreement to be executed by its duly authorized officers as of the day and year first above written.

**“BUYER”**

**MIRAMAR LABS, INC.**

By:         /s/ Mark Deem        

Name:         Mark Deem        

Title:         CEO        

**“SELLER”**

**JAN WALLACE**

By:         /s/ Jan Wallace        

Name:         Jan Wallace

## EXHIBIT A

### DEFINITIONS

“**Action**” means an action, suit, investigation, complaint, claim, notice of infringement, instruction to cease and desist, demand or other proceeding, threatened or pending, whether civil or criminal, in law or in equity or before any arbitrator or Governmental Entity.

“**Affiliate**” of a Person means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. The term “**control**” (including, with correlative meanings, the terms “**controlled by**” and “**under common control with**”) means the possession of the power to direct the management and policies of the referenced Person, whether through ownership interests, by contract or otherwise.

“**Approval**” means an authorization, consent, consent to assignment, approval or waiver of, clearance by, notice to or registration or filing with, or any other similar action by or with respect to a Governmental Entity or any other Person that is required in order to consummate the Asset Purchase, including transferring or assigning all of the Purchased Assets to Buyer.

“**Bill of Sale**” means that certain Bill of Sale by Seller to be entered into on the Closing Date, the form of which is attached as **Exhibit B**.

“**Change of Control**” means: (a) the consummation of a merger or consolidation of party with or into another entity or any other corporate reorganization, if more than 50% of the combined voting power of the continuing or surviving entity’s securities outstanding immediately after such merger, consolidation or other reorganization is owned by Persons or companies who were not stockholders or owners immediately prior to such merger, consolidation or other; or (b) the sale, transfer or other disposition of all or substantially all of the Company’s assets.

“**Commercially Reasonable Efforts**” means efforts that are designed to enable a party, directly or indirectly, to satisfy a condition to, comply with a covenant required by, or otherwise assist in the consummation of, the Asset Purchase and that do not require the performing party to expend funds or assume liabilities other than expenditures and liabilities that are customary and reasonable in nature and amount in the context of the Asset Purchase.

“**Contract**” means any mortgage, indenture, lease, contract, covenant or other agreement, instrument or commitment, permit, concession, franchise or license.

“**Disclosure Schedule**” means Seller’s Disclosure Schedule delivered by Seller to Buyer on the date hereof and as amended from time to time pursuant to the terms of this Agreement as the context requires. Any fact or item that is disclosed in any section of the Disclosure Schedule will be deemed to be disclosed in all applicable sections of the Disclosure Schedule, notwithstanding the omission of a reference or a cross-reference thereto. The disclosure of any fact or item in the Disclosure Schedule will not constitute any acknowledgment regarding the materiality of such disclosure or

whether the subject matter of such disclosure will have a Material Adverse Effect. The Seller's Disclosure Schedules shall be attached hereto as **Exhibit F**.

“**Dollars**” and “**\$**” refer to United States dollars and other lawful currency of the United States of America.

“**Encumbrance**” means any claim, charge, lease, covenant, easement, encumbrance, security interest, lien, option, pledge, right of others, or restriction of any nature (whether on voting, sale, transfer, disposition, use, ownership, competition or otherwise), whether imposed by agreement, understanding, law, equity or otherwise, except for any restrictions on transfer generally arising under any applicable federal or state securities law or any Permitted Encumbrances.

“**GAAP**” means United States generally accepted accounting principles consistently applied by Seller.

“**Governmental Entity**” means any agency, bureau, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state, county or local, domestic or foreign.

“**Intellectual Property Rights**” means any or all statutory and/or common law rights throughout the world in, arising out of, or associated with: (i) all inventions (whether patentable or not) and invention disclosures and improvements thereon, and patents, inventor's certificates and utility models and any and all applications and registrations therefor (including any including any continuation, divisional, substitution, continuations-in-part, provisional and utility applications), and all substitutions, extensions, confirmations, reissues, divisions, re-examinations, renewals and extensions thereof, and equivalent or similar rights in inventions (“**Patents**”); (ii) copyrights, copyright registrations and any and all applications therefor and other rights corresponding thereto; (iii) all industrial designs and any registrations and applications therefor; (iv) all databases and data collections (including knowledge databases, customer lists and customer databases); (v) confidential information, trade secrets and know-how, including processes drawings, prototypes, models, designs and other industry information, and all documentation relating to any of the foregoing; and (vi) all rights in or to software or other Technology.

“**Material Adverse Effect**” means any change in or effect on the Purchased Assets, Assumed Liabilities or the Business as expected to be conducted immediately after the Closing (i.e., giving effect to the transfers of the Purchased Assets and Assumed Liabilities contemplated by this Agreement) that would (a) be materially adverse to the conduct or value of the Business by Buyer immediately following the Closing Date, (b) materially impair the validity or enforceability of this Agreement and the Transaction Documents taken as a whole, or (c) materially impair the value of the Purchased Assets; provided, however, that the following will not constitute a Material Adverse Effect: (i) general economic conditions; (ii) any changes generally affecting the industries in which Seller currently operates the Business, provided that such changes do not materially disproportionately affect Seller; or (iii) anything specifically disclosed in a Disclosure Schedule.

“**Order**” means any decree, injunction, judgment, order, ruling, assessment or writ.

**“Ordinary Course”** means for the Business, with respect to any Person and as of any date of determination, the conduct or operation of a line of business of such Person in the ordinary course of such business, as then conducted and proposed to be conducted, in a manner consistent with the past business practices of such Person and in accordance with the reasonable requirements of such business, in each case as determined with respect to such business as of such date of determination.

**“Payables”** means all accounts payable to trade creditors relating to or arising from the Business that are reflected on the Unaudited Statements and unpaid as of the Closing. Payables will be computed in accordance with GAAP, but will not include Seller’s transaction expenses in connection with the Asset Purchase.

**“Permitted Encumbrances”** means: (a) Encumbrances for Taxes not yet delinquent or the validity of which are being contested in good faith by appropriate actions and that are described in a Disclosure Schedule; (b) Encumbrances existing on the Closing Date to remain on the Purchased Assets after the Closing as listed in a Disclosure Schedule; (c) Encumbrances that are statutory liens of landlords, carriers, warehousemen, mechanics, materialmen and other Encumbrances imposed by law created in the Ordinary Course of Seller for amounts not yet due and for which, at Closing, Seller will have incurred no liability to pay; (d) Encumbrances that are minor or technical defects in title that in the aggregate do not materially affect the value, marketability or utility of the Purchased Assets as presently used; and (e) Encumbrances that are Assumed Liabilities.

**“Person”** means an individual, a corporation, a partnership, a limited liability company, a joint venture, an association, a trust, an unincorporated association or any other entity or organization, including a Governmental Entity.

**“Regulation”** means (a) any applicable law, statutes, rule, regulation, ordinance, judgment, decree, ruling, order, award, injunction, recommendation or other official action of any Governmental Entity, and (b) any official change in the interpretation or administration of any of the foregoing by the Governmental Entity or by any other Governmental Entity or other Person responsible for the interpretation or administration of any of the foregoing.

**“Taxes”** means any foreign, federal, state, county or local income, sales and use, excise, franchise, real and personal property, transfer, gross receipt, capital stock, production, business and occupation, disability, employment, payroll, severance or withholding tax or charge imposed by any Governmental Entity, any interest and penalties (civil or criminal) related thereto or to the nonpayment thereof and any obligations under any agreements or arrangements with any other person with respect to such amounts and including any liability for taxes of a predecessor entity.

**“Technology”** means any and all technical information, know-how, test results, knowledge, techniques, discoveries, data, ideas, specifications, designs, trade secrets, regulatory and other governmental filings, documents, apparatus, clinical and regulatory strategies, manufacturing information, descriptions, compositions of matter, processes, methods, procedures, assays, preclinical and clinical data, analytical and quality control or assurance data and any other similar information.

## EXHIBIT B

### FORM OF BILL OF SALE

This Bill of Sale (this “**Bill of Sale**”) is made effective as of January 18, 2008, by and by and between Miramar Labs, Inc., a Delaware corporation (“**Buyer**”), and Jan Wallace, an individual (“**Seller**”). Capitalized terms used in this Agreement and not otherwise defined have the meanings stated in the Asset Purchase Agreement (as defined below). The parties hereto hereby agree as follows:

### BACKGROUND

**WHEREAS**, the parties have entered into that certain Asset Purchase Agreement, dated as of January 18, 2008 (the “**Asset Purchase Agreement**”), under which Seller has agreed to sell, convey, assign, transfer and deliver the Purchased Assets to Buyer or its assigns.

1. **Sale**. Seller does hereby sell, convey, assign, transfer and deliver to Buyer, and Buyer does hereby purchase, acquire and accept from Seller, all of Seller’s right, title and interest in and to the Purchased Assets.
2. **Representations**. All representations, warranties, agreements and indemnities of Seller with respect to the Purchased Assets set forth in the Asset Purchase Agreement will continue in effect as provided therein and will not be deemed to be amended, modified, terminated or superseded by or merged with this Bill of Sale.
3. **Miscellaneous Provisions**.
  - 3.1 **Amendments; Waiver**. The terms, provisions and conditions of this Bill of Sale may be amended only by agreement in writing of all parties. No waiver of any provision nor consent to any exception to the terms of this Bill of Sale or any agreement contemplated hereby will be effective unless in writing and signed by the party to be bound and then only to the specific purpose, extent and instance so provided.
  - 3.2 **Further Assurances**. Each party will execute and deliver, both before and after the Closing, such further certificates, agreements and other documents and take such other actions as the other party may reasonably request or as may be necessary or appropriate to consummate or implement the Asset Purchase, including to more effectively transfer the Purchased Assets, or to evidence such events or matters.
  - 3.3 **Assignment**. Neither this Bill of Sale nor any rights or obligations under it are assignable by one party without the prior written consent of the other party other than in connection with a Change of Control of a party.
  - 3.4 **Descriptive Headings**. The descriptive headings of the sections and subsections of this Bill of Sale are for convenience only and do not constitute a part of this Bill of Sale.

- 3.5 **Counterparts.** This Bill of Sale and any amendment hereto or any other agreement delivered pursuant hereto may be executed in one or more counterparts and by different parties in separate counterparts. All counterparts will constitute one and the same agreement and will become effective when one or more counterparts have been signed by each party and delivered to the other party. A facsimile signature page will be deemed an original.
- 3.6 **Governing Laws.** This Bill of Sale and the legal relations between the parties will be governed by and construed in accordance with the laws of the State of California applicable to contracts made and performed in such State and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.
- 3.7 **Waiver.** No failure on the part of any party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.
- 3.8 **Representation By Counsel; Interpretation.** The parties each acknowledge that each has been represented by counsel in connection with this Bill of Sale and the Asset Purchase. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Bill of Sale against the party that drafted it has no application and is expressly waived. The provisions of this Agreement will be interpreted in a reasonable manner to effect the intent of the parties hereto.
- 3.9 **Severability.** If any provision of this Bill of Sale is held to be unenforceable for any reason, it will be adjusted rather than voided, if possible, to achieve the intent of the parties. All other provisions of this Bill of Sale will be deemed valid and enforceable to the extent possible.
4. **Reversion Rights:** Buyer agrees that if within five (5) years from the date of this Bill of Sale it has not utilized or marketed the microwave therapy system to produce sales revenue then, if such delay is not caused by any action or inaction of the Seller, the Purchased Assets acquired under this Bill of Sale shall revert to the Seller. Buyer agrees to execute any and all documentation required to return ownership of the Purchased Assets. Seller shall notify the Buyer in writing of the right to reversion.

[signature page to follow]

**IN WITNESS WHEREOF**, Seller and Buyer have caused this Bill of Sale and License to be duly executed as of the day and year first above written.

**“BUYER”**

**MIRAMAR LABS, INC.**

By:     /s/ Mark Deem    

Name:     Mark Deem    

Title:     CEO    

**“SELLER”**

**JAN WALLACE**

By:     /s/ Jan Wallace    

Name:     Jan Wallace

**EXHIBIT C**

**FORM OF WARRANT AGREEMENT**

**THIS WARRANT AND THE SECURITIES ISSUABLE UPON THE EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED OR AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED.**

Void after  
[ \_\_\_\_\_, 2 \_\_\_\_ ]

**MIRAMAR LABS, INC.**

**WARRANT TO PURCHASE SHARES OF SERIES A PREFERRED STOCK**

This Warrant is issued to Jan Wallace (the “Holder”) by Miramar Labs, Inc., a Delaware corporation (the “Company”), pursuant to the terms and conditions set forth herein.

1. Purchase of Shares. Subject to the terms and conditions hereinafter set forth, the Holder of this Warrant is entitled, upon surrender of this Warrant at the principal office of the Company (or at such other place as the Company shall notify the Holder hereof in writing) during the Exercise Period, to purchase from the Company the number of fully paid and nonassessable Shares (as defined below), that equals the quotient obtained by dividing (a) the Warrant Coverage Amount (as defined below) by (b) the Exercise Price (as defined below).

2. Definitions.

(a) Exercise Price. The exercise price for the Shares shall be the price per Share in the Series A preferred financing (\$1.00/Share) (“Exercise Price”).

(b) Exercise Period. This Warrant shall be exercisable in whole during the term commencing on the date that the [First][Second][Third][Fourth] Milestone is achieved under the Asset Purchase Agreement dated January 18, 2008 by and between the parties (the “APA”) and ending on the earlier of 5:00 p.m. on the date five (5) years thereafter, or earlier expiration of this Warrant pursuant to Section 12 hereof.

(c) Warrant Coverage Amount. The term “Warrant Coverage Amount” shall mean the amount of the cash payment made at the [First][Second][Third][Fourth] Milestone under the APA.

(d) The Shares. The term “Shares” shall mean shares of the Company’s Series A Preferred Stock (as may be adjusted pursuant to Section 6 hereof).

(e) Change of Control. The term “Change of Control” shall mean (i) the acquisition of the Company by another entity by means of any transaction or series of related transactions (including, without limitation, any transfer of more than 50% of the voting power of the Company, reorganization, merger or consolidation, but excluding any merger effected exclusively for the purpose of changing the domicile of the Company); or (ii) the sale of all or substantially all of the assets of the Company; unless the Company's stockholders of record as constituted immediately prior to such acquisition or sale will, immediately after such acquisition or sale (by virtue of securities issued as consideration for the Company's acquisition or sale or otherwise) hold at least fifty percent (50%) of the voting power of the surviving or acquiring entity.

3. Method of Exercise. During the Exercise Period, the Holder may exercise in whole the purchase rights evidenced hereby. Such exercise shall be effected by:

(i) the surrender of the Warrant, together with a notice of exercise to the Secretary of the Company at its principal offices; and

(ii) the payment to the Company of an amount equal to the Warrant Coverage Amount.

4. Certificates for Shares. Upon the exercise of the purchase rights evidenced by this Warrant, one or more certificates for the number of Shares so purchased shall be issued as soon as practicable thereafter, and in any event within thirty (30) days of the delivery of the exercise notice and the payment of the Warrant Coverage Amount.

5. Issuance of Shares. The Company covenants that the Shares, when issued pursuant to the exercise of this Warrant, will be duly and validly issued, fully paid and nonassessable and free from all taxes, liens, and charges with respect to the issuance thereof.

6. Adjustment of Exercise Price and Number of Shares. The number of and kind of securities purchasable upon exercise of this Warrant and the Exercise Price shall be subject to adjustment from time to time as follows:

(a) Subdivisions, Combinations and Other Issuances. If the Company shall at any time prior to the expiration of this Warrant subdivide the Shares, by split-up or otherwise, or combine its Shares, or issue additional shares of its Shares as a dividend, the number of Shares issuable on the exercise of this Warrant shall forthwith be proportionately increased in the case of a subdivision or stock dividend, or proportionately decreased in the case of a combination. Appropriate adjustments shall also be made to the purchase price payable per share, but the

aggregate purchase price payable for the total number of Shares purchasable under this Warrant (as adjusted) shall remain the same. Any adjustment under this Section 6(a) shall become effective at the close of business on the date the subdivision or combination becomes effective, or as of the record date of such dividend, or in the event that no record date is fixed, upon the making of such dividend.

(b) Reclassification, Reorganization and Consolidation. In case of any reclassification, capital reorganization, or change in the capital stock of the Company (other than as a result of a subdivision, combination, or stock dividend provided for in Section 6(a) above), then the Company shall make appropriate provision so that the Holder of this Warrant shall have the right at any time prior to the expiration of this Warrant to purchase, at a total price equal to that payable upon the exercise of this Warrant, the kind and amount of shares of stock and other securities and property receivable in connection with such reclassification, reorganization, or change by a Holder of the same number of Shares as were purchasable by the Holder of this Warrant immediately prior to such reclassification, reorganization, or change. In any such case appropriate provisions shall be made with respect to the rights and interest of the Holder of this Warrant so that the provisions hereof shall thereafter be applicable with respect to any shares of stock or other securities and property deliverable upon exercise hereof, and appropriate adjustments shall be made to the purchase price per share payable hereunder, provided the aggregate purchase price shall remain the same.

(c) Notice of Adjustment. When any adjustment is required to be made in the number or kind of shares purchasable upon exercise of the Warrant, or in the Exercise Price, the Company shall promptly notify the Holder of such event and of the number of Shares or other securities or property thereafter purchasable upon exercise of this Warrant.

7. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant, but in lieu of such fractional shares the Company shall make a cash payment therefor on the basis of the Exercise Price then in effect.

8. Representations of the Company. The Company represents that all corporate actions on the part of the Company, its officers, directors and stockholders necessary for the sale and issuance of this Warrant have been taken.

9. Representations and Warranties by the Holder. The Holder represents and warrants to the Company as follows:

(a) This Warrant and the Shares issuable upon exercise thereof are being acquired for its own account, for investment and not with a view to, or for resale in connection with, any distribution or public offering thereof within the meaning of the Securities Act of 1933, as amended (the "Act"). Upon exercise of this Warrant, the Holder shall, if so requested by the Company, confirm in writing, in a form satisfactory to the Company, that the securities issuable upon exercise of this Warrant are being acquired for investment and not with a view toward distribution or resale.

(b) The Holder understands that the Warrant and the Shares have not been registered under the Act by reason of their issuance in a transaction exempt from the registration and

prospectus delivery requirements of the Act pursuant to Section 4(2) thereof, and that they must be held by the Holder indefinitely, and that the Holder must therefore bear the economic risk of such investment indefinitely, unless a subsequent disposition thereof is registered under the Act or is exempted from such registration. The Holder further understands that the Warrant Shares have not been qualified under the California Securities Law of 1968 (the "California Law") by reason of their issuance in a transaction exempt from the qualification requirements of the California Law pursuant to Section 25102(f) thereof, which exemption depends upon, among other things, the bona fide nature of the Holder's investment intent expressed above.

(c) The Holder has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the purchase of this Warrant and the Shares purchasable pursuant to the terms of this Warrant and of protecting its interests in connection therewith.

(d) The Holder is able to bear the economic risk of the purchase of the Shares pursuant to the terms of this Warrant.

(e) The Holder is an "accredited investor" as such term is defined in Rule 501 of Regulation D promulgated under the Act.

10. Restrictive Legend.

The Shares (unless registered under the Act) shall be stamped or imprinted with a legend in substantially the following form:

THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF, AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. SUCH SHARES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS. COPIES OF THE AGREEMENT COVERING THE PURCHASE OF THESE SHARES AND RESTRICTING THEIR TRANSFER MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE COMPANY AT THE PRINCIPAL EXECUTIVE OFFICES OF THE COMPANY.

11. Rights of Stockholders. No holder of this Warrant shall be entitled, as a Warrant holder, to vote or receive dividends or be deemed the holder of the Shares or any other securities of the Company which may at any time be issuable on the exercise hereof for any purpose, nor shall anything contained herein be construed to confer upon the holder of this Warrant, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action (whether upon any recapitalization, issuance of stock, reclassification of stock,

change of par value, consolidation, merger, conveyance, or otherwise) or to receive notice of meetings, or to receive dividends or subscription rights or otherwise until the Warrant shall have been exercised and the Shares purchasable upon the exercise hereof shall have become deliverable, as provided herein.

12. Expiration of Warrant; Notice of Certain Events Terminating This Warrant.

(a) This Warrant shall expire and shall no longer be exercisable upon the earlier to occur of:

(i) Any Change of Control; or

(ii) The initial public offering of the Company's Common Stock.

(b) The Company shall provide at least fifteen (15) days prior written notice of any event set forth in Section 12(a)(i) or (ii).

13. Notices. All notices and other communications required or permitted hereunder shall be in writing, shall be effective when given, and shall in any event be deemed to be given upon receipt or, if earlier, (a) five (5) days after deposit with the U.S. Postal Service or other applicable postal service, if delivered by first class mail, postage prepaid, (b) upon delivery, if delivered by hand, (c) one business day after the business day of deposit with Federal Express or similar overnight courier, freight prepaid or (d) one business day after the business day of facsimile transmission, if delivered by facsimile transmission with copy by first class mail, postage prepaid, and shall be addressed (i) if to the Holder, at the Holder's address as set forth Jan Wallace 4223 Glencoe Avenue Suite B130, Marina Del Rey, California 90292, with a copy to Claire C. Ambrosio, Attorney at Law 4223 Glencoe Avenue, Suite B130, Marina Del Rey, California 90292 and (ii) if to the Company, at the address of its principal corporate offices (attention: President), with a copy to Philip H. Oettinger, Wilson Sonsini Goodrich & Rosati, P.C., 650 Page Mill Road, Palo Alto, California 94304 or at such other address as a party may designate by ten days advance written notice to the other party pursuant to the provisions above.

14. "Market Stand-Off" Agreement. Holder hereby agrees that, during the period of duration specified by the Company and an underwriter of common stock or other securities of the Company, following the effective date of a registration statement of the Company filed under the Act for the Company's initial public offering, it shall not, to the extent requested by the Company and such underwriter, subject to the terms hereof, directly or indirectly sell, offer to sell, contract to sell (including, without limitation, any short sale), grant any option to purchase or otherwise transfer or dispose of (other than to donees who agree to be similarly bound) any securities of the Company held by it at any time during such period except common stock included in such registration; provided, however, that

(a) all officers and directors of the Company enter into similar agreements;

(b) the Company obtains from persons who hold one percent (1%) or greater of the Company's outstanding capital stock, a lock-up agreement similar to that set forth in this Section 14; and

(c) such market stand-off time period shall not exceed one hundred eighty (180) days.

Holder agrees to provide to the other underwriters of any public offering such further agreements as such underwriter may reasonably request in connection with this market stand-off agreement, provided that the terms of such agreements are substantially consistent with the provisions of this Section 14. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to the Registrable Securities of each holder (and the shares or securities of every other person subject to the foregoing restriction) until the end of such period.

Notwithstanding the foregoing, the obligations described in this Section 14 shall not apply to a registration relating solely to employee benefit plans on Form S-1 or Form S-8 or similar forms which may be promulgated in the future, or a registration relating solely to an SEC Rule 145 transaction.

15. Registration Rights Agreement. The registration rights of the Holder (including Holders' successors) with respect to the Common Stock issuable upon conversion of the Shares issuable upon exercise of this Warrant will be the same as granted to the holders of shares issued in the Qualified Equity Financing.

16. Governing Law. This Warrant and all actions arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of law provisions of the State of California or of any other state.

17. Rights and Obligations Survive Exercise of Warrant. Unless otherwise provided herein, the rights and obligations of the Company, of the Holder of this Warrant and of the holder of the Shares issued upon exercise of this Warrant, shall survive the exercise of this Warrant.

Issued this \_\_\_\_ day of \_\_\_\_, 200\_\_.

**MIRAMAR LABS, INC.**  
a Delaware Corporation

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By: Mark Deem  
Title: President and Chief Executive Officer

**EXHIBIT A**

**NOTICE OF EXERCISE**

TO: Miramar Labs, Inc.  
199 Jefferson Drive  
Menlo Park, CA 94025  
Attention: President

1. The undersigned hereby elects to purchase \_\_\_\_\_ shares of Series A Preferred Stock pursuant to the terms of the attached Warrant.

2. Please issue a certificate or certificates representing said Shares in the name of the undersigned or in such other name as is specified below:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

3. The undersigned hereby represents and warrants that the aforesaid Shares are being acquired for the account of the undersigned for investment and not with a view to, or for resale, in connection with the distribution thereof, and that the undersigned has no present intention of distributing or reselling such shares and all representations and warranties of the undersigned set forth in Section 9 of the attached Warrant (including Section 9 (e) thereof) are true and correct as of the date hereof.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Title)

## **EXHIBIT D**

### **IP RIGHTS**

Territory	Patent #	App #	Filing Date	Issue Date	Description
United States	6,104,959	08/904,175	7/31/97	8/15/00	Method & Apparatus for treating Subcutaneous Histological Features – Parent Filing
United States	6,334,074	09/474,969	12/29/99	12/25/01	Microwave Applicator for Therapeutic Use
United States	NA	09/637,923	8/14/00	NA	Divisional of 08/904,175
Australia	84915/98	PCT/US98/14737	2/28/00	2/21/02	Method & Apparatus for treating Subcutaneous Histological Features
Canada	NA	2298680	1/31/00	NA	Method & Apparatus for treating Subcutaneous Histological Features
Europe	NA	1998935729	2/11/00	NA	Method & Apparatus for treating Subcutaneous Histological Features

## EXHIBIT E

### PATENT RIGHTS ASSIGNMENT

WHEREAS, Jan Wallace, an individual (“**Assignor**”) owns all, right, title, and interest in and to the inventions and improvements claimed patents and patent applications specified on the attached Schedule I (collectively, the “**Patent Rights**”); and

WHEREAS, Miramar Labs, Inc., a Delaware corporation (the “**Assignee**”) wants to acquire all interest in the inventions and the Patent Rights including any patents or registrations that may arise therefrom (collectively, “**Letters Patents and Registrations**”);

For good and valuable consideration, receipt of which is hereby acknowledged by Assignor, Assignor has assigned, and does assign to Assignee all right, title and interest in and to the inventions claimed in the and the Patent Rights and to all foreign counterparts (including patent, utility model and industrial designs), and in and to any Letters Patent and Registrations which may hereafter be granted on the same in the United States and all countries throughout the world, and to claim the priority from the applications as provided by the Paris Convention. The right, title and interest is to be held and enjoyed by Assignee and Assignee’s successors and assigns as fully and exclusively as it would have been held and enjoyed by Assignor had this assignment not been made, for the full term of any Letters Patent and Registrations which may be granted thereon, or of any and all substitutions, extensions, confirmations, reissues, divisions, re-examinations, renewals and extensions thereof.

Assignor further agrees that Assignor will, without charge to Assignee, but at Assignee’s expense, (a) cooperate with Assignee in the prosecution of the Patent Rights and foreign counterparts thereof, (b) execute, verify, acknowledge and deliver all such further papers and instruments of transfer and (c) perform such other acts as Assignee lawfully may request to obtain or maintain Letters Patent and Registrations for the invention and improvements in any and all countries, and to vest title thereto in Assignee, or Assignee’s successors and assigns.

Buyer agrees that if within five (5) years from the date of this Assignment it has not utilized or marketed the microwave therapy system to produce sales revenue then, if such delay is not caused by any action or inaction of the Seller, the Patent Rights shall revert to the Seller. Buyer agrees to execute any and all documentation required to return ownership of the all Patent rights under this Assignment. Seller shall notify the Buyer in writing of the right to revision.

[The remainder of this page left blank intentionally; signature page follows.]

IN TESTIMONY WHEREOF, this Assignment is executed this 18<sup>th</sup> day of January, 2008.

**“ASSIGNEE”**

**MIRAMAR LABS, INC.**

By: /s/ Mark Deem

Name: Mark Deem

Title: CEO

**“ASSIGNOR”**

**JAN WALLACE**

By: /s/ Jan Wallace

Name: Jan Wallace

**EXHIBIT F**

**DISCLOSURE SCHEDULE**

**Exhibit F**

There are no further disclosures other than those listed in the Asset Purchase Agreement.

**EXHIBIT G**

**SELLER'S EXPENSES**

## LOAN AND SECURITY AGREEMENT

**THIS LOAN AND SECURITY AGREEMENT** (as the same may from time to time be amended, modified, supplemented or restated, this “**Agreement**”) dated as of August 7, 2015 (the “**Effective Date**”) among OXFORD FINANCE LLC, a Delaware limited liability company with an office located at 133 North Fairfax Street, Alexandria, Virginia 22314 (“**Oxford**”), as collateral agent (in such capacity, “**Collateral Agent**”), the Lenders listed on Schedule 1.1 hereof or otherwise a party hereto from time to time including Oxford in its capacity as a Lender and SILICON VALLEY BANK, a California corporation with an office located at 3003 Tasman Drive, Santa Clara, CA 95054 (“**Bank**” or “**SVB**”) (each a “**Lender**” and collectively, the “**Lenders**”), and MIRAMAR LABS, INC., a Delaware Corporation with offices located at 2790 Walsh Ave., Santa Clara, CA 95051 (“**Borrower**”), provides the terms on which the Lenders shall lend to Borrower and Borrower shall repay the Lenders. The parties agree as follows:

### 1. ACCOUNTING AND OTHER TERMS

**1.1** Accounting terms not defined in this Agreement shall be construed in accordance with GAAP. Calculations and determinations must be made in accordance with GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein. All references to “**Dollars**” or “**\$**” are United States Dollars, unless otherwise noted.

### 2. LOANS AND TERMS OF PAYMENT

**2.1** **Promise to Pay.** Borrower hereby unconditionally promises to pay each Lender, the outstanding principal amount of all Term Loans advanced to Borrower by such Lender and accrued and unpaid interest thereon and any other amounts due hereunder as and when due in accordance with this Agreement.

#### **2.2** **Term Loans.**

(a) Availability. (i) Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, to make a term loan to Borrower on the Effective Date in an aggregate amount equal to Ten Million Dollars (\$10,000,000.00) according to each Lender’s Term A Loan Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to as the “**Term A Loan**”). After repayment, the Term A Loan may not be re-borrowed.

(ii) Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, during the Second Draw Period, to make a term loan to Borrower in an aggregate amount equal to Five Million Dollars (\$5,000,000.00) according to each Lender’s Term B Loan Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to as the “**Term B Loan**”). After repayment, the Term B Loan may not be re-borrowed.

(iii) Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, during the Third Draw Period, to make a term loan to Borrower in an aggregate amount equal to Five Million Dollars (\$5,000,000.00) according to each Lender’s Term C Loan Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to as the “**Term C Loan**”, and together with the Term A Loan and the Term B Loan, each is hereinafter referred to singly as a “**Term Loan**” and, collectively, as the “**Term Loans**”). After repayment, no Term C Loan may be re-borrowed.

(b) Repayment. Borrower shall make monthly payments of interest only commencing on the first (1<sup>st</sup>) Payment Date following the Funding Date of each Term Loan, and continuing on the Payment Date of each successive month thereafter through and including the Payment Date immediately preceding the Amortization Date. Borrower agrees to pay, on the Funding Date of each Term Loan, any initial partial monthly interest payment otherwise due for the period between the Funding Date of such Term Loan and the first Payment Date thereof. Commencing on the Amortization Date, and continuing on the Payment Date of each month thereafter, Borrower shall make consecutive equal monthly payments of principal and interest, in arrears, to each Lender, as calculated by Collateral Agent (which calculations shall be deemed correct absent manifest error) based upon: (1) the amount of such Lender's Term Loan, (2) the effective rate of interest, as determined in Section 2.3(a), and (3) a repayment schedule equal to (x) thirty-three (33) months, if the Amortization Date is January 1, 2017; or (y) twenty-seven (27) months, if the Amortization Date is July 1, 2017. All unpaid principal and accrued and unpaid interest with respect to each Term Loan is due and payable in full on the Maturity Date. Each Term Loan may only be prepaid in accordance with Sections 2.2(c) and 2.2(d).

(c) Mandatory Prepayments. If the Term Loans are accelerated following the occurrence and during the continuance of an Event of Default, Borrower shall immediately pay to Lenders, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of: (i) all outstanding principal of the Term Loans plus accrued and unpaid interest thereon through the prepayment date, (ii) the Final Payment, (iii) the Prepayment Fee, plus (iv) all other Obligations that are due and payable, including Lenders' Expenses and interest at the Default Rate with respect to any past due amounts. Notwithstanding (but without duplication with) the foregoing, on the Maturity Date, if the Final Payment had not previously been paid in full in connection with the prepayment of the Term Loans in full, Borrower shall pay to Collateral Agent, for payment to each Lender in accordance with its respective Pro Rata Share, the Final Payment in respect of the Term Loan (s).

(d) Permitted Prepayment of Term Loans. Borrower shall have the option to prepay all, but not less than all, of the Term Loans advanced by the Lenders under this Agreement, provided Borrower (i) provides written notice to Collateral Agent of its election to prepay the Term Loans at least fifteen (15) days prior to such prepayment, and (ii) pays to the Lenders on the date of such prepayment, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of (A) all outstanding principal of the Term Loans plus accrued and unpaid interest thereon through the prepayment date, (B) the Final Payment, (C) the Prepayment Fee, plus (D) all other Obligations that are due and payable, including Lenders' Expenses and interest at the Default Rate with respect to any past due amounts.

## **2.3 Payment of Interest on the Credit Extensions.**

(a) Interest Rate. Subject to Section 2.3(b), the principal amount outstanding under the Term Loans shall accrue interest at a fixed per annum rate (which rate shall be fixed for the duration of the applicable Term Loan) equal to the Basic Rate, determined by Collateral Agent on the Funding Date of the applicable Term Loan, which interest shall be payable monthly in arrears in accordance with Sections 2.2(b) and 2.3(e). Interest shall accrue on each Term Loan commencing on, and including, the Funding Date of such Term Loan, and shall accrue on the principal amount outstanding under such Term Loan through and including the day on which such Term Loan is paid in full.

(b) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, Obligations shall accrue interest at a fixed per annum rate equal to the rate that is otherwise applicable thereto plus five percentage points (5.00%) (the "Default Rate"). Payment or acceptance of the increased interest

rate provided in this Section 2.3(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Collateral Agent.

(c) 360-Day Year. Interest shall be computed on the basis of a three hundred sixty (360) day year consisting of twelve (12) months of thirty (30) days.

(d) Debit of Accounts. Collateral Agent and each Lender may debit (or ACH) any deposit accounts, maintained by Borrower or any of its Subsidiaries, including the Designated Deposit Account, for principal and interest payments or any other amounts Borrower owes the Lenders under the Loan Documents when due. Any such debits (or ACH activity) shall not constitute a set-off.

(e) Payments. Except as otherwise expressly provided herein, all payments by Borrower under the Loan Documents shall be made to the respective Lender to which such payments are owed, at such Lender's office in immediately available funds on the date specified herein. Unless otherwise provided, interest is payable monthly on the Payment Date of each month. Payments of principal and/or interest received after 12:00 noon Eastern time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment is due the next Business Day and additional fees or interest, as applicable, shall continue to accrue until paid. All payments to be made by Borrower hereunder or under any other Loan Document, including payments of principal and interest, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim, in lawful money of the United States and in immediately available funds.

**2.4 Secured Promissory Notes.** The Term Loans shall be evidenced by a Secured Promissory Note or Notes in the form attached as Exhibit D hereto (each a "**Secured Promissory Note**"), and shall be repayable as set forth in this Agreement. Borrower irrevocably authorizes each Lender to make or cause to be made, on or about the Funding Date of any Term Loan or at the time of receipt of any payment of principal on such Lender's Secured Promissory Note, an appropriate notation on such Lender's Secured Promissory Note Record reflecting the making of such Term Loan or (as the case may be) the receipt of such payment. The outstanding amount of each Term Loan set forth on such Lender's Secured Promissory Note Record shall be prima facie evidence of the principal amount thereof owing and unpaid to such Lender, but the failure to record, or any error in so recording, any such amount on such Lender's Secured Promissory Note Record shall not limit or otherwise affect the obligations of Borrower under any Secured Promissory Note or any other Loan Document to make payments of principal or interest on any Secured Promissory Note when due. Upon receipt of an affidavit of an officer of a Lender as to the loss, theft, destruction, or mutilation of its Secured Promissory Note, Borrower shall issue, in lieu thereof, a replacement Secured Promissory Note in the same principal amount thereof and of like tenor.

**2.5 Fees.** Borrower shall pay to Collateral Agent:

(a) Facility Fee. [waived];

(b) Final Payment. The Final Payment, when due hereunder, to be shared between the Lenders in accordance with their respective Pro Rata Shares;

(c) Prepayment Fee. The Prepayment Fee, when due hereunder, to be shared between the Lenders in accordance with their respective Pro Rata Shares;

(d) Lenders' Expenses. All Lenders' Expenses (including reasonable attorneys' fees and expenses for documentation and negotiation of this Agreement) incurred through and after the Effective Date, when due.

**2.6 Withholding.** Payments received by the Lenders from Borrower hereunder will be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any governmental authority (including any interest, additions to tax or penalties applicable thereto). Specifically, however, if at any time any Governmental Authority, applicable law, regulation or international agreement requires Borrower to make any withholding or deduction from any such payment or other sum payable hereunder to the Lenders, Borrower hereby covenants and agrees that the amount due from Borrower with respect to such payment or other sum payable hereunder will be increased to the extent necessary to ensure that, after the making of such required withholding or deduction, each Lender receives a net sum equal to the sum which it would have received had no withholding or deduction been required and Borrower shall pay the full amount withheld or deducted to the relevant Governmental Authority. Borrower will, upon request, furnish the Lenders with proof reasonably satisfactory to the Lenders indicating that Borrower has made such withholding payment; provided, however, that Borrower need not make any withholding payment if the amount or validity of such withholding payment is contested in good faith by appropriate and timely proceedings and as to which payment in full is bonded or reserved against by Borrower. The agreements and obligations of Borrower contained in this Section 2.6 shall survive the termination of this Agreement.

### **3. CONDITIONS OF LOANS**

**3.1 Conditions Precedent to Initial Credit Extension.** Each Lender's obligation to make a Term A Loan is subject to the condition precedent that Collateral Agent and each Lender shall consent to or shall have received, in form and substance satisfactory to Collateral Agent and each Lender, such documents, and completion of such other matters, as Collateral Agent and each Lender may reasonably deem necessary or appropriate, including, without limitation:

- (a) original Loan Documents, each duly executed by Borrower and each Subsidiary, as applicable;
- (b) duly executed original Control Agreements with respect to any Collateral Accounts maintained by Borrower or any of its domestic Subsidiaries;
- (c) duly executed original Secured Promissory Notes in favor of each Lender according to its Term A Loan Commitment Percentage;
- (d) the Operating Documents and good standing certificates of Borrower certified by the Secretary of State (or equivalent agency) of Borrower's jurisdiction of organization and each jurisdiction in which Borrower is qualified to conduct business, each as of a date no earlier than thirty (30) days prior to the Effective Date;
- (e) a completed Perfection Certificate for Borrower and each of its Subsidiaries;
- (f) the Annual Projections, for the current calendar year;
- (g) duly executed original officer's certificate for Borrower and each Subsidiary that is a party to the Loan Documents, in a form acceptable to Collateral Agent and the Lenders;
- (h) certified copies, dated as of date no earlier than thirty (30) days prior to the Effective Date, of financing statement searches, as Collateral Agent shall request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either

constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;

(i) a landlord's consent executed in favor of Collateral Agent in respect of all of Borrower's and each Subsidiaries' leased locations;

(j) a bailee waiver executed in favor of Collateral Agent in respect of each third party bailee where Borrower or any Subsidiary maintains Collateral having a book value in excess of One Hundred Thousand Dollars (\$100,000.00);

(k) a duly executed legal opinion of counsel to Borrower dated as of the Effective Date;

(l) a payoff letter from Oxford Finance LLC, in its capacity as collateral agent in respect of the Existing Indebtedness;

(m) evidence that (i) the Liens securing the Existing Indebtedness and (ii) the documents and/or filings evidencing the perfection of such Liens (except to the extent Collateral Agent agrees that such filings or documents are to remain in place after the Effective Date), including without limitation any financing statements and/or control agreements, in each case, have or will, prior to or concurrently with the initial Credit Extension, be terminated;

(n) evidence satisfactory to Collateral Agent and the Lenders that the insurance policies required by Section 6.5 hereof are in full force and effect, together with appropriate evidence showing loss payable and/or additional insured clauses or endorsements in favor of Collateral Agent, for the ratable benefit of the Lenders;

(o) a copy of any applicable Registration Rights Agreement or Investors' Rights Agreement and any amendments thereto; and

(p) payment of the fees and Lenders' Expenses then due as specified in Section 2.5 hereof.

**3.2 Conditions Precedent to all Credit Extensions.** The obligation of each Lender to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent:

(a) receipt by (i) the Lenders of an executed Disbursement Letter in the form of Exhibit B-1 attached hereto; and (ii) SVB of an executed Loan Payment/Advance Request Form in the form of Exhibit B-2 attached hereto;

(b) the representations and warranties in Section 5 hereof shall be true, accurate and complete in all material respects on the date of the Disbursement Letter (and the Loan Payment/Advance Request Form) and on the Funding Date of each Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in Section 5 hereof are true, accurate and complete in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text

thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date;

(c) in such Lender's sole discretion, there has not been any Material Adverse Change or any material adverse deviation by Borrower from the Annual Projections of Borrower presented to and accepted by Collateral Agent and each Lender;

(d) to the extent not delivered at the Effective Date, duly executed original Secured Promissory Notes and Warrants, substantially in the form delivered as of the Effective Date and in favor of each Lender according to its Commitment Percentage, with respect to each Credit Extension made by such Lender after the Effective Date; and

(e) payment of the fees and Lenders' Expenses then due as specified in Section 2.5 hereof.

**3.3 Covenant to Deliver.** Borrower agrees to deliver to Collateral Agent and the Lenders each item required to be delivered to Collateral Agent under this Agreement as a condition precedent to any Credit Extension. Borrower expressly agrees that a Credit Extension made prior to the receipt by Collateral Agent or any Lender of any such item shall not constitute a waiver by Collateral Agent or any Lender of Borrower's obligation to deliver such item, and any such Credit Extension in the absence of a required item shall be made in each Lender's sole discretion.

**3.4 Procedures for Borrowing.** Subject to the prior satisfaction of all other applicable conditions to the making of a Term Loan set forth in this Agreement, to obtain a Term Loan, Borrower shall notify the Lenders (which notice shall be irrevocable) by electronic mail, facsimile, or telephone by 12:00 noon Eastern time three (3) Business Days prior to the date the Term Loan is to be made. Together with any such electronic, facsimile or telephonic notification, Borrower shall deliver to the Lenders by electronic mail or facsimile a completed Disbursement Letter (and the Loan Payment/Advance Request Form, with respect to SVB) executed by a Responsible Officer or his or her designee. The Lenders may rely on any telephone notice given by a person whom a Lender reasonably believes is a Responsible Officer or designee. On the Funding Date, each Lender shall credit and/or transfer (as applicable) to the Designated Deposit Account, an amount equal to its Term Loan Commitment.

#### **4. CREATION OF SECURITY INTEREST**

**4.1 Grant of Security Interest.** Borrower hereby grants Collateral Agent, for the ratable benefit of the Lenders, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Collateral Agent, for the ratable benefit of the Lenders, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral, subject only to Permitted Liens that are permitted by the terms of this Agreement to have priority to Collateral Agent's Lien. If Borrower shall acquire commercial tort claims (as defined in the Code) having a value in excess of One Hundred Thousand Dollars (\$100,000.00) individually or Two Hundred Fifty Thousand Dollars (\$250,000.00) in the aggregate, Borrower, shall promptly notify Collateral Agent in a writing signed by Borrower, as the case may be, of the general details thereof (and further details as may be required by Collateral Agent) and grant to Collateral Agent, for the ratable benefit of the Lenders, in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Collateral Agent.

Borrower acknowledges that it previously has entered, and/or may in the future enter, into Bank Services Agreements with Bank. Regardless of the terms of any Bank Services Agreement, Borrower agrees that any amounts Borrower owes Bank thereunder shall be deemed to be Obligations hereunder and that it is the intent of Borrower and Bank to have all such Obligations secured by the first priority perfected security interest in the Collateral granted herein (subject only to Permitted Liens that may have superior priority to Collateral Agent's Lien in this Agreement).

If this Agreement is terminated, Collateral Agent's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations (other than inchoate indemnity obligations) and at such time as the Lenders' obligation to make Credit Extensions has terminated, Collateral Agent shall, at the sole cost and expense of Borrower, release its Liens in the Collateral and all rights therein shall revert to Borrower. In the event (x) all Obligations (other than inchoate indemnity obligations), except for Bank Services, are satisfied in full, and (y) this Agreement is terminated, Collateral Agent shall terminate the security interest granted herein upon Borrower providing cash collateral acceptable to Bank in its good faith business judgment consistent with Bank's then current practice for Bank Services, if any. In the event such Bank Services consist of outstanding Letters of Credit, Borrower shall provide to Bank cash collateral in an amount equal to (x) if such Letters of Credit are denominated in Dollars, then one hundred five percent (105%); and (y) if such Letters of Credit are denominated in a Foreign Currency, then one hundred ten percent (110%), of the Dollar Equivalent of the face amount of all such Letters of Credit plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgment), to secure all of the Obligations relating to such Letters of Credit.

**4.2 Authorization to File Financing Statements.** Borrower hereby authorizes Collateral Agent to file financing statements or take any other action required to perfect Collateral Agent's security interests in the Collateral, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Collateral Agent's interest or rights under the Loan Documents, including a notice that any disposition of the Collateral, except to the extent permitted by the terms of this Agreement, by Borrower, or any other Person, shall be deemed to violate the rights of Collateral Agent under the Code.

**4.3 Pledge of Collateral.** Borrower hereby pledges, assigns and grants to Collateral Agent, for the ratable benefit of the Lenders, a security interest in all the Shares, together with all proceeds and substitutions thereof, all cash, stock and other moneys and property paid thereon, all rights to subscribe for securities declared or granted in connection therewith, and all other cash and noncash proceeds of the foregoing, as security for the performance of the Obligations. On the Effective Date, or, to the extent not certificated as of the Effective Date, within ten (10) days of the certification of any Shares, the certificate or certificates for the Shares will be delivered to Collateral Agent, accompanied by an instrument of assignment duly executed in blank by Borrower. To the extent required by the terms and conditions governing the Shares, Borrower shall cause the books of each entity whose Shares are part of the Collateral and any transfer agent to reflect the pledge of the Shares. Upon the occurrence and during the continuance of an Event of Default hereunder, Collateral Agent may effect the transfer of any securities included in the Collateral (including but not limited to the Shares) into the name of Collateral Agent and cause new (as applicable) certificates representing such securities to be issued in the name of Collateral Agent or its transferee. Borrower will execute and deliver such documents, and take or cause to be taken such actions, as Collateral Agent may reasonably request to perfect or continue the perfection of Collateral Agent's security interest in the Shares. Unless an Event of Default shall have occurred and be continuing, Borrower shall be entitled to exercise any voting rights with respect to the Shares and to give consents, waivers and ratifications in respect thereof, provided that no vote shall be cast or consent, waiver or ratification given or action taken which would be inconsistent with any of the terms of this Agreement or which would constitute or create any

violation of any of such terms. All such rights to vote and give consents, waivers and ratifications shall terminate upon the occurrence and continuance of an Event of Default.

## 5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Collateral Agent and the Lenders as follows:

**5.1 Due Organization, Authorization: Power and Authority.** Borrower and each of its Subsidiaries is duly existing and in good standing as a Registered Organization in its jurisdictions of organization or formation and Borrower and each of its Subsidiaries is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its businesses or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a Material Adverse Change. In connection with this Agreement, Borrower and each of its Subsidiaries has delivered to Collateral Agent a completed perfection certificate signed by an officer of Borrower or such Subsidiary (each a “**Perfection Certificate**” and collectively, the “**Perfection Certificates**”). Borrower represents and warrants that (a) Borrower and each of its Subsidiaries’ exact legal name is that which is indicated on its respective Perfection Certificate and on the signature page of each Loan Document to which it is a party; (b) Borrower and each of its Subsidiaries is an organization of the type and is organized in the jurisdiction set forth on its respective Perfection Certificate; (c) such Perfection Certificate accurately sets forth each of Borrower’s and its Subsidiaries’ organizational identification number or accurately states that Borrower or such Subsidiary has none; (d) each Perfection Certificate accurately sets forth Borrower’s and each of its Subsidiaries’ place of business, or, if more than one, its chief executive office as well as Borrower’s and each of its Subsidiaries’ mailing address (if different than its chief executive office); (e) except as set forth in such Perfection Certificate, Borrower and each of its Subsidiaries (and each of its respective predecessors) have not, in the past five (5) years, changed its jurisdiction of organization, organizational structure or type, or any organizational number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificates pertaining to Borrower and each of its Subsidiaries, is accurate and complete in all material respects (it being understood and agreed that Borrower and each of its Subsidiaries may from time to time update certain information in the Perfection Certificates (including the information set forth in clause (d) above) after the Effective Date to the extent such information is permitted to be updated by one or more specific provisions in this Agreement); such updated Perfection Certificates subject to the review and approval of Collateral Agent. If Borrower or any of its Subsidiaries is not now a Registered Organization but later becomes one, Borrower shall notify Collateral Agent of such occurrence and provide Collateral Agent with such Person’s organizational identification number within five (5) Business Days of receiving such organizational identification number.

The execution, delivery and performance by Borrower and each of its Subsidiaries of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower’s or such Subsidiaries’ organizational documents, including its respective Operating Documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law applicable thereto, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or such Subsidiary, or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect) or are being obtained pursuant to Section 6.1(b), or (v) constitute an event of default under any material agreement by which Borrower or any of such Subsidiaries, or their respective properties, is bound. Neither Borrower nor any of its Subsidiaries is in default under any agreement to which it is a party or by which it or any of its assets is bound in which such default could reasonably be expected to have a Material Adverse Change.

## **5.2 Collateral.**

(e) Borrower and each its Subsidiaries have good title to, have rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien under the Loan Documents, free and clear of any and all Liens except Permitted Liens, and neither Borrower nor any of its Subsidiaries have any Deposit Accounts, Securities Accounts, Commodity Accounts or other investment accounts other than the Collateral Accounts or the other investment accounts, if any, described in the Perfection Certificates delivered to Collateral Agent in connection herewith with respect of which Borrower or such Subsidiary has given Collateral Agent notice and taken such actions as are necessary to give Collateral Agent a perfected security interest therein to the extent required under Section 6.6. The Accounts are bona fide, existing obligations of the Account Debtors.

(f) On the Effective Date, and except as disclosed on the Perfection Certificate (i) the Collateral is not in the possession of any third party bailee (such as a warehouse), and (ii) no such third party bailee possesses components of the Collateral in excess of One Hundred Thousand Dollars (\$100,000.00). None of the components of the Collateral shall be maintained at locations other than as disclosed in the Perfection Certificates on the Effective Date or as permitted pursuant to Section 6.11.

(g) All Inventory is in all material respects of good and marketable quality, free from material defects.

(h) Borrower and each of its Subsidiaries is the sole owner of the Intellectual Property each respectively purports to own, free and clear of all Liens other than Permitted Liens. Except as noted on the Perfection Certificates, neither Borrower nor any of its Subsidiaries is a party to, nor is bound by, any material license or other material agreement with respect to which Borrower or such Subsidiary is the licensee that (i) prohibits or otherwise restricts Borrower or its Subsidiaries from granting a security interest in Borrower's or such Subsidiaries' interest in such material license or material agreement or any other property, or (ii) for which a default under or termination of could interfere with Collateral Agent's or any Lender's right to sell any Collateral. Borrower shall provide written notice to Collateral Agent and each Lender within ten (10) days of Borrower or any of its Subsidiaries entering into or becoming bound by any license or agreement with respect to which Borrower or any Subsidiary is the licensee (other than over-the-counter software that is commercially available to the public).

**5.3 Litigation.** Except as disclosed (i) on the Perfection Certificates, or (ii) in accordance with Section 6.9 hereof, there are no actions, suits, investigations (subject to attorney-client privilege), or proceedings pending or, to the knowledge of the Responsible Officers, threatened in writing by or against Borrower or any of its Subsidiaries involving more than Two Hundred Fifty Thousand Dollars (\$250,000.00).

**5.4 No Material Deterioration in Financial Condition; Financial Statements.** All consolidated financial statements for Borrower and its Subsidiaries, delivered to Collateral Agent fairly present, in conformity with GAAP, in all material respects the consolidated financial condition of Borrower and its Subsidiaries, and the consolidated results of operations of Borrower and its Subsidiaries as of the dates and for the periods presented (subject, in the case of unaudited financial statements, to normal year-end adjustments and the absence of footnotes). There has not been any material deterioration in the consolidated financial condition of Borrower and its Subsidiaries since the date of the most recent financial statements submitted to any Lender.

**5.5 Solvency.** Borrower is Solvent and Borrower and each of its Subsidiaries, on a consolidated basis, are Solvent.

**5.6 Regulatory Compliance.** Neither Borrower nor any of its Subsidiaries is an “investment company” or a company “controlled” by an “investment company” under the Investment Company Act of 1940, as amended. Neither Borrower nor any of its Subsidiaries is engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower and each of its Subsidiaries has complied in all material respects with the Federal Fair Labor Standards Act. Neither Borrower nor any of its Subsidiaries is a “holding company” or an “affiliate” of a “holding company” or a “subsidiary company” of a “holding company” as each term is defined and used in the Public Utility Holding Company Act of 2005. Neither Borrower nor any of its Subsidiaries has violated any laws, ordinances or rules, the violation of which could reasonably be expected to have a Material Adverse Change. Neither Borrower’s nor any of its Subsidiaries’ properties or assets has been used by Borrower or such Subsidiary or, to Borrower’s knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with applicable laws. Borrower and each of its Subsidiaries has obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted, except where the failure to obtain any such consent, approval or authorization to make any such declaration of filing or give such notice could not reasonably be expected to have a Material Adverse Change.

None of Borrower, any of its Subsidiaries, or any of Borrower’s or its Subsidiaries’ Affiliates or any of their respective agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is (i) in violation of any Anti-Terrorism Law, (ii) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, or (iii) is a Blocked Person. None of Borrower, any of its Subsidiaries, or to the knowledge of Borrower and any of their Affiliates or agents, acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (x) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (y) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

**5.7 Investments.** Neither Borrower nor any of its Subsidiaries owns any stock, shares, partnership interests or other equity securities except for Permitted Investments.

**5.8 Tax Returns and Payments; Pension Contributions.** Borrower and each of its Subsidiaries has timely filed all required tax returns and reports, and Borrower and each of its Subsidiaries, has timely paid all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower and such Subsidiaries, in all jurisdictions in which Borrower or any such Subsidiary is subject to taxes, including the United States, unless such taxes are being contested in accordance with the following sentence. Borrower and each of its Subsidiaries, may defer payment of any contested taxes, provided that Borrower or such Subsidiary, (a) in good faith contests its obligation to pay the taxes by appropriate proceedings promptly and diligently instituted and conducted, (b) notifies Collateral Agent in writing of the commencement of, and any material development in, the proceedings, and (c) posts bonds or takes any other steps required to prevent the Governmental Authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a “**Permitted Lien.**” Neither Borrower nor any of its Subsidiaries is aware of any claims or adjustments proposed for any of Borrower’s or such Subsidiaries’, prior tax years which could result in additional taxes becoming due and payable by Borrower or its Subsidiaries. Borrower and each of its Subsidiaries have paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and neither Borrower nor any of its Subsidiaries have, withdrawn from participation in, and have not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower or its Subsidiaries, including

any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority. Notwithstanding anything to the contrary contained in this Agreement, Borrower shall not be in breach of this Section 5.8 unless the aggregate amount of taxes covered by tax returns and reports that have not been timely filed or the aggregate amount of taxes that have not been timely paid in either case exceeds Twenty Five Thousand Dollars (\$25,000.00).

**5.9 Use of Proceeds.** Borrower shall use the proceeds of the Credit Extensions solely as working capital and to fund its general business requirements in accordance with the provisions of this Agreement, and not for personal, family, household or agricultural purposes. A portion of the proceeds of the Term A Loans shall be used by Borrower to repay the Existing Indebtedness in full on the Effective Date.

**5.10 Shares.** Borrower has full power and authority to create a first lien on the Shares and no disability or contractual obligation exists that would prohibit Borrower from pledging the Shares pursuant to this Agreement. To Borrower's knowledge, there are no subscriptions, warrants, rights of first refusal or other restrictions on transfer relative to, or options exercisable with respect to the Shares. The Shares have been and will be duly authorized and validly issued, and are fully paid and non-assessable. To Borrower's knowledge, the Shares are not the subject of any present or threatened suit, action, arbitration, administrative or other proceeding, and Borrower knows of no reasonable grounds for the institution of any such proceedings.

**5.11 Full Disclosure.** No written representation, warranty or other statement of Borrower or any of its Subsidiaries in any certificate or written statement given to Collateral Agent or any Lender, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Collateral Agent or any Lender, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

**5.12 Definition of "Knowledge."** For purposes of the Loan Documents, whenever a representation or warranty is made to Borrower's knowledge or awareness, to the "best of" Borrower's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of the Responsible Officers.

## **6. AFFIRMATIVE COVENANTS**

Borrower shall, and shall cause each of its Subsidiaries to, do all of the following:

### **6.1 Government Compliance.**

(a) Except as permitted under Section 7.3, maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of organization and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Change. Comply with all laws, ordinances and regulations to which Borrower or any of its Subsidiaries is subject, the noncompliance with which could reasonably be expected to have a Material Adverse Change.

(b) Obtain and keep in full force and effect, all of the material Governmental Approvals necessary for the performance by Borrower and its Subsidiaries of their respective businesses and obligations under the Loan Documents (except as could not reasonably be expected to have a material adverse effect on Borrower's business) and the grant of a security interest to Collateral Agent for the ratable benefit of the Lenders,

in all of the Collateral. Borrower shall promptly provide copies to Collateral Agent of any material Governmental Approvals obtained by Borrower or any of its Subsidiaries.

## 6.2 Financial Statements, Reports, Certificates.

(a) Deliver to each Lender:

(i) as soon as available, but no later than thirty (30) days after the last day of each month, a company prepared consolidated and consolidating balance sheet, income statement and cash flow statement covering the consolidated operations of Borrower and its Subsidiaries for such month certified by a Responsible Officer and in a form reasonably acceptable to Collateral Agent;

(ii) as soon as available, but no later than one hundred eighty (180) days after the last day of Borrower's fiscal year or within five (5) days of filing with the SEC, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion (except that such opinion may be qualified with respect to going concern) on the financial statements from an independent certified public accounting firm acceptable to Collateral Agent in its reasonable discretion;

(iii) as soon as available after approval thereof by Borrower's Board of Directors, but no later than forty-five (45) days after the last day of each of Borrower's fiscal years, Borrower's annual financial projections for the entire current fiscal year as approved by Borrower's Board of Directors, which such annual financial projections shall be set forth in a month-by-month format (such annual financial projections as originally delivered to Collateral Agent and the Lenders are referred to herein as the "**Annual Projections**"; provided that, any revisions of the Annual Projections approved by Borrower's Board of Directors shall be delivered to Collateral Agent and the Lenders no later than seven (7) days after such approval);

(iv) within five (5) days of delivery, copies of all statements, reports and notices made available to Borrower's security holders generally or holders of Subordinated Debt in their capacity as such;

(v) in the event that Borrower becomes subject to the reporting requirements under the Securities Exchange Act of 1934, as amended, within five (5) days of filing, all reports on Form 10-K, 10-Q and 8-K filed with the Securities and Exchange Commission,

(vi) prompt notice of (i) any amendments of or other changes to the Operating Documents of Borrower or any of its Subsidiaries and (ii) any material amendment of or other change to the capitalization table of Borrower; in each case together with any copies reflecting such amendments or changes with respect thereto; and provided that Borrower shall provide Collateral Agent and Lenders the notice with respect to, and copies of, the current capitalization table no later than thirty (30) days after the end of each fiscal quarter to the extent that there have been any amendments of, or changes to, the capitalization table since the last time the same was delivered to Collateral Agent and Lenders.

(vii) prompt notice of any event that could reasonably be expected to materially and adversely affect the value of the Intellectual Property;

(viii) as soon as available, but no later than thirty (30) days after the last day of each month, copies of the month-end account statements for each Collateral Account maintained by Borrower or its Subsidiaries, which statements may be provided to Collateral Agent and each Lender by Borrower or directly from the applicable institution(s), and

- (ix) other information as reasonably requested by Collateral Agent or any Lender.

Notwithstanding the foregoing, documents required to be delivered pursuant to the terms hereof (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered the date on which Borrower notifies Collateral Agent and Lenders that the SEC has made such documents publicly available or the date on which Borrower posts such documents, or provides a link thereto, on Borrower's website on the internet at Borrower's website address.

(b) Concurrently with the delivery of the financial statements specified in Section 6.2(a)(i) above but no later than thirty (30) days after the last day of each month, deliver to each Lender, a duly completed Compliance Certificate signed by a Responsible Officer.

(c) Keep proper books of record and account in accordance with GAAP in all material respects, in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities (subject, in the case of unaudited financial statements, to normal year-end adjustments and the absence of footnotes). Borrower shall, and shall cause each of its Subsidiaries to, allow, at the sole cost of Borrower, Collateral Agent or any Lender, during regular business hours upon reasonable prior notice (provided that no notice shall be required when an Event of Default has occurred and is continuing), to visit and inspect any of its properties, to examine and make abstracts or copies from any of its books and records, and to conduct a collateral audit and analysis of its operations and the Collateral. Such audits shall be conducted no more often than twice every year unless (and more frequently if) an Event of Default has occurred and is continuing.

**6.3 Inventory; Returns.** Keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Borrower, or any of its Subsidiaries, and their respective Account Debtors shall follow Borrower's, or such Subsidiary's, customary practices as they exist at the Effective Date. Borrower must promptly notify Collateral Agent and the Lenders of all returns, recoveries, disputes and claims that involve more than Two Hundred Fifty Thousand Dollars (\$250,000.00) individually or in the aggregate in any calendar year.

**6.4 Taxes; Pensions.** Timely file and require each of its Subsidiaries to timely file, all required tax returns and reports and timely pay, and require each of its Subsidiaries to timely file, all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower or its Subsidiaries, except for deferred payment of any taxes contested pursuant to the terms of Section 5.8 hereof, and shall deliver to Lenders, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with the terms of such plans. Notwithstanding anything to the contrary contained in this Agreement, Borrower shall not be in breach of this Section 6.4 unless the aggregate amount of taxes covered by tax returns and reports that have not been timely filed or the aggregate amount of taxes that have not been timely paid in either case exceeds Twenty Five Thousand Dollars (\$25,000.00).

**6.5 Insurance.** Keep Borrower's and its Subsidiaries' business and the Collateral insured for risks and in amounts standard for companies in Borrower's and its Subsidiaries' industry and location and as Collateral Agent may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are reasonably satisfactory to Collateral Agent and Lenders. All property policies shall have a lender's loss payable endorsement showing Collateral Agent as lender loss payee and waive subrogation against Collateral Agent, and all liability policies shall show, or have endorsements showing, Collateral Agent, as additional insured. The Collateral Agent shall be named as lender loss payee and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral, and each provider of any such insurance shall agree, by

endorsement upon the policy or policies issued by it or by independent instruments furnished to the Collateral Agent, that it will give the Collateral Agent thirty (30) days prior written notice before any such policy or policies shall be materially altered or canceled. At Collateral Agent's request, Borrower shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any policy shall, at Collateral Agent's option, be payable to Collateral Agent, for the ratable benefit of the Lenders, on account of the Obligations. Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy up to One Hundred Thousand Dollars (\$100,000.00) with respect to any loss, but not exceeding Two Hundred Fifty Thousand Dollars (\$250,000.00), in the aggregate for all losses under all casualty policies in any one year, toward the replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Collateral Agent has been granted a first priority security interest, and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of Collateral Agent, be payable to Collateral Agent, for the ratable benefit of the Lenders, on account of the Obligations. If Borrower or any of its Subsidiaries fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons, Collateral Agent and/or any Lender may make, at Borrower's expense, all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Collateral Agent or such Lender deems prudent.

#### **6.6 Operating Accounts.**

(a) Except as otherwise provided in Section 6.6(b), maintain all of Borrower's and its Subsidiaries' Collateral Accounts (other than the Miramar Hong Kong Account) with Bank or its Affiliates in accounts which are subject to a Control Agreement in favor of Collateral Agent and maintain all cash management services and foreign exchange services with Bank or its Affiliates.

(b) Borrower shall provide Collateral Agent five (5) days' prior written notice before Borrower or any of its Subsidiaries establishes any Collateral Account at or with any Person other than Bank or its Affiliates. In addition, for each Collateral Account that Borrower or any of its Subsidiaries, at any time maintains, Borrower or such Subsidiary shall cause the applicable bank or financial institution at or with which such Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Collateral Agent's Lien in such Collateral Account in accordance with the terms hereunder prior to the establishment of such Collateral Account, which Control Agreement may not be terminated without prior written consent of Collateral Agent. The provisions of the previous sentence shall not apply to (i) deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's, or any of its Subsidiaries', employees and identified to Collateral Agent by Borrower as such in the Perfection Certificates and (ii) the Miramar Hong Kong Account.

(c) Neither Borrower nor any of its Subsidiaries shall maintain any Collateral Accounts except Collateral Accounts maintained in accordance with Sections 6.6(a) and (b).

**6.7 Protection of Intellectual Property Rights.** Borrower and each of its Subsidiaries shall: (a) use commercially reasonable efforts to protect, defend and maintain the validity and enforceability of its Intellectual Property that is material to Borrower's business; (b) promptly advise Collateral Agent in writing of material infringement by a third party of its Intellectual Property; and (c) not allow any Intellectual Property material to Borrower's business to be abandoned, forfeited or dedicated to the public without Collateral Agent's prior written consent.

**6.8 Litigation Cooperation.** Commencing on the Effective Date and continuing through the termination of this Agreement, make available to Collateral Agent and the Lenders, without expense to Collateral Agent or the Lenders, Borrower and each of Borrower's officers, employees and agents and Borrower's Books, to the extent that Collateral Agent or any Lender may reasonably deem them necessary to prosecute or defend any third-party suit or proceeding instituted by or against Collateral Agent or any Lender with respect to any Collateral or relating to Borrower.

**6.9 Notices of Litigation and Default.** Borrower will give prompt written notice to Collateral Agent and the Lenders of any litigation or governmental proceedings pending or threatened (in writing) against Borrower or any of its Subsidiaries, which could reasonably be expected to result in damages or costs to Borrower or any of its Subsidiaries of One Hundred Thousand Dollars (\$100,000.00) or more or which could reasonably be expected to have a Material Adverse Change. Without limiting or contradicting any other more specific provision of this Agreement, promptly (and in any event within three (3) Business Days) upon Borrower becoming aware of the existence of any Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default, Borrower shall give written notice to Collateral Agent and the Lenders of such occurrence, which such notice shall include a reasonably detailed description of such Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default.

**6.10 Intentionally Omitted.**

**6.11 Landlord Waivers; Bailee Waivers.** In the event that Borrower or any of its Subsidiaries, after the Effective Date, intends to add any new offices or business locations in the United States, including warehouses, or otherwise store any portion of the Collateral with, or deliver any portion of the Collateral to, a bailee, in each case pursuant to Section 7.2, then Borrower or such Subsidiary will first receive the written consent of Collateral Agent and, in the event that the Collateral at any new location is valued in excess of One Hundred Thousand (\$100,000.00) in the aggregate, such bailee or landlord, as applicable, must execute and deliver a bailee waiver or landlord waiver, as applicable, in form and substance reasonably satisfactory to Collateral Agent prior to the addition of any new offices or business locations, or any such storage with or delivery to any such bailee, as the case may be.

**6.12 Creation/Acquisition of Subsidiaries.** In the event Borrower, or any of its Subsidiaries creates or acquires any Subsidiary, Borrower shall provide prior written notice to Collateral Agent and each Lender of the creation or acquisition of such new Subsidiary, provide Collateral Agent and Lenders with a completed Perfection Certificate in respect of such Subsidiary substantially in the form of Annex I attached hereto, and take all such action as may be reasonably required by Collateral Agent or any Lender to cause each such Subsidiary to become a co-Borrower hereunder or to guarantee the Obligations of Borrower under the Loan Documents and, in each case, grant a continuing pledge and security interest in and to the assets of such Subsidiary (substantially as described on Exhibit A hereto); and Borrower (or its Subsidiary, as applicable) shall grant and pledge to Collateral Agent, for the ratable benefit of the Lenders, a perfected security interest in the Shares of each such newly created Subsidiary; provided, however, that solely in the circumstance in which Borrower or any Subsidiary creates or acquires a Foreign Subsidiary in an acquisition permitted by Section 7.7 hereof or otherwise approved by the Required Lenders, (i) such Foreign Subsidiary shall not be required to guarantee the Obligations of Borrower under the Loan Documents and grant a continuing pledge and security interest in and to the assets of such Foreign Subsidiary, and (ii) Borrower shall not be required to grant and pledge to Collateral Agent, for the ratable benefit of Lenders, a perfected security interest in more than sixty five percent (65%) of the Shares of such Foreign Subsidiary, if Borrower demonstrates to the reasonable satisfaction of Collateral Agent that such Foreign Subsidiary providing such guarantee or pledge and security interest or Borrower

providing a perfected security interest in more than sixty five percent (65%) of the Shares would create a present and existing adverse tax consequence to Borrower under the U.S. Internal Revenue Code.

### **6.13 Further Assurances.**

(a) Execute any further instruments and take further action as Collateral Agent or any Lender reasonably requests to perfect or continue Collateral Agent's Lien in the Collateral or to effect the purposes of this Agreement.

(b) Deliver to Collateral Agent and Lenders, within five (5) days after the same are sent or received, copies of all material correspondence, reports, documents and other filings with any Governmental Authority that could reasonably be expected to have a material adverse effect on any of the Governmental Approvals material to Borrower's business or otherwise could reasonably be expected to have a Material Adverse Change.

## **7. NEGATIVE COVENANTS**

Borrower shall not, and shall not permit any of its Subsidiaries to, do any of the following without the prior written consent of the Required Lenders:

**7.1 Dispositions.** Convey, sell, lease, transfer, assign, or otherwise dispose of (collectively, "Transfer"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn out, surplus or obsolete Equipment; (c) in connection with Permitted Liens, Permitted Investments and Permitted Licenses; and (d) other property not to exceed One Hundred Thousand Dollars (\$100,000.00) in the aggregate per fiscal year.

**7.2 Changes in Business, Management, Ownership, or Business Locations.** (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses engaged in by Borrower as of the Effective Date or reasonably related thereto; (b) liquidate or dissolve (unless permitted under Section 7.3); or (c) (i) any Key Person shall cease to be actively engaged in the management of Borrower unless written notice thereof is provided to Collateral Agent within five (5) days of such change, or (ii) consummate any transaction or series of related transactions in which the stockholders of Borrower who were not stockholders immediately prior to the first such transaction own more than forty nine percent (49%) of the voting stock of Borrower immediately after giving effect to such transaction or related series of such transactions (other than by the sale of Borrower's equity securities in a public offering, a private placement of public equity or to venture capital investors so long as Borrower identifies to Collateral Agent the venture capital investors prior to the closing of the transaction). Borrower shall not, without at least thirty (30) days' prior written notice to Collateral Agent: (A) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than One Hundred Thousand Dollars (\$100,000.00) in assets or property of Borrower or any of its Subsidiaries); (B) change its jurisdiction of organization, (C) change its organizational structure or type, (D) change its legal name, or (E) change any organizational number (if any) assigned by its jurisdiction of organization.

**7.3 Mergers or Acquisitions.** Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock, shares or property of another Person, provided that a Subsidiary may merge or consolidate into another Subsidiary (provided such surviving Subsidiary is a "co-Borrower" hereunder or has provided a secured Guaranty of Borrower's Obligations hereunder to the extent required under Section 6.12) or with (or into) Borrower provided Borrower is the surviving legal entity, and as long as no Event of Default is occurring

prior thereto or arises as a result therefrom. Without limiting the foregoing, Borrower shall not, without Collateral Agent's prior written consent, enter into any binding contractual arrangement with any Person to attempt to facilitate a merger or acquisition of Borrower, unless (i) no Event of Default exists when such agreement is entered into by Borrower, (ii) such agreement does not give such Person the right to claim any break up or similar fees, payments or damages from Borrower or any Subsidiary as a result of any failure to proceed with or close such merger or acquisition in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) in the aggregate, and (iii) Borrower notifies Collateral Agent in advance of entering into such an agreement.

**7.4 Indebtedness.** Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

**7.5 Encumbrance.** Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, or permit any Collateral not to be subject to the first priority security interest granted herein (except for Permitted Liens that are permitted by the terms of this Agreement to have priority over Collateral Agent's Lien), or enter into any agreement, document, instrument or other arrangement (except with or in favor of Collateral Agent, for the ratable benefit of the Lenders) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower, or any of its Subsidiaries, from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or such Subsidiary's Intellectual Property, except as is otherwise permitted in Section 7.1 hereof and the definition of "Permitted Liens" herein.

**7.6 Maintenance of Collateral Accounts.** Maintain any Collateral Account except pursuant to the terms of Section 6.6 hereof.

**7.7 Distributions; Investments.** (a) Pay any dividends (other than dividends payable solely in capital stock or dividends payable to Borrower) or make any distribution or payment in respect of or redeem, retire or purchase any capital stock (other than (i) repurchases pursuant to the terms of employee stock purchase plans, employee restricted stock agreements, stockholder rights plans, director or consultant stock option plans, or similar plans, provided such repurchases do not exceed One Hundred Thousand Dollars (\$100,000.00) in the aggregate per fiscal year), (ii) the conversion of Borrower's convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange therefor and (iii) the making of cash payments in lieu of the issuance of fractional shares upon such conversion or in connection with the exercise of warrants or similar securities) or (b) directly or indirectly make any Investment other than Permitted Investments, or permit any of its Subsidiaries to do so.

**7.8 Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower or any of its Subsidiaries, except for (a) transactions that are in the ordinary course of Borrower's or such Subsidiary's business, upon fair and reasonable terms that are no less favorable to Borrower or such Subsidiary than would be obtained in an arm's length transaction with a non-affiliated Person, (b) Subordinated Debt or equity investments by Borrower's investors in Borrower or its Subsidiaries, and (c) reasonable and customary fees paid to members of Borrower's board of directors, (d) compensation arrangements and benefit plans for officers entered into or maintained in the ordinary course of business and (e) transactions by and among Borrower and its Subsidiaries consisting of Permitted Investments.

**7.9 Subordinated Debt.** (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase

the amount thereof or adversely affect the subordination thereof to Obligations owed to the Lenders, except as permitted under the Subordination Agreement.

**7.10 Compliance.** Become an “investment company” or a company controlled by an “investment company”, under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a Material Adverse Change, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower or any of its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

**7.11 Compliance with Anti-Terrorism Laws.** Collateral Agent hereby notifies Borrower and each of its Subsidiaries that pursuant to the requirements of Anti-Terrorism Laws, and Collateral Agent’s policies and practices, Collateral Agent is required to obtain, verify and record certain information and documentation that identifies Borrower and each of its Subsidiaries and their principals, which information includes the name and address of Borrower and each of its Subsidiaries and their principals and such other information that will allow Collateral Agent to identify such party in accordance with Anti-Terrorism Laws. Neither Borrower nor any of its Subsidiaries shall, nor shall Borrower or any of its Subsidiaries permit any Affiliate to, directly or indirectly, knowingly enter into any documents, instruments, agreements or contracts with any Person listed on the OFAC Lists. Borrower and each of its Subsidiaries shall immediately notify Collateral Agent if Borrower or such Subsidiary has knowledge that Borrower, or any Subsidiary or Affiliate of Borrower, is listed on the OFAC Lists or (a) is convicted on, (b) pleads *nolo contendere* to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. Neither Borrower nor any of its Subsidiaries shall, nor shall Borrower or any of its Subsidiaries, permit any Affiliate to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224 or any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

**7.12 Subsidiary Assets.** Permit the aggregate value of assets held by Miramar Labs HK to exceed ten percent (10%) of Borrower and its Subsidiaries total assets at any time.

## **8. EVENTS OF DEFAULT**

Any one of the following shall constitute an event of default (an “**Event of Default**”) under this Agreement:

**8.1 Payment Default.** Borrower fails to (a) make any payment of principal or interest on any Credit Extension on its due date, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day grace period shall not apply to payments due on the Maturity

Date or the date of acceleration pursuant to Section 9.1 (a) hereof). During the cure period, the failure to cure the payment default is not an Event of Default (but no Credit Extension will be made during the cure period);

## **8.2 Covenant Default.**

(a) Borrower or any of its Subsidiaries fails or neglects to perform any obligation in Sections 6.2 (Financial Statements, Reports, Certificates), 6.4 (Taxes), 6.5 (Insurance), 6.6 (Operating Accounts), 6.7 (Protection of Intellectual Property Rights), 6.9 (Notice of Litigation and Default), 6.12 (Creation/Acquisition of Subsidiaries) or 6.13 (Further Assurances) or Borrower violates any covenant in Section 7; or

(b) Borrower, or any of its Subsidiaries, fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Credit Extensions shall be made during such cure period). Grace periods provided under this Section shall not apply, among other things, to financial covenants or any other covenants set forth in subsection (a) above;

**8.3 Investor Abandonment.** Any Lender determines in its good faith judgment, that (i) Borrower will not be able to satisfy the Obligations as they become due and payable, and (ii) none of Borrower's principal investors (defined as each investor that has designated a member of Borrower's Board of Directors) intends to fund such amounts as may be necessary to enable Borrower to satisfy the Obligations as they become due and payable, or (iii) there is a material impairment in the perfection or priority of the Collateral Agent's security interest in, or the value of, the Collateral;

## **8.4 Attachment; Levy; Restraint on Business.**

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or any of its Subsidiaries or of any entity under control of Borrower or its Subsidiaries on deposit with any Lender or any Lender's Affiliate or any bank or other institution at which Borrower or any of its Subsidiaries maintains a Collateral Account, or (ii) a notice of lien, levy, or assessment is filed against Borrower or any of its Subsidiaries or their respective assets by any government agency, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any ten (10) day cure period; and

(b) (i) any material portion of Borrower's or any of its Subsidiaries' assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower or any of its Subsidiaries from conducting any material part of its business;

**8.5 Insolvency.** (a) Borrower or any of its Subsidiaries is or becomes Insolvent; (b) Borrower or any of its Subsidiaries begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower or any of its Subsidiaries and not dismissed or stayed within forty-five (45) days (but no Credit Extensions shall be made while Borrower or any Subsidiary is Insolvent and/or until any Insolvency Proceeding is dismissed);

**8.6 Other Agreements.** There is a default in any agreement to which Borrower or any of its Subsidiaries is a party with a third party or parties resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) or that could reasonably be expected to have a Material Adverse Change;

**8.7 Judgments.** One or more judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least One Hundred Thousand Dollars (\$100,000.00) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower or any of its Subsidiaries and shall remain unsatisfied, unvacated, or unstayed for a period of ten (10) days after the entry thereof (provided that no Credit Extensions will be made prior to the satisfaction, vacation, or stay of such judgment, order or decree);

**8.8 Misrepresentations.** Borrower or any of its Subsidiaries or any Person acting for Borrower or any of its Subsidiaries makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Collateral Agent and/or Lenders or to induce Collateral Agent and/or the Lenders to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made;

**8.9 Subordinated Debt.** A default or breach occurs under any agreement between Borrower or any of its Subsidiaries and any creditor of Borrower or any of its Subsidiaries that signed a subordination, intercreditor, or other similar agreement with Collateral Agent or the Lenders, or any creditor that has signed such an agreement with Collateral Agent or the Lenders breaches any terms of such agreement;

**8.10 Guaranty.** (a) Any Guaranty terminates or ceases for any reason to be in full force and effect other than pursuant to its terms; (b) any Guarantor does not perform any obligation or covenant under any Guaranty and has failed to cure the failure to perform within ten (10) days after the occurrence thereof; provided, however, that if the failure to perform cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts be cured within such ten (10) day period, and such failure is likely to be cured within a reasonable time, then such Guarantor shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such failure, and within such reasonable time period the failure to cure the failure shall not be deemed an Event of Default (but no Credit Extensions shall be made during such cure period); (c) any circumstance described in Sections 8.3, 8.4, 8.5, 8.7, or 8.8 occurs with respect to any Guarantor, or (d) the liquidation, winding up, or termination of existence of any Guarantor except as permitted hereunder;

**8.11 Governmental Approvals.** Any Governmental Approval shall have been revoked, rescinded, suspended, modified in an adverse manner, or not renewed in the ordinary course for a full term *and* such revocation, rescission, suspension, modification or non-renewal has resulted in or could reasonably be expected to result in a Material Adverse Change; or

**8.12 Lien Priority.** Any Lien created hereunder or by any other Loan Document shall at any time fail to constitute a valid and perfected Lien on any of the Collateral purported to be secured thereby, subject to no prior or equal Lien, other than Permitted Liens which are permitted to have priority in accordance with the terms of this Agreement.

## 9. RIGHTS AND REMEDIES

### 9.1 Rights and Remedies.

(a) Upon the occurrence and during the continuance of an Event of Default, Collateral Agent may, and at the written direction of Required Lenders shall, without notice or demand, do any or all of the following: (i) deliver notice of the Event of Default to Borrower, (ii) by notice to Borrower declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations shall be immediately due and payable without any action by Collateral Agent or the Lenders) or (iii) by notice to Borrower suspend or terminate the obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders (but if an Event of Default described in Section 8.5 occurs all obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders shall be immediately terminated without any action by Collateral Agent or the Lenders).

(b) Without limiting the rights of Collateral Agent and the Lenders set forth in Section 9.1 (a) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right, without notice or demand, to do any or all of the following:

- (i) foreclose upon and/or sell or otherwise liquidate, the Collateral;
- (ii) apply to the Obligations any (a) balances and deposits of Borrower that Collateral Agent or any Lender holds or controls, or (b) any amount held or controlled by Collateral Agent or any Lender owing to or for the credit or the account of Borrower; and/or
- (iii) commence and prosecute an Insolvency Proceeding or consent to Borrower commencing any Insolvency Proceeding.

(c) Without limiting the rights of Collateral Agent and the Lenders set forth in Sections 9.1 (a) and (b) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right, without notice or demand, to do any or all of the following:

- (i) settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Collateral Agent considers advisable, notify any Person owing Borrower money of Collateral Agent's security interest in such funds, and verify the amount of such account;
- (ii) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Collateral Agent requests and make it available in a location as Collateral Agent reasonably designates. Collateral Agent may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Collateral Agent a license to enter and occupy any of its premises, without charge, to exercise any of Collateral Agent's rights or remedies;
- (iii) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, and/or advertise for sale, the Collateral. Collateral Agent is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's and each of its Subsidiaries' labels, patents, copyrights, mask works, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter,

or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Collateral Agent's exercise of its rights under this Section 9.1, Borrower's and each of its Subsidiaries' rights under all licenses and all franchise agreements inure to Collateral Agent, for the benefit of the Lenders;

(iv) place a "hold" on any account maintained with Collateral Agent or the Lenders and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(v) demand and receive possession of Borrower's Books;

(vi) appoint a receiver to seize, manage and realize any of the Collateral, and such receiver shall have any right and authority as any competent court will grant or authorize in accordance with any applicable law, including any power or authority to manage the business of Borrower or any of its Subsidiaries;

(vii) subject to clauses 9.1(a) and (b), exercise all rights and remedies available to Collateral Agent and each Lender under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof);

(viii) for any Letters of Credit, demand that Borrower (i) deposit cash with Bank in an amount equal to (x) if such Letters of Credit are denominated in Dollars, then one hundred five percent (105%); and (y) if such Letters of Credit are denominated in a Foreign Currency, then one hundred ten percent (110%), of the Dollar Equivalent of the aggregate face amount of all Letters of Credit remaining undrawn (plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgment)), to secure all of the Obligations relating to such Letters of Credit, as collateral security for the repayment of any future drawings under such Letters of Credit, and Borrower shall forthwith deposit and pay such amounts, and (ii) pay in advance all letter of credit fees scheduled to be paid or payable over the remaining term of any Letters of Credit; and

(ix) terminate any FX Contracts.

Notwithstanding any provision of this Section 9.1 to the contrary, upon the occurrence of any Event of Default, Collateral Agent shall have the right to exercise any and all remedies referenced in this Section 9.1 without the written consent of Required Lenders following the occurrence of an Exigent Circumstance. As used in the immediately preceding sentence, "**Exigent Circumstance**" means any event or circumstance that, in the reasonable judgment of Collateral Agent, imminently threatens the ability of Collateral Agent to realize upon all or any material portion of the Collateral, such as, without limitation, fraudulent removal, concealment, or abscondment thereof, destruction or material waste thereof, or failure of Borrower or any of its Subsidiaries after reasonable demand to maintain or reinstate adequate casualty insurance coverage, or which, in the judgment of Collateral Agent, could reasonably be expected to result in a material diminution in value of the Collateral.

**9.2 Power of Attorney.** Borrower hereby irrevocably appoints Collateral Agent as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's or any of its Subsidiaries' name on any checks or other forms of payment or security; (b) sign Borrower's or any of its Subsidiaries' name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Collateral Agent determines reasonable; (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate

or discharge the same; and (f) transfer the Collateral into the name of Collateral Agent or a third party as the Code or any applicable law permits. Borrower hereby appoints Collateral Agent as its lawful attorney-in-fact to sign Borrower's or any of its Subsidiaries' name on any documents necessary to perfect or continue the perfection of Collateral Agent's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than inchoate indemnity obligations) have been satisfied in full and Collateral Agent and the Lenders are under no further obligation to make Credit Extensions hereunder. Collateral Agent's foregoing appointment as Borrower's or any of its Subsidiaries' attorney in fact, and all of Collateral Agent's rights and powers, coupled with an interest, are irrevocable until all Obligations (other than inchoate indemnity obligations) have been fully repaid and performed and Collateral Agent's and the Lenders' obligation to provide Credit Extensions terminates.

**9.3 Protective Payments.** If Borrower or any of its Subsidiaries fail to obtain the insurance called for by Section 6.5 or fails to pay any premium thereon or fails to pay any other amount which Borrower or any of its Subsidiaries is obligated to pay under this Agreement or any other Loan Document, Collateral Agent may obtain such insurance or make such payment, and all amounts so paid by Collateral Agent are Lenders' Expenses and immediately due and payable, bearing interest at the Default Rate, and secured by the Collateral. Collateral Agent will make reasonable efforts to provide Borrower with notice of Collateral Agent obtaining such insurance or making such payment at the time it is obtained or paid or within a reasonable time thereafter. No such payments by Collateral Agent are deemed an agreement to make similar payments in the future or Collateral Agent's waiver of any Event of Default.

**9.4 Application of Payments and Proceeds.** Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, (a) Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Collateral Agent from or on behalf of Borrower or any of its Subsidiaries of all or any part of the Obligations, and, as between Borrower on the one hand and Collateral Agent and Lenders on the other, Collateral Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Collateral Agent may deem advisable notwithstanding any previous application by Collateral Agent, and (b) the proceeds of any sale of, or other realization upon all or any part of the Collateral shall be applied: first, to the Lenders' Expenses; second, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the United States Bankruptcy Code, would have accrued on such amounts); third, to the principal amount of the Obligations outstanding; and fourth, to any other indebtedness or obligations of Borrower owing to Collateral Agent or any Lender under the Loan Documents. Any balance remaining shall be delivered to Borrower or to whoever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (x) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (y) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its pro rata share of amounts available to be applied pursuant thereto for such category. Any reference in this Agreement to an allocation between or sharing by the Lenders of any right, interest or obligation "ratably," "proportionally" or in similar terms shall refer to Pro Rata Share unless expressly provided otherwise. Collateral Agent, or if applicable, each Lender, shall promptly remit to the other Lenders such sums as may be necessary to ensure the ratable repayment of each Lender's portion of any Term Loan and the ratable distribution of interest, fees and reimbursements paid or made by Borrower. Notwithstanding the foregoing, a Lender receiving a scheduled payment shall not be responsible for determining whether the other Lenders also received their scheduled payment on such date; provided, however, if it is later determined that a Lender received more than its ratable share of scheduled payments made on any date or dates, then such Lender shall remit to Collateral Agent or other Lenders such sums as may be necessary to ensure the ratable payment of such scheduled payments, as instructed by Collateral Agent. If any payment or distribution of any kind or character, whether in cash,

properties or securities, shall be received by a Lender in excess of its ratable share, then the portion of such payment or distribution in excess of such Lender's ratable share shall be received by such Lender in trust for and shall be promptly paid over to the other Lender for application to the payments of amounts due on the other Lenders' claims. To the extent any payment for the account of Borrower is required to be returned as a voidable transfer or otherwise, the Lenders shall contribute to one another as is necessary to ensure that such return of payment is on a pro rata basis. If any Lender shall obtain possession of any Collateral, it shall hold such Collateral for itself and as agent and bailee for Collateral Agent and other Lenders for purposes of perfecting Collateral Agent's security interest therein.

**9.5 Liability for Collateral.** So long as Collateral Agent and the Lenders comply with reasonable banking practices and applicable law regarding the safekeeping of the Collateral in the possession or under the control of Collateral Agent and the Lenders, Collateral Agent and the Lenders shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

**9.6 No Waiver; Remedies Cumulative.** Failure by Collateral Agent or any Lender, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Collateral Agent or any Lender thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by Collateral Agent and the Required Lenders and then is only effective for the specific instance and purpose for which it is given. The rights and remedies of Collateral Agent and the Lenders under this Agreement and the other Loan Documents are cumulative. Collateral Agent and the Lenders have all rights and remedies provided under the Code, any applicable law, by law, or in equity. The exercise by Collateral Agent or any Lender of one right or remedy is not an election, and Collateral Agent's or any Lender's waiver of any Event of Default is not a continuing waiver. Collateral Agent's or any Lender's delay in exercising any remedy is not a waiver, election, or acquiescence.

**9.7 Demand Waiver.** Borrower waives, to the fullest extent permitted by law, demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Collateral Agent or any Lender on which Borrower or any Subsidiary is liable.

## **10. NOTICES**

All notices, consents, requests, approvals, demands, or other communication (collectively, "**Communication**") by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Any of Collateral Agent, Lender or Borrower may change its mailing address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower:

MIRAMAR LABS, INC.  
2790 Walsh Ave.  
Santa Clara, CA 95051  
Attn: Brigid Makes  
Fax: (408) 940-8795  
Email: bmakes@miramarlabs.com

with a copy (which shall not constitute notice) to:

Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304  
Attn: Philip Oettinger  
Fax: (650) 493-6811  
Email: poettinger@wsgr.com

If to Collateral Agent:

OXFORD FINANCE LLC  
133 North Fairfax Street  
Alexandria, Virginia 22314  
Attention: Legal Department  
Fax: (703) 519-5225  
Email: LegalDepartment@oxfordfinance.com

with a copy to:

SILICON VALLEY BANK  
2400 Hanover Street  
Palo Alto, California 94304  
Attn: Jason Hughes  
Fax: (650) 856-7879  
Email: jhughes@svb.com

with a copy (which shall not constitute notice) to:

DLA Piper LLP (US)  
4365 Executive Drive, Suite 1100  
San Diego, California 92121-2133  
Attn: Troy Zander  
Fax: (858) 638-5086  
troy.zander@dlapiper.com

11. **CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER, AND JUDICIAL REFERENCE**

California law governs the Loan Documents without regard to principles of conflicts of law. Borrower, Collateral Agent and each Lender each submit to the exclusive jurisdiction of the State and Federal courts in Santa Clara County, California; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Collateral Agent or any Lender from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Collateral Agent or any Lender. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided by Borrower in accordance with, Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

**TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER, COLLATERAL AGENT AND EACH LENDER EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.**

WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of the Santa Clara County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Santa Clara County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure §§ 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Santa Clara County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and orders applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to California Code of Civil Procedure § 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies, foreclose against collateral, or obtain provisional

remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

## 12. GENERAL PROVISIONS

**12.1 Successors and Assigns.** This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not transfer, pledge or assign this Agreement or any rights or obligations under it without Collateral Agent's and each Lender's prior written consent (which may be granted or withheld in Collateral Agent's and each Lender's discretion, subject to Section 12.6). The Lenders have the right, without the consent of or notice to Borrower, to sell, transfer, assign, pledge, negotiate, or grant participation in (**any** such sale, transfer, assignment, negotiation, or grant of a participation, a "**Lender Transfer**") all or any part of, or any interest in, the Lenders' obligations, rights, and benefits under this Agreement and the other Loan Documents; *provided, however*, that any such Lender Transfer (other than a transfer, pledge, sale or assignment to an Eligible Assignee) of its obligations, rights, and benefits under this Agreement and the other Loan Documents shall require the prior written consent of the Required Lenders (such approved assignee, an "**Approved Lender**"). Borrower and Collateral Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned until Collateral Agent shall have received and accepted an effective assignment agreement in form satisfactory to Collateral Agent executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Assignee or Approved Lender as Collateral Agent reasonably shall require. Notwithstanding anything to the contrary contained herein, so long as no Event of Default has occurred and is continuing, no Lender Transfer (other than a Lender Transfer (i) in respect of the Warrants or (ii) in connection with (x) assignments by a Lender due to a forced divestiture at the request of any regulatory agency; or (y) upon the occurrence of a default, event of default or similar occurrence with respect to a Lender's own financing or securitization transactions) shall be permitted, without Borrower's consent, to any Person which is an Affiliate or Subsidiary of Borrower, a direct competitor of Borrower or a vulture hedge fund, each as determined by Collateral Agent.

**12.2 Indemnification.** Borrower agrees to indemnify, defend and hold Collateral Agent and the Lenders and their respective directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Collateral Agent or the Lenders (each, an "**Indemnified Person**") harmless against: (a) all obligations, demands, claims, and liabilities (collectively, "**Claims**") asserted by any other party in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Loan Documents; and (b) all losses or Lenders' Expenses incurred, or paid by Indemnified Person in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Loan Documents between Collateral Agent, and/or the Lenders and Borrower (including reasonable attorneys' fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct. Borrower hereby further indemnifies, defends and holds each Indemnified Person harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnified Person) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnified Person shall be designated a party thereto and including any such proceeding initiated by or on behalf of Borrower, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Collateral Agent or Lenders) asserting any right to payment for the transactions contemplated hereby which may be imposed on, incurred by or asserted against such Indemnified Person as a result of or in connection with the transactions contemplated hereby and the use or intended use of the proceeds of the loan proceeds except, in each case, for liabilities, obligations, losses, damages,

penalties, actions, judgments, suits, claims, costs, expenses and disbursements directly caused by such Indemnified Person's gross negligence or willful misconduct.

**12.3 Time of Essence.** Time is of the essence for the performance of all Obligations in this Agreement.

**12.4 Severability of Provisions.** Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

**12.5 Correction of Loan Documents.** Collateral Agent and the Lenders may correct patent errors and fill in any blanks in this Agreement and the other Loan Documents consistent with the agreement of the parties.

**12.6 Amendments in Writing; Integration.** (a) No amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document, no approval or consent thereunder, or any consent to any departure by Borrower or any of its Subsidiaries therefrom, shall in any event be effective unless the same shall be in writing and signed by Borrower, Collateral Agent and the Required Lenders provided that:

(i) no such amendment, waiver or other modification that would have the effect of increasing or reducing a Lender's Term Loan Commitment or Commitment Percentage shall be effective as to such Lender without such Lender's written consent;

(ii) no such amendment, waiver or modification that would affect the rights and duties of Collateral Agent shall be effective without Collateral Agent's written consent or signature;

(iii) no such amendment, waiver or other modification shall, unless signed by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Term Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Term Loan (B) postpone the date fixed for, or waive, any payment of principal of any Term Loan or of interest on any Term Loan (other than default interest) or any fees provided for hereunder (other than late charges or for any termination of any commitment); (C) change the definition of the term "**Required Lenders**" or the percentage of Lenders which shall be required for the Lenders to take any action hereunder; (D) release all or substantially all of any material portion of the Collateral, authorize Borrower to sell or otherwise dispose of all or substantially all or any material portion of the Collateral or release any Guarantor of all or any portion of the Obligations or its guaranty obligations with respect thereto, except, in each case with respect to this clause (D), as otherwise may be expressly permitted under this Agreement or the other Loan Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 12.6 or the definitions of the terms used in this Section 12.6 insofar as the definitions affect the substance of this Section 12.6; (F) consent to the assignment, delegation or other transfer by Borrower of any of its rights and obligations under any Loan Document or release Borrower of its payment obligations under any Loan Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; (G) amend any of the provisions of Section 9.4 or amend any of the definitions of Pro Rata Share, Term Loan Commitment, Commitment Percentage or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder; (H) subordinate the Liens granted in favor of Collateral Agent securing the Obligations; or (I) amend any of the provisions of Section 12.10. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F), (G) and (H) of the preceding sentence;

(iv) the provisions of the foregoing clauses (i), (ii) and (iii) are subject to the provisions of any interlender or agency agreement among the Lenders and Collateral Agent pursuant to which any Lender may agree to give its consent in connection with any amendment, waiver or modification of the Loan Documents only in the event of the unanimous agreement of all Lenders.

(b) Other than as expressly provided for in Section 12.6(a)(i)-(iii), Collateral Agent may, if requested by the Required Lenders, from time to time designate covenants in this Agreement less restrictive by notification to a representative of Borrower.

(c) This Agreement and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings,

representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the Loan Documents merge into this Agreement and the Loan Documents.

**12.7 Counterparts.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

**12.8 Survival.** All covenants, representations and warranties made in this Agreement continue in full force and effect until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been satisfied. Without limiting the foregoing, except as otherwise provided in Section 4.1, the grant of security interest by Borrower in Section 4.1 shall survive until the termination of all Bank Services Agreements. The obligation of Borrower in Section 12.2 to indemnify each Lender and Collateral Agent, as well as the confidentiality provisions in Section 12.9 below, shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

**12.9 Confidentiality.** In handling any confidential information of Borrower, the Lenders and Collateral Agent shall exercise the same degree of care that it exercises for their own proprietary information, but disclosure of information may be made: (a) subject to the terms and conditions of this Agreement, to the Lenders' and Collateral Agent's Subsidiaries or Affiliates, or in connection with a Lender's own financing or securitization transactions and upon the occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction; (b) to prospective transferees (other than those identified in (a) above) or purchasers of any interest in the Credit Extensions (provided, however, the Lenders and Collateral Agent shall, except upon the occurrence and during the continuance of an Event of Default, obtain such prospective transferee's or purchaser's agreement to the terms of this provision or to similar confidentiality terms); (c) as required by law, regulation, subpoena, or other order; (d) to Lenders' or Collateral Agent's regulators or as otherwise required in connection with an examination or audit; (e) as Collateral Agent reasonably considers appropriate in exercising remedies under the Loan Documents; and (f) to third party service providers of the Lenders and/or Collateral Agent so long as such service providers have executed a confidentiality agreement with the Lenders and Collateral Agent with terms no less restrictive than those contained herein. Confidential information does not include information that either: (i) is in the public domain or in the Lenders' and/or Collateral Agent's possession when disclosed to the Lenders and/or Collateral Agent, or becomes part of the public domain after disclosure to the Lenders and/or Collateral Agent through no fault of Collateral Agent or any Lender; or (ii) is disclosed to the Lenders and/or Collateral Agent by a third party, if the Lenders and/or Collateral Agent does not know that the third party is prohibited from disclosing the information. Collateral Agent and the Lenders

may use confidential information for any purpose, including, without limitation, for the development of client databases, reporting purposes, and market analysis. The provisions of the immediately preceding sentence shall survive the termination of this Agreement. The agreements provided under this Section 12.9 supersede all prior agreements, understanding, representations, warranties, and negotiations between the parties about the subject matter of this Section 12.9.

**12.10 Right of Set Off.** Borrower hereby grants to Collateral Agent and to each Lender, a lien, security interest and right of set off as security for all Obligations to Collateral Agent and each Lender hereunder, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Collateral Agent or the Lenders or any entity under the control of Collateral Agent or the Lenders (including a Collateral Agent affiliate) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Collateral Agent or the Lenders may set off the same or any part thereof and apply the same to any liability or obligation of Borrower even though unmaturing and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE COLLATERAL AGENT TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

**12.11 Silicon Valley Bank as Agent.** Collateral Agent hereby appoints Silicon Valley Bank (“SVB”) as its agent (and SVB hereby accepts such appointment) for the purpose of perfecting Collateral Agent’s Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the Code can be perfected by possession or control, including without limitation, all Deposit Accounts maintained at SVB.

**12.12 Cooperation of Borrower.** If necessary, Borrower agrees to (i) execute any documents (including new Secured Promissory Notes) reasonably required to effectuate and acknowledge each assignment of a Term Loan Commitment or Loan to an assignee in accordance with Section 12.1, (ii) make Borrower’s management available to meet with Collateral Agent and prospective participants and assignees of Term Loan Commitments or Credit Extensions (which meetings shall be conducted no more often than twice every twelve months unless an Event of Default has occurred and is continuing), and (iii) assist Collateral Agent or the Lenders in the preparation of information relating to the financial affairs of Borrower as any prospective participant or assignee of a Term Loan Commitment or Term Loan reasonably may request. Subject to the provisions of Section 12.9, Borrower authorizes each Lender to disclose to any prospective participant or assignee of a Term Loan Commitment, any and all information in such Lender’s possession concerning Borrower and its financial affairs which has been delivered to such Lender by or on behalf of Borrower pursuant to this Agreement, or which has been delivered to such Lender by or on behalf of Borrower in connection with such Lender’s credit evaluation of Borrower prior to entering into this Agreement.

### **13. DEFINITIONS**

**13.1 Definitions.** As used in this Agreement, the following terms have the following meanings:

“**Account**” is any “account” as defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Borrower.

“**Account Debtor**” is any “account debtor” as defined in the Code with such additions to such term as may hereafter be made.

“**Affiliate**” of any Person is a Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person’s senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person’s managers and members.

“**Agreement**” is defined in the preamble hereof.

“**Amortization Date**” is January 1, 2017; provided that, upon Borrower achieving Revenue Event 2.0, whether or not Borrower requests or is advanced the Term C Loan, the Amortization Date shall be July 1, 2017.

“**Annual Projections**” is defined in Section 6.2(a).

“**Anti-Terrorism Laws**” are any laws relating to terrorism or money laundering, including Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act, and the laws administered by OFAC.

“**Approved Fund**” is any (i) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business or (ii) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (i) and that, with respect to each of the preceding clauses (i) and (ii), is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

“**Approved Lender**” is defined in Section 12.1.

“**Bank Services**” are any products, credit services, and/or financial accommodations previously, now, or hereafter provided to Borrower or any of its Subsidiaries by Bank or any Bank Affiliate, including, without limitation, any letters of credit, cash management services (including, without limitation, merchant services, direct deposit of payroll, business credit cards, and check cashing services), interest rate swap arrangements, and foreign exchange services as any such products or services may be identified in Bank’s various agreements related thereto (each, a “**Bank Services Agreement**”).

“**Bank**” is defined in the preamble hereof.

“**Basic Rate**” is, with respect to a Term Loan, the per annum rate of interest (based on a year of three hundred sixty (360) days) equal to the greater of (i) seven and eight tenths percent (7.80%) and (ii) the sum of (a) the Prime Rate published in The Wall Street Journal three (3) Business Days prior to the Funding Date of such Term Loan (which shall not, in any case, be less than three and one-quarter percent (3.25%)), plus (b) four and fifty-five hundredths percent (4.55%).

“**Blocked Person**” is any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224, or (e) a Person that is named a “specially designated national” or “blocked person” on the most current list published by OFAC or other similar list.

“**Borrower**” is defined in the preamble hereof.

“**Borrower’s Books**” are Borrower’s or any of its Subsidiaries’ books and records including ledgers, federal, and state tax returns, records regarding Borrower’s or its Subsidiaries’ assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

“**Business Day**” is any day that is not a Saturday, Sunday or a day on which Collateral Agent is closed.

“**Cash Equivalents**” are (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor’s Ratings Group or Moody’s Investors Service, Inc., (c) certificates of deposit maturing no more than one (1) year after issue provided that the account in which any such certificate of deposit is maintained is subject to a Control Agreement in favor of Collateral Agent, and (d) money market funds at least ninety-five percent (95%) of which constitute Cash Equivalents of the kinds described in clauses (a) through (c) above. For the avoidance of doubt, the direct purchase by Borrower or any of its Subsidiaries of any Auction Rate Securities, or purchasing participations in, or entering into any type of swap or other derivative transaction, or otherwise holding or engaging in any ownership interest in any type of Auction Rate Security by Borrower or any of its Subsidiaries shall be conclusively determined by the Lenders as an ineligible Cash Equivalent, and any such transaction shall expressly violate each other provision of this Agreement governing Permitted Investments. Notwithstanding the foregoing, Cash Equivalents does not include and Borrower, and each of its Subsidiaries, are prohibited from purchasing, purchasing participations in, entering into any type of swap or other equivalent derivative transaction, or otherwise holding or engaging in any ownership interest in any type of debt instrument, including, without limitation, any corporate or municipal bonds with a long-term nominal maturity for which the interest rate is reset through a dutch auction and more commonly referred to as an auction rate security (each, an “**Auction Rate Security**”).

“**Claims**” are defined in Section 12.2.

“**Code**” is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of California; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Collateral Agent’s Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of California, the term “Code” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

“**Collateral**” is any and all properties, rights and assets of Borrower described on Exhibit A.

“**Collateral Account**” is any Deposit Account, Securities Account, or Commodity Account, or any other bank account maintained by Borrower or any Subsidiary at any time.

“**Collateral Agent**” is, Oxford, not in its individual capacity, but solely in its capacity as agent on behalf of and for the benefit of the Lenders.

“**Commitment Percentage**” is set forth in Schedule 1.1, as amended from time to time.

“**Commodity Account**” is any “commodity account” as defined in the Code with such additions to such term as may hereafter be made.

“**Communication**” is defined in Section 10.

“**Compliance Certificate**” is that certain certificate in the form attached hereto as Exhibit C.

“**Contingent Obligation**” is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but “Contingent Obligation” does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

“**Control Agreement**” is any control agreement entered into among the depository institution at which Borrower or any of its Subsidiaries maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower or any of its Subsidiaries maintains a Securities Account or a Commodity Account, Borrower and such Subsidiary, and Collateral Agent pursuant to which Collateral Agent obtains control (within the meaning of the Code) for the benefit of the Lenders over such Deposit Account, Securities Account, or Commodity Account.

“**Copyrights**” are any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

“**Credit Extension**” is any Term Loan or any other extension of credit by Collateral Agent or Lenders for Borrower’s benefit.

“**Default Rate**” is defined in Section 2.3(b).

“**Deposit Account**” is any “deposit account” as defined in the Code with such additions to such term as may hereafter be made.

“**Designated Deposit Account**” is Borrower’s deposit account, account number XXXXXX8350, maintained with Bank.

“**Disbursement Letter**” is that certain form attached hereto as Exhibit B-1.

“**Dollar Equivalent**” is, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in a Foreign Currency, the equivalent amount therefor in Dollars as determined by Bank at such time on the basis of the then-prevailing rate of exchange in San Francisco, California, for sales of the Foreign Currency for transfer to the country issuing such Foreign Currency.

“**Dollars,**” “**dollars**” and “**\$**” each mean lawful money of the United States.

“**Effective Date**” is defined in the preamble of this Agreement.

“**Eligible Assignee**” is (i) a Lender, (ii) an Affiliate of a Lender, (iii) an Approved Fund and (iv) any commercial bank, savings and loan association or savings bank or any other entity which is an “accredited investor” (as defined in Regulation D under the Securities Act of 1933, as amended) and which extends credit or buys loans as one of its businesses, including insurance companies, mutual funds, lease financing companies and commercial finance companies, in each case, which either (A) has a rating of BBB or higher from Standard & Poor’s Rating Group and a rating of Baa2 or higher from Moody’s Investors Service, Inc. at the date that it becomes a Lender or (B) has total assets in excess of Five Billion Dollars (\$5,000,000,000.00), and in each case of clauses (i) through (iv), which, through its applicable lending office, is capable of lending to Borrower without the imposition of any withholding or similar taxes; provided that notwithstanding the foregoing, “Eligible Assignee” shall not include, unless an Event of Default has occurred and is continuing, (i) Borrower or any of Borrower’s Affiliates or Subsidiaries or (ii) a direct competitor of Borrower or a vulture hedge fund, each as reasonably determined by Collateral Agent. Notwithstanding the foregoing, (x) in connection with assignments by a Lender due to a forced divestiture at the request of any regulatory agency, the restrictions set forth herein shall not apply and Eligible Assignee shall mean any Person or party and (y) in connection with a Lender’s own financing or securitization transactions, the restrictions set forth herein shall not apply and Eligible Assignee shall mean any Person or party providing such financing or formed to undertake such securitization transaction and any transferee of such Person or party upon the occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction; provided that no such sale, transfer, pledge or assignment under this clause (y) shall release such Lender from any of its obligations hereunder or substitute any such Person or party for such Lender as a party hereto until Collateral Agent shall have received and accepted an effective assignment agreement from such Person or party in form satisfactory to Collateral Agent executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Assignee as Collateral Agent reasonably shall require.

“**Equipment**” is all “equipment” as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

“**ERISA**” is the Employee Retirement Income Security Act of 1974, as amended, and its regulations.

“**Event of Default**” is defined in Section 8.

“**Existing Indebtedness**” is the indebtedness of Borrower to the Lenders pursuant to that certain Loan and Security Agreement, dated June 27, 2013 (as amended from time to time), entered into by and between Collateral Agent, the Lenders and Borrower, as more particularly described in that certain payoff letter dated on or about the Effective Date.

“**Final Payment**” is a payment (in addition to and not a substitution for the regular monthly payments of principal plus accrued interest) due on the earliest to occur of (a) the Maturity Date, or (b) the acceleration of any Term Loan, or (c) the prepayment of a Term Loan pursuant to Section 2.2(c) or (d), equal to the original principal amount of such Term Loan multiplied by the Final Payment Percentage, payable to Lenders in accordance with their respective Pro Rata Shares.

“**Final Payment Percentage**” is two and one-quarter percent (2.25%).

“**Foreign Currency**” means lawful money of a country other than the United States.

“**Foreign Subsidiary**” is a Subsidiary that is not an entity organized under the laws of the United States or any territory thereof.

“**Funding Date**” is any date on which a Credit Extension is made to or on account of Borrower which shall be a Business Day.

“**FX Contract**” is any foreign exchange contract by and between Borrower and Bank under which Borrower commits to purchase from or sell to Bank a specific amount of Foreign Currency on a specified date.

“**GAAP**” is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession in the United States, which are applicable to the circumstances as of the date of determination.

“**General Intangibles**” are all “general intangibles” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, trademarks, service marks and, to the extent permitted under applicable law, any applications therefor, whether registered or not, any trade secret rights, including any rights to unpatented inventions, payment intangibles, royalties, contract rights, goodwill, franchise agreements, purchase orders, customer lists, route lists, telephone numbers, domain names, claims, income and other tax refunds, security and other deposits, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

“**Governmental Approval**” is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

“**Governmental Authority**” is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

“**Guarantor**” is any Person providing a Guaranty in favor of Collateral Agent.

“**Guaranty**” is any guarantee of all or any part of the Obligations, as the same may from time to time be amended, restated, modified or otherwise supplemented.

“**Indebtedness**” is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations.

“**Indemnified Person**” is defined in Section 12.2.

**“Insolvency Proceeding”** is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

**“Insolvent”** means not Solvent.

**“Intellectual Property”** means all of Borrower’s or any Subsidiary’s right, title and interest in and to the following:

- (a) its Copyrights, Trademarks and Patents;
- (b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how, operating manuals;
- (c) any and all source code;
- (d) any and all design rights which may be available to Borrower;
- (e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and
- (f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

**“Inventory”** is all “inventory” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of any Person’s custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

**“Investment”** is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance, or capital contribution to any Person.

**“Key Person”** is each of Borrower’s (i) President and Chief Executive Officer, who is Michael Kleine and (ii) Chief Financial Officer, who is Brigid A. Makes as of the Effective Date.

**“Lender”** is any one of the Lenders.

**“Lenders”** are the Persons identified on Schedule 1.1 hereto and each assignee that becomes a party to this Agreement pursuant to Section 12.1.

**“Lenders’ Expenses”** are all audit fees and expenses, costs, and expenses (including reasonable attorneys’ fees and expenses, as well as appraisal fees, fees incurred on account of lien searches, inspection fees, and filing fees) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred by Collateral Agent and/or the Lenders in connection with the Loan Documents.

“**Letter of Credit**” is a standby or commercial letter of credit issued by Bank upon request of Borrower based upon an application, guarantee, indemnity, or similar agreement.

“**Lien**” is a claim, mortgage, deed of trust, levy, charge, pledge, security interest, or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

“**Loan Documents**” are, collectively, this Agreement, the Warrants, the Perfection Certificates, each Compliance Certificate, each Disbursement Letter, each Loan Payment/Advance Request Form and any Bank Services Agreement, any subordination agreements, any note, or notes or guaranties executed by Borrower or any other Person, and any other present or future agreement entered into by Borrower, any Guarantor or any other Person for the benefit of the Lenders and Collateral Agent in connection with this Agreement; all as amended, restated, or otherwise modified.

“**Loan Payment/Advance Request Form**” is that certain form attached hereto as Exhibit B-2.

“**Material Adverse Change**” is (a) a material impairment in the perfection or priority of Collateral Agent’s Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations or condition (financial or otherwise) of Borrower or any Subsidiary; or (c) a material impairment of the prospect of repayment of any portion of the Obligations.

“**Maturity Date**” is September 1, 2019.

“**Miramar Hong Kong Account**” means accounts held by Miramar Labs HK subject to the limitations of Section 7.12.

“**Obligations**” are all of Borrower’s obligations to pay when due any debts, principal, interest, Lenders’ Expenses, the Prepayment Fee, the Final Payment, and other amounts Borrower owes the Lenders now or later, in connection with, related to, following, or arising from, out of or under, this Agreement or, the other Loan Documents (other than the Warrants), or otherwise, including, without limitation, all obligations relating to letters of credit (including reimbursement obligations for drawn and undrawn letters of credit), cash management services, and foreign exchange contracts, if any, and including interest accruing after Insolvency Proceedings begin (whether or not allowed) and debts, liabilities, or obligations of Borrower assigned to the Lenders and/or Collateral Agent, and the performance of Borrower’s duties under the Loan Documents (other than the Warrants).

“**OFAC**” is the U.S. Department of Treasury Office of Foreign Assets Control.

“**OFAC Lists**” are, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

“**Operating Documents**” are, for any Person, such Person’s formation documents, as certified by the Secretary of State (or equivalent agency) of such Person’s jurisdiction of organization on a date that is no earlier than thirty (30) days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

“**Patents**” means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

“**Payment Date**” is the first (1<sup>st</sup>) calendar day of each calendar month, commencing on October 1, 2015.

“**Perfection Certificate**” and “**Perfection Certificates**” is defined in Section 5.1.

“**Permitted Indebtedness**” is:

(a) Borrower’s Indebtedness to the Lenders and Collateral Agent under this Agreement and the other Loan Documents;

(b) Indebtedness existing on the Effective Date and disclosed on the Perfection Certificate (s);

(c) Subordinated Debt;

(d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;

(e) Indebtedness consisting of capitalized lease obligations and purchase money Indebtedness, in each case incurred by Borrower or any of its Subsidiaries to finance the acquisition, repair, improvement or construction of fixed or capital assets of such person, provided that (i) the aggregate outstanding principal amount of all such Indebtedness does not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) at any time and (ii) the principal amount of such Indebtedness does not exceed the lower of the cost or fair market value of the property so acquired or built or of such repairs or improvements financed with such Indebtedness (each measured at the time of such acquisition, repair, improvement or construction is made);

(f) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of Borrower’s business;

(g) Intercompany indebtedness that otherwise constitutes an Investment permitted under clauses (a), (f) and (i) of the definition of Permitted Investments;

(h) Other Indebtedness not to exceed One Hundred Thousand Dollars (\$100,000.00) in the aggregate principal amount outstanding at any time; and

(i) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (e) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose materially more burdensome terms upon Borrower, or its Subsidiary, as the case may be.

“**Permitted Investments**” are:

(a) Investments disclosed on the Perfection Certificate(s) and existing on the Effective Date;

(b) (i) Investments consisting of cash and Cash Equivalents, and (ii) any Investments permitted by Borrower’s investment policy, as amended from time to time, provided that such investment policy (and any such amendment thereto) has been approved in writing by Collateral Agent;

- (c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower;
- (d) Investments consisting of Deposit Accounts and Securities Accounts in which Collateral Agent has a perfected security interest to the extent required under Section 6.6;
- (e) Investments in connection with Transfers permitted by Section 7.1;
- (f) Investments by Borrower in Subsidiaries not to exceed Four Hundred Fifty Thousand Dollars (\$450,000.00) per month, and in any event not to exceed Four Million Five Hundred Thousand Dollars (\$4,500,000.00) in the aggregate in Borrower's 2015 fiscal year and thereafter;
- (g) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower's Board of Directors; not to exceed Twenty Five Thousand Dollars (\$25,000.00) outstanding at any time in the aggregate for (i) and (ii) in any fiscal year;
- (h) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;
- (i) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (i) shall not apply to Investments of Borrower in any Subsidiary;
- (j) non-cash Investments in joint ventures or strategic alliances in the ordinary course of Borrower's business consisting of the non-exclusive licensing of technology, the development of technology or the providing of technical support;
- (k) lease-hold improvement costs associated with any expansion or relocation of facilities in the ordinary course of business not to exceed Three Hundred Thousand Dollars (\$300,000.00) at any time; and
- (l) other Investments not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) in any fiscal year.

“**Permitted Licenses**” are (A) licenses of over-the-counter software that is commercially available to the public, and (B) non-exclusive and exclusive licenses for the use of the Intellectual Property of Borrower or any of its Subsidiaries entered into in the ordinary course of business, provided, that, with respect to each such license described in clause (B), (i) no Event of Default has occurred or is continuing at the time of such license; (ii) the license constitutes an arms-length transaction, the terms of which, on their face, do not provide for a sale or assignment of any Intellectual Property and do not restrict the ability of Borrower or any of its Subsidiaries, as applicable, to pledge, grant a security interest in or lien on, or assign or otherwise Transfer any Intellectual Property; (iii) in the case of any exclusive license, (x) Borrower delivers ten (10) days' prior written notice and a brief summary of the terms of the proposed license to Collateral Agent and the Lenders and delivers to Collateral Agent and the Lenders copies of the final executed licensing documents in connection with the exclusive license promptly upon consummation thereof, and (y) any such license could not result in a legal transfer of title of the licensed property but may be exclusive in respects other than territory and may be exclusive as to territory only

as to discrete geographical areas outside of the United States; and (iv) all upfront payments, royalties, milestone payments or other proceeds arising from the licensing agreement that are payable to Borrower or any of its Subsidiaries are paid to a Deposit Account that is governed by a Control Agreement.

“**Permitted Liens**” are:

(a) Liens existing on the Effective Date and disclosed on the Perfection Certificates or arising under this Agreement and the other Loan Documents;

(b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on its Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;

(c) liens securing Indebtedness permitted under clause (e) of the definition of “**Permitted Indebtedness**,” provided that (i) such liens exist prior to the acquisition of, or attach substantially simultaneous with, or within twenty (20) days after the, acquisition, lease, repair, improvement or construction of, such property financed or leased by such Indebtedness and (ii) such liens do not extend to any property of Borrower other than the property (and proceeds thereof) acquired, leased or built, or the improvements or repairs, financed by such Indebtedness;

(d) Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory, securing liabilities in the aggregate amount not to exceed One Hundred Thousand Dollars (\$100,000.00), and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(e) Liens to secure payment of workers’ compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(f) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;

(g) leases or subleases of real property granted in the ordinary course of Borrower’s business (or, if referring to another Person, in the ordinary course of such Person’s business), and leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of Borrower’s business (or, if referring to another Person, in the ordinary course of such Person’s business), if the leases, subleases, licenses and sublicenses do not prohibit granting Collateral Agent or any Lender a security interest therein;

(h) banker’s liens, rights of setoff and Liens in favor of financial institutions incurred in the ordinary course of business arising in connection with Borrower’s deposit accounts or securities accounts held at such institutions solely to secure payment of fees and similar costs and expenses and provided such accounts are maintained in compliance with Section 6.6(b) hereof;

(i) deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like

nature, in each case, incurred in the ordinary course of business and not representing an obligations for borrowed money;

(j) Liens in favor of customs and revenue authorities arising in the ordinary course of Borrower's business and as a matter of law to secure payment of customs duties in connection with the importation of goods;

(k) Liens on insurance proceeds in favor of insurance companies granted as security for financed premiums;

(l) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 8.4 or 8.7; and

(m) Liens consisting of Permitted Licenses.

**"Person"** is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

**"Prepayment Fee"** is, with respect to any Term Loan subject to prepayment prior to the Maturity Date, whether by mandatory or voluntary prepayment, acceleration or otherwise, an additional fee payable to the Lenders in amount equal to:

(i) for a prepayment made on or after the Funding Date of such Term Loan through and including the second anniversary of the Funding Date of such Term Loan, two percent (2.0%) of the principal amount of such Term Loan prepaid; and

(ii) for a prepayment made after the second anniversary of the Funding Date of such Term Loan and prior to the Maturity Date, one percent (1.0%) of the principal amount of such Term Loan prepaid.

**"Pro Rata Share"** is, as of any date of determination, with respect to each Lender, a percentage (expressed as a decimal, rounded to the ninth decimal place) determined by dividing the outstanding principal amount of Term Loans held by such Lender by the aggregate outstanding principal amount of all Term Loans.

**"Registered Organization"** is any "registered organization" as defined in the Code with such additions to such term as may hereafter be made.

**"Required Lenders"** means (i) for so long as all of the Persons that are Lenders on the Effective Date (each an **"Original Lender"**) have not assigned or transferred any of their interests in their Term Loan, Lenders holding one hundred percent (100%) of the aggregate outstanding principal balance of the Term Loan, or (ii) at any time from and after any Original Lender has assigned or transferred any interest in its Term Loan, Lenders holding at least sixty six percent (66%) of the aggregate outstanding principal balance of the Term Loan and, in respect of this clause (ii), (A) each Original Lender that has not assigned or transferred any portion of its Term Loan, (B) each assignee or transferee of an Original Lender's interest in the Term Loan, but only to the extent that such assignee or transferee is an Affiliate or Approved Fund of such Original Lender, and (C) any Person providing financing to any Person described in clauses (A) and (B) above; provided, however, that this clause (C) shall only apply upon the occurrence of a default, event of default or similar occurrence with respect to such financing.

**“Requirement of Law”** is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

**“Responsible Officer”** is any of the President, Chief Executive Officer, or Chief Financial Officer of Borrower acting alone.

**“Revenue Event 1.0”** is the achievement by Borrower after the Effective Date at the end of any fiscal month of Borrower of trailing six (6) months’ consolidated revenue of at least Ten Million Dollars (\$10,000,000.00) as of the end of such fiscal month, as determined by Collateral Agent in its reasonable discretion based upon written evidence satisfactory to Collateral Agent.

**“Revenue Event 2.0”** is (x) the achievement by Borrower after the Effective Date at the end of any fiscal month of Borrower of trailing six (6) months’ consolidated revenue of at least Fifteen Million Dollars (\$15,000,000.00) as of the end of such fiscal month, as determined by Collateral Agent in its reasonable discretion based upon written evidence satisfactory to Collateral Agent; and (y) Borrower’s receipt of net cash proceeds after the Effective Date, from the sale and issuance of Borrower’s equity securities, of at least Fifteen Million Dollars (\$15,000,000.00), from investors and on terms and conditions reasonably acceptable to Collateral Agent.

**“SEC”** is the Securities and Exchange Commission, or any successor thereto.

**“Second Draw Period”** is the period commencing on the first Business Day following the occurrence of Revenue Event 1.0 and ending on the earliest of (i) the date that is sixty (60) days from the date of occurrence of Revenue Event 1.0, (ii) April 30, 2016 and (iii) the existence of an Event of Default; provided, however, that the Second Draw Period shall not commence if on the date of the occurrence of Revenue Event 1.0 an Event of Default has occurred and is continuing.

**“Secured Promissory Note”** is defined in Section 2.4.

**“Secured Promissory Note Record”** is a record maintained by each Lender with respect to the outstanding Obligations owed by Borrower to Lender and credits made thereto.

**“Securities Account”** is any “securities account” as defined in the Code with such additions to such term as may hereafter be made.

**“Shares”** is one hundred percent (100%) of the issued and outstanding capital stock, membership units or other securities owned or held of record by Borrower or Borrower’s Subsidiary, in any Subsidiary; provided that, in the event Borrower, demonstrates to Collateral Agent’s reasonable satisfaction, that a pledge of more than sixty five percent (65%) of the Shares of such Subsidiary which is a Foreign Subsidiary, creates a present and existing adverse tax consequence to Borrower under the U.S. Internal Revenue Code, “Shares” shall mean sixty five percent (65%) of the issued and outstanding capital stock, membership units or other securities owned or held of record by Borrower or its Subsidiary in such Foreign Subsidiary.

**“Solvent”** is, with respect to any Person: the fair salable value of such Person’s consolidated assets (including goodwill minus disposition costs) exceeds the fair value of such Person’s liabilities; such Person is not left with unreasonably small capital after the transactions in this Agreement; and such Person is able to pay its debts (including trade debts) as they mature.

“**Subordinated Debt**” is indebtedness incurred by Borrower or any of its Subsidiaries subordinated to all Indebtedness of Borrower and/or its Subsidiaries to the Lenders (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Collateral Agent and the Lenders entered into between Collateral Agent, Borrower, and/or any of its Subsidiaries, and the other creditor), on terms acceptable to Collateral Agent and the Lenders.

“**Subsidiary**” is, with respect to any Person, any Person of which more than fifty percent (50%) of the voting stock or other equity interests (in the case of Persons other than corporations) is owned or controlled, directly or indirectly, by such Person or through one or more intermediaries.

“**Term Loan**” is defined in Section 2.2(a)(ii) hereof.

“**Term A Loan**” is defined in Section 2.2(a)(i) hereof.

“**Term B Loan**” is defined in Section 2.2(a)(ii) hereof.

“**Term C Loan**” is defined in Section 2.2(a)(iii) hereof.

“**Term Loan Commitment**” is, for any Lender, the obligation of such Lender to make a Term Loan, up to the principal amount shown on Schedule 1.1. “**Term Loan Commitments**” means the aggregate amount of such commitments of all Lenders.

“**Third Draw Period**” is the period commencing on the first Business Day following the occurrence of Revenue Event 2.0 and ending on the earliest of (i) the date that is sixty (60) days from the date of occurrence of Revenue Event 2.0; (ii) October 31, 2016 and (iii) the existence of an Event of Default; provided, however, that the Third Draw Period shall not commence if on the date of the occurrence of Revenue Event 2.0 an Event of Default has occurred and is continuing.

“**Trademarks**” means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

“**Transfer**” is defined in Section 7.1.

“**Warrants**” are those certain Warrants to Purchase Stock dated as of the Effective Date, or any date thereafter, issued by Borrower in favor of each Lender or such Lender’s Affiliates.

***[Balance of Page Intentionally Left Blank]***

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

**BORROWER:**

MIRAMAR LABS, INC.

By  /s/ Brigid Makes

Name:  Brigid Makes

Title:  Chief Financial Officer

**COLLATERAL AGENT AND LENDER:**

OXFORD FINANCE LLC

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LENDER:**

SILICON VALLEY BANK

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

**BORROWER:**

MIRAMAR LABS, INC.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**COLLATERAL AGENT AND LENDER:**

OXFORD FINANCE LLC

By /s/ T. A. Lex \_\_\_\_\_  
Name: T. A. Lex \_\_\_\_\_  
Title: COO \_\_\_\_\_

**LENDER:**

SILICON VALLEY BANK

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

**BORROWER:**

MIRAMAR LABS, INC.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**COLLATERAL AGENT AND LENDER:**

OXFORD FINANCE LLC

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LENDER:**

SILICON VALLEY BANK

By /s/ Shawn Parry  
Name: Shawn Parry  
Title: Vice President

SCHEDULE 1.1

**Lenders and Commitments**

**Term A Loans**

<b>Lender</b>	<b>Term Loan Commitment</b>	<b>Commitment Percentage</b>
OXFORD FINANCE LLC	\$5,000,000.00	50%
SILICON VALLEY BANK	\$5,000,000.00	50%
<b>TOTAL</b>	<b>\$10,000,000.00</b>	<b>100.00%</b>

**Term B Loans**

<b>Lender</b>	<b>Term Loan Commitment</b>	<b>Commitment Percentage</b>
OXFORD FINANCE LLC	\$2,500,000.00	50%
SILICON VALLEY BANK	\$2,500,000.00	50%
<b>TOTAL</b>	<b>\$5,000,000.00</b>	<b>100.00%</b>

**Term C Loans**

<b>Lender</b>	<b>Term Loan Commitment</b>	<b>Commitment Percentage</b>
OXFORD FINANCE LLC	\$2,500,000.00	50%
SILICON VALLEY BANK	\$2,500,000.00	50%
<b>TOTAL</b>	<b>\$5,000,000.00</b>	<b>100.00%</b>

**Aggregate (all Term Loans)**

<b>Lender</b>	<b>Term Loan Commitment</b>	<b>Commitment Percentage</b>
OXFORD FINANCE LLC	\$10,000,000.00	50%
SILICON VALLEY BANK	\$10,000,000.00	50%
<b>TOTAL</b>	<b>\$20,000,000.00</b>	<b>100.00%</b>

## **EXHIBIT A**

### **Description of Collateral**

The Collateral consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as noted below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts and other Collateral Accounts, all certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include any (i) Intellectual Property; provided, however, the Collateral shall include all Accounts and all proceeds of Intellectual Property and provided further that if a judicial authority (including a U.S. Bankruptcy Court) would hold that a security interest in the underlying Intellectual Property is necessary to have a security interest in such Accounts and such property that are proceeds of Intellectual Property, then the Collateral shall automatically, and effective as of the Effective Date, include the Intellectual Property to the extent necessary to permit perfection of Collateral Agent's security interest in such Accounts and such other property of Borrower that are proceeds of the Intellectual Property; (ii) more than 65% of the total combined voting power of all classes of stock entitled to vote the shares of capital stock (the "Shares") of any Foreign Subsidiary, if Borrower demonstrates to Collateral Agent's reasonable satisfaction that a pledge of more than sixty five percent (65%) of the Shares of such Subsidiary creates a present and existing adverse tax consequence to Borrower under the U.S. Internal Revenue Code; and (iii) any license or contract, in each case if the granting of a Lien in such license or contract is prohibited by or would constitute a default under the agreement governing such license or contract (but (A) only to the extent such prohibition is enforceable under applicable law and (B) other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-408 or 9-409 (or any other Section) of Division 9 of the Code); provided that upon the termination, lapsing or expiration of any such prohibition, such license or contract, as applicable, shall automatically be subject to the security interest granted in favor of Collateral Agent hereunder and become part of the "Collateral."

Pursuant to the terms of a certain negative pledge arrangement with Collateral Agent and the Lenders, Borrower has agreed not to encumber any of its Intellectual Property.

**EXHIBIT B-1**

**Form of Disbursement Letter**

[see attached]

## DISBURSEMENT LETTER

August 7, 2015

The undersigned, being the duly elected and acting \_\_\_\_\_ of MIRAMAR LABS, INC., a Delaware Corporation with offices located at 2790 Walsh Ave., Santa Clara, CA 95051 (“**Borrower**”), does hereby certify, on behalf of Borrower and not in an individual capacity, to **OXFORD FINANCE LLC** (“**Oxford**” and “**Lender**”), as collateral agent (the “**Collateral Agent**”) in connection with that certain Loan and Security Agreement dated as of August 7, 2015, by and among Borrower, Collateral Agent and the Lenders from time to time party thereto (the “**Loan Agreement**”; with other capitalized terms used below having the meanings ascribed thereto in the Loan Agreement) that:

1. The representations and warranties made by Borrower in Section 5 of the Loan Agreement and in the other Loan Documents are true and correct in all material respects as of the date hereof; provided that those representations and warranties expressly referring to a specific date shall be true and correct in all material respects as of such date.
2. No event or condition has occurred that would constitute an Event of Default under the Loan Agreement or any other Loan Document.
3. Borrower is in compliance with the covenants and requirements contained in Sections 4, 6 and 7 of the Loan Agreement.
4. All conditions referred to in Section 3 of the Loan Agreement to the making of the Credit Extension to be made on or about the date hereof have been satisfied or waived by Collateral Agent.
5. No Material Adverse Change has occurred.
6. The undersigned is a Responsible Officer.
7. [Revenue Event [1.0][2.0] has occurred.]

***[Balance of Page Intentionally Left Blank]***

7. The proceeds of the Term [A][B][C] Loan shall be disbursed as follows:

**Disbursement from Oxford:**

Loan Amount	\$5,000,000.00
Less:	
--Facility Fee	(\$_____)
-- Existing Debt Payoff to be remitted to Oxford Finance LLC per the Payoff Letter dated as of August 7, 2015	(\$_____)]
[--Interim Interest	(\$_____)]
--Lender's Legal Fees	(\$_____)*
<b>Net Proceeds due from Oxford:</b>	<b>\$ _____</b>

**Disbursement from SVB:**

Loan Amount	\$5,000,000.00
Less:	
--Facility Fee	(\$_____)
-- Existing Debt Payoff to be remitted to Silicon Valley Bank per the Payoff Letter dated as of August 7, 2015	(\$_____)]
[--Interim Interest	(\$_____)]
<b>Net Proceeds due from SVB:</b>	<b>\$ _____</b>

**TOTAL TERM [A][B][C] LOAN NET PROCEEDS  
FROM LENDERS**

**\$ \_\_\_\_\_**

8. The Term [A][B][C] Loan shall amortize in accordance with the Amortization Table attached hereto.

9. The aggregate net proceeds of the Term Loans shall be transferred to the Designated Deposit Account as follows:

Account Name: MIRAMAR LABS, INC.  
Bank Name: Silicon Valley Bank  
Bank Address: 3003 Tasman Drive  
Santa Clara, California 95054  
Account Number: 3300508350  
ABA Number: 121140399

***[Balance of Page Intentionally Left Blank]***

Dated as of the date first set forth above.

**BORROWER:**

MIRAMAR LABS, INC.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**COLLATERAL AGENT AND LENDER:**

OXFORD FINANCE LLC

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LENDER:**

SILICON VALLEY BANK

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**AMORTIZATION TABLE**

(Term [A][B][C] Loan)

[see attached]

**EXHIBIT B-2**

**Loan Payment/Advance Request Form**

**DEADLINE FOR SAME DAY PROCESSING IS NOON PACIFIC TIME\***

Fax To: \_\_\_\_\_

Date: \_\_\_\_\_

<b>LOAN PAYMENT:</b>	
MIRAMAR LABS, INC.	
From Account # _____ (Deposit Account #) _____	To Account # _____ (Loan Account #) _____
Principal \$ _____	and/or Interest \$ _____
Authorized Signature: _____	Phone Number: _____
Print Name/Title: _____	
<b>LOAN ADVANCE:</b>	
Complete <i>Outgoing Wire Request</i> section below if all or a portion of the funds from this loan advance are for an outgoing wire.	
From Account # _____ (Loan Account #) _____	To Account # _____ (Deposit Account #) _____
Amount of Advance \$ _____	
All Borrower's representations and warranties in the Loan and Security Agreement are true, correct and complete in all material respects on the date of the request for an advance; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date:	
Authorized Signature: _____	Phone Number: _____
Print Name/Title: _____	
<b>OUTGOINGWIREREQUEST:</b>	
<b>Complete only if all or a portion of funds from the loan advance above is to be wired.</b>	
Deadline for same day processing is noon, Pacific Time	
Beneficiary Name: _____	Amount of Wire: \$ _____
Beneficiary Bank: _____	Account Number: _____
City and State: _____	
Beneficiary Bank Transit (ABA) # _____	Beneficiary Bank Code (Swift, Sort, Chip, etc.): <b>(For International Wire Only)</b>
Intermediary Bank: _____	Transit (ABA) #: _____
For Further Credit to: _____	
Special Instruction: _____	
<i>By signing below, I (we) acknowledge and agree that my (our) funds transfer request shall be processed in accordance with and subject to the terms and conditions set forth in the agreements(s) covering funds transfer service(s), which agreements(s) were previously received and executed by me (us).</i>	
Authorized Signature: _____	2nd Signature (if required): _____
Print Name/Title: _____	Print Name/Title: _____
Telephone #: _____	Telephone #: _____

## EXHIBIT C

### Compliance Certificate

TO: OXFORD FINANCE LLC, as Collateral Agent and Lender  
SILICON VALLEY BANK, as Lender

FROM: MIRAMAR LABS, INC.

The undersigned authorized officer (“**Officer**”) of MIRAMAR LABS, INC. (“**Borrower**”), hereby certifies on behalf of Borrower and not in any individual capacity that in accordance with the terms and conditions of the Loan and Security Agreement by and among Borrower, Collateral Agent, and the Lenders from time to time party thereto (the “**Loan Agreement**,” capitalized terms used but not otherwise defined herein shall have the meanings given them in the Loan Agreement),

(a) Borrower is in complete compliance for the period ending \_\_\_\_\_ with all required covenants except as noted below;

(b) There are no Events of Default, except as noted below;

(c) Except as noted below, all representations and warranties of Borrower stated in the Loan Documents are true and correct in all material respects on this date and for the period described in (a), above; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date.

(d) Borrower, and each of Borrower’s Subsidiaries, has timely filed all required tax returns and reports, Borrower, and each of Borrower’s Subsidiaries, has timely paid all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower, or Subsidiary, except as otherwise permitted pursuant to the terms of Section 5.8 of the Loan Agreement;

(e) No Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Collateral Agent and the Lenders.

Attached are the required documents, if any, supporting our certification(s). The Officer, on behalf of Borrower, further certifies that the attached financial statements are prepared in accordance with Generally Accepted Accounting Principles (GAAP) and are consistently applied from one period to the next except as explained in an accompanying letter or footnotes and except, in the case of unaudited financial statements, for the absence of footnotes and subject to year-end audit adjustments as to the interim financial statements.

**Please indicate compliance status since the last Compliance Certificate by circling Yes, No, or N/A under “Complies” column.**

<b>Reporting Covenant</b>	<b>Requirement</b>	<b>Actual</b>	<b>Complies</b>		
1) Financial statements	Monthly within 30 days		Yes	No	N/A
2) Annual (CPA Audited) statements	Within 180 days after FYE		Yes	No	N/A
3) Annual Financial Projections/Budget (prepared on a monthly basis)	Annually (within 10 days of FYE), and when revised		Yes	No	N/A
4) A/R & A/P agings	If applicable		Yes	No	N/A
5) 8-K, 10-K and 10-Q Filings	If applicable, within 5 days of filing		Yes	No	N/A
6) Compliance Certificate	Monthly within 30 days		Yes	No	N/A
7) IP Report	When required		Yes	No	N/A
8) Total amount of Borrower's cash and cash equivalents at the last day of the measurement period		\$ _____	Yes	No	N/A
9) Total amount of Borrower's Subsidiaries' cash and cash equivalents at the last day of the measurement period		\$ _____	Yes	No	N/A

**Deposit and Securities Accounts**

*(Please list all accounts; attach separate sheet if additional space needed)*

<b>Institution Name</b>	<b>Account Number</b>	<b>New Account?</b>	<b>Account Control Agreement in place?</b>	
1)		Yes No	Yes	No
2)		Yes No	Yes	No
3)		Yes No	Yes	No
4)		Yes No	Yes	No

**Other Matters**

- |   |     |    |
|---|-----|----|
| 1) Have any Key Person ceased to be actively engaged in Borrower's management since the last Compliance Certificate?  | Yes | No |
| 2) Have there been any transfers/sales/disposals/retirement of Collateral or IP prohibited by the Loan Agreement?   | Yes | No |
| 3) Have there been any new or pending claims or causes of action against Borrower that involve more than One Hundred Thousand Dollars (\$100,000.00)?   | Yes | No |
| 4) Have there been any amendments of or other changes to the capitalization table of Borrower and to the Operating Documents of Borrower or any of its Subsidiaries? If yes, provide copies of any such amendments or changes with this Compliance Certificate. | Yes | No |

**Exceptions**

Please explain any exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions." Attach separate sheet if additional space needed.)

MIRAMAR LABS, INC.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**LENDER USE ONLY**

Received by: \_\_\_\_\_ Date: \_\_\_\_\_

Verified by: \_\_\_\_\_ Date: \_\_\_\_\_

Compliance Status:    Yes        No

**EXHIBIT D**

**Form of Secured Promissory Note**

[see attached]

**SECURED PROMISSORY NOTE**  
**(Term [A][B][C] Loan)**

\$5,000,000.00

Dated: August 7, 2015

FOR VALUE RECEIVED, the undersigned, MIRAMAR LABS, INC., a Delaware Corporation with offices located at 2790 Walsh Ave., Santa Clara, CA 95051 (“**Borrower**”) HEREBY PROMISES TO PAY to the order of [OXFORD FINANCE LLC][SILICON VALLEY BANK] (“**Lender**”) the principal amount of FIVE MILLION DOLLARS (\$5,000,000.00) or such lesser amount as shall equal the outstanding principal balance of the Term [A][B][C] Loan made to Borrower by Lender, plus interest on the aggregate unpaid principal amount of such Term [A][B][C] Loan, at the rates and in accordance with the terms of the Loan and Security Agreement dated August 7, 2015 by and among Borrower, Lender, Oxford Finance LLC, as Collateral Agent, and the other Lenders from time to time party thereto (as amended, restated, supplemented or otherwise modified from time to time, the “**Loan Agreement**”). If not sooner paid, the entire principal amount and all accrued and unpaid interest hereunder shall be due and payable on the Maturity Date as set forth in the Loan Agreement. Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Principal, interest and all other amounts due with respect to the Term [A][B][C] Loan, are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Secured Promissory Note (this “**Note**”). The principal amount of this Note and the interest rate applicable thereto, and all payments made with respect thereto, shall be recorded by Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Note.

The Loan Agreement, among other things, (a) provides for the making of a secured Term [A][B][C] Loan by Lender to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Note may not be prepaid except as set forth in Section 2.2 (c) and Section 2.2(d) of the Loan Agreement.

This Note and the obligation of Borrower to repay the unpaid principal amount of the Term [A][B][C] Loan, interest on the Term [A][B][C] Loan and all other amounts due Lender under the Loan Agreement is secured under the Loan Agreement.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Note are hereby waived.

Borrower shall pay all reasonable fees and expenses, including, without limitation, reasonable attorneys’ fees and costs, incurred by Lender in the enforcement or attempt to enforce any of Borrower’s obligations hereunder not performed when due.

This Note shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of California.

The ownership of an interest in this Note shall be registered on a record of ownership maintained by Lender or its agent. Notwithstanding anything else in this Note to the contrary, the right to the principal of, and stated interest on, this Note may be transferred only if the transfer is registered on such record of ownership and the transferee is identified as the owner of an interest in the obligation. Borrower shall be entitled to treat the registered holder of this Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Note on the part of any other person or entity.

***[Balance of Page Intentionally Left Blank]***

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

**BORROWER:**

MIRAMAR LABS, INC.

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LOAN INTEREST RATE AND PAYMENTS OF PRINCIPAL**

<b>Date</b>	<b>Principal Amount</b>	<b>Interest Rate</b>	<b>Scheduled Payment Amount</b>	<b>Notation By</b>
-------------	-------------------------	----------------------	-------------------------------------	--------------------

**ANNEX I**

**Form of Perfection Certificate**

[See attached]

**CORPORATE BORROWING CERTIFICATE**

*[WSGR to provide draft]*

**DEBTOR:** MIRAMAR LABS, INC.

**SECURED PARTY:** OXFORD FINANCE LLC,  
as Collateral Agent

**EXHIBIT A TO UCC FINANCING STATEMENT**

**Description of Collateral**

The Collateral consists of all of Debtor's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as noted below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts and other Collateral Accounts, all certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include any (i) Intellectual Property; provided, however, the Collateral shall include all Accounts and all proceeds of Intellectual Property and provided further that if a judicial authority (including a U.S. Bankruptcy Court) would hold that a security interest in the underlying Intellectual Property is necessary to have a security interest in such Accounts and such property that are proceeds of Intellectual Property, then the Collateral shall automatically, and effective as of the Effective Date, include the Intellectual Property to the extent necessary to permit perfection of Collateral Agent's security interest in such Accounts and such other property of Borrower that are proceeds of the Intellectual Property; (ii) more than 65% of the total combined voting power of all classes of stock entitled to vote the shares of capital stock (the "Shares") of any Foreign Subsidiary, if Borrower demonstrates to Collateral Agent's reasonable satisfaction that a pledge of more than sixty five percent (65%) of the Shares of such Subsidiary creates a present and existing adverse tax consequence to Borrower under the U.S. Internal Revenue Code; and (iii) any license or contract, in each case if the granting of a Lien in such license or contract is prohibited by or would constitute a default under the agreement governing such license or contract (but (A) only to the extent such prohibition is enforceable under applicable law and (B) other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-408 or 9-409 (or any other Section) of Division 9 of the Code); provided that upon the termination, lapsing or expiration of any such prohibition, such license or contract, as applicable, shall automatically be subject to the security interest granted in favor of Collateral Agent hereunder and become part of the "Collateral."

Pursuant to the terms of a certain negative pledge arrangement with Collateral Agent and the Lenders, Debtor has agreed not to encumber any of its Intellectual Property.

Capitalized terms used but not defined herein have the meanings ascribed in the Uniform Commercial Code in effect in the State of California as in effect from time to time (the "Code") or, if not defined in the Code, then in the Loan and Security Agreement by and between Debtor, Secured Party and the other Lenders party thereto (as modified, amended and/or restated from time to time).

## **SUBORDINATION AGREEMENT**

This Subordination Agreement (the “Agreement”) is made as of February 24, 2016, by and among each of the parties listed as a creditor on a signature page hereto (each, a “Creditor”), and **OXFORD FINANCE LLC**, a Delaware limited liability company with an office located at 133 North Fairfax Street, Alexandria, Virginia 22314, in its capacity as Collateral Agent (as hereinafter defined) for the Lenders (as hereinafter defined).

### **Recitals**

A. Pursuant to a Loan and Security Agreement (such agreement as it may be amended from time to time, the “Loan Agreement”), among **OXFORD FINANCE LLC** (“Oxford” in its capacity as Collateral Agent for the Lenders, the “Collateral Agent”), the Lenders from time to time a party thereto, including, without limitation, Oxford Finance LLC (the “Lenders”) and MIRAMAR LABS, INC. (the “**Borrower**”) has requested and/or obtained certain loans or other credit accommodations from the Lenders which are or may be from time to time secured by assets and property of Borrower.

B. Creditor has extended loans or other credit accommodations to Borrower, and/or may extend loans or other credit accommodations to Borrower from time to time.

C. In order to induce Lenders to extend credit to Borrower and, at any time or from time to time, at Lenders’ option, to make such further loans, extensions of credit, or other accommodations to or for the account of Borrower, or to purchase or extend credit upon any instrument or writing in respect of which Borrower may be liable in any capacity, or to grant such renewals or extension of any such loan, extension of credit, purchase, or other accommodation as Lenders may deem advisable, Creditor is willing to subordinate: (i) all of Borrower’s indebtedness to Creditor (including, without limitation, principal, premium (if any), interest, fees, charges, expenses, costs, professional fees and expenses, and reimbursement obligations), whether presently existing or arising in the future (the “Subordinated Debt”) to all of Borrower’s indebtedness and obligations to the Collateral Agent and/or the Lenders; and (ii) all of Creditor’s security interests, if any, to all security interests in the Borrower’s property in favor of the Collateral Agent and/or the Lenders.

### **NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. Creditor hereby acknowledges and agrees that (i) Creditor does not have any lien on or security interest in any property of Borrower, whether now owned or hereafter acquired, including, without limitation, the “Collateral” as defined in the Loan Agreement, (ii) Borrower is prohibited from granting to the Creditor any lien on, security interest in, or negative pledge with respect to, any property of Borrower, whether now owned or hereafter acquired, including, without limitation, the Collateral and (iii) the Creditor shall not take any lien on, security interest in, or negative pledge with respect to, any property of Borrower, whether now owned or hereafter acquired, including, without limitation, the Collateral. In furtherance of the foregoing, Creditor hereby subordinates to the Collateral Agent and the Lenders any security interest or lien that Creditor may have in any property of Borrower, including without limitation, the Collateral. Notwithstanding the respective dates of attachment or perfection of any security interest of Creditor and the security interest of the Collateral Agent and the Lenders, the lien and security interest of the Collateral Agent and the Lenders in any property of Borrower, whether now owned or hereafter acquired, including, without limitation, the Collateral, shall at all times be senior to the lien and security interest of Creditor.

2. All Subordinated Debt is subordinated in right of payment to all obligations of Borrower to the Collateral Agent and the Lenders now existing or hereafter arising, together with all costs of collecting such obligations (including attorneys’ fees), including, without limitation, all interest accruing after the commencement by or against Borrower of any bankruptcy, reorganization or similar proceeding, and all obligations under the Loan Agreement (the “Senior Debt”).

3. Creditor will not demand or receive from Borrower (and Borrower will not pay to Creditor) all or any part of the Subordinated Debt, by way of payment, prepayment, setoff, lawsuit or otherwise, nor will Creditor

exercise any remedy with respect to the Subordinated Debt or any property of the Borrower, whether now owned or hereafter acquired, including, without limitation, the Collateral, nor will Creditor accelerate the Subordinated Debt, or commence, or cause to commence, prosecute or participate in any administrative, legal or equitable action against Borrower, until such time as (i) the Senior Debt is indefeasibly paid in full in cash, and (ii) the Lenders have no commitment or obligation to lend any further funds to Borrower, and (iii) all financing agreements among the Collateral Agent and the Lenders and Borrower are terminated. Nothing herein shall prohibit Creditor from converting all or any part of the Subordinated Debt into equity securities of Borrower or from receiving cash payments in lieu of the issuance of fractional shares in connection with such conversion (“**Fractional Payments**”), provided that if such securities have any call or put features that would obligate Borrower to pay any money other than Fractional Payments (including the payment of any cash dividends or other cash distributions for so long as the Senior Debt remains outstanding), Creditor hereby agrees that Borrower may not declare, pay or make such payment of money to Creditor, and Creditor shall not declare or accept any such dividends, distributions or other payments except as may be permitted in the Loan Agreement.

4. Creditor shall hold in trust for the Collateral Agent and the Lenders and promptly deliver to the Collateral Agent in the form received (except for endorsement or assignment by Creditor where required by the Collateral Agent), for application to the Senior Debt, any payment, distribution, security or proceeds received by Creditor with respect to the Subordinated Debt other than in accordance with this Agreement.

5. In the event of Borrower’s insolvency, reorganization or any case or proceeding under any bankruptcy or insolvency law or laws relating to the relief of debtors, these provisions shall remain in full force and effect, and the Collateral Agent’s and the Lenders’ claims against Borrower and the estate of Borrower shall be paid in full before any payment is made to Creditor.

6. Until the Senior Debt is indefeasibly paid in full in cash and Lenders’ arrangements to lend any funds to Borrower have been terminated, Creditor irrevocably appoints the Collateral Agent as Creditor’s attorney-in-fact, and grants to the Collateral Agent a power of attorney with full power of substitution, in the name of Creditor or in the name of the Collateral Agent and/or the Lenders, for the use and benefit of the Collateral Agent and the Lenders, without notice to Creditor, to perform at the Collateral Agent’s option the following acts in any bankruptcy, insolvency or similar proceeding involving Borrower:

(i) To file the appropriate claim or claims in respect of the Subordinated Debt on behalf of Creditor if Creditor does not do so prior to 30 days before the expiration of the time to file claims in such proceeding and if the Collateral Agent elects, in its sole discretion, to file such claim or claims;

(ii) To accept or reject any plan of reorganization or arrangement on behalf of Creditor and to otherwise vote Creditor’s claims in respect of any Subordinated Debt in any manner that the Collateral Agent deems appropriate for the enforcement of its rights hereunder.

7. Creditor shall immediately affix a legend to the instruments evidencing the Subordinated Debt stating that the instruments are subject to the terms of this Agreement, in substantially the form attached hereto as Annex I. By the execution of this Agreement, Creditor hereby authorizes the Collateral Agent and the Lenders to amend any financing statements filed by Creditor against Borrower as follows: “In accordance with a certain Subordination Agreement by and among the Secured Party, the Debtor and Oxford Finance LLC, in its capacity as Collateral Agent, the Secured Party has subordinated any security interest or lien that Secured Party may have in any property of the Debtor to the security interest of Oxford Finance LLC and the Lenders identified therein in all assets of the Debtor, notwithstanding the respective dates of attachment or perfection of the security interest of the Secured Party and Oxford Finance LLC and the Lenders.”

8. Neither the Borrower nor the Creditor may amend any material term of any Subordinated Debt without the prior written consent of the Collateral Agent and the Lenders. Without limiting the foregoing, no amendment of the documents evidencing or relating to the Subordinated Debt shall directly or indirectly modify the provisions of this Agreement in any manner which might terminate or impair the subordination of the Subordinated Debt or the subordination of any security interest or lien that Creditor may have in any property of Borrower. By way of example, such instruments shall not be amended to (i) increase the rate of interest with respect to the Subordinated Debt, or (ii)

accelerate the payment of the principal or interest or any other portion of the Subordinated Debt. The Collateral Agent and the Lenders shall have the sole and exclusive right to restrict or permit, or approve or disapprove, the sale, transfer or other disposition of any of the property or assets of the Borrower, including, without limitation, the Collateral, except in accordance with the terms of the Senior Debt. Upon written notice from the Collateral Agent of the Collateral Agent's and the Lenders' agreement to release its lien on all or any portion of the Collateral in connection with the sale, transfer or other disposition thereof by the Collateral Agent and the Lenders (or by Borrower with consent of the Collateral Agent and the Lenders), Creditor shall be deemed to have also, automatically and simultaneously, released any lien or security interest on such Collateral, and Creditor shall upon written request by the Collateral Agent, immediately take such action as shall be necessary or appropriate to evidence and confirm such release. All proceeds resulting from any such sale, transfer or other disposition shall be applied first to the Senior Debt until payment in full thereof, with the balance, if any, to the Subordinated Debt, or to any other entitled party. If Creditor fails to release any lien or security interest as required hereunder, Creditor hereby appoints the Collateral Agent as attorney in fact for Creditor with full power of substitution to release Creditor's liens and security interests as provided hereunder. Such power of attorney being coupled with an interest shall be irrevocable.

9. All necessary action on the part of the Creditor, its officers, directors, partners, members and shareholders, as applicable, necessary for the authorization of this Agreement and the performance of all obligations of Creditor hereunder has been taken. This Agreement constitutes the legal, valid and binding obligation of Creditor, enforceable against Creditor in accordance with its terms. The execution, delivery and performance of and compliance with this Agreement by Creditor will not (i) result in any material violation or default of any term of any of the Creditor's charter, formation or other organizational documents (such as Articles or Certificate of Incorporation, bylaws, partnership agreement, operating agreement, etc.) or (ii) violate any material applicable law, rule or regulation.

10. If, at any time after payment in full of the Senior Debt any payments of the Senior Debt must be disgorged by the Collateral Agent or the Lenders for any reason (including, without limitation, the bankruptcy of Borrower), this Agreement and the relative rights and priorities set forth herein shall be reinstated as to all such disgorged payments as though such payments had not been made and Creditor shall immediately pay over to the Collateral Agent all payments received with respect to the Subordinated Debt to the extent that such payments would have been prohibited hereunder. At any time and from time to time, without notice to Creditor, the Collateral Agent and the Lenders may take such actions with respect to the Senior Debt as the Collateral Agent and the Lenders, in their sole discretion, may deem appropriate, including, without limitation, terminating advances to Borrower, increasing the principal amount, extending the time of payment, increasing applicable interest rates, renewing, compromising or otherwise amending the terms of any documents affecting the Senior Debt and any collateral securing the Senior Debt, and enforcing or failing to enforce any rights against Borrower or any other person. No such action or inaction shall impair or otherwise affect the Collateral Agent's and the Lenders' rights hereunder.

11. This Agreement shall bind any successors or assignees of Creditor and shall benefit any successors or assigns of the Collateral Agent and the Lenders. This Agreement shall remain effective until the earlier of: (i) termination in writing by the Collateral Agent or (ii) Collateral Agent and the Lenders receive evidence in form and substance reasonably satisfactory to Collateral Agent and the Lenders that the Subordinated Debt is cancelled by Creditors or converted into equity of the Borrower. This Agreement is solely for the benefit of Creditor and the Collateral Agent and the Lenders and not for the benefit of Borrower or any other party. Creditor further agree that if Borrower is in the process of refinancing any portion of the Senior Debt with a new lender, and if the Collateral Agent and/or the Lenders makes a request of Creditor, Creditor shall agree to enter into a new subordination agreement with the new lender on substantially the terms and conditions of this Agreement.

12. Creditor hereby agrees to execute such documents and/or take such further action as the Collateral Agent and the Lenders may at any time or times reasonably request in order to carry out the provisions and intent of this Agreement, including, without limitation, ratifications and confirmations of this Agreement from time to time hereafter, as and when requested by the Collateral Agent.

13. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

14. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to conflicts of laws principles. Creditor and the Collateral Agent submit to the exclusive jurisdiction of the state and federal courts located in New York, New York in any action, suit, or proceeding of any kind, against it which arises out of or by reason of this Agreement. CREDITOR AND COLLATERAL AGENT WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN.

15. This Agreement represents the entire agreement with respect to the subject matter hereof, and supersedes all prior negotiations, agreements and commitments. Creditor is not relying on any representations by the Collateral Agent, the Lenders or Borrower in entering into this Agreement and Creditor has kept and will continue to keep itself fully apprised of the financial and other condition of Borrower. This Agreement may be amended only by written instrument signed by Creditor and the Collateral Agent.

*[Balance of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

**OXFORD FINANCE LLC**, as  
Collateral Agent

By: /s/ Mark Davis

Name: Mark Davis

Title: Vice President – Finance, Secretary & Treasurer

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

CREDITOR:

**DOMAIN PARTNERS VII, L.P.**

By: One Palmer Square Associates VII, L.L.C.

Its: General Partner

By: /s/ Lisa A. Kraeutler

Name: Lisa Kraeutler

Title: Attorney-in-fact

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

CREDITOR:

**MORGENTHALER PARTNERS VIII, L.P.**

By: Morgenthaler Management Partners VIII,  
Its: Managing Partner

By: /s/ Henry A. Plain Jr.

Name: Henry A. Plain Jr.

Title: Member

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

CREDITOR:

**AISSLING CAPITAL III, LP**

By: /s/ Lloyd Appel

Name: Lloyd Appel

Title: CFO

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

CREDITOR:

**CROSS CREEK CAPITAL, L.P.**

By: Cross Creek Capital GP, L.P.  
Its: Sole General Partner

By: Cross Creek Capital, LLC  
Its: Sole General Partner

By: /s/ Tyler Christenson  
Name: Tyler Christenson  
Title: Director

CREDITOR:

**CROSS CREEK CAPITAL  
EMPLOYEES' FUND, L.P.**

By: Cross Creek Capital GP, L.P.  
Its: Sole General Partner

By: Cross Creek Capital, LLC  
Its: Sole General Partner

By: /s/ Tyler Christenson  
Name: Tyler Christenson  
Title: Director

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

CREDITOR:

**RMI INVESTMENTS S.A.R.L.**

By: /s/ Pavel Iliev

Name: Pavel Iliev

Title: Manager Category A

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

The undersigned approves of the terms of this Agreement.

BORROWER:

**MIRAMAR LABS, INC.**

By: /s/ R. Michael Kleine

Name: R. Michael Kleine

Title: President & CEO

Annex I

Legend to be added to Subordinated Debt instruments

“THIS UNSECURED/SECURED CONVERTIBLE PROMISSORY NOTE (AND ALL PAYMENT AND ENFORCEMENT PROVISIONS HEREIN) (THE “NOTE”) IS SUBJECT TO THE TERMS OF A SUBORDINATION AGREEMENT DATED AS OF FEBRUARY \_\_, 2016, BY AND AMONG THE CREDITOR (AS DEFINED HEREIN), THE COMPANY (AS DEFINED HEREIN) AND OXFORD FINANCE LLC (THE “SUBORDINATION AGREEMENT”). IN THE EVENT OF ANY INCONSISTENCY BETWEEN THIS NOTE AND THE SUBORDINATION AGREEMENT, THE TERMS OF THE SUBORDINATION AGREEMENT SHALL CONTROL.”

## CONSENT AND FIRST AMENDMENT TO LOAN AND SECURITY AGREEMENT

This **CONSENT AND FIRST AMENDMENT TO LOAN AND SECURITY AGREEMENT** (this “**Agreement**”) is entered into as of June 2, 2016, by and among OXFORD FINANCE LLC, a Delaware limited liability company with an office located at 133 North Fairfax Street, Alexandria, Virginia 22314 (“**Oxford**”), as collateral agent (in such capacity, “**Collateral Agent**”), the Lenders listed on the signature pages hereto (each a “**Lender**” and collectively, the “**Lenders**”) including Oxford in its capacity as a Lender and SILICON VALLEY BANK, a California corporation with an office located at 3003 Tasman Drive, Santa Clara, CA 95054 (“**Bank**” or “**SVB**”), immediately prior to the Borrower Change in Name (defined below), MIRAMAR LABS, INC., a Delaware corporation (“**Miramar**”), immediately after the Borrower Change in Name, MIRAMAR TECHNOLOGIES, INC. (“**Miramar Technologies**” and, together with Miramar, the “**Borrower**”) with offices located at 2790 Walsh Ave., Santa Clara, CA 95051.

### RECITALS

**A.** Collateral Agent, the Lenders and the Borrower have entered into that certain Loan and Security Agreement dated as of August 7, 2015 (as the same may from time to time be amended, modified, supplemented or restated, the “**Loan Agreement**”). The Lenders have extended credit to the Borrower for the purposes permitted in the Loan Agreement.

**B.** Miramar has informed Collateral Agent and the Lenders that it desires to change its corporate name from Miramar Labs, Inc. to Miramar Technologies, Inc. (the “**Borrower Name Change**”).

**C.** The Borrower has requested that Collateral Agent and the Lenders consent to (a) the Borrower Name Change and (b) amend the Loan Agreement to reflect the Borrower Name Change and Collateral Agent and the Lenders have agreed to do so, but only to the extent, in accordance with the terms, subject to the conditions and in reliance upon the representations and warranties set forth below.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

**1. Definitions.** Capitalized terms used but not defined in this Agreement shall have the meanings given to them in the Loan Agreement.

**2. Consent.** Subject to the terms of Section 8 below, Collateral Agent and Lenders hereby consent to the Borrower Name Change and agree that such name change shall not, in and of itself constitute an Event of Default under Section 7.2 of the Loan Agreement.

**3. Amendment to Loan Agreement.** All references in the Loan Documents to “Borrower” shall mean and refer to MIRAMAR TECHNOLOGIES, INC. MIRAMAR TECHNOLOGIES, INC. shall have all rights and obligations of a Borrower thereunder, and agrees to be bound by all the terms and conditions of the Loan Agreement and the other Loan Documents and hereby makes to Collateral Agent all representations, warranties, grants of security interest and covenants contained in the Loan Agreement and the other Loan Documents as of the date hereof.

**4. Limitation of Consent and Amendment.**

**4.1** The consent set forth in **Section 2** and the amendment set forth in **Section 3** above, are effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Loan Document, or (b) otherwise prejudice any right or remedy which Collateral Agent or any Lender may now have or may have in the future under or in connection with any Loan Document.

**4.2** This Agreement shall be construed in connection with and as part of the Loan Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Loan Documents, except as herein amended, are hereby ratified and confirmed (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date) and shall remain in full force and effect.

**5. Representations and Warranties.** Borrower represents and warrants to Collateral Agent on and as of the date hereof as follows:

**5.1** (a) the representations and warranties contained in the Loan Documents are true and correct in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (b) no Event of Default has occurred and is continuing;

**5.2** Borrower has the power and authority to execute and deliver this Agreement and to perform its obligations under the Loan Agreement;

**5.3** The execution and delivery by Borrower of this Agreement and the performance by Borrower of its obligations under the Loan Agreement have been duly authorized by all necessary action on the part of Borrower;

**5.4** The execution and delivery by Borrower of this Agreement and the performance by Borrower of its obligations under the Loan Agreement do not and will not (a) contravene any material law or regulation binding on or affecting Borrower, (b) constitute an event of default under any material agreement binding on Borrower, (c) contravene any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Borrower, or (d) conflict with the organizational documents of Borrower;

**5.5** The execution and delivery by Borrower of this Agreement and the performance by Borrower of its obligations under the Loan Agreement do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on Borrower, except as already has been obtained or made; and

**5.6** This Agreement has been duly executed and delivered by Borrower and is the binding obligation of each, enforceable against each in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.

**6. Integration.** This Agreement and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the Loan Documents merge into this Agreement and the Loan Documents.

**7. Counterparts.** This Agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

**8. Conditions to Effectiveness.** The parties agree that this Agreement shall be deemed effective upon:

(a) the due execution and delivery to Collateral Agent and Lenders of each of the following:

- (i) Officer's Certificate, attached hereto as Exhibit A, duly executed by Borrower;
- (ii) copies of the amendments to the Operating Documents of Miramar Technologies evidencing Miramar Technologies' corporate name change;
- (iii) an amended UCC Financing Statement Amendment, reflecting the name change of Miramar Technologies; and

(b) payment of all Lender Expenses incurred through the date hereof, which may be debited from any of Borrower's accounts.

**9. Miscellaneous.**

**9.1** This Agreement shall constitute a Loan Document under the Loan Agreement; the failure to comply with the covenants contained herein shall constitute an Event of Default under the Loan Agreement; and all obligations included in this Agreement (including, without limitation, all obligations for the payment of principal, interest, fees, and other amounts and expenses) shall constitute obligations under the Loan Agreement and secured by the Collateral.

**9.2** Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

**10. Governing Law.** This Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of California.

[Signature page follows.]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed and delivered as of the date first written above.

**COLLATERAL AGENT  
AND LENDER**

OXFORD FINANCE LLC

By: /s/ Mark Davis  
Name: Mark Davis  
Title: Vice President – Finance, Secretary  
& Treasurer

**LENDER**

SILICON VALLEY BANK

By: /s/ Michelle Lai  
Name: Michelle Lai  
Title: Vice President

**BORROWER**

MIRAMAR TECHNOLOGIES, INC. (f/  
k/a MIRAMAR LABS, INC.)

By: /s/ R. Michael Kleine  
Name: R. Michael Kleine  
Title: President & CEO

*[Signature Page to Consent and First Amendment to Loan and Security Agreement]*

**EXHIBIT A**  
**CORPORATE BORROWING CERTIFICATE**  
**MIRAMAR TECHNOLOGIES, INC.**  
[TO BE ATTACHED]

**CONSENT, JOINDER AND SECOND AMENDMENT  
TO  
LOAN AND SECURITY AGREEMENT**

This **CONSENT, JOINDER AND SECOND AMENDMENT TO LOAN AND SECURITY AGREEMENT** (this “**Agreement**”) is entered into as of June 7, 2016, by and among OXFORD FINANCE LLC, a Delaware limited liability company with an office located at 133 North Fairfax Street, Alexandria, Virginia 22314 (“**Oxford**”), as collateral agent (in such capacity, “**Collateral Agent**”), the Lenders listed on the signature pages hereto (each a “**Lender**” and collectively, the “**Lenders**”) including Oxford in its capacity as a Lender and SILICON VALLEY BANK, a California corporation with an office located at 3003 Tasman Drive, Santa Clara, CA 95054 (“**Bank**” or “**SVB**”), MIRAMAR TECHNOLOGIES, INC. (“**Miramar Technologies**” or “**Existing Borrower**”) and, immediately after the Merger (defined below), MIRAMAR LABS, INC., a Delaware corporation (“**Parent**”), each of Existing Borrower and immediately after the Merger, the Parent having their offices located at 2790 Walsh Ave., Santa Clara, CA 95051. For purposes hereof, both Parent and Existing Borrower may also be referred to herein, collectively, as the “**Borrowers**” and, individually, as a “**Borrower**”).

**RECITALS**

**A.** Collateral Agent, the Lenders and the Existing Borrower have entered into that certain Loan and Security Agreement dated as of August 7, 2015 (as the same may from time to time be amended, modified, supplemented or restated, including by that certain Consent and First Amendment to Loan and Security Agreement dated as of June 2, 2016, the “**Loan Agreement**”). The Lenders have extended credit to the Existing Borrower for the purposes permitted in the Loan Agreement.

**B.** Miramar has informed Collateral Agent and the Lenders that it desires to enter into an Agreement and Plan of Merger and Reorganization (the “**Merger Agreement**”), attached hereto as Exhibit A, and any other material agreement related to and executed by the Borrowers in connection with the Merger Agreement (collectively, the “**Merger Documents**”), pursuant to which a wholly-owned Subsidiary of Parent will merge with and into Miramar Technologies, with Miramar Technologies surviving as a wholly-owned Subsidiary of Parent (collectively, the “**Merger**”).

**C.** The Existing Borrower has requested that Collateral Agent and the Lenders (i) consent to the Merger, (ii) amend the Loan Agreement to reflect the addition of Parent as a Borrower under the Loan Documents and (iii) make certain other revisions to the Loan Agreement as more fully set forth herein and Collateral Agent and the Lenders have agreed to do so, but only to the extent, in accordance with the terms, subject to the conditions and in reliance upon the representations and warranties set forth below.

## AGREEMENT

**NOW, THEREFORE**, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

**1. Definitions.** Capitalized terms used but not defined in this Agreement shall have the meanings given to them in the Loan Agreement.

**2. Consent.** Subject to the terms of Section 10 below, Collateral Agent and Lenders hereby consent to the Merger and agree that the Merger shall not, in and of itself, constitute an Event of Default under Section 7.2 or Section 7.3 of the Loan Agreement, provided that no other Event of Default exists on or immediately prior to the Merger or immediately after giving effect to the Merger.

**3. Joinder.**

**3.1 Additional Borrower.** Parent hereby is added as a “Borrower” under the Loan Agreement, *ab initio*. All references in the Loan Agreement to “Borrower” hereafter shall mean and refer to Parent and Miramar Technologies, individually and collectively, jointly and severally; and Parent hereafter shall have all rights, duties and obligations of “Borrower” thereunder.

**3.2 Joinder to Loan Agreement.** Parent hereby joins the Loan Agreement and each of the Loan Documents, and agrees to comply with and be bound by all of the terms, conditions and covenants of the Loan Agreement and Loan Documents, as if it were originally named a “Borrower” therein (but only effective as of the date of this Agreement). Without limiting the generality of the preceding sentence, Parent agrees that it will be jointly and severally liable, together with Borrower, for the payment and performance of all obligations and liabilities of Borrower under the Loan Agreement, including, without limitation, the Obligations.

**3.3 Subrogation and Similar Rights.** Each Borrower waives (a) any suretyship defenses available to it under the Code or any other applicable law and (b) any right to require Collateral Agent or any Lender to: (i) proceed against any Borrower or any other person; (ii) proceed against or exhaust any security; or (iii) pursue any other remedy. Collateral Agent and any Lender may each exercise or not exercise any right or remedy it has against any Borrower or any security it holds (including the right to foreclose by judicial or non-judicial sale) without affecting any Borrower’s liability. Notwithstanding any other provision of this Agreement, the Loan Agreement, the Loan Documents or any related documents, until the Obligations have been indefeasibly paid in full and at such time as each Lender’s obligation to make Credit Extensions has terminated, each Borrower irrevocably waives all rights that it may have at law or in equity (including, without limitation, any law subrogating Borrower to the rights of Collateral Agent and/or Lenders under this Agreement and the Loan Agreement) to seek contribution, indemnification or any other form of reimbursement from any other Borrower, or any other Person now or hereafter primarily or secondarily liable for any of the Obligations, for any payment made by Borrower with respect to the Obligations in connection with this Agreement, the Loan Agreement or otherwise and all rights that it might have to benefit from, or to participate in, any security for the Obligations as a result

of any payment made by Borrower with respect to the Obligations in connection with this Agreement, the Loan Agreement or otherwise. Any agreement providing for indemnification, reimbursement or any other arrangement prohibited under this section shall be null and void. If any payment is made to a Borrower in contravention of this section, such Borrower shall hold such payment in trust for Collateral Agent, for the ratable benefit of Lenders, and such payment shall be promptly delivered to Collateral Agent, for the ratable benefit of Lenders, for application to the Obligations, whether matured or unmatured.

**3.4 Grant of Security Interest.** To secure the prompt payment and performance of all of the Obligations, Parent hereby grants to Collateral Agent, for the ratable benefit of Lenders, a continuing lien upon and security interest in all of Parent's now existing or hereafter arising rights and interest in the Collateral, whether now owned or existing or hereafter created, acquired, or arising, and wherever located. Parent further covenants and agrees that by its execution hereof it shall provide all such information, complete all such forms, and take all such actions, and enter into all such agreements, in form and substance reasonably satisfactory to Collateral Agent and each Lender that are reasonably deemed necessary by Collateral Agent or any Lender in order to grant a valid, perfected first priority security interest (subject to Permitted Liens) to Collateral Agent, for the ratable benefit of Lenders, in the Collateral. Each Borrower hereby authorizes Collateral Agent to file financing statements, without notice to any Borrower, with all appropriate jurisdictions in order to perfect or protect Collateral Agent's and/or any Lender's interest or rights hereunder, including a notice that any disposition of the Collateral in contravention of the terms of the Loan Agreement, by either Borrower or any other Person, shall be deemed to violate the rights of Collateral Agent and each Lender under the Code.

#### **4. Amendment to Loan Agreement.**

**4.1** All references in the Loan Documents to "Borrower" shall mean and refer to MIRAMAR LABS, INC. and MIRAMAR TECHNOLOGIES, INC. MIRAMAR LABS, INC. shall have all rights and obligations of a Borrower thereunder, and agrees to be bound by all the terms and conditions of the Loan Agreement and the other Loan Documents and hereby makes to Collateral Agent all representations, warranties, grants of security interest and covenants contained in the Loan Agreement and the other Loan Documents as of the date hereof, subject, in each case, to Section 11 hereof.

**4.2 Section 12.13 (Borrower Liability).** New Section 12.13 hereby is added to the Agreement as follows:

**"12.13 Borrower Liability.** Either Borrower may, acting singly, request Credit Extensions hereunder. Each Borrower hereby appoints the other as agent for the other for all purposes hereunder, including with respect to requesting Credit Extensions hereunder. Each Borrower hereunder shall be jointly and severally obligated to repay all Credit Extensions made hereunder, regardless of which Borrower actually receives said Credit Extension, as if each Borrower hereunder directly received all Credit Extensions. Each Borrower waives (a) any suretyship defenses available to it under the Code or any other applicable law (other than the defense of payment or performance of the obligations), including, without limitation, the benefit of California Civil Code Section 2815 permitting revocation as to future transactions and the benefit of California Civil

Code Sections 1432, 2809, 2810, 2819, 2839, 2845, 2847, 2848, 2849, 2850, and 2899 and 3433, and (b) any right to require Collateral Agent or any Lender to: (i) proceed against any Borrower or any other person; (ii) proceed against or exhaust any security; or (iii) pursue any other remedy. Collateral Agent and or any Lender may exercise or not exercise any right or remedy it has against any Borrower or any security it holds (including the right to foreclose by judicial or non-judicial sale) without affecting any Borrower's liability. Notwithstanding any other provision of this Agreement or other related document, until the Obligations have been indefeasibly paid in full and at such time as each Lender's obligation to make Credit Extensions has terminated, each Borrower irrevocably waives all rights that it may have at law or in equity (including, without limitation, any law subrogating Borrower to the rights of Collateral Agent and the Lenders under this Agreement) to seek contribution, indemnification or any other form of reimbursement from any other Borrower, or any other Person now or hereafter primarily or secondarily liable for any of the Obligations, for any payment made by Borrower with respect to the Obligations in connection with this Agreement or otherwise and all rights that it might have to benefit from, or to participate in, any security for the Obligations as a result of any payment made by Borrower with respect to the Obligations in connection with this Agreement or otherwise. Any agreement providing for indemnification, reimbursement or any other arrangement prohibited under this Section shall be null and void. If any payment is made to a Borrower in contravention of this Section, such Borrower shall hold such payment in trust for Collateral Agent and the Lenders and such payment shall be promptly delivered to Collateral Agent for application to the Obligations, whether matured or unmatured."

## **5. Limitation of Consent and Amendment.**

**5.1** The consent set forth in **Section 2**, the joinder set forth in **Section 3** and the amendment set forth in **Section 4** above, are effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Loan Document, or (b) otherwise prejudice any right or remedy which Collateral Agent or any Lender may now have or may have in the future under or in connection with any Loan Document.

**6.** This Agreement shall be construed in connection with and as part of the Loan Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Loan Documents, except as herein amended, are hereby ratified and confirmed (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date) and shall remain in full force and effect.

**7. Representations and Warranties.** Subject to Section 11 hereof, each Borrower represents and warrants to Collateral Agent on and as of the date hereof as follows:

**7.1** (a) the representations and warranties contained in the Loan Documents are true and correct in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (b) no Event of Default has occurred and is continuing;

**7.2** Borrower has the power and authority to execute and deliver this Agreement and to perform its obligations under the Loan Agreement;

**7.3** The organizational documents of Existing Borrower delivered to Collateral Agent on the Effective Date or, with respect to Parent, on the date of this Agreement, are true, accurate and complete and have not been amended, supplemented or restated and are and continue to be in full force and effect;

**7.4** The execution and delivery by Borrower of this Agreement and the performance by Borrower of its obligations under the Loan Agreement have been duly authorized by all necessary action on the part of Borrower;

**7.5** The execution and delivery by Borrower of this Agreement and the performance by Borrower of its obligations under the Loan Agreement do not and will not (a) contravene any material law or regulation binding on or affecting Borrower, (b) constitute an event of default under any material agreement binding on Borrower, (c) contravene any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Borrower, or (d) conflict with the organizational documents of Borrower;

**7.6** The execution and delivery by Borrower of this Agreement and the performance by Borrower of its obligations under the Loan Agreement do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on Borrower, except as already has been obtained or made; and

**7.7** This Agreement has been duly executed and delivered by Borrower and is the binding obligation of each, enforceable against each in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.

**8. Integration.** This Agreement and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the Loan Documents merge into this Agreement and the Loan Documents.

**9. Counterparts.** This Agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

**10. Conditions to Effectiveness.** The parties agree that this Agreement shall be deemed effective upon:

- (a) the due execution and delivery to Collateral Agent and Lenders of each of the following:

- (i) this Agreement by Miramar Technologies, the Parent, the Collateral Agent and the Required Lenders;
  - (ii) Officer's Certificates, attached hereto as Exhibit B-1 and Exhibit B-2, duly executed by each Borrower;
  - (iii) the certificate(s) for the Shares of Miramar Technologies, together with Assignment(s) Separate from Certificate, duly executed in blank;
  - (iv) duly executed original Amended and Restated Secured Promissory Notes in favor of each Lender according to its Term Loan Commitment Percentage;
  - (v) duly executed original Warrants in favor of each Lender according to its Term Loan Commitment Percentage;
  - (vi) the Operating Documents and good standing certificates of Parent, certified by the Secretary of State (or equivalent agency) of Parent's jurisdiction of organization or formation and each jurisdiction in which Parent is qualified to conduct business, each dated as of a date no earlier than thirty (30) days prior to the date hereof;
  - (vii) a completed Perfection Certificate for Parent;
  - (viii) certified copies, dated as of a date no earlier than thirty (30) days prior to the date hereof, of financing statement searches with respect to Parent, as Collateral Agent shall request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or will be terminated or released;
  - (ix) evidence satisfactory to Collateral Agent and the Lenders that the insurance policies required by Section 6.5 of the Loan Agreement are in full force and effect, together with appropriate evidence showing loss payable and/or additional insured clauses or endorsements in favor of Collateral Agent, for the ratable benefit of the Lenders; and
  - (x) fully executed copies of the Merger Documents, together with evidence reasonably satisfactory to Collateral Agent and the Lenders that the transactions contemplated by the Merger Documents have been consummated;
- (b) the filing of a UCC-1 financing statement; and

**11. Miscellaneous.**

**11.1** This Agreement shall constitute a Loan Document under the Loan Agreement; the failure to comply with the covenants contained herein shall constitute an Event of Default under the Loan Agreement; and all obligations included in this Agreement (including, without limitation, all obligations for the payment of principal, interest, fees, and other amounts and expenses) shall constitute obligations under the Loan Agreement and secured by the Collateral.

**11.2** Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

**12. Governing Law.** This Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of California.

[Signature page follows.]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed and delivered as of the date first written above.

**COLLATERAL AGENT  
AND LENDER**

OXFORD FINANCE LLC

By: /s/ Mark Davis  
Name: Mark Davis  
Title: Vice President – Finance, Secretary  
& Treasurer

**BORROWER**

MIRAMAR LABS, INC.

By: /s/ R. Michael Kleine  
Name: R. Michael Kleine  
Title: President & CEO

**LENDER**

SILICON VALLEY BANK

By: /s/ Michelle Lai  
Name: Michelle Lai  
Title: Vice President

**BORROWER**

MIRAMAR TECHNOLOGIES, INC. (f/k/a  
MIRAMAR LABS, INC.)

By: /s/ R. Michael Kleine  
Name: R. Michael Kleine  
Title: President & CEO

*[Signature Page to Consent, Joinder and Second Amendment to Loan and Security Agreement]*

**EXHIBIT A**  
**MERGER DOCUMENTS**  
[TO BE ATTACHED]

**EXHIBIT B-1**

**CORPORATE BORROWING CERTIFICATE**

**MIRAMAR LABS, INC.**

[TO BE ATTACHED]

**EXHIBIT B-2**

**CORPORATE BORROWING CERTIFICATE**

**MIRAMAR TECHNOLOGIES, INC.**

[TO BE ATTACHED]

**LEASE**

**BY AND BETWEEN**

**DWF HI WALSH BOWERS, LLC,  
a Delaware limited liability company  
as Landlord**

**and**

**MIRAMAR LABS, INC.,  
a Delaware limited liability company,  
as Tenant**

**For Premises located at  
2790 Walsh Avenue, Santa Clara, California**

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## LEASE

This Lease is dated as of the lease reference date specified in Section A of the Summary of Basic Lease Terms and is made by and between the party identified as Landlord in Section B of the Summary and the party identified as Tenant in Section C of the Summary.

### SUMMARY OF BASIC LEASE TERMS

SECTION (LEASE REFERENCE)	TERMS
A. (Introduction)	<u>Lease Reference Date:</u> December 16, 2013
B. (Introduction)	<u>Landlord:</u> DWF III Walsh Bowers, LLC a Delaware limited liability company
C. (Introduction)	<u>Tenant:</u> Miramar Labs, Inc. a Delaware limited liability company
D. (§ 1.20)	<u>Premises:</u> That area consisting of approximately 29,256 square feet of gross leasable area the address of which is 2790 Walsh Avenue, Santa Clara, California. An outlined of the Premises is attached hereto as <u>Exhibit A</u> . The Premises is located in the Building described below.
E. (§1.21)	<u>Project:</u> The land and improvements outlined on <u>Exhibit B</u> currently with the Building described below.
F. (§ 1.7)	<u>Building:</u> The building having commonly known addresses of 2845 and 2855 Bowers Avenue, and 2790 Walsh Avenue, Santa Clara, California. The Building contains approximately 61,500 square feet of gross leasable area.  The gross leasable area of the Premises and Building referred to above shall be deemed the actual gross leasable area in the Premises and Building.
G. (§ 1.28)	<u>Tenant's Share:</u> 47.57% of the Building based on the ratio that the rentable square footage of the Premises bears to the total rentable square footage in the Building.

- H. (§4.5) Tenant's Allocated Parking Stalls: 97 parking spaces.
- I. (§ 1.24) Scheduled Commencement Date: March 1, 2014.
- J. (§ 1.17) Lease Term: Sixty-two (62) calendar months (plus the partial month following the Commencement Date if such date is not the first day of a month). If the Commencement Date is other than the first day of a calendar month, the first month of the Lease Term shall include the remainder of the calendar month in which the Commencement Date occurs plus the first full calendar month thereafter.
- K. (§ 3-1) Base Monthly Rent: The Base Monthly Rent shall be in the following applicable amounts:
- | <u>Months</u> | <u>Base Monthly Rent</u>  |
|---------------|---|
| 1-12          | \$42,421.20 (subject to the Base Rent Abatement provided below) |
| 13 — 24       | \$43,693.84   |
| 25 — 36       | \$45,004.65   |
| 37 — 48       | \$46,354.79   |
| 49 — 60       | \$47,745.43   |
| 61 — 62       | \$49,177.80   |
- The foregoing schedule starts as of the Commencement Date. If the Commencement Date occurs other than on the first day of a calendar month, the first month of the Term shall consist of the remainder of the partial month in which the Commencement Date occurs plus the next full calendar month; provided however, the inclusion of such partial month with the next full calendar month shall not entitle Tenant to any additional free rent as hereinafter described. Except as provided in this paragraph, Landlord agrees not to demand or collect and Tenant shall have no obligation to pay Base Monthly Rent for the first three (3) months of the Lease Term (the "**Base Rent Abatement Period**"); provided, however, that if the Commencement Date is other than the first day of a calendar month, the Base Rent Abatement Period shall be the first ninety (90) days from and including the Commencement Date. The Base Monthly Rent abated for the Base Rent Abatement Period collectively shall be referred to as the "**Base Rent Abatement.**" Tenant shall be required to pay Tenant's Share of Operating Expenses and all other Additional Rent and charges during the Base Rent Abatement Period and continuing throughout the Lease Term.
- L. (§ 33) Prepaid Rent: \$42,421.20.
- M. (§ 3.5 & §3.6) Letter of Credit: Letter of Credit for \$295,067.00.

N.  
(§ 4.1)

Permitted Use:

The Premises shall be used solely for general office, research and development, medical device light manufacturing, and small outpatient clinic, but for no other purpose. The use of any portion of the Premises for the outpatient clinic shall be conditioned upon and subject to the following:

(a) The maximum rentable square footage of space for the clinic shall be limited to 1000 rentable square feet in the aggregate in the Premises;

(b) The clinic shall not be open to the general public and shall be solely for the purposes of: i) clinical research on Tenant's devices; ii) clinical studies approved by an appropriate Institutional Review Board and/or the US Food and Drug Administration; iii) training physicians on the use of Tenant's devices; and customer demonstrations;

(c) The clinic may be licensed to a qualified physician to perform the uses set forth in subparagraph (b) above;

(d) The clinic shall not be used for more than 20% of regular business hours and shall not interfere with any other tenant's or occupants use or occupancy of any portion of the Building;

(e) At its expense, Tenant shall be solely responsible for obtaining all licenses and permits for the conduct of such clinic and shall provide copies of same to Landlord;

(f) Any additional alterations or improvements required under any applicable federal, state or local law shall be the responsibility of Tenant at its expense;

(g) Except where as expressly permitted in this Lease, Tenant shall not use any Hazardous Materials in connection with the clinic or in providing any services or tests to visitors of the clinic; and

(h) Except with respect to a qualified physician using the clinic in accordance with the permitted uses set forth herein, the right to operate the clinic is personal to the original party signing this Lease as Tenant but may not be exercised or relied upon by any other party.

O. (§ 5.2)	<u>Permitted Tenant's Alterations limit:</u>	\$30,000.00
P. (§9 A)	<u>Tenant's Liability Insurance Minimum:</u>	\$5,000,000.00
Q. (§ 1.3)	<u>Landlord's Address:</u>	Divco West Real Estate Services, Inc. 3032 Bunker Hill Lane, Suite 102 Santa Clara, CA 95054 Attn: Property Manager
	With a copy to:	Divco West Real Estate Services, Inc. 575 Market Street, 35th floor San Francisco, CA 94105 Attn.: Asset Manager
R. (§ 1.3)	Tenant's Address:	<u>Prior to the Commencement Date:</u> 445 Indio Way Sunnyvale, CA 94085 Attn.: Chief Financial Officer
		<u>From and after the Commencement Date:</u> At the Premises Attn.: Chief Financial Officer
S. (§15.13)	<u>Retained Real Estate Brokers:</u>	Colliers International and CBRE representing Landlord, and Kidder Mathews representing Tenant.
T. (§ 1.16)	<u>Lease:</u>	This Lease includes the summary of the Basic Lease Terms, the Lease, and the following exhibits and addenda: Exhibit A — Outline of Premises Exhibit B — Project Site Plan Exhibit C - Work Letter for Tenant Improvements Exhibit D - Acceptance Agreement Exhibit E — Option to Extend Exhibit F — Hazardous Material Certificate

The foregoing Summary is hereby incorporated into and made a part of this Lease. Each reference in this Lease to any term of the Summary shall mean the respective information set forth above and shall be construed to incorporate all of the terms provided under the particular paragraph pertaining to such information. In the event of any conflict between the Summary and the Lease, the Summary shall control.

#### **ARTICLE 1 DEFINITIONS**

1.1 General: Any initially capitalized term that is given a special meaning by this Article 1, the Summary, or by any other provision of this Lease (including the exhibits attached hereto) shall have such meaning when used in this Lease or any addendum or amendment hereto unless otherwise clearly indicated by the context.

1.2 Additional Rent: The term "**Additional Rent**" is defined in Section 3.2.

1.3 Address for Notices: The term “**Address for Notices**” means the addresses set forth in Sections Q and R of the Summary; provided, however, that after the Commencement Date, Tenant’s Address for Notices shall be the address of the Premises.

1.4 Agents: The term “**Agents**” means the following: (i) with respect to Landlord, the employees and agents of Landlord; and (ii) with respect to Tenant, the employees, contractors, agents and invitees of Tenant and Tenant’s subtenants and their respective agents, employees, contractors, and invitees.

1.5 Agreed Interest Rate: The term “**Agreed Interest Rate**” means that interest rate determined as of the time it is to be applied that is equal to the lesser of (i) 5% in excess of the discount rate established by the Federal Reserve Bank of San Francisco as it may be adjusted from time to time, or (ii) the maximum interest rate permitted by Law.

1.6 Base Monthly Rent: The term “**Base Monthly Rent**” means the fixed monthly rent payable by Tenant pursuant to Section 3.1 which is specified in Section K of the Summary.

1.7 Building: The term “**Building**” means the building in which the Premises are located which Building is identified in Section F of the Summary.

1.8 Commencement Date: The term “**Commencement Date**” is the date the Lease Term commences, which term is defined in Section 2.2.

1.9 Common Area: The term “**Common Area**” means all areas and facilities within the Project that are not designated by Landlord for the exclusive use of Tenant or any other lessee or other occupant of the Project, including the parking areas, access and perimeter roads, pedestrian sidewalks, landscaped areas, trash enclosures, recreation areas and the like.

1.10 Operating Expenses: The term “**Operating Expenses**” is defined in Section 8.2.

1.11 Effective Date: The term “**Effective Date**” means the date the last signatory to this Lease whose execution is required to make it binding on the parties hereto shall have executed this Lease.

1.12 Event of Tenant’s Default: The term “**Event of Tenant’s Default**” is defined in Section 13.1.

1.13 Hazardous Materials: The terms “**Hazardous Materials**” and “**Hazardous Materials Laws**” are defined in Section 7.2F.

1.14 Insured and Uninsured Peril: The terms “**Insured Peril**” and “**Uninsured Peril**” are defined in ¶1.2E.

1.15 Law: The term “**Law**” means any judicial decision, statute, constitution, ordinance, resolution, regulation, rule, administrative order, or other requirement of any municipal, county, state, federal or other government agency or authority having jurisdiction over the parties to this

Lease or the Premises, both, in effect either at the Effective Date or any time during the Lease Term, including, without limitation, any Hazardous Material Law (as defined in Section 7.2F) and the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et. seq.* and any rules, regulations, restrictions, guidelines, requirements or publications promulgated or published pursuant thereto.

1.16 Lease: The term “**Lease**” means the Summary and all elements of this Lease identified in Section T of the Summary, all of which are attached hereto and incorporated herein by this reference.

1.17 Lease Term: The term “**Lease Term**” or “**Term**” means the term of this Lease which shall commence on the Commencement Date and continue for the period specified in Section J of the Summary.

1.18 Lender: The term “**Lender**” means any beneficiary, mortgage, secured party, lessor, or other holder of any Security Instrument.

1.19 Permitted Use: The term “**Permitted Use**” means the use specified in Section N of the Summary.

1.20 Premises: The term “**Premises**” means that building area described in Section D of the Summary that is within the Building.

1.21 Project: The term “**Project**” means that real property and the improvements thereon which are specified in Section E of the Summary. Landlord reserves the right, in its sole and absolute discretion, to include such other buildings in the Project, to sell, transfer, assign or otherwise dispose of any building or parcel in the Project and elect to remove such building and/or parcel from the Project.

1.22 Private Restrictions: The term “**Private Restrictions**” means all recorded covenants, conditions and restrictions, private agreements, reciprocal easement agreements, and any other recorded instruments affecting the use of the Premises which (i) exist as of the Effective Date, or (i) are after the Effective Date.

1.23 Real Property Taxes: The term “**Real Property Taxes**” is defined in Section 8.3.

1.24 Scheduled Commencement Date: The term “**Scheduled Commencement Date**” means the date specified in Section I of the Summary.

1.25 Security Instrument: The term “**Security Instrument**” means any underlying lease, mortgage or deed of trust which now or hereafter affects the Project, and any renewal, modification, consolidation, replacement or extension thereof.

1.26 Summary: The term “**Summary**” means the Summary of Basic Lease Terms that immediately precedes Article I of this Lease.

1.27 Tenant's Alterations: The term "**Tenant's Alterations**" or "**Tenant's Alteration**" or "**Tenant Alteration**" means all improvements, additions, alterations, and fixtures installed in the Premises by Tenant.

1.28 Tenant's Share: The term "**Tenant's Share**" means the percentage obtained by dividing Tenant's gross leasable area in the Premises (as set forth D of the Summary) by the gross leasable area in the Building, which as of the Effective Date are the percentages identified in Section G of the Summary.

1.29 Trade Fixtures: The term "**Trade Fixtures**" means (i) Tenant's inventory, furniture, signs, and business equipment, and (ii) anything affixed to the Premises by Tenant at its expense for purposes of trade, manufacture, ornament or domestic use (except replacement of similar work or material originally installed by Landlord) which can be removed without material injury to the Premises unless such thing has, by the manner in which it is affixed, become an integral part of the Premises.

## **ARTICLE 2 DEMISE, CONSTRUCTION, AND ACCEPTANCE**

2.1 **Demise of Premises:** Landlord hereby leases to Tenant, and Tenant leases from Landlord, for the Lease Term upon the terms and conditions of this Lease, the Premises for Tenant's own use in the conduct of Tenant's business together with (i) the non-exclusive right to use the number of Tenant's Allocated Parking Stalls within the Common Area subject to the limitations set forth in Section 4.5), and (ii) the non-exclusive right to use for ingress and egress from the Premises. Landlord reserves the use of the exterior walls, the roof and the area beneath above the Premises, together with the right to install, maintain, use, and replace ducts, wires, conduits and pipes leading through the Premises in locations which will not materially interfere with Tenant's use of the Premises.

2.2 **Commencement Date:** The "**Commencement Date**" shall mean the earlier of (i) the date the "Tenant Improvements" have been "Substantially Completed" (as such terms are defined in Exhibit C attached hereto), (ii) the date Tenant starts conducting its normal business in the Premises, or (iii) March 1, 2014.

2.3 **Construction of Improvements:** Tenant shall construct the Tenant Improvements (as defined in Exhibit C) in accordance with the terms of Exhibit C.

2.4 **Delivery and Acceptance of Possession:** If this Lease provides that Landlord must deliver possession of the Premises to Tenant on a certain date, and if Landlord is unable to deliver possession of the Premises to Tenant on or before such date for any reason whatsoever, then this Lease shall not be void or voidable except as provided in this paragraph, and Landlord shall not be liable to Tenant for any loss or damage resulting therefrom. If the delay in delivery is due to any delay caused by Tenant or any of its Agents or otherwise due to the acts or omissions of Tenant or its employees, agents or contractors (including without limitation the failure to timely deliver plans, insurance certificates or other items as required by this Lease), then the delivery date shall be deemed (for the purposes of calculating the Commencement Date) the date the Premises would have been delivered but for such delays by Tenant.

Tenant shall accept possession and enter into good faith occupancy of the entire Premises and commence the operation of its business therein within 30 days after the Commencement Date. Tenant acknowledges that it has had an opportunity to conduct, and has conducted, such inspections of the Premises as it deems necessary to evaluate its condition. Except as otherwise specifically provided herein, Tenant agrees to accept possession of the Premises in its then existing condition, "AS-IS", including all patent and latent defects. Tenant's taking possession of any part of the Premises shall be deemed to be an acceptance by Tenant of any work of improvement done by Landlord in such part as complete and in accordance with the terms of this Lease except for defects of which Tenant has given Landlord written notice prior to the time Tenant takes possession. At the time Landlord delivers possession of the Premises to Tenant, Landlord and Tenant shall together execute an acceptance agreement in the form attached as Exhibit D, appropriately completed. Landlord shall have no obligation to deliver possession, nor shall Tenant be entitled to take occupancy, of the Premises until such acceptance agreement has been executed, and Tenant's obligation to pay Base Monthly Rent and Additional Rent shall not be excused or delayed because of

Tenant's failure to execute such acceptance agreement. If requested by Landlord, Tenant shall also execute and deliver to Landlord an acknowledge agreement in the form attached hereby as Exhibit D, appropriate completed, to further confirm the Commencement Date.

2.5 Early Occupancy Period. Landlord shall deliver possession of the Premises to Landlord within five (5) business days after the date this Lease has been fully executed by Tenant and Landlord, provided Tenant has paid to Landlord the prepaid Rent and delivered to Landlord the Letter of Credit and insurance certificates required under this Lease. The date Landlord delivers possession shall be referred to as the "**Delivery Date**." The period of time from and including the Delivery Date to immediately prior to the Commencement Date shall be referred to as the "**Early Occupancy Period**." During the Early Occupancy Period, Tenant shall comply with all of the terms and provisions of this Lease that would otherwise apply during the Lease Term, except that Tenant shall not have to pay Base Monthly Rent or Tenant's Share of Operating Expenses during the Early Occupancy Period. Said early occupancy shall not advance the Commencement Date of this Lease.

### **ARTICLE 3 RENT**

3.1 Base Monthly Rent: Commencing on the Commencement Date and continuing throughout the Lease Term, Tenant shall pay to Landlord the Base Monthly Rent set forth in Section K of the Summary.

3.2 Additional Rent: Commencing on the Commencement Date and continuing throughout the Lease Term, Tenant shall pay the following as additional rent (the "**Additional Rent**"): (i) any late charges or interest due Landlord pursuant to Section 3.4; (ii) Tenant's Share of Operating Expenses as provided in Section 8.1; (iii) Landlord's share of any Subrent received by Tenant upon certain assignments and sublettings as required by Section 14.1; (iv) any legal fees and costs due Landlord pursuant to Section 15.9; and (v) any other charges due Landlord pursuant to this Lease.

3.3 Payment of Rent: Concurrently with the execution of this Lease by Tenant, Tenant shall pay to Landlord the amount set forth in Section L of the Summary as prepayment of rent for credit against the first installment(s) of Base Monthly Rent. The term "**Rent**" or "**rent**" shall mean Base Monthly Rent, Additional Rent and other sums required to be paid by Tenant under this Lease. All rent required to be paid in monthly installments shall be paid in advance on the first day of each calendar month during the Lease Term. All rent shall be paid in lawful money of the United States, without any abatement, deduction or offset whatsoever (except as specifically provided in Section 11.4 and Section 12.3), and without any prior demand therefor. Rent shall be paid to Landlord at its address set forth in Section O of the Summary, or at such other place as Landlord may designate from time to time. Tenant's obligation to pay Base Monthly Rent and Tenant's Share of Operating Expenses shall be prorated at the commencement and expiration of the Lease Term.

3.4 Late Charge, Interest and Quarterly Payments:

A. Late Charge. Tenant acknowledges that the late payment by Tenant of any installment of rent, or any other sum of money required to be paid by Tenant under this Lease, will

cause Landlord to incur certain costs and expenses not contemplated under this Lease, the exact amount of such costs being extremely difficult and impractical to fix. Such costs and expenses will include, without limitation, attorneys' fees, administrative and collection costs, and processing and accounting expenses and other costs and expenses necessary and incidental thereto. If any Base Monthly Rent or Additional Rent is not received by Landlord from Tenant when due such payment is due, then Tenant shall immediately pay to Landlord a late charge equal to 5% of such delinquent rent as liquidated damages for Tenant's failure to make timely payment. In no event shall this provision for a late charge be deemed to grant to Tenant a grace period or extension of time within which to pay any rent or prevent Landlord from exercising any right or remedy available to Landlord upon Tenant's failure to pay any rent due under this Lease in a timely fashion, including any right to terminate this Lease pursuant to Section 13.2B.

B. Interest. If any rent remains delinquent for a period in excess of ten (10) days then, in addition to such late charge, Tenant shall pay to Landlord interest on any rent that is not paid when due at the Agreed Interest Rate following the date such amount became due until paid.

C. Quarterly Payments. If Tenant during any twelve (12) month period shall be more than five (5) days delinquent in the payment of any rent or other amount payable by Tenant hereunder on three (3) or more occasions, then, notwithstanding anything herein to the contrary, Landlord may, by written notice to Tenant, elect to require Tenant to pay all Base Monthly Rent and Additional Rent quarterly in advance. Such right shall be in addition to and not in lieu of any other right or remedy available to Landlord hereunder or at law on account of Tenant's default hereunder.

3.5 Security Deposit: Any cash Security Deposit, to the extent a cash Security Deposit is permitted by Landlord in its sole and absolute discretion, paid by Tenant to Landlord shall remain the sole and separate property of Landlord until actually repaid to Tenant (or at Landlord's option the last assignee, if any, of Tenant's interest hereunder), said sum not being earned by Tenant until all conditions precedent for its payment to Tenant have been fulfilled. As this sum both in equity and at law is Landlord's separate property, Landlord shall not be required to (1) keep said deposit separate from his general accounts, or (2) pay interest, or other increment for its use. If Tenant fails to pay rent or other charges when due hereunder, or otherwise defaults with respect to any provision of this Lease, including and not limited to Tenant's obligation to restore or clean the Leased Premises following vacation thereof, Tenant, at Landlord's election, shall be deemed not to have earned the right to repayment of those portions of the Security Deposit used or applied by Landlord for the payment of any rent or other charges in default, or for the payment of any other sum to which Landlord may become obligated by reason of Tenant's default, or to compensate Landlord for any loss or damage which Landlord may suffer thereby. Landlord may retain such portion of the Security Deposit as it reasonably deems necessary to restore or clean the Leased Premises following vacation by Tenant. The Security Deposit is not to be characterized as rent until and unless so applied in respect of a default by Tenant. Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code, and all other provisions of law, now or hereafter in force, which provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant or to clean the Leased Premises, it being agreed that Landlord may, in addition, claim those sums reasonably necessary to compensate

Landlord for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of Tenant or any officer, employee, agent or invitee of Tenant. If Landlord elects to use or apply all or any portion of the Security Deposit as provided in Section 3.5, Tenant shall within ten (10) days after written demand therefor pay to Landlord in cash, an amount equal to that portion of the Security Deposit used or applied by Landlord, and Tenant's failure to so do shall be a material breach of this Lease. The ten (10) day notice specified in the preceding sentence shall insofar as not prohibited by law, constitute full satisfaction of notice of default provisions required by law or ordinance.

3.6 Letter of Credit. Concurrent with Tenant's execution of this Lease, Tenant shall deliver to Landlord, as protection for the full and faithful performance by Tenant of all of its obligations under this Lease and for all losses and damages Landlord may suffer (or that Landlord reasonably estimates it may suffer) as a result of any breach, default or failure to perform by Tenant under this Lease, an irrevocable and unconditional negotiable standby Letter of Credit ("**Letter of Credit**"), in the form as is acceptable to Landlord, payable at an office in the San Francisco Bay Area, California, running in favor of Landlord and issued by a solvent, nationally recognized bank with a long term rating of BBB or higher, under the supervision of the Superintendent of Banks of the State of California, or a national banking association (an "**Acceptable Issuing Bank**"), in the amount provided in Section M of the Summary to this Lease (the "**Letter of Credit Amount**"). Tenant shall pay all expenses, points, or fees incurred by Tenant in obtaining the Letter of Credit and any replacement Letter of Credit. The bank issuing the Letter of Credit (the "**Bank**") shall be subject to Landlord's prior written approval, which approval shall not be withheld by Landlord if the proposed Bank is an Acceptable Issuing Bank. If an Acceptable Issuing Bank is declared insolvent or taken over by the Federal Deposit Insurance Corporation or any governmental agency for any reason or does not meet the standards to be approved an Acceptable Issuing Bank, Tenant shall deliver a replacement Letter of Credit from another Bank approved by Landlord that meets the standards for an Acceptable Issuing Bank within the earlier of (i) thirty (30) days after notice from Landlord that the Bank does not meet the standard for an Acceptable Issuing Bank, or (ii) the date the Bank is declared insolvent or taken over for any reason by the Federal Deposit Insurance Corporation or any other governmental agency. In addition, the Letter of Credit shall expressly provide for the following:

shall be "callable" at sight, irrevocable, and unconditional;

shall be maintained in effect, whether through renewal or extension, for the period from the date of this Lease and continuing until the date (the "**Letter of Credit Expiration Date**") that is one sixty (60) days after the expiration of the Term (as the Term may be extended). The Letter of Credit may be for one year period, provided the Letter of Credit is automatically extended for not less than a one year period unless the issuing Bank provides written notice to Landlord not less than sixty (60) days prior to the then expiration date of the Letter of Credit that the issuing Bank will not renew or extend the Letter of Credit, in which case Tenant shall deliver to Landlord a replacement Letter of Credit not less than thirty (30) days prior to the scheduled expiration date of the then existing Letter of Credit held by Landlord without any action whatsoever on the part of Landlord;

shall be fully assignable by Landlord, its successors, and assignees of its interest in the Leased Premises;

shall permit partial draws and multiple presentations and drawings; and

shall be otherwise subject to the Uniform Customs and Practices for Documentary Credits, International Chamber of Commerce Publication No. 600 (UCP600), or the International Standby Practices-ISP 98, International Chamber of Commerce Publication No. 590 (1998).

A. **Transfers.** The Letter of Credit shall also provide that Landlord, its successors, and assigns, may, at any time and without notice to Tenant and without first obtaining Tenant's consent, transfer (one or more times) all or any portion of its interest in and to the Letter of Credit to another party, person, or entity, provided such transferee is the assignee of the Landlord's rights and interests in and to this Lease and expressly assumes the same and Landlord's obligations under the Lease, or to any lender providing financing to Landlord. In the event of a transfer of Landlord's interest in the Building, Landlord shall transfer the Letter of Credit, in whole or in part, to the transferee and Landlord shall then be released by Tenant from all liability therefor, and it is agreed that the provisions of this Section shall apply to every transfer or assignment of the whole or any portion of the Letter of Credit to a new landlord. In connection with any such transfer of the Letter of Credit by Landlord, Tenant shall execute and submit to the Bank such applications, documents, and instruments as may be necessary to effectuate such transfer, and Tenant shall be responsible for paying the Bank's transfer and processing fees in connection with any such transfer.

B. **Restoration.** If, as a result of any drawing by Landlord on the Letter of Credit, the amount of the Letter of Credit shall be less than the Letter of Credit Amount, Tenant shall, within ten (10) business days after the drawdown by Landlord and notice thereof to Tenant, take such actions as are required to restore the Letter of Credit Amount, which may include providing a replacement Letter of Credit for the full Letter of Credit Amount, provided such additional Letter(s) of Credit or replacement Letter of Credit comply with the applicable requirements of Section 3.6 and all subsections thereof of this Lease. If Tenant fails to comply with this requirement, such failure shall be deemed a rent default under this Lease, provided that if Landlord is prevented from delivering a notice of default to Tenant or otherwise declaring a default by Tenant for any reason, including, without limitation, because Tenant has filed a voluntary petition, or an involuntary petition has been filed against Tenant, under the Bankruptcy Code, then no such notice or declaration of default and cure period shall be required for a rent default under this Lease.

C. **Renewals.** Tenant covenants and warrants that it will neither assign nor encumber the Letter of Credit or any part of it and that neither Landlord nor its successors or assigns will be bound by any such assignment, encumbrance, attempted assignment, or attempted encumbrance. Without limiting the generality of the foregoing, if the Letter of Credit expires earlier than the Letter of Credit Expiration Date, Landlord will accept a renewal of the letter of credit (such renewal letter of credit to be in effect and delivered to Landlord, as applicable, not later than forty-five (45) days before the expiration of the Letter of Credit), which shall be irrevocable and automatically renewable as required in Section 3.6 above through the Letter of Credit Expiration Date on the same terms as the expiring Letter of Credit or such other terms as may be acceptable to

Landlord in its sole discretion. However, if the Letter of Credit is not timely renewed, or if Tenant fails to maintain the Letter of Credit in the amount and in accordance with the terms set forth in Section 3.6 above, Landlord shall have the right to present the Letter of Credit to the Bank to draw on the Letter of Credit, and the proceeds of the Letter of Credit may be applied by Landlord against any Rent payable by Tenant under this Lease that is not paid when due and to pay for all losses and damages that Landlord has suffered or that Landlord reasonably estimates that it will suffer as a result of any breach or default by Tenant under this Lease. Any unused proceeds shall be deemed held by Landlord as security in accordance with applicable laws, but need not be segregated from Landlord's other assets. Landlord agrees to pay to Tenant within sixty (60) days after the expiration of the Term of this Lease the amount of any proceeds of the Letter of Credit received by Landlord and not applied against any Rent payable by Tenant under this Lease; or not used to pay for any losses and damages suffered by Landlord (or reasonably estimated by Landlord that it will suffer) as a result of any breach or default by Tenant under this Lease; provided, however, that if before the Letter of Credit Expiration Date a voluntary petition is filed by Tenant, or an involuntary petition is filed against Tenant by any of Tenant's creditors, under the Bankruptcy Code, then Landlord shall not be obligated to make such payment in the amount of the unused Letter of Credit proceeds until either all preference issues relating to payments under this Lease have been resolved in such bankruptcy or reorganization case or such bankruptcy or reorganization case has been dismissed.

D. **Draws.** Tenant acknowledges and agrees that Landlord is entering into this Lease in material reliance on the ability of Landlord to draw on the Letter of Credit on the occurrence of any breach, default or failure to perform on the part of Tenant under this Lease. If Tenant shall breach or fail to perform any provision of this Lease or otherwise be in default under this Lease, Landlord may, but without obligation to do so, and without notice to Tenant, draw on the Letter of Credit, in part or in whole, to cure any breach or default of Tenant and to compensate Landlord for any and all damages of any kind or nature sustained or which Landlord reasonably estimates that it will sustain resulting from Tenant's breach or default and to which Landlord is entitled under this Lease, including any damages that accrue upon termination of the Lease under the Lease and/or Section 1951.2 of the California Civil Code or any similar provision. The use, application, or retention of any proceeds of the Letter of Credit, or any portion of it, by Landlord shall not prevent Landlord from exercising any other right or remedy provided by this Lease or by any applicable law, it being intended that Landlord shall not first be required to proceed against the Letter of Credit, and shall not operate as a limitation on any recovery to which Landlord may otherwise be entitled. Tenant agrees not to interfere in any way with payment to Landlord of the proceeds of the Letter of Credit, following a draw properly made by Landlord of any portion of the Letter of Credit. No condition or term of this Lease shall be deemed to render the Letter of Credit conditional to justify the issuer of the Letter of Credit in failing to honor a drawing on such Letter of Credit in a timely manner. Tenant agrees and acknowledges that (1) the Letter of Credit constitutes a separate and independent contract between Landlord and the Bank; (2) Tenant is not a third party beneficiary of such contract; (3) Tenant has no property interest whatsoever in the Letter of Credit; and (4) if Tenant becomes a debtor under any chapter of the Bankruptcy Code, neither Tenant, any trustee, nor Tenant's bankruptcy estate shall have any right to restrict or limit Landlord's claim or rights to the Letter of Credit by application of Section 502(b)(6) of the U.S. Bankruptcy Code or otherwise.

In addition, Landlord, or its then managing agent, shall have the right to draw down an amount up to the face amount of the Letter of Credit if any of the following shall have occurred or be applicable:

(1) Landlord states that such amount is due to Landlord under the terms and conditions of this Lease, provided that if Landlord is prevented from delivering a notice of default to Tenant for any reason, including, without limitation, because Tenant has filed a voluntary petition, or an involuntary petition has been filed against Tenant, under the Bankruptcy Code (hereinafter defined), then no such notice and cure period shall be required;

(2) Tenant has filed a voluntary petition under any chapter of the U.S. Bankruptcy Code or any similar state law (collectively, the “**Bankruptcy Code**”);

(3) Tenant has assigned any or all of its assets to creditors in accordance with any federal or state laws;

(4) an involuntary petition has been filed against Tenant or any guarantor of Tenant’s obligations under this Lease under any chapter of the Bankruptcy Code, which petition is not dismissed within sixty (60) days after the date it is filed; provided, however, that if Tenant is still operating its business in the Leased Premises and this Lease has not been terminated, Landlord may draw upon the Letter of Credit only to the extent such amount is due Landlord under the terms of this Lease or the guaranty of this Lease; or

(5) the Bank has notified Landlord that the Letter of Credit will not be renewed or extended through the Letter of Credit Expiration Date; or

(6) the Bank does not meet the standard for an Acceptable Issuing Bank and Tenant has not delivered a replacement Letter of Credit from an Acceptable Issuing Bank within the earlier of (i) thirty (30) days after notice from Landlord that the Bank does not meet the standard for an Acceptable Issuing Bank, or (ii) the date the Bank is declared insolvent or taken over for any reason by the Federal Deposit Insurance Corporation or any other governmental agency.

E. **Replacement.** Tenant may, from time to time, replace any existing Letter of Credit with a new Letter of Credit if the new Letter of Credit:

(1) Becomes effective at least 30 days before expiration of the Letter of Credit that it replaces;

(2) Is in the applicable Letter of Credit Amount;

(3) Is issued by an Acceptable Issuing Bank or a Bank otherwise acceptable to Landlord in its sole discretion; and

(4) Otherwise complies with the requirements of Section 8.2 and all subsections thereof.

F. **Not a Security Deposit.** Landlord and Tenant acknowledge and agree that in no event or circumstance shall the Letter of Credit or any renewal of it or any proceeds applied by Landlord as provided in this Lease be (1) deemed to be or treated as a “security deposit” within the meaning of California Civil Code Section 1950.7, (2) subject to the terms of Section 1950.7, or (3) intended to serve as a “security deposit” within the meaning of Section 1950.7. Landlord and Tenant (1) agree that Section 1950.7 and any and all other laws, rules, and regulations applicable to security deposits in the commercial context (“**Security Deposit Laws**”) shall have no applicability or relevancy to the Letter of Credit, and (2) waive any and all rights, duties, and obligations either party may now or in the future have relating to or arising from the Security Deposit Laws.

3.7 **Electronic Payment.** Landlord shall have the right, on not less than thirty (30) days prior written notice to Tenant (the “**Electronic Payment Notice**”), to require Tenant to make subsequent payments of Monthly Base Rent and Additional Rent due pursuant to the terms of this Lease by means of a federal funds wire transfer or such other method of electronic funds transfer as may be required by Landlord in its sole and absolute discretion (the “**Electronic Payment**”). The Electronic Payment Notice shall set forth the proper bank ABA number, account number and designation of the account to which such Electronic Payment shall be made. Tenant shall promptly notify Landlord in writing of any additional information that will be required to establish and maintain Electronic Payment from Tenant’s bank or financial institution. Landlord shall have the right, after at least ten (10) days prior written notice to Tenant, to change the name of the depository for receipt of any Electronic Payment and to discontinue payment of any sum by Electronic Payment.

3.8 **Landlord’s Election to Defer Base Monthly Rent.** Landlord shall have the right in its sole and absolute discretion to elect to defer, for such period of time selected by Landlord in its sole discretion, Base Monthly Rent upon not less than thirty (30) days prior written notice to Tenant. The total amount of Base Monthly Rent Landlord elects to defer shall be referred to as the “**Deferred Rent.**” As directed in writing by Landlord in its sole and absolute discretion, the Deferred Rent shall be paid by Tenant to Landlord by having the Deferred Rent amortized on a straight line basis, without interest, over the remaining initial Term and added to the Base Monthly Rent then remaining over the initial Term commencing on the first day of a calendar month immediately following the end of the period for which the deferral of Deferred Rent applies. If this Lease is terminated whether due to a default by Tenant or as otherwise provided in this Lease, Tenant shall pay to Landlord, in addition to all other Rent and charges due under this Lease the unpaid amount of Deferred Rent that otherwise would be included in the monthly Base Rent for the portion of the Term cancelled or terminated. Tenant shall execute any amendment to the Lease to reflect the amount and schedule for payment of the Deferred Rent within ten days after request by Landlord.

#### **ARTICLE 4 USE OF PREMISES**

4.1 **Limitation on Use:** Tenant shall use the Premises solely for the Permitted Use specified in Section N of the Summary. There shall not be any change in use without the prior written consent of Landlord which will not be unreasonably withheld. Tenant shall not do anything in or about the Premises which will (i) cause structural injury to the Building, or (ii) cause damage to any part of the Building except to the extent reasonably necessary for the installation of Tenant’s

Trade Fixtures and Tenant's Alterations, and then only in a manner which has been first approved by Landlord in writing. Tenant shall not operate any equipment within the Premises which will (i) materially damage the Building or the Common Area, (ii) overload existing electrical systems or other mechanical equipment servicing the Building, (iii) impair the efficient operation of the sprinkler system or the heating, ventilating or air conditioning ("HVAC") equipment within or servicing the Building, or (iv) damage, overload or corrode the sanitary sewer system. Tenant shall not attach, hang or suspend anything from the ceiling, roof, walls or columns of the Building or set any load on the floor in excess of the load limits for which such items are designed nor operate hard wheel forklifts within the Premises. Any dust, fumes, or waste products generated by Tenant's use of the Premises shall be contained and disposed so that they do not (i) create an unreasonable fire or health hazard, (ii) damage the Premises, or (iii) result in the violation of any Law. Except as approved by Landlord, Tenant shall not change the exterior of the Building or install any equipment or antennas on or make any penetrations of the exterior or roof of the Building. Tenant shall not commit any waste in or about the Premises, and Tenant shall keep the Premises in a neat, clean, attractive and orderly condition, free of any nuisances. If Landlord designates a standard window covering for use throughout the Building, Tenant shall use this standard window covering to cover all windows in the Premises. Tenant shall not conduct on any portion of the Premises or the Project any sale of any kind, including any public or private auction, fire sale, going-out-of-business sale, distress sale or other liquidation sale.

4.2 Compliance with Regulations: Tenant shall not use the Premises in any manner which violates any Laws or Private Restrictions which affect the Premises. Tenant shall abide by and promptly observe and comply with all Laws and Private Restrictions. Tenant shall not use the Premises in any manner which will cause a cancellation of any insurance policy covering Tenant's Alterations or any improvements installed by Landlord at its expense or which poses an unreasonable risk of damage or injury to the Premises. Tenant shall not sell, or permit to be kept, used, or sold in or about the Premises any article which may be prohibited by the standard form of fire insurance policy. Tenant shall comply with all reasonable requirements of any insurance company, insurance underwriter, or Board of Fire Underwriters which are necessary to maintain the insurance coverage carried by either Landlord or Tenant pursuant to this Lease.

4.3 Outside Areas: No materials, supplies, tanks or containers, equipment, finished products or semi-finished products, raw materials, inoperable vehicles or articles of any nature shall be stored upon or permitted to remain outside of the Premises except in fully fenced and screened areas outside the Building which have been designed for such purpose and have been approved in writing by Landlord for such use by Tenant.

4.4 Signs: Tenant shall not place on any portion of the Premises any sign, placard, lettering in or on windows, banner, displays or other advertising or communicative material which is visible from the exterior of the Building without the prior written approval of Landlord. All such approved signs shall strictly conform to all Laws, Private Restrictions, and Landlord's sign criteria then in effect and shall be installed at the expense of Tenant. Tenant shall maintain such signs in good condition and repair.

4.5 Parking: Tenant is allocated and shall have the non-exclusive right to use not more than the number of Tenant's Allocated Parking Stalls contained within the Project described in Section H of the Summary for its use and the use of Tenant's Agents, the location of which may be designated from time to time by Landlord. Tenant shall not at any time use more parking spaces than the number so allocated to Tenant or park its vehicles or the vehicles of others in any portion of the Project not designated by Landlord as a non-exclusive parking area. Tenant shall not have the exclusive right to use any specific parking space. If Landlord grants to any other tenant the exclusive right to use any particular parking space(s), Tenant shall not use such spaces. Landlord reserves the right, after having given Tenant reasonable notice, to have any vehicles owned by Tenant or Tenant's Agents utilizing parking spaces in excess of the parking spaces allowed for Tenant's use to be towed away at Tenant's cost. All trucks and delivery vehicles shall be (i) parked at the rear of the Building, (ii) loaded and unloaded in a manner which does not interfere with the businesses of other occupants of the Project, and (iii) permitted to remain on the Project only so long as is reasonably necessary to complete loading and unloading. In the event Landlord elects or is required by any Law to limit or control parking in the Project, whether by validation of parking tickets or any other method of assessment, Tenant agrees to participate in such validation or assessment program under such reasonable rules and regulations as are from time to time established by Landlord.

4.6 Rules and Regulations: Landlord may from time to time promulgate reasonable and nondiscriminatory rules and regulations applicable to all occupants of the Project for the care and orderly management of the Project and the safety of its tenants and invitees. Such rules and regulations shall be binding upon Tenant upon delivery of a copy thereof to Tenant, and Tenant agrees to abide by such rules and regulations. If there is a conflict between the rules and regulations and any of the provisions of this Lease, the provisions of this Lease shall prevail. Landlord shall not be responsible for the violation by any other tenant of the Project of any such rules and regulations.

4.7 Access: Tenant shall have access to the Premises 24 hours/day and 7 days/week, subject to any reasonable security regulations in place from time to time.

#### ARTICLE 5 TRADE FIXTURES AND ALTERATIONS

5.1 Trade Fixtures: Throughout the Lease Term, Tenant may provide and install, and shall maintain in good condition, any Trade Fixtures and Alterations required in the conduct of its business and consistent with the Permitted Use, in the Premises, except to the extent (a) any Trade Fixture or Alterations will use, generate, store or dispose of any Hazardous Material in which case the prior written consent of Landlord in its good faith discretion shall be required before such Trade Fixture may be installed, or (b) any Trade Fixture and Alteration shall be subject to the requirements set forth below for the construction of a Tenant Alteration, including, without limitation, the prior written consent of Landlord. All Trade Fixtures shall remain Tenant's property.

5.2 Tenant's Alterations: Construction by Tenant of a Tenant Alteration shall be governed by the following:

A. Consent Required. Tenant shall not construct any Tenant's Alterations or otherwise alter the Premises without Landlord's prior written approval, which will not be unreasonably withheld unless such Tenant Alteration affects areas outside of the Premises or the exterior of the Building or the structural parts of the Building, in which case Landlord may withhold its consent in its sole and absolute discretion. Notwithstanding the foregoing, Landlord's consent shall not be required for any Alteration to the interior of the Premises that complies with the following requirements: (a) is cosmetic in nature such as painting, (b) does not affect the roof or any area outside of the Premises or require work inside the walls or above the ceiling of the Premises; (c) does not affect the structural parts of the Building or electrical, plumbing, HVAC or mechanical systems in the Building or servicing the Premises, or the sprinkler or other life safety system; and (d) costs less than the Permitted Tenant Alterations Limit specified in Section O of the Summary per work of improvement and in the aggregate for all of such Alterations during a calendar year (herein referred to as "**Minor Alteration**"). Tenant shall provide Landlord with prior written notice of any Minor Alteration that requires a building permit. In the event Landlord's approval for any Tenant's Alterations is required, Tenant shall not construct the Tenant Alteration until Landlord has approved in writing the plans and specifications therefor, and such Tenant's Alterations shall be constructed substantially in compliance with such approved plans and specifications by a licensed contractor first approved by Landlord. All Tenant's Alterations constructed by Tenant shall be constructed by a licensed contractor in accordance with all Laws using new materials of good quality.

B. Other Requirements. Tenant shall not commence construction of any Tenant's Alterations until (i) all required governmental approvals and permits have been obtained, (ii) all requirements regarding insurance imposed by this Lease have been satisfied, (iii) Tenant has given Landlord at least five days' prior written notice of its intention to commence such construction, and (iv) if reasonably requested by Landlord, Tenant has obtained contingent liability and broad form builders' risk insurance in an amount reasonably satisfactory to Landlord if there are any perils relating to the proposed construction not covered by insurance carried pursuant to Article 9.

C. Restoration. All Tenant's Alterations shall remain the property of Tenant during the Lease Term but shall not be altered or removed from the Premises. At the expiration or sooner termination of the Lease Term, all Tenant's Alterations (except for Tenant's Trade Fixtures) shall be surrendered to Landlord as part of the realty and shall then become Landlord's property, and Landlord shall have no obligation to reimburse Tenant for all or any portion of the value or cost thereof; provided, however, that if Landlord requires Tenant to remove any Tenant's Alterations, Tenant shall so remove such Tenant's Alterations and restore the affected area prior to the expiration or sooner termination of the Lease Term. Notwithstanding the foregoing, Tenant shall not be obligated to remove any Tenant's Alterations with respect to which the following is true: (i) Tenant was required, or elected, to obtain the approval of Landlord to the installation of the leasehold improvement in question; (ii) at the time Tenant requested Landlord's approval, Tenant requested of Landlord in writing that Landlord inform Tenant of whether or not Landlord would require Tenant to remove such Tenant Alteration at the expiration of the Lease Term; and (iii) at the time Landlord granted its approval, it did not inform Tenant that it would require Tenant to remove such leasehold improvement at the expiration of the Lease Term.

D. Removal of Data and Telecommunication Wires. Prior to the expiration or sooner termination of the Term of this Lease or at any time that any of the Wires (as defined below) are no longer in active use by Tenant, Landlord may elect (“**Election Right**”) by written notice to Tenant to:

(1) Retain any or all wires, cables, and similar installations appurtenant thereto (“**Wires**”) installed by Tenant with the Premises or anywhere in the Building outside the Premises, including, without limitation, the plenums or risers of the Building;

(2) Remove any or all of the Wires and restore the Premises or the Building, as the case may be, to their condition existing prior to the installation of the Wires (“**Wire Restoration Work**”); or

(3) Require Tenant to perform all or part of the Wire Restoration Work at Tenant’s sole cost and expense.

Tenant shall comply with all applicable Laws with respect to the Wires, subject to Landlord’s right to elect to retain the Wires. If Tenant discontinues the use of all or any part of the Wires or is no longer using all or any part of the Wires, Tenant shall, within twenty (20) days thereafter, notify Landlord of same in writing, accompanied by a plan or other reasonable description of the current type, quantity, points of commencement and termination, and routes of the Wires to allow Landlord to determine if Landlord desires to retain same. If Landlord elects to retain any or all of the Wires (pursuant to Section 5.2D(1) above), Tenant covenants that: (a) Tenant shall be the sole owner of the Wires, Tenant shall have the sole right to surrender the Wires, and the wires shall be free of all liens and encumbrances; and (b) All Wires shall be left in good condition, working order, properly labeled and capped or sealed at each end and in each telecommunications/electrical closet and junction box, and in safe condition.

The provisions of Section 5.2D and all subsections thereof shall survive the expiration or sooner termination of the Term of this Lease.

5.3 Alterations Required by Law: Tenant shall make any alteration, addition or change of any sort to the Premises that is required by any Law because of (i) Tenant’s particular use or change of use of the Premises; (ii) Tenant’s application for any permit or governmental approval; or (iii) Tenant’s construction or installation of any Tenant’s Alterations or Trade Fixtures. Any other alteration, addition, or change required by Law which is not the responsibility of Tenant pursuant to the foregoing shall be made by Landlord (subject to Landlord’s right to reimbursement from Tenant specified in Section 5.4).

5.4 Amortization of Certain Capital Improvements: Tenant shall pay Additional Rent in the event Landlord reasonably elects or is required to make any of the following kinds of capital improvements to the Project: (i) capital improvements required to be constructed in order to comply with any Law (excluding any Hazardous Materials Law) not in effect or applicable to the Project as of the Effective Date; (ii) modification of existing or construction of additional capital improvements

or building service equipment for the purpose of reducing the consumption of utility services or Operating Expenses of the Project; (iii) replacement of capital improvements or building service equipment existing as of the Effective Date when required because of normal wear and tear; and (iv) restoration of any part of the Project that has been damaged by any peril to the extent the cost thereof is not covered by insurance proceeds actually recovered by Landlord up to a maximum amount per occurrence of 10% of the then replacement cost of the Project. The amount of Additional Rent Tenant is to pay with respect to each such capital improvement shall be determined as follows:

A. Amortization Period. All costs paid by Landlord to construct such improvements (including financing costs) shall be amortized over the useful life of such improvement (as reasonably determined by Landlord in accordance with generally accepted accounting principles) with interest on the unamortized balance at the then prevailing market rate Landlord would pay if it borrowed funds to construct such improvements from an institutional lender, and Landlord shall inform Tenant of the monthly amortization payment required to so amortize such costs, and shall also provide Tenant with the information upon which such determination is made.

B. Payment. As Additional Rent, Tenant shall pay at the same time the Base Monthly Rent is due an amount equal to Tenant's Share of that portion of such monthly amortization payment fairly allocable to the Building (as reasonably determined by Landlord) for each month after such improvements are completed until the first to occur of (i) the expiration of the Lease Term (as it may be extended), or (ii) the end of the term over which such costs were amortized.

5.5 Mechanic's Liens: Tenant shall keep the Project free from any liens and shall pay when due all bills arising out of any work performed, materials furnished, or obligations incurred by Tenant or Tenant's Agents relating to the Project. If any claim of lien is recorded (except those caused by Landlord or Landlord's Agents), Tenant shall bond against or discharge the same within 10 days after the same has been recorded against the Project. Should any lien be filed against the Project or any action be commenced affecting title to the Project, the party receiving notice of such lien or action shall immediately give the other party written notice thereof.

5.6 Taxes on Tenant's Property: Tenant shall pay before delinquency any and all taxes, assessments, license fees and public charges levied, assessed or imposed against Tenant or Tenant's estate in this Lease or the property of Tenant situated within the Premises which become due during the Lease Term. If any tax or other charge is assessed by any governmental agency because of the execution of this Lease, such tax shall be paid by Tenant. On demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of these payments.

## ARTICLE 6 REPAIR AND MAINTENANCE

6.1 Tenant's Obligation to Maintain: Except as otherwise provided in Section 6.2, Section 11.1, and Section 12.3, Tenant shall be responsible for the following during the Lease Term:

A. General. Tenant shall clean and maintain in good order, condition, and repair and replace when necessary the Premises and every part thereof, through regular inspections and servicing, including, but not limited to: (i) all plumbing and sewage facilities (including all sinks, toilets, faucets and drains), and all ducts, pipes, vents or other parts of the HVAC or plumbing system; (ii) all fixtures, interior walls, floors, carpets and ceilings; (iii) all windows, doors, entrances, plate glass, showcases and skylights (including cleaning both interior and exterior surfaces); (iv) all electrical facilities and all equipment (including all lighting fixtures, lamps, bulbs, tubes, fans, vents, exhaust equipment and systems); and (v) any automatic fire extinguisher equipment in the Premises.

B. Utilities and Glass. With respect to utility facilities serving the Premises (including electrical wiring and conduits, gas lines, water pipes, and plumbing and sewage fixtures and pipes), Tenant shall be responsible for the maintenance and repair of any such facilities which serve only the Premises, including all such facilities that are within the walls or floor, or on the roof of the Premises, and any part of such facility that is not within the Premises, but only up to the point where such facilities join a main or other junction (e.g., sewer main or electrical transformer) from which such utility services are distributed to other parts of the Project as well as to the Premises.

C. Windows. Tenant shall replace any damaged or broken glass in the Premises (including all interior and exterior doors and windows) with glass of the same kind, size and quality. Tenant shall repair any damage to the Premises (including exterior doors and windows) caused by vandalism or any unauthorized entry. Tenant shall maintain continuously throughout the Lease Term a service contract for the washing of all windows (both interior and exterior surfaces) in the Premises with a contractor approved by Landlord, which contract provides for the periodic washing of all such windows at least once every 120 days during the Lease Term. Tenant shall furnish Landlord with copies of all such service contracts, which shall provide that they may not be canceled or changed without at least 30 days' prior written notice to Landlord.

D. HVAC. Tenant shall (i) maintain, repair and replace when necessary all HVAC equipment which services only the Premises, and shall keep the same in good condition through regular inspection and servicing, and (ii) maintain continuously throughout the Lease Term a service contract for the maintenance of all such HVAC equipment with a licensed HVAC repair and maintenance contractor approved by Landlord, which contract provides for the periodic inspection and servicing of the HVAC equipment at least once every 90 days during the Lease Term. Notwithstanding the foregoing, Landlord may elect at any time to assume responsibility for the maintenance, repair and replacement of such HVAC equipment which serves only the Premises. Tenant shall furnish Landlord with copies of all such service contracts, which shall provide that they may not be canceled or changed without at least 30 days' prior written notice to Landlord.

E. Standards. All repairs and replacements required of Tenant shall be promptly made with new materials of like kind and quality. If the work affects the structural parts of the Building or if the estimated cost of any item of repair or replacement is in excess of the Permitted Tenant's Alterations Limit, then Tenant shall first obtain Landlord's written approval of the scope of the work, plans therefor, materials to be used, and the contractor.

6.2 Landlord's Obligation to Maintain: Landlord shall repair, maintain and operate the Common Area and repair and maintain the roof, exterior and structural parts of the building(s) located on the Project so that the same are kept in good order and repair. If there is central HVAC or other building service equipment and/or utility facilities serving portions of the Common Area and/or both the Premises and other parts of the Building, Landlord shall maintain and operate (and replace when necessary) such equipment. Landlord shall not be responsible for repairs required by an accident, fire or other peril or for damage caused to any part of the Project by any act or omission of Tenant or Tenant's Agents except as otherwise required by Article 11. Landlord may engage contractors of its choice to perform the obligations required of it by this Article, and the necessity of any expenditure to perform such obligations shall be at the sole discretion of Landlord.

6.3 Control of Common Area: Landlord shall at all times have exclusive control of the Common Area. Landlord shall have the right, without the same constituting an actual or constructive eviction and without entitling Tenant to any abatement of rent, to: (i) close any part of the Common Area to whatever extent required in the opinion of Landlord's counsel to prevent a dedication thereof or the accrual of any prescriptive rights therein; (ii) temporarily close the Common Area to perform maintenance or for any other reason deemed sufficient by Landlord; (iii) change the shape, size, location and extent of the Common Area; (iv) eliminate from or add to the Project any land or improvement, including multi-deck parking structures; (v) make changes to the Common Area including, without limitation, changes in the location of driveways, entrances, passageways, doors and doorways, elevators, stairs, restrooms, exits, parking spaces, parking areas, sidewalks or the direction of the flow of traffic and the site of the Common Area; (vi) remove unauthorized persons from the Project; and/or (vii) change the name of the Building or Project, or if required under applicable law or by the postal authority, the address of the Building. Tenant shall keep the Common Area clear of all obstructions created or permitted by Tenant. If in the opinion of Landlord unauthorized persons are using any of the Common Area by reason of the presence of Tenant in the Building, Tenant, upon demand of Landlord, shall restrain such unauthorized use by appropriate proceedings. In exercising any such rights regarding the Common Area, (i) Landlord shall make a reasonable effort to minimize any disruption to Tenant's business, and (ii) Landlord shall not exercise its rights to control the Common Area in a manner that would materially interfere with Tenant's use of the Premises without first obtaining Tenant's consent. Landlord shall have no obligation to provide guard services or other security measures for the benefit of the Project. Tenant assumes all responsibility for the protection of Tenant and Tenant's Agents from acts of third parties; provided, however, that nothing contained herein shall prevent Landlord, at its sole option, from providing security measures for the Project.

## ARTICLE 7 WASTE DISPOSAL AND UTILITIES

7.1 Waste Disposal: Tenant shall store its waste either inside the Premises or within outside trash enclosures that are fully fenced and screened in compliance with all Private Restrictions, and designed for such purpose. All entrances to such outside trash enclosures shall be kept closed, and waste shall be stored in such manner as not to be visible from the exterior of such outside enclosures. Tenant shall cause all of its waste to be regularly removed from the Premises at

Tenant's sole cost. Tenant shall keep all fire corridors and mechanical equipment rooms in the Premises free and clear of all obstructions at all times.

7.2 Hazardous Materials: Landlord and Tenant agree as follows with respect to the existence or use of Hazardous Materials on the Project:

A. Hazardous Materials Disclosure Certificate. Tenant shall deliver to Landlord an executed Hazardous Materials disclosure statement, substantially in the form required by Landlord from time to time describing Tenant's then present use of Hazardous Materials on the Premises, and any other reasonably necessary documents as requested by Landlord. Prior to executing this Lease, Tenant has delivered to Landlord Tenant's executed initial Hazardous Materials Disclosure Certificate, in the form attached hereto as Exhibit F (the "**Initial Hazardous Materials Certificate**"). Tenant covenants, represents and warrants to Landlord that the information in the Initial Hazardous Materials Certificate is true and correct and accurately describes the use(s) of Hazardous Materials which will be made and/or used on the Premises by Tenant. Tenant shall, commencing with the date which is one year from the Commencement Date and continuing every year thereafter, or on a more frequent basis when requested by Landlord, deliver to Landlord upon written request then made by Landlord to Tenant, an executed and updated Hazardous Materials Disclosure Certificate, substantially in the form attached hereto as Exhibit F, or such other reasonable form as may be requested by Landlord (the "**Annual Hazardous Materials Certificate**") describing Tenant's then present use of Hazardous Materials on the Premises, and any other reasonably necessary documents as requested by Landlord.

B. Hazardous Material Usage. Tenant shall not be entitled to use, store, generate, transport or dispose of any Hazardous Materials (herein referred to as "**Hazardous Materials Usage**") on, in, or about any portion of the Premises, Building or the Project without, in each instance, obtaining Landlord's prior written consent thereto in its sole and absolute discretion, except for (i) small quantities of office products and cleaning fluids customarily used in an office setting to conduct business at the Premises, and (ii) those Hazardous Materials which are (a) set forth in the Initial Hazardous Materials Disclosure Certificate and in any subsequent Annual Hazardous Materials Certificate that is reasonably approved by Landlord, and (b) are necessary for Tenant's business, but then only for the use permitted under this Lease in the manner for which they were designed and in such limited amounts as may be normal, customary and necessary for the operation of Tenant's business and which do not required a use or storage permit from any governmental agency or authority. The use of such Hazardous Materials shall be in full compliance with Laws, and all judicial and administrative decisions pertaining thereto. Any Hazardous Material Usage of Hazardous Materials by Tenant and Tenant's Agents after the Effective Date in or about the Project shall strictly comply with all applicable Laws, including all Hazardous Materials Laws now or hereinafter enacted. Tenant agrees that any changes to the type and/or quantities of Hazardous Materials specified in the most recent approved Hazardous Material Disclosure Certificate may be implemented only with the prior written consent of Landlord, which consent may be given or withheld in Landlord's sole and absolute discretion. Tenant shall not be entitled nor permitted to install any tanks under, on or about the Premises, Building or Project for the storage of Hazardous

Materials without the express written consent of Landlord, which may be given or withheld in Landlord's sole and absolute discretion.

C. Tests and Inspections. Landlord shall have the right at all times during the Term of this Lease to (i) inspect the Premises, (ii) conduct tests and investigations to determine whether Tenant is in compliance with the provisions of this Section 7.2 or to determine if Hazardous Materials are present in, on or about the Project, and (iii) request lists of all Hazardous Materials used, stored or otherwise located on, under or about any portion of the Premises and/or the Common Areas. The cost of all such inspections, tests and investigations shall be borne by Tenant, if Landlord reasonably determines that Tenant or any of Tenant's Agents are directly or indirectly responsible in any manner for any contamination revealed by such inspections, tests and investigations. The aforementioned rights granted herein to Landlord and its representatives shall not create (a) a duty on Landlord's part to inspect, test, investigate, monitor or otherwise observe the Premises or the activities of Tenant and Tenant's Agents with respect to Hazardous Materials, including without limitation, Tenant's operation, use and any remediation related thereto, or (b) liability on the part of Landlord and its representatives for Tenant's use, storage, disposal or remediation of Hazardous Materials, it being understood that Tenant shall be solely responsible for all liability in connection therewith.

D. Notice. Tenant shall give to Landlord immediate verbal and follow-up written notice of any spills, releases, discharges, disposals, emissions, migrations, removals or transportation of Hazardous Materials on, under or about any portion of the Premises, Common Areas or Project; provided that Tenant has actual, implied or constructive knowledge of such event(s). Tenant, at its sole cost and expense, covenants and warrants to promptly investigate, clean up, remove, restore and otherwise remediate (including, without limitation, preparation of any feasibility studies or reports and the performance of any and all closures) any spill, release, discharge, disposal, emission, migration or transportation or other Hazardous Material Usage of Hazardous Materials arising from or related to the acts or omissions of Tenant or Tenant's Agents such that the affected portions of the Project and any adjacent property are returned to the condition existing prior to the appearance of such Hazardous Materials. Any such investigation, clean up, removal, restoration and other remediation shall only be performed after Tenant has obtained Landlord's prior written consent in its sole and absolute discretion. Notwithstanding the foregoing, Tenant shall be entitled to respond immediately to an emergency without first obtaining Landlord's prior written consent. Tenant, at its sole cost and expense, shall conduct and perform, or cause to be conducted and performed, all closures as required by any Hazardous Materials Laws or any agencies or other governmental authorities having jurisdiction thereof. If Tenant fails to so promptly investigate, clean up, remove, restore, provide closure or otherwise so remediate, Landlord may, but without obligation to do so, take any and all steps necessary to rectify the same and Tenant shall promptly reimburse Landlord, upon demand, for all costs and expenses to Landlord of performing investigation, clean up, removal, restoration, closure and remediation work. All such work undertaken by Tenant, as required herein, shall be performed in such a manner so as to enable Landlord to make full economic use of the Premises and the other portions of the Project after the satisfactory completion of such work.

E. Indemnity. Except for any Hazardous Materials that may exist in violation of applicable Law as of the Delivery Date, Tenant shall indemnify, hold harmless, and, at Landlord's option (with such attorneys as Landlord may approve in advance and in writing), defend Landlord and Landlord's officers, directors, shareholders, partners, members, managers, employees, contractors, property managers, agents and mortgagees and other lien holders, from and against any and all "Losses" (hereinafter defined) arising from or related to: (a) any violation or alleged violation by Tenant or any of Tenant's Agents of any of the Laws, including, without limitation, the Hazardous Materials Laws; (b) any breach of the provisions of this Section 7.2 or any subsection thereof by Tenant or any of Tenant's Agents; or (c) any Hazardous Materials Usage on, about or from the Premises of any Hazardous Material approved by Landlord under this Lease. The term "**Losses**" shall mean all claims, demands, expenses, actions, judgments, damages (whether consequential, direct or indirect, known or unknown, foreseen or unforeseen), penalties, fines, liabilities, losses of every kind and nature (including, without limitation, property damage, diminution in value of Landlord's interest in the Premises or the Project, damages for the loss or restriction on use of any space or amenity within the Building or the Project, damages arising from any adverse impact on marketing space in the Project, sums paid in settlement of claims and any costs and expenses associated with injury, illness or death to or of any person), suits, administrative proceedings, costs and fees, including, but not limited to, attorneys' and consultants' fees and expenses, and the costs of cleanup, remediation, removal and restoration, that are in any way related to any matter covered by the foregoing indemnity

F. Hazardous Material. As used herein, the term "**Hazardous Material**," means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government or under any Hazardous Material Law. The term "Hazardous Material," includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) listed under Article 9 or defined as hazardous or extremely hazardous pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ii) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq. (42 U.S.C. 6903), or (iii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response; Compensation and Liability Act, 42 U.S.C. 9601 et seq. (42 U.S.C. 9601). As used herein, the term "**Hazardous Material Law**" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Material.

G. Medical Waste. "Medical Waste" shall include all wastes, products and byproducts which are defined or considered pursuant to any medical or biological waste regulations which have been or may hereafter be promulgated by any governmental agency or authority with jurisdiction over the Premises or the Tenant's use thereof or business conducted therein, including without limitation the following:

(1) medical devices or paraphernalia such as syringes, sutures, cotton swabs or pads, sponges, bandages, or wraps of any sort, or any other item which is utilized to treat any patient or other person for any medicinal, medical, diagnostic or therapeutic reason or purpose;

(2) any material of any type or nature whatsoever that is radioactive to any degree, whether as the result of their manufacture, use or application;

(3) any device or thing which is intended to come into contact with any part of the body, whether or not such item or device is so utilized prior to its disposal;

(4) any device, instrument or thing which has become infected, contaminated, diseased, or otherwise exposed to harmful, contagious, or communicable organisms, bacteria, or other life form.

The removal, disposal, or destruction of all Medical Waste shall be exclusively the responsibility of Tenant under all circumstances, and the disposal shall not become the obligation of Landlord for any reason. Tenant shall be responsible for the disposals of Medical Waste in compliance with all applicable Laws. Tenant agrees that Medical Waste will be disposed of separately from the regular trash. Tenant also agrees that Tenant will not mix or place Medical Waste in regular trash containers. The parties further agree that, in the event any harm or injury, of any type or nature whatsoever, should be caused to, incurred by, inflicted upon, or suffered by any individual, including Tenant or Tenant's Agents, visitors, invitees or licensees, or Landlord, or any of their respective agents, employees, guests, visitors, invitees or licensees, as the result of the failure of Tenant to timely, thoroughly and completely dispose of Medical Waste, or as the result of coming into contact, whether by touching, breathing, inhaling, or in any other manner ingesting or consuming such item, or by being exposed in any manner thereto, Tenant shall be liable to such individual, and shall save and hold Landlord and its principals and other tenants, agents, employees, patients, visitors, invitees or licensees harmless against any damages, liability, claims, causes of action or judgments arising therefrom. Tenant shall be liable to and shall pay any injured party for all damages, costs or expenses, including reasonable attorney fees, arising out of any exposure, harm, injury, disease, contamination, or affliction suffered as the result of any Medical Waste stored, generated, or disposed of by Tenant or in the Premises.

H. Survival. The obligations of Landlord and Tenant under this Section 7.2 shall survive the expiration or earlier termination of the Lease Term. The rights and obligations of Landlord and Tenant with respect to issues relating to Hazardous Materials are exclusively established by this Section 7.2. In the event of any inconsistency between any other part of this Lease and this Section 7.2, the terms of this Section 7.2 shall control.

7.3 Utilities: Tenant shall promptly pay, as the same become due, all charges for water, gas, electricity, telephone, sewer service, waste pick-up and any other utilities, materials or services furnished directly to or used by Tenant on or about the Premises during the Lease Term, including, without limitation, (i) meter, use and/or connection fees, hook-up fees, or standby fee (excluding any connection fees or hook-up fees which relate to making the existing electrical, gas, and water service available to the Premises as of the Commencement Date), and (ii) penalties for discontinued or

interrupted service. If any utility service is not separately metered to the Premises, then Tenant shall pay its pro rata share of the cost of such utility service with all others served by the service not separately metered. However, if Landlord determines that Tenant is using a disproportionate amount of any utility service not separately metered, then Landlord at its election may (i) periodically charge Tenant, as Additional Rent, a sum equal to Landlord's reasonable estimate of the cost of Tenant's excess use of such utility service, or (ii) install a separate meter (at Tenant's expense) to measure the utility service supplied to the Premises.

7.4 Compliance with Governmental Regulations: Tenant shall comply with all rules, regulations and requirements promulgated by national, state or local governmental agencies or utility suppliers concerning the use of utility services, including any rationing, limitation or other control. Tenant shall not be entitled to terminate this Lease nor to any abatement in rent by reason of such compliance.

## ARTICLE 8 OPERATING EXPENSES

8.1 Tenant's Payment Obligation: As Additional Rent, Tenant shall pay Tenant's Share (specified in Section G of the Summary) of all Operating Expenses; provided, however, if the Project contains more than one building, then Tenant shall pay Tenant's Share of all Operating Expenses fairly allocable to the Building as provided below, including (a) all Operating Expenses paid with respect to the maintenance, repair, replacement and use of the Building, and (b) a proportionate share of all Operating Expenses which relate to the Project in general that are not fairly allocable to any one building that is part of the Project. Tenant shall pay such share of the actual Operating Expenses incurred or paid by Landlord but not theretofore billed to Tenant within 10 days after receipt of a written bill therefor from Landlord, on such periodic basis as Landlord shall designate, but in no event more frequently than once a month. Alternatively, Landlord may from time to time require that Tenant pay Tenant's Share of Operating Expenses in advance in estimated monthly installments, in accordance with the following: (i) Landlord shall deliver to Tenant Landlord's reasonable estimate of the Operating Expenses it anticipates will be paid or incurred for the Landlord's fiscal year in question; (ii) during such Landlord's fiscal year Tenant shall pay such share of the estimated Operating Expenses in advance in monthly installments as required by Landlord due with the installments of Base Monthly Rent; and (iii) within 150 days after the end of each Landlord's fiscal year, Landlord shall furnish to Tenant a statement in reasonable detail of the actual Operating Expenses paid or incurred by Landlord during the just ended Landlord's fiscal year (the "**Annual Reconciliation Statement**") and thereupon there shall be an adjustment between Landlord and Tenant, with payment to Landlord or credit by Landlord against the next installment of Base Monthly Rent, as the case may require, within 10 days after delivery by Landlord to Tenant of said statement, so that Landlord shall receive the entire amount of Tenant's Share of all Operating Expenses for such Landlord's fiscal year and no more. The failure of Landlord to delivery such annual reconciliation statement within said 180-day period under clause (iii) above shall not constitute a waiver or otherwise release a party from its obligation to make a payment or credit when such reconciliation is actually done.

Notwithstanding anything to the contrary in this Lease, if the Project consists of multiple buildings, certain Operating Expenses may pertain to a particular building(s) and other Operating

Expenses to the Project as a whole. Landlord reserves the right in its sole discretion to allocate any such costs applicable to any particular building within the Project to the building in question whose tenants shall be responsible for payment of their respective proportionate shares in the pertinent building and other such costs applicable to the Project to each building in the Project (including the Building) with the tenants in each such building being responsible for paying their respective proportionate shares in such building of such costs to the extent required under the applicable leases. Landlord shall in good faith attempt to allocate such costs to the buildings (including the Building) in a reasonable, non-discriminatory manner and such allocation shall be binding on Tenant.

8.2 Operating Expenses Defined: The term “**Operating Expenses**” shall mean the total amounts paid or payable, whether by Landlord or others on behalf of Landlord, in connection with the ownership, maintenance, repair, and operations of the Building, the Common Areas and the Project, including without limitation, the following:

A. All costs and expenses paid or incurred by Landlord in doing the following (including payments to independent contractors providing services related to the performance of the following): (i) maintaining, cleaning, repairing and resurfacing the roof (including repair of leaks) and the exterior surfaces (including painting) of all buildings located on the Project; (ii) maintenance of the liability, fire, property damage, earthquake and other insurance covering the Project carried by Landlord pursuant to Section 9.2 (including the prepayment of premiums for coverage of up to one year); (iii) maintaining, repairing, operating and replacing when necessary HVAC equipment, utility facilities and other building service equipment; (iv) providing utilities to the Common Area (including lighting, trash removal and water for landscaping irrigation); (v) complying with all applicable Laws and Private Restrictions; (vi) operating, maintaining, repairing, cleaning, painting, re-striping and resurfacing the Common Area; (vii) replacement or installation of lighting fixtures, directional or other signs and signals, irrigation systems, trees, shrubs, ground cover and other plant materials, and all landscaping in the Common Area; and (viii) providing security (provided, however, that Landlord shall not be obligated to provide security and if it does, Landlord may discontinue such service at any time and in any event Landlord shall not be responsible for any act or omission of any security personnel); and (ix) capital improvements as provided in Section 5.4 hereof;

B. The following costs: (i) Real Property Taxes as defined in Section 8.3; (ii) the amount of any “deductible” paid by Landlord with respect to damage caused by any Insured Peril; (iii) the cost to repair damage caused by an Uninsured Peril up to a maximum amount in any 12 month period equal to 2% of the replacement cost of the buildings or other improvements damaged; and (iv) that portion of all compensation (including benefits and premiums for workers’ compensation and other insurance) paid to or on behalf of employees of Landlord but only to the extent they are involved in the performance of the work described by Section 8.2A that is fairly allocable to the Project;

C. Fees for property management services rendered by either Landlord or a third party manager engaged by Landlord (which may be a party affiliated with Landlord), not to exceed the monthly rate of 3% of the Rent, plus charges for supplies, equipment, salaries, wages, bonuses and other compensation (including fringe benefits, vacation, holidays and other paid absence

benefits) relating to employees of Landlord or its property manager or agents engaged in the management, operation, repair, or maintenance of the Building and/or Common Areas of the Project;

D. All additional costs and expenses incurred by Landlord with respect to the operation, protection, maintenance, repair and replacement of the Project which would be considered a current expense (and not a capital expenditure) pursuant to generally accepted accounting principles; provided, however, that Operating Expenses shall not include any of the following: (i) payments on any loans or ground leases affecting the Project; (ii) depreciation of any buildings or any major systems of building service equipment within the Project; (iii) leasing commissions; (iv) the cost of tenant improvements installed for the exclusive use of other tenants of the Project; and (v) any cost incurred in complying with Hazardous Materials Laws, which subject is governed exclusively by Section 7.2.

E. Notwithstanding the foregoing, for purposes of this Lease, Operating Expenses shall not, however, include:

(1) costs, including legal fees, space planners' fees, and brokerage fees incurred in connection with the original construction or development, or original or future leasing of the Project, and costs, including permit, license and inspection costs, incurred with respect to the installation of tenant improvements made for new tenants initially occupying space in the Project after the Commencement Date or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for tenants or other occupants of the Project (excluding, however, such costs relating to any common areas of the Building or Project or parking facilities);

(2) any bad debt loss, rent loss, or reserves for bad debts or rent loss;

(3) costs associated with the operation of the business of the limited liability company, partnership or entity which constitutes Landlord, as the same are distinguished from the costs of operation of the Building or Project (which shall specifically include, but not be limited to, accounting costs associated with the operation of the Building or Project). Costs associated with the operation of the business of the limited liability company, partnership or entity which constitutes Landlord include costs of partnership accounting and legal matters, costs of defending any lawsuits with any mortgagee (except as the actions of the Tenant may be in issue), costs of selling, syndicating, financing, mortgaging or hypothecating any of the Landlord's interest in the Project, and costs incurred in connection with any disputes between Landlord and its employees, between Landlord and Project management, or between Landlord and other tenants or occupants;

(4) except for a management fee provided in Section 8.2C above, overhead and profit increment paid to the Landlord or to subsidiaries or affiliates of the Landlord for services in the Project to the extent the same exceeds the costs of such services rendered by qualified, first-class unaffiliated third parties on a competitive basis;

(5) costs arising from the gross negligence or willful misconduct of Landlord or its agents, employees, vendors, contractors, or providers of materials or services.

(6) costs occasioned by the violation of law by Landlord, any other occupant of the Building or the Project, or their respective agents, employees or contractors;

(7) costs for to the extent for which Landlord receives reimbursement from others, including reimbursement from insurance (provided that Landlord shall exercise commercially reasonable efforts to collect such amounts, but shall not be required to commence any litigation or arbitration or similar proceeding to collect such amounts);

(8) interest, charges and fees incurred on debt or payments on any deed of trust or ground lease on the Building, or the Project;

(9) advertising or promotional costs or other costs incurred by Landlord in procuring tenants for the Building or other portions of the Project;

(10) costs incurred in repairing, maintaining or replacing any structural elements of the Building;

(11) any wages, bonuses or other compensation of executive personnel of Landlord to the extent in excess of the costs of services that typically be performed by a building manager, property manager, regional property manager or asset manager regardless of the actual title of the person performing such service;

(12) Landlord corporate overhead and general administrative expenses of Landlord, except as specifically provided herein;

(13) leasing expenses and broker commissions payable by Landlord;

(14) costs occasioned by the exercise of the power of eminent domain;

(15) costs to correct any construction defect in the structural parts of the Building existing on the Commencement Date;

(16) costs incurred in connection with negotiations or disputes with any other occupant of the Project and costs arising from the violation by Landlord or any other occupant of the Project of the terms and conditions of any lease or other agreement;

(17) costs incurred in connection with the presence of any Hazardous Materials on the Project to the extent required by applicable Law to be removed or abated as of the Commencement Date but not removed or abated until after the Commencement Date, except to the extent caused by the release or emission of the Hazardous Material in question by Tenant or Tenant's Agents, in which case Tenant shall be solely responsible for such costs;

(18) expense reserves for any costs beyond the applicable current year's anticipated expenses; and

(19) costs for capital improvements which are required to be properly capitalized under generally accepted accounting principles except to the extent amortized over the useful life of the capital item in question as set forth in Section 5.4 above.

Landlord shall not calculate Operating Expenses in a manner which will result in collection by Landlord of more than its out-of-pocket cost for such items plus the management fees and related expenses collectible from Tenant thereon.

8.3 Real Property Taxes Defined: The term “**Real Property Taxes**” shall mean all taxes, assessments, levies, and other charges of any kind or nature whatsoever, general and special, foreseen and unforeseen (including all installments of principal and interest required to pay any existing or future general or special assessments for public improvements, services or benefits, and any increases resulting from reassessments resulting from a change in ownership, new construction, or any other cause), now or hereafter imposed by any governmental or quasi-governmental authority or special district having the direct or indirect power to tax or levy assessments, which are levied or assessed against, or with respect to the value, occupancy or use of all or any portion of the Project (as now constructed or as may at any time hereafter be constructed, altered, or otherwise changed) or Landlord’s interest therein, the fixtures, equipment and other property of Landlord, real or personal, that are an integral part of and located on the Project, the gross receipts, income, or rentals from the Project, or the use of parking areas, public utilities, or energy within the Project, or Landlord’s business of leasing the Project. The parties acknowledged that Proposition 13 was adopted by the voters of the State of California in the June 1978 election (“**Proposition 13**”) and that assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants, and, in further recognition of the decrease in the level and quality of governmental services and amenities as a result of Proposition 13, Real Property Taxes shall also include any governmental or private assessments or the Project’s contribution towards a governmental or private cost-sharing agreement for the purpose of augmenting or improving the quality of services and amenities normally provided by governmental agencies. If at any time during the Lease Term the method of taxation or assessment of the Project prevailing as of the Effective Date shall be altered so that in lieu of or in addition to any Real Property Tax described above there shall be levied, assessed or imposed (whether by reason of a change in the method of taxation or assessment, creation of a new tax or charge, or any other cause) an alternate or additional tax or charge (i) on the value, use or occupancy of the Project or Landlord’s interest therein, or (ii) on or measured by the gross receipts, income or rentals from the Project, on Landlord’s business of leasing the Project, or computed in any manner with respect to the operation of the Project, then any such tax or charge, however designated, shall be included within the meaning of the term Real Property Taxes for purposes of this Lease. If any Real Property Tax is based upon property or rents unrelated to the Project, then only that part of such Real Property Tax that is fairly allocable to the Project shall be included within the meaning of the term Real Property Taxes. Notwithstanding the foregoing, the term Real Property Taxes shall not include estate, inheritance, transfer, gift or franchise taxes of Landlord or the federal or state net income tax imposed on Landlord’s income from all sources.

If the parcel containing the Building contains other buildings on such parcel. In such event and if the Building and the buildings and improvements are currently included in the same tax bill and contain different size and types of improvements, Landlord shall have the right to allocate the Taxes to each such building in accordance with Landlord's reasonable accounting and management principles.

8.4 Adjustments. Notwithstanding the foregoing provisions, Tenant's Share as to certain expenses included in Operating Expenses may be calculated differently to yield a higher percentage share for Tenant as to those expenses if Landlord permits other tenants or occupants in the Project to incur such expenses directly rather than have Landlord incur the expense in common for the Project. In such case, Tenant's Share of the applicable expense shall be calculated as having as its denominator the sum of the gross leasable areas of all premises in the Project less the gross leasable areas of tenants who have incurred such expense directly. Nothing herein shall imply that Landlord will permit Tenant or any other tenant of the Project to incur Common Area Costs. Any such permission shall be in the sole discretion of Landlord. If the Building or Project is not one hundred percent (100%) occupied during all or a portion of any calendar year, Landlord shall make an appropriate adjustment to the components of Operating Expenses for such year to determine the amount of Operating Expenses that would have been incurred had the Building and Project been one hundred percent (100%) occupied; and the amount so determined shall be deemed to have been the amount of Operating Expenses for such year.

#### ARTICLE 9 INSURANCE

9.1 Tenant's Insurance: Tenant shall maintain insurance complying with all of the following:

A. Types. Tenant shall procure, pay for and keep in full force and effect the following:

(1) Commercial general liability insurance, including property damage, against liability for personal injury, bodily injury, death and damage to property occurring in or about, or resulting from an occurrence in or about, the Premises with combined single limit coverage of not less than the amount of Tenant's Liability Insurance Minimum specified in Section P of the Summary, which insurance shall contain a "contractual liability" endorsement insuring Tenant's performance of Tenant's obligation to indemnify Landlord contained in Section 10.3;

(2) Fire and property damage insurance in so-called "all risk" form insuring Tenant's Trade Fixtures, and Tenant's Alterations for the full actual replacement cost thereof; and

(3) Insurance for: (a) Business Auto Liability covering owned, non-owned and hired vehicles with a limit of not less than \$1,000,000 per accident; (b) Employers Liability with limits of \$1,000,000 each accident, \$1,000,000 disease policy limit, \$1,000,000 disease--each employee; (c) Business Interruption Insurance covering six (6) months, and (d) Excess Liability in the amount of \$5,000,000. In addition, whenever Tenant shall undertake any alterations, additions or

improvements in, to or about the Leased Premises (“**Work**”) the aforesaid insurance protection must extend to and include injuries to persons and damage to property arising in connection with such Work, without limitation including liability under any applicable structural work act, and such other insurance as Landlord shall require; and the policies of or certificates evidencing such insurance must be delivered to Landlord prior to the commencement of any such Work.

B. Requirements. Where applicable and required by Landlord, each policy of insurance required to be carried by Tenant pursuant to this Section 9.1: (i) shall name Landlord and such other parties in interest as Landlord reasonably designates as additional insured; (ii) shall be primary insurance which provides that the insurer shall be liable for the full amount of the loss up to and including the total amount of liability set forth in the declarations without the right of contribution from any other insurance coverage of Landlord; (iii) shall be in a form satisfactory to Landlord; (iv) shall be carried with companies reasonably acceptable to Landlord; (v) shall provide that such policy shall not be subject to cancellation, lapse or change except after at least 30 days prior written notice to Landlord so long as such provision of 30 days notice is reasonably obtainable, but in any event not less than 10 days prior written notice; (vi) shall not have a “deductible” in excess of such amount as is approved by Landlord; (vii) shall contain a cross liability endorsement; and (viii) shall contain a “severability” clause. If Tenant has in full force and effect a blanket policy of liability insurance with the same coverage for the Premises as described above, as well as other coverage of other premises and properties of Tenant, or in which Tenant has some interest, such blanket insurance shall satisfy the requirements of this Section 9.1.

C. Evidence. A copy of each paid-up policy evidencing the insurance required to be carried by Tenant pursuant to this Section 9.1 (appropriately authenticated by the insurer) or a certificate of the insurer, certifying that such policy has been issued, providing the coverage required by this Section 9.1, and containing the provisions specified herein, shall be delivered to Landlord prior to the time Tenant or any of its Agents enters the Premises and upon renewal of such policies, but not less than 5 days prior to the expiration of the term of such coverage. Landlord may, at any time, and from time to time, inspect and/or copy any and all insurance policies required to be procured by Tenant pursuant to this Section 9.1. If any Lender or insurance advisor reasonably determines at any time that the amount of coverage required for any policy of insurance Tenant is to obtain pursuant to this Section 9.1 is not adequate, then Tenant shall increase such coverage for such insurance to such amount as such Lender or insurance advisor reasonably deems adequate, not to exceed the level of coverage for such insurance commonly carried by comparable businesses similarly situated.

## 9.2

Landlord’s Insurance: Landlord shall have the following obligations and options regarding insurance:

A. Property Damage. Landlord shall maintain a policy or policies of fire and property damage insurance in so-called “all risk” form insuring Landlord (and such others as Landlord may designate) against loss of rents for a period of not less than 12 months and from physical damage to the Project with coverage of not less than the full replacement cost thereof. Landlord may so insure the Project separately, or may insure the Project with other property owned

by Landlord which Landlord elects to insure together under the same policy or policies. Landlord shall have the right, but not the obligation, in its sole and absolute discretion, to obtain insurance for such additional perils as Landlord deems appropriate, including, without limitation, coverage for damage by earthquake and/or flood. All such coverage shall contain “deductibles” which Landlord deems appropriate, which in the case of earthquake and flood insurance, may be up to 10% of the replacement value of the property insured or such higher amount as is then commercially reasonable. Landlord shall not be required to cause such insurance to cover any Trade Fixtures or Tenant’s Alterations of Tenant.

B. Other. Landlord may maintain a policy or policies of commercial general liability insurance insuring Landlord (and such others as are designated by Landlord) against liability for personal injury, bodily injury, death and damage to property occurring or resulting from an occurrence in, on or about the Project, with combined single limit coverage in such amount as Landlord from time to time determines is reasonably necessary for its protection.

C. Tenant’s Obligation to Reimburse: If Landlord’s insurance rates for the Building are increased at any time during the Lease Term as a result of the nature of Tenant’s use of the Premises, Tenant shall reimburse Landlord for the full amount of such increase immediately upon receipt of a bill from Landlord therefor.

9.3 Release and Waiver of Subrogation: The parties hereto release each other, and their respective agents and employees, from any liability for injury to any person or damage to property that is caused by or results from any risk insured against under any valid and collectible insurance policy carried by either of the parties which contains a waiver of subrogation by the insurer and is in force at the time of such injury or damage; subject to the following limitations: (i) the foregoing provision shall not apply to the commercial general liability insurance described by subparagraphs Section 9.1A and Section 9.2B; (ii) such release shall apply to liability resulting from any risk insured against or covered by self-insurance maintained or provided by Tenant to satisfy the requirements of Section 9.1 to the extent permitted by this Lease; and (iii) Tenant shall not be released from any such liability to the extent any damages resulting from such injury or damage are not covered by the recovery obtained by Landlord from such insurance, but only if the insurance in question permits such partial release in connection with obtaining a waiver of subrogation from the insurer. This release shall be in effect only so long as the applicable insurance policy contains a clause to the effect that this release shall not affect the right of the insured to recover under such policy. Each party shall use reasonable efforts to cause each insurance policy obtained by it to provide that the insurer waives all right of recovery by way of subrogation against the other party and its agents and employees in connection with any injury or damage covered by such policy. However, if any insurance policy cannot be obtained with such a waiver of subrogation, or if such waiver of subrogation is only available at additional cost and the party for whose benefit the waiver is to be obtained does not pay such additional cost, then the party obtaining such insurance shall notify the other party of that fact and thereupon shall be relieved of the obligation to obtain such waiver of subrogation rights from the insurer with respect to the particular insurance involved.

#### ARTICLE 10 LIMITATION ON LANDLORD’S LIABILITY AND INDEMNITY

10.1 Limitation on Landlord's Liability: Landlord shall not be liable to Tenant, nor shall Tenant be entitled to terminate this Lease or to any abatement of rent (except as expressly provided otherwise herein), for any injury to Tenant or Tenant's Agents, damage to the property of Tenant or Tenant's Agents, or loss to Tenant's business resulting from any cause, including without limitation any: (i) failure, interruption or installation of any HVAC or other utility system or service; (ii) failure to furnish or delay in furnishing any utilities or services when such failure or delay is caused by fire or other peril, the elements, labor disturbances of any character, or any other accidents or other conditions beyond the reasonable control of Landlord; (iii) limitation, curtailment, rationing or restriction on the use of water or electricity, gas or any other form of energy or any services or utility serving the Project; (iv) vandalism or forcible entry by unauthorized persons or the criminal act of any person; or (v) penetration of water into or onto any portion of the Premises or the Building through roof leaks or otherwise. Notwithstanding the foregoing but subject to Section 9.3, Landlord shall be liable for any such injury, damage or loss which is proximately caused by Landlord's willful misconduct or gross negligence of which Landlord has actual notice and a reasonable opportunity to cure but which it fails to so cure.

10.2 Limitation on Tenant's Recourse: If Landlord is a corporation, limited liability company, trust, partnership, joint venture, unincorporated association or other form of business entity: (i) the obligations of Landlord shall not constitute personal obligations of the officers, directors, trustees, partners, joint venturers, members, owners, stockholders, or other principals or representatives of such business entity; and (ii) Tenant shall not have recourse to the assets of such officers, directors, trustees, partners, joint venturers, members, owners, stockholders, principals or representatives except to the extent of their interest in the Project. Tenant shall have recourse only to the interest of Landlord in the Project for the satisfaction of the obligations of Landlord and shall not have recourse to any other assets of Landlord for the satisfaction of such obligations.

10.3 Indemnification of Landlord: Tenant shall hold harmless, indemnify and defend Landlord, and its employees, agents and contractors, with competent counsel reasonably satisfactory to Landlord (and Landlord agrees to accept counsel that any insurer requires be used), from all liability, penalties, losses, damages, costs, expenses, causes of action, claims and/or judgments arising by reason of any death, bodily injury, personal injury or property damage resulting from (i) any cause or causes whatsoever (other than the willful misconduct or gross negligence of Landlord of which Landlord has had notice and a reasonable time to cure, but which Landlord has failed to cure) occurring in or about or resulting from an occurrence in or about the Premises during the Lease Term, (ii) the negligence or willful misconduct of Tenant or its agents, employees and contractors, wherever the same may occur, or (iii) an Event of Tenant's Default. The provisions of this Section 10.3 shall survive the expiration or sooner termination of this Lease.

## ARTICLE 11 DAMAGE TO PREMISES

11.1 Landlord's Duty to Restore: If the Premises are damaged by any peril after the Effective Date, Landlord shall restore the Premises unless the Lease is terminated by Landlord pursuant to Section 11.2 or by Tenant pursuant to Section 11.3. All insurance proceeds available from the fire and property damage insurance carried by Landlord pursuant to Section 9.2 shall be paid to and become the property of Landlord. If this Lease is terminated pursuant to either Section 11.2 or Section 11.3, then all insurance proceeds available from insurance carried by Tenant which covers loss to property that is Landlord's property or would become Landlord's property on termination of this Lease shall be paid to and become the property of Landlord. If this Lease is not so terminated, then upon receipt of the insurance proceeds (if the loss is covered by insurance) and the issuance of all necessary governmental permits, Landlord shall commence and diligently prosecute to completion the restoration of the Premises, to the extent then allowed by Law, to substantially the same condition in which the Premises were immediately prior to such damage. Landlord's obligation to restore shall be limited to the Premises and interior improvements constructed by Landlord as they existed as of the Commencement Date, excluding any Tenant's Alterations, Trade Fixtures and/or personal property constructed or installed by Tenant in the Premises. Tenant shall forthwith replace or fully repair all Tenant's Alterations and Trade Fixtures installed by Tenant and existing at the time of such damage or destruction, and all insurance proceeds received by Tenant from the insurance carried by it pursuant to Section 9.1A(2) shall be used for such purpose.

11.2 Landlord's Right to Terminate: Landlord shall have the right to terminate this Lease in the event any of the following occurs, which right may be exercised only by delivery to Tenant of a written notice of election to terminate within 30 days after the date of such damage:

A. Damage From Insured Peril. The Building or Project is damaged by an Insured Peril to such an extent that the estimated cost to restore exceeds 33% of the then actual replacement cost thereof;

B. Damage From Uninsured Peril. The Building or Project is damaged by an Uninsured Peril to such an extent that the estimated cost to restore exceeds 2% of the then actual replacement cost thereof; provided, however, that Landlord may not terminate this Lease pursuant to this Section 11.2B if one or more tenants of the Project agree in writing to pay the amount by which the cost to restore the damage exceeds such amount and subsequently deposit such amount with Landlord within 30 days after Landlord has notified Tenant of its election to terminate this Lease;

C. Damage Near End of Term. The Premises are damaged by any peril within 12 months of the last day of the Lease Term to such an extent that the estimated cost to restore equals or exceeds an amount equal to six times the Base Monthly Rent then due; provided, however, that Landlord may not terminate this Lease pursuant to this Section 11.2C if Tenant, at the time of such damage, has a then valid express written option to extend the Lease Term and Tenant exercises such option to extend the Lease Term within 15 days following the date of such damage; or

D. Restrictions on Restoration. The Building or Project is damaged by any peril and, because of the Laws then in force, (i) cannot be restored at reasonable cost to substantially the same condition in which it was prior to such damage, or (ii) cannot be used for the same use being made thereof before such damage if restored as required by this Article.

E. Defined Terms. As used herein, the following terms shall have the following meanings: (i) the term “**Insured Peril**” shall mean a peril actually insured against for which the insurance proceeds actually received by Landlord are sufficient (except for any “deductible” amount specified by such insurance) to restore the Project under then existing building codes to the condition existing immediately prior to the damage; and (ii) the term “**Uninsured Peril**” shall mean any peril which is not an Insured Peril. Notwithstanding the foregoing, if the “deductible” for earthquake or flood insurance exceeds 2% of the replacement cost of the improvements insured, such peril shall be deemed an “Uninsured Peril”.

11.3 Tenant’s Right to Terminate: If the Premises are damaged by any peril and Landlord does not elect to terminate this Lease or is not entitled to terminate this Lease pursuant to Section 11.2, then as soon as reasonably practicable, Landlord shall furnish Tenant with the written opinion of Landlord’s architect or construction consultant as to when the restoration work required of Landlord may be completed. Tenant shall have the right to terminate this Lease in the event any of the following occurs, which right may be exercised only by delivery to Landlord of a written notice of election to terminate within 7 days after Tenant receives from Landlord the estimate of the time needed to complete such restoration.

A. Major Damage. The Premises are damaged by any peril and, in the reasonable opinion of Landlord’s architect or construction consultant, the restoration of the Premises cannot be substantially completed within 270 days after the date of such damage; or

B. Damage Near End of Term. The Premises are damaged by any peril within 12 months of the last day of the Lease Term and, in the reasonable opinion of Landlord’s architect or construction consultant, the restoration of the Premises cannot be substantially completed within 90 days after the date of such damage and such damage renders unusable more than 30% of the Premises.

11.4 Abatement of Rent: In the event of damage to the Premises which does not result in the termination of this Lease, the Base Monthly Rent and the Additional Rent shall be temporarily abated during the period of restoration in proportion to the degree to which Tenant’s use of the Premises is impaired by such damage. Tenant shall not be entitled to any compensation or damages from Landlord for loss of Tenant’s business or property or for any inconvenience or annoyance caused by such damage or restoration. Tenant hereby waives the provisions of California Civil Code Sections 1932(2) and 1933(4) and the provisions of any similar law hereinafter enacted.

## ARTICLE 12 CONDEMNATION

12.1 Landlord’s Termination Right: Landlord shall have the right to terminate this Lease if, as a result of a taking by means of the exercise of the power of eminent domain (including a

voluntary sale or transfer by Landlord to a condemnor under threat of condemnation), (i) all or any part of the Premises is so taken, (ii) more than 10% of the Building Leasable Area is so taken, or (iii) more than 50% of the Common Area is so taken. Any such right to terminate by Landlord must be exercised within a reasonable period of time, to be effective as of the date possession is taken by the condemnor.

12.2 Tenant's Termination Right: Tenant shall have the right to terminate this Lease if, as a result of any taking by means of the exercise of the power of eminent domain (including any voluntary sale or transfer by Landlord to any condemnor under threat of condemnation), (i) 10% or more of the Premises is so taken and that part of the Premises that remains cannot be restored within a reasonable period of time and thereby made reasonably suitable for the continued operation of the Tenant's business, or (ii) there is a taking affecting the Common Area and, as a result of such taking, Landlord cannot provide parking spaces within reasonable walking distance of the Premises equal in number to at least 80% of the number of spaces allocated to Tenant by Section 2.1, whether by rearrangement of the remaining parking areas in the Common Area (including construction of multi-deck parking structures or re-striping for compact cars where permitted by Law) or by alternative parking facilities on other land. Tenant must exercise such right within a reasonable period of time, to be effective on the date that possession of that portion of the Premises or Common Area that is condemned is taken by the condemnor.

12.3 Restoration and Abatement of Rent: If any part of the Premises or the Common Area is taken by condemnation and this Lease is not terminated, then Landlord shall restore the remaining portion of the Premises and Common Area and interior improvements constructed by Landlord as they existed as of the Commencement Date, excluding any Tenant's Alterations, Trade Fixtures and/or personal property constructed or installed by Tenant. Thereafter, except in the case of a temporary taking, as of the date possession is taken the Base Monthly Rent shall be reduced in the same proportion that the floor area of that part of the Premises so taken (less any addition thereto by reason of any reconstruction) bears to the original floor area of the Premises.

12.4 Temporary Taking: If any portion of the Premises is temporarily taken for one year or less, this Lease shall remain in effect. If any portion of the Premises is temporarily taken by condemnation for a period which exceeds one year or which extends beyond the natural expiration of the Lease Term, and such taking materially and adversely affects Tenant's ability to use the Premises for the Permitted Use, then Tenant shall have the right to terminate this Lease, effective on the date possession is taken by the condemnor.

12.5 Division of Condemnation Award: Any award made as a result of any condemnation of the Premises or the Common Area shall belong to and be paid to Landlord, and Tenant hereby assigns to Landlord all of its right, title and interest in any such award; provided, however, that Tenant shall be entitled to receive any condemnation award that is made directly to Tenant for the following so long as the award made to Landlord is not thereby reduced: (i) for the taking of personal property or Trade Fixtures belonging to Tenant, (ii) for the interruption of Tenant's business or its moving costs, (iii) for loss of Tenant's goodwill; or (iv) for any temporary taking where this Lease is not terminated as a result of such taking. The rights of Landlord and Tenant regarding any condemnation shall be determined as provided in this Article, and each party hereby waives the

provisions of California Code of Civil Procedure Section 1265.130 and the provisions of any similar law hereinafter enacted allowing either party to petition the Superior Court to terminate this Lease in the event of a partial taking of the Premises.

#### ARTICLE 13 DEFAULT AND REMEDIES

13.1 Events of Tenant's Default: Tenant shall be in default of its obligations under this Lease if any of the following events occurs (an "**Event of Tenant's Default**"):

A. Payment. Tenant shall have failed to pay Base Monthly Rent or Additional Rent when due, and such failure is not cured within 3 days after delivery of written notice from Landlord specifying such failure to pay; or

B. General Covenant. Tenant shall have failed to perform any term, covenant, or condition of this Lease other than those referred to in any other subsection of this Section 13.1, and Tenant shall have failed to cure such breach within 10 days after written notice from Landlord specifying the nature of such breach where such breach could reasonably be cured within said 10 day period, or if such breach could not be reasonably cured within said 10 day period, Tenant shall have failed to commence such cure within said 10 day period and thereafter continue with due diligence to prosecute such cure to completion within such time period as is reasonably needed but not to exceed 90 days from the date of Landlord's notice; or

C. Transfer. Tenant shall have sublet the Premises or assigned its interest in the Lease in violation of the provisions contained in Article 14; or

D. Abandonment. Tenant shall have abandoned the Premises or left the Premises substantially vacant; or

E. Insolvency. The occurrence of the following: (i) the making by Tenant of any general arrangements or assignments for the benefit of creditors; (ii) Tenant becomes a "debtor" as defined in 11 USC §101 or any successor statute thereto (unless, in the case of a petition filed against Tenant, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this Section 13.1E is contrary to any applicable Law, such provision shall be of no force or effect; or

F. Required Documents. Tenant shall have failed to deliver documents required of it pursuant to Section 15.4 or Section 15.6 within the time periods specified therein; or

G. Multiple Defaults. Any two (2) failures by Tenant to observe and perform any provision of this Lease during any twelve (12) month period of the term, as such may be extended, shall constitute, at the option of Landlord, a separate and noncurable default.

Any written notice of default sent by Landlord to Tenant shall be in lieu of, and not in addition to, any termination notice required under applicable statutory or regulatory provisions (and no further notice shall be required should Landlord elect to terminate this Lease as set forth below).

13.2 Landlord's Remedies: If an Event of Tenant's Default occurs, Landlord shall have the following remedies, in addition to all other rights and remedies provided by any Law or otherwise provided in this Lease, to which Landlord may resort cumulatively or in the alternative:

A. Continue. Landlord may keep this Lease in effect and enforce by an action at law or in equity all of its rights and remedies under this Lease, including (i) the right to recover the rent and other sums as they become due by appropriate legal action, (ii) the right to make payments required of Tenant or perform Tenant's obligations and be reimbursed by Tenant for the cost thereof with interest at the Agreed Interest Rate from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant, and (iii) the remedies of injunctive relief and specific performance to compel Tenant to perform its obligations under this Lease. Notwithstanding anything contained in this Lease, in the event of a breach of an obligation by Tenant which results in a condition which poses an imminent danger to safety of persons or damage to property, an unsightly condition visible from the exterior of the Building, or a threat to insurance coverage, then if Tenant does not cure such breach within 3 days after delivery to it of written notice from Landlord identifying the breach, Landlord may cure the breach of Tenant and be reimbursed by Tenant for the cost thereof with interest at the Agreed Interest Rate from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. Should Landlord not terminate this Lease by giving Tenant written notice, Landlord may enforce all its rights and remedies under this Lease, including the right to recover the rent as it becomes due under the Lease as provided in California Civil Code Section 1951.4.

B. Enter and Relet. Landlord may enter the Premises and release them to third parties for Tenant's account for any period, whether shorter or longer than the remaining Lease Term. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in releasing the Premises, including brokers' commissions, expenses of altering and preparing the Premises required by the releasing. Tenant shall pay to Landlord the rent and other sums due under this Lease on the date the rent is due, less the rent and other sums Landlord received from any releasing. No act by Landlord allowed by this subparagraph shall terminate this Lease unless Landlord notifies Tenant in writing that Landlord elects to terminate this Lease. Notwithstanding any releasing without termination, Landlord may later elect to terminate this Lease because of the default by Tenant.

C. Terminate. Landlord may terminate this Lease by giving Tenant written notice of termination, in which event this Lease shall terminate on the date set forth for termination in such notice. Any termination under this Section 13.2C shall not relieve Tenant from its obligation to pay sums then due Landlord or from any claim against Tenant for damages or rent previously accrued or then accruing. In no event shall any one or more of the following actions by Landlord, in the absence of a written election by Landlord to terminate this Lease, constitute a termination of this

Lease: (i) appointment of a receiver or keeper in order to protect Landlord's interest hereunder; (ii) consent to any subletting of the Premises or assignment of this Lease by Tenant, whether pursuant to the provisions hereof or otherwise; or (iii) any other action by Landlord or Landlord's Agents intended to mitigate the adverse effects of any breach of this Lease by Tenant, including without limitation any action taken to maintain and preserve the Premises or any action taken to relet the Premises or any portions thereof to the extent such actions do not affect a termination of Tenant's right to possession of the Premises.

D. No Deemed Termination. In the event Tenant breaches this Lease and abandons the Premises, this Lease shall not terminate unless Landlord gives Tenant written notice of its election to so terminate this Lease. No act by or on behalf of Landlord intended to mitigate the adverse effect of such breach, including those described by Section 13.C, shall constitute a termination of Tenant's right to possession unless Landlord gives Tenant written notice of termination.

E. Damages. In the event Landlord terminates this Lease, Landlord shall be entitled, at Landlord's election, to damages in an amount as set forth in California Civil Code Section 1951.2 as in effect on the Effective Date. For purposes of computing damages pursuant to California Civil Code Section 1951.2, (i) an interest rate equal to the Agreed Interest Rate shall be used where permitted, and (ii) the term "rent" includes Base Monthly Rent and Additional Rent. Such damages shall include:

(1) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided, computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%); and

(2) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease, or which in the ordinary course of things would be likely to result therefrom, including the following: (i) expenses for cleaning, repairing or restoring the Premises; (ii) expenses for altering, remodeling or otherwise improving the Premises for the purpose of reletting, including installation of leasehold improvements (whether such installation be funded by a reduction of rent, direct payment or allowance to a new tenant, or otherwise); (iii) broker's fees, advertising costs and other expenses of reletting the Premises; (iv) costs of carrying the Premises, such as taxes, insurance premiums, utilities and security precautions; (v) expenses in retaking possession of the Premises; and (vi) attorneys' fees and court costs incurred by Landlord in retaking possession of the Premises and in releasing the Premises or otherwise incurred as a result of Tenant's default.

F. Non Exclusive Remedies. Nothing in this Section 13.2 shall limit Landlord's right to indemnification from Tenant as provided in Section 7.2 and Section 10.3. Any notice given by Landlord in order to satisfy the requirements of Section 13.1A or Section 13.1B above shall also satisfy the notice requirements of California Code of Civil Procedure Section 1161 regarding unlawful detainer proceedings.

13.3 Waiver: One party's consent to or approval of any act by the other party requiring the first party's consent or approval shall not be deemed to waive or render unnecessary the first party's consent to or approval of any subsequent similar act by the other party. The receipt by Landlord of any rent or payment with or without knowledge of the breach of any other provision hereof shall not be deemed a waiver of any such breach unless such waiver is in writing and signed by Landlord. No delay or omission in the exercise of any right or remedy accruing to either party upon any breach by the other party under this Lease shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by either party of any breach of any provision of this Lease shall not be deemed to be a waiver of any subsequent breach of the same or of any other provisions herein contained.

13.4 Limitation On Exercise of Rights: At any time that an Event of Tenant's Default has occurred and remains uncured, (i) it shall not be unreasonable for Landlord to deny or withhold any consent or approval requested of it by Tenant which Landlord would otherwise be obligated to give, and (ii) Tenant may not exercise any option to extend, right to terminate this Lease, or other right granted to it by this Lease which would otherwise be available to it.

13.5 Waiver by Tenant of Certain Remedies: Tenant waives the provisions of Sections 1932(1), 1941 and 1942 of the California Civil Code and any similar or successor law regarding Tenant's right to terminate this Lease or to make repairs and deduct the expenses of such repairs from the rent due under this Lease. Tenant hereby waives any right of redemption or relief from forfeiture under the laws of the State of California, or under any other present or future law, including the provisions of Sections 1174 and 1179 of the California Code of Civil Procedure.

#### ARTICLE 14 ASSIGNMENT AND SUBLETTING

14.1 Transfer By Tenant: The following provisions shall apply to any assignment, subletting or other transfer by Tenant or any subtenant or assignee or other successor in interest of the original Tenant (collectively referred to in this Section 14.1 as "Tenant"):

A. Transfer. Tenant shall not do any of the following (collectively referred to herein as a "**Transfer**"), whether voluntarily, involuntarily, by operation of law or otherwise without the prior written consent of Landlord, which consent shall not be unreasonably withheld: (i) sublet all or any part of the Premises or allow it to be sublet, occupied or used by any other person (the agents and servants of Tenant excepted) whether by sublease, license, concession, franchise, agency, or management agreement; (ii) assign its interest in this Lease; (iii) mortgage or encumber the Lease (or otherwise use the Lease as a security device) in any manner; or (iv) materially amend or modify an assignment, sublease or other transfer that has been previously approved by Landlord. Tenant shall reimburse Landlord for all reasonable costs and attorneys' fees incurred by Landlord in connection with the evaluation, processing, and/or documentation of any requested Transfer, whether or not Landlord's consent is granted. Landlord's reasonable costs shall include the cost of any review or investigation performed by Landlord or consultant acting on Landlord's behalf of (i) Hazardous Materials used, stored, released, or disposed of by the potential Subtenant or Assignee, and/or (ii) violations of Hazardous Materials Law by the Tenant or the proposed Subtenant or Assignee. Any Transfer so approved by Landlord shall not be effective until Tenant has delivered to

Landlord an executed counterpart of the document evidencing the Transfer which (i) is in a form reasonably approved by Landlord, (ii) contains the same terms and conditions as stated in Tenant's notice given to Landlord pursuant to Section 14.1B, and (iii) in the case of an assignment of the Lease, contains the agreement of the proposed transferee to assume all obligations of Tenant under this Lease arising after the effective date of such Transfer and to remain jointly and severally liable therefor with Tenant. Any attempted Transfer without Landlord's consent shall constitute an Event of Tenant's Default and shall be voidable at Landlord's option. Landlord's consent to any one Transfer shall not constitute a waiver of the provisions of this Section 14.1 as to any subsequent Transfer or a consent to any subsequent Transfer. No Transfer, even with the consent of Landlord, shall relieve Tenant of its personal and primary obligation to pay the rent and to perform all of the other obligations to be performed by Tenant hereunder. The acceptance of rent by Landlord from any person shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any Transfer.

B. Procedure. At least 30 days before a proposed Transfer is to become effective, Tenant shall give Landlord written notice of the proposed terms of such Transfer and request Landlord's approval, which notice shall include the following: (i) the name and legal composition of the proposed transferee; (ii) a current financial statement of the transferee, financial statements of the transferee covering the preceding three years if the same exist, and (if available) an audited financial statement of the transferee for a period ending not more than one year prior to the proposed effective date of the Transfer, all of which statements are prepared in accordance with generally accepted accounting principles; (iii) the nature of the proposed transferee's business to be carried on in the Premises; (iv) all consideration to be given on account of the Transfer; (v) a current financial statement of Tenant; and (vi) an accurately filled out response to Landlord's standard hazardous materials questionnaire. Tenant shall provide to Landlord such other information as may be reasonably requested by Landlord within seven days after Landlord's receipt of such notice from Tenant. Landlord shall respond in writing to Tenant's request for Landlord's consent to a Transfer within the later of (i) 30 days of receipt of such request together with the required accompanying documentation, or (ii) 15 days after Landlord's receipt of all information which Landlord reasonably requests within seven days after it receives Tenant's first notice regarding the Transfer in question. If Landlord fails to respond in writing within said period, then Tenant shall provide a second written notice to Landlord requesting such consent and if Landlord fails to respond within 7 days after receipt of such second notice, then Landlord will be deemed to have consented to such Transfer. Tenant shall immediately notify Landlord of any modification to the proposed terms of such Transfer, which shall also be subject Landlord's consent in accordance with the same process for obtaining Landlord's initial consent to such Transfer.

C. Recapture. In the event that Tenant seeks to make any Transfer for the entire Premises, Landlord shall have the right to terminate this Lease or (i) on the condition that the proposed transferee immediately enter into a direct lease of the Premises with Landlord (or, in the case of a partial sublease, a lease for the portion proposed to be so sublet) on the same terms and conditions contained in Tenant's notice, or (ii) so that Landlord is thereafter free to lease the Premises (or, in the case of a partial sublease, the portion proposed to be so sublet) to whomever it pleases on whatever terms are acceptable to Landlord. In the event Landlord elects to so terminate

this Lease, then (i) if such termination is conditioned upon the execution of a lease between Landlord and the proposed transferee, Tenant's obligations under this Lease shall not be terminated until such transferee executes a new lease with Landlord, enters into possession and commences the payment of rent, and (ii) if Landlord elects simply to terminate this Lease (or, in the case of a partial sublease, terminate this Lease as to the portion to be so sublet), the Lease shall so terminate in its entirety (or as to the space to be so sublet) fifteen (15) days after Landlord has notified Tenant in writing of such election. Upon such termination, Tenant shall be released from any further obligation under this Lease if it is terminated in its entirety, or shall be released from any further obligation under the Lease with respect to the space proposed to be sublet in the case of a proposed partial sublease. In the case of a partial termination of the Lease, the Base Monthly Rent and Tenant's Share shall be reduced to an amount which bears the same relationship to the original amount thereof as the area of that part of the Premises which remains subject to the Lease bears to the original area of the Premises. Landlord and Tenant shall execute a cancellation and release with respect to the Lease to effect such termination.

D. Other Requirements. If Landlord consents to a Transfer proposed by Tenant, Tenant may enter into such Transfer, and if Tenant does so, the following shall apply:

(1) Tenant shall not be released of its liability for the performance of all of its obligations under the Lease.

(2) If Tenant assigns its interest in this Lease, then Tenant shall pay to Landlord 50% of all Subrent (as defined in Section 14.1D(5)) received by Tenant. In the case of assignment, the amount of Subrent owed to Landlord shall be paid to Landlord on the same basis, whether periodic or in lump sum, that such Subrent is paid to Tenant by the assignee.

(3) If Tenant sublets any part of the Premises, then with respect to the space so subleased, Tenant shall pay to Landlord 50% of the positive difference, if any, between (i) all Subrent paid by the subtenant to Tenant, less (ii) the sum of all Base Monthly Rent and Additional Rent allocable to the space sublet. Such amount shall be paid to Landlord on the same basis, whether periodic or in lump sum, that such Subrent is paid to Tenant by its subtenant.

(4) Tenant's obligations under this Section 14.1D shall survive any Transfer, and Tenant's failure to perform its obligations hereunder shall be an Event of Tenant's Default. At the time Tenant makes any payment to Landlord required by this Section 14.1D, Tenant shall deliver an itemized statement of the method by which the amount to which Landlord is entitled was calculated, certified by Tenant as true and correct. Landlord shall have the right at reasonable intervals to inspect Tenant's books and records relating to the payments due hereunder. Upon request therefor, Tenant shall deliver to Landlord copies of all bills, invoices or other documents upon which its calculations are based. Landlord may condition its approval of any Transfer upon obtaining a certification from both Tenant and the proposed transferee of all Subrent and other amounts that are to be paid to Tenant in connection with such Transfer.

(5) As used in this Section 14.1D, the term "**Subrent**" shall mean any consideration of any kind received, or to be received, by Tenant as a result of the Transfer, if such

sums are related to Tenant's interest in this Lease or in the Premises, including payments from or on behalf of the transferee (in excess of the book value thereof) for Tenant's assets, fixtures, leasehold improvements, inventory, accounts, goodwill, equipment, furniture, and general intangibles.

E. Deemed Transfers. Except for a Permitted Transfer, the term "Transfer" shall include any of the following, whether voluntary or involuntary and whether effected by death, operation of law or otherwise:

(1) If Tenant is a partnership, limited liability company or other entity other than a corporation described in Section 14.1E(2) below:

(a) A change in ownership effected voluntarily, involuntarily, or by operation of law of fifty percent (50%) or more of the partners or members or fifty percent (50%) or more in the aggregate of the partnership or membership interests, whether in a single transaction or series of transactions over a period of time; or

(b) The sale, mortgage, hypothecation, pledge or other encumbrance at any time of more than an aggregate of fifty percent (50%) in the aggregate of the value of Tenant's assets; or

(c) The dissolution of the partnership, limited liability company or other entity without its immediate reconstitution.

(2) If Tenant is a closely held corporation (i.e., one whose stock is not publicly held and not traded through an exchange or over the counter):

(a) The sale or other transfer of more than an aggregate of twenty-five percent (25%) of the voting shares of Tenant or more in the aggregate, whether in a single transaction or series of transactions over a period of time;

(b) The sale, mortgage, hypothecation, pledge or other encumbrance at any time of more than an aggregate of twenty-five percent (25%) in the aggregate of the value of Tenant's assets; or

(c) The dissolution, merger, consolidation, or other reorganization of Tenant.

F. Permitted Transfers. Notwithstanding anything contained in Section 14.1, Landlord's consent is not required for any Transfer by Tenant to an Affiliate, as defined below, as long as the following conditions are met and Tenant otherwise complies with the other provisions of Section 14.1 (each such Transfer shall be referred to as a "**Permitted Transfer**"):

(a) At least ten (10) business days before the Transfer, Landlord receives written notice of the Transfer (as well as any documents or information reasonably requested by Landlord regarding the Transfer or Transferee);

(b) The Transfer is not a subterfuge by Tenant to avoid its obligations under this Lease;

(c) If the Transfer is an assignment, Transferee assumes in writing all of Tenant's obligations under this Lease relating to the Leased Premises; and

(d) Transferee has a tangible net worth, as evidenced by financial statements delivered to Landlord and certified by an independent certified public accountant in accordance with generally accepted accounting principles that are consistently applied ("**Net Worth**"), at least equal to Tenant's Net Worth either immediately before the Transfer or as of the date of this Lease, whichever is greater.

For purposes hereof, the term "**Affiliate**" means any entity that controls, is controlled by, or is under common control with Tenant. "**Control**" means the direct or indirect ownership of more than fifty percent (50%) of the voting securities of an entity or possession of the right to vote more than fifty percent (50%) of the voting interest in the ordinary direction of the entity's affairs. Landlord shall not be entitled to terminate the Lease pursuant to Section 14.1C due to a Permitted Transfer or to receive any part of any Subrent resulting from a Permitted Transfer that would otherwise be due it pursuant to Section 14.1D.

A Permitted Transfer shall also include the sale or issuance of shares in Tenant in connection with its public offering on a national stock exchange or a regularly traded over-the-counter market and quoted on NASDAQ or shares that may be traded publicly subsequent thereto in the regular course of trading and not as a result of any merger, take over or sale of assets.

G. Reasonable Standards. The consent of Landlord to a Transfer may not be unreasonably withheld, provided that it is agreed to be reasonable for Landlord to consider any of the following reasons, which list is not exclusive, in electing to deny consent:

(1) The financial strength, credit, character and business or professional standing of the proposed transferee at the time of the proposed Transfer is not at least equal to that of Tenant at the time of execution of this Lease;

(2) A proposed transferee whose occupation of the Premises would cause a diminution in the value of the Building or Project;

(3) A proposed transferee whose impact or affect on the common facilities or the utility, efficiency or effectiveness of any utility or telecommunication system serving the Building or the Project or the other occupants of the Project would be adverse, disadvantageous or require improvements or changes in any utility or telecommunication capacity currently serving the Building or the Project;

(4) A proposed transferee whose occupancy will require a variation in the terms of this Lease (including, without limitation, a variation in the use clause) or which otherwise adversely affects any interest of Landlord;

(5) The existence of any default by Tenant under any provision of this Lease;

(6) A proposed transferee who is or is likely to be, or whose business is or is likely to be, subject to compliance with additional laws or other governmental requirements beyond those to which Tenant or Tenant's business is subject;

(7) the proposed Transferee is a governmental agency or unit, a non-profit or charitable entity or organization or an existing tenant in the Project;

(8) Landlord otherwise determines that the proposed Transfer would have the effect of decreasing the value of the Building or the Project, or increasing the expenses associated with operating, maintaining and repairing the Building or the Project;

(9) The proposed Transferee will use, store or handle Hazardous Materials (defined above) in or about the Premises of a type, nature or quantity not then acceptable to Landlord; or

(10) The portion of the Premises to be sublet or assigned is irregular in shape with inadequate means of ingress and egress.

N. Reasonable Restriction. The restrictions on Transfer described in this Lease are acknowledged by Tenant to be reasonable for all purposes, including, without limitation, the provisions of California Civil Code (the "Code") Section 1951.4(b)(2). Tenant expressly waives any rights which it might otherwise be deemed to possess pursuant to applicable law, including, without limitation, Section 1997.040 of the Code, to limit any remedy of Landlord pursuant to Section 1951.2 or 1951.4 of the Code by means of proof that enforcement of a restriction on use of the Premises would be unreasonable.

14.2 Transfer By Landlord: Landlord and its successors in interest shall have the right to transfer their interest in this Lease and the Project at any time and to any person or entity. In the event of any such transfer, the Landlord originally named herein (and, in the case of any subsequent transfer, the transferor) from the date of such transfer, shall be automatically relieved, without any further act by any person or entity, of all liability for the performance of the obligations of the Landlord hereunder which may accrue after the date of such transfer. After the date of any such transfer, the term "Landlord" as used herein shall mean the transferee of such interest in the Premises.

## ARTICLE 15 GENERAL PROVISIONS

15.1 Landlord's Right to Enter: Landlord and its agents may enter the Premises at any reasonable time after giving at least 24 hours' prior notice to Tenant (and immediately in the case of emergency) for the purpose of: (i) inspecting the same; (ii) posting notices of non-responsibility; (iii) supplying any service to be provided by Landlord to Tenant; (iv) showing the Premises to prospective purchasers, mortgagees or tenants; (v) making necessary alterations, additions or repairs;

(vi) performing Tenant's obligations when Tenant has failed to do so after written notice from Landlord; (vii) placing upon the Premises ordinary "for lease" signs or "for sale" signs; and (viii) responding to an emergency. Landlord shall have the right to use any and all means Landlord may deem necessary and proper to enter the Premises in an emergency. Any entry into the Premises obtained by Landlord in accordance with this Section 15.1 shall not be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises.

15.2 Surrender of the Premises: Upon the expiration or sooner termination of this Lease, Tenant shall vacate and surrender the Premises to Landlord in the same condition as existed at the Commencement Date, except for (i) reasonable wear and tear, (ii) damage caused by any peril or condemnation, and (iii) contamination by Hazardous Materials for which Tenant is not responsible pursuant to Section 7.2A or Section 7.2B. In this regard, normal wear and tear shall be construed to mean wear and tear caused to the Premises by the natural aging process which occurs in spite of prudent application of the best standards for maintenance, repair and janitorial practices, and does not include items of neglected or deferred maintenance. In any event, Tenant shall cause the following to be done prior to the expiration or the sooner termination of this Lease: (i) all interior walls shall be painted or cleaned so that they appear freshly painted; (ii) all tiled floors shall be cleaned and waxed; (iii) all carpets shall be cleaned and shampooed; (iv) all broken, marred, stained or nonconforming acoustical ceiling tiles shall be replaced; (v) all interior and exterior windows shall be washed; (vi) the HVAC system shall be serviced by a reputable and licensed service firm and left in good operating condition and repair as so certified by such firm; and (vii) the plumbing and electrical systems and lighting shall be placed in good order and repair (including replacement of any burned out, discolored or broken light bulbs, ballasts, or lenses). If Landlord so requests, Tenant shall, prior to the expiration or sooner termination of this Lease, (i) remove any Tenant's Alterations which Tenant is required to remove pursuant to Section 5.2 and repair all damage caused by such removal. If the Premises are not so surrendered at the termination of this Lease, Tenant shall continue to be responsible for the payment of Rent until the Premises are so surrendered in accordance with said provisions and Tenant shall be liable to Landlord for all costs incurred by Landlord in returning the Premises to the required condition, plus interest on all costs incurred at the Agreed Interest Rate. Tenant shall indemnify Landlord against loss or liability resulting from delay by Tenant in so surrendering the Premises, including, without limitation, any claims made by any succeeding tenant or losses to Landlord due to lost opportunities to lease to succeeding tenants and losses and damages suffered by Landlord due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

15.3 Holding Over: This Lease shall terminate without further notice at the expiration of the Lease Term. Any holding over by Tenant after expiration of the Lease Term shall not constitute a renewal or extension of the Lease or give Tenant any rights in or to the Premises except as expressly provided in this Lease. Any holding over after such expiration with the written consent of Landlord shall be construed to be a tenancy from month to month on the same terms and conditions herein specified insofar as applicable except that Base Monthly Rent shall be increased to an amount equal to 150% of the greater of (a) the Base Monthly Rent payable during the last full calendar month of

the Lease Term, or (b) the then prevailing fair market rent. In any event, no provision of this Section 15.3 shall be deemed to waive Landlord's right of reentry or any other right under this Lease or at law. Additionally, in the event that upon termination of the Lease, Tenant has not fulfilled its obligation with respect to repairs and cleanup of the Premises or any other Tenant obligations as set forth in this Lease, then Landlord shall have the right to perform any such obligations as it deems necessary at Tenant's sole cost and expense, and any time required by Landlord to complete such obligations shall be considered a period of holding over and the terms of this section shall apply.

15.4 Subordination: Tenant covenants and agrees that this Lease is subject and subordinate to any Security Instrument and to any advances made on the security thereof and to any and all increases, renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self operative and no further instrument of subordination need be required by any owner or holder of any such ground lease, mortgage, deed of trust or security agreement. In confirmation of such subordination, at Landlord's request, Tenant shall execute promptly any appropriate certificate or instrument that Landlord may request and Tenant hereby constitutes and appoints Landlord as Tenant's attorney-in-fact to execute any such certificate or instrument for and on behalf of Tenant. Notwithstanding the foregoing, any Lender shall have the right to elect, by written notice given to Tenant, to have this Lease be superior to its Security Instrument. In the event of the enforcement by any holder of the Security Instrument ("**Successor Landlord**") of the remedies provided for by law or by such Security Instrument, at Successor Landlord's election, Tenant will attorn to and recognize as its landlord, and become the tenant of, such Successor Landlord, without any change in the terms or other provisions of this Lease or without the execution of any further instrument by Tenant; provided, however, that such Successor Landlord or successor in interest shall not be bound by (a) any payment of Base Monthly Rent or Additional Rent for more than one (1) month in advance, (b) any amendment or modification of this Lease, or any waiver of the terms of this Lease, made without the written consent of such Successor Landlord, (c) any offset right that Tenant may have against any former Landlord relating to any event or occurrence before the date of attornment, including any claim for damages of any kind whatsoever as the result of any breach by a former Landlord that occurred before the date of attornment; (d) any obligation to pay Tenant any sum(s) that any former Landlord owed to Tenant unless such sums, if any, shall have actually been delivered to Successor Landlord by way of an assumption of escrow accounts or otherwise, (e) any obligation to pay Tenant any security deposited with a former Landlord, unless such security was actually delivered to such Successor Landlord; (f) any obligation to commence or complete any initial construction of improvements in the Premises or any expansion or rehabilitation of existing improvements thereon; or (g) any obligation arising from representations and warranties related to a former Landlord. Upon request by such Successor Landlord, whether before or after the enforcement of its remedies, Tenant shall execute and deliver an instrument or instruments confirming and evidencing the attornment herein set forth, and Tenant hereby irrevocably appoints Landlord as Tenant's agent and attorney-in-fact for the purpose of executing, acknowledging and delivering any such instruments and certificates. This Lease is further subject to and subordinate to all matters of record.

If the Project is currently encumbered by a Security Instrument, Landlord shall request the beneficiary (or its servicer) of the existing Security Instrument that encumbers the Project as of the

date hereof to issue its standard subordination, non-disturbance and attornment agreement (“SNDA”), pursuant to which such beneficiary agrees to recognize this Lease in the event of default under such Security Instrument or sale under such Security Instrument, so long as Tenant is not in default hereunder. Landlord’s sole obligation under this section is to request such SNDA and follow the process of such lender for issuance of a SNDA. The failure of such lender to issue its SNDA shall not relieve Tenant of any of its obligations under this Lease. Landlord will pay for the basic administrative fee, if any, to the lender and costs for such Lender’s attorney to prepare the SNDA, but Tenant shall be responsible for paying all additional costs incurred to negotiate any changes in the lender’s form of SNDA.

15.5 Lender Protection: Tenant will give the owners or holders of any Security Instrument (“Lienholder”), by registered mail, a copy of any notice of default Tenant serves on Landlord, provided that Landlord or Lienholder previously notified Tenant (by way of notice of assignment of rents and leases or otherwise) of the address of Lienholder. Tenant further agrees that if Landlord fails to cure such default within a reasonable period of time after Landlord’s receipt of such notice of default from Tenant, then Tenant will provide written notice of such failure to Lienholder and Lienholder will have an additional thirty (30) days within which to cure the default. Lienholder shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent that Lienholder agrees or undertakes otherwise in writing. If the default cannot be cured within the additional thirty (30) day period, then Lienholder will have such additional time as may be necessary to effect the cure if, within the thirty (30) day period, Lienholder has commenced and is diligently pursuing the cure (including, without limitation, commencing foreclosure proceedings if necessary to effect the cure).

15.6 Estoppel Certificates and Financial Statements: At all times during the Lease Term, Tenant agrees, following any request by Landlord, promptly to execute and deliver to Landlord within 15 days following delivery of such request an estoppel certificate: (i) certifying that this Lease is unmodified and in full force and effect or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect, (ii) stating the date to which the rent and other charges are paid in advance, if any, (iii) acknowledging that there are not, to Tenant’s knowledge, any uncured defaults on the part of any party hereunder or, if there are uncured defaults, specifying the nature of such defaults, and (iv) certifying such other information about the Lease as may be reasonably required by Landlord. A failure to deliver an estoppel certificate within 15 days after delivery of a request therefor shall be a conclusive admission that, as of the date of the request for such statement: (i) this Lease is unmodified except as may be represented by Landlord in said request and is in full force and effect, (ii) there are no uncured defaults in Landlord’s performance, and (iii) no rent has been paid more than 30 days in advance. At any time during the Lease Term Tenant shall, upon 15 days’ prior written notice from Landlord, provide Tenant’s most recent financial statement and financial statements covering the 24 month period prior to the date of such most recent financial statement to any existing Lender or to any potential Lender or buyer of the Premises. Such statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Tenant, shall be audited by an independent certified public accountant.

Tenant hereby authorizes Landlord to obtain one or more credit reports on Tenant at any time, and shall execute such further authorizations as Landlord may reasonably require in order to obtain a credit report.

15.7 Consent: Whenever Landlord's approval or consent is required by this Lease, such approval or consent may be exercised in Landlord's sole and absolute discretion, unless a different standard has been expressly provided in this Lease for the particular matter requiring Landlord's consent or approval.

15.8 Notices: Any notice required or desired to be given regarding this Lease shall be in writing and may be given by personal delivery, by facsimile, by courier service, or by mail. A notice shall be deemed to have been given (i) on the third business day after mailing if such notice was deposited in the United States mail, certified or registered, postage prepaid, addressed to the party to be served at its Address for Notices specified in Section Q or Section R of the Summary (as applicable), (ii) when delivered if given by personal delivery, and (iii) in all other cases when actually received at the party's Address for Notices. Either party may change its address by giving notice of the same in accordance with this Section 15.8, provided, however, that any address to which notices may be sent must be a California address.

15.9 Attorneys' Fees: In the event either Landlord or Tenant shall bring any action or legal proceeding for an alleged breach of any provision of this Lease, to recover rent, to terminate this Lease or otherwise to enforce, protect or establish any term or covenant of this Lease, the prevailing party shall be entitled to recover as a part of such action or proceeding, or in a separate action brought for that purpose, reasonable attorneys' fees, court costs, and experts' fees as may be fixed by the court.

15.10 Authority: If Tenant is a corporation, limited liability company, partnership or other entity, each individual executing this Lease on behalf of said organization represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said organization in accordance with a duly adopted resolution or other applicable authorization of said organization, and that this Lease is binding upon said organization in accordance with its terms. Further, Tenant shall, within thirty (30) days after execution of this Lease, deliver to Landlord a certified copy of a resolution or other applicable authorization of said organization authorizing or ratifying the execution of this Lease.

15.11 Miscellaneous: Should any provision of this Lease prove to be invalid or illegal, such invalidity or illegality shall in no way affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect. Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor. The captions used in this Lease are for convenience only and shall not be considered in the construction or interpretation of any provision hereof. Any executed copy of this Lease shall be deemed an original for all purposes. This Lease shall, subject to the provisions regarding assignment, apply to and bind the respective heirs, successors, executors, administrators and assigns of Landlord and Tenant. "**Party**" shall mean Landlord or Tenant, as the context implies. If Tenant consists of more than one person or entity, then all members of Tenant shall be jointly and severally liable hereunder.

This Lease shall be construed and enforced in accordance with the laws of the State of California. The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against either Landlord or Tenant. When the context of this Lease requires, the neuter gender includes the masculine, the feminine, a partnership or corporation or joint venture, and the singular includes the plural. The terms “shall”, “will” and “agree” are mandatory. The term “may” is permissive. When a party is required to do something by this Lease, it shall do so at its sole cost and expense without right of reimbursement from the other party unless a provision of this Lease expressly requires reimbursement. Landlord and Tenant agree that (i) the gross leasable area of the Premises includes any atriums, depressed loading docks, covered entrances or egresses, and covered loading areas, (ii) each has had an opportunity to determine to its satisfaction the actual area of the Project and the Premises, (iii) all measurements of area contained in this Lease are conclusively agreed to be correct and binding upon the parties, even if a subsequent measurement of any one of these areas determines that it is more or less than the amount of area reflected in this Lease, and (iv) any such subsequent determination that the area is more or less than shown in this Lease shall not result in a change in any of the computations of rent, improvement allowances, or other matters described in this Lease where area is a factor. Where a party hereto is obligated not to perform any act, such party is also obligated to restrain any others within its control from performing said act, including the Agents of such party. Landlord shall not become or be deemed a partner or a joint venturer with Tenant by reason of the provisions of this Lease.

15.12 Termination by Exercise of Right: If this Lease is terminated pursuant to its terms by the proper exercise of a right to terminate specifically granted to Landlord or Tenant by this Lease, then this Lease shall terminate 30 days after the date the right to terminate is properly exercised (unless another date is specified in that part of the Lease creating the right, in which event the date so specified for termination shall prevail), the rent and all other charges due hereunder shall be prorated as of the date of termination, and neither Landlord nor Tenant shall have any further rights or obligations under this Lease except for those that have accrued prior to the date of termination or those obligations which this Lease specifically provides are to survive termination. This ¶15.12 does not apply to a termination of this Lease by Landlord as a result of an Event of Tenant’s Default.

15.13 Brokerage Commissions: Landlord and Tenant each represents and warrants to the other party that it has not authorized, retained or employed, or acted by implication to authorize, retain or employ, any real estate broker or salesman to act for it or on its behalf in connection with this Lease so as to cause the other party to be responsible for the payment of a brokerage commission, except for the Retained Real Estate Broker(s) identified in the Summary to this Lease. Landlord and Tenant shall each indemnify, defend and hold the other party harmless from and against any and all claims by any real estate broker or salesman (other than the Retained Real Estate Brokers) whom the indemnifying party authorized, retained or employed, or acted by implication to authorize, retain or employ, to act for the indemnifying party in connection with this Lease

15.14 Force Majeure: Any prevention, delay or stoppage due to strikes, lock-outs, inclement weather, labor disputes, inability to obtain labor, materials, fuels or reasonable substitutes therefor, governmental restrictions, regulations, controls, action or inaction, civil commotion, fire or other acts of God, and other causes beyond the reasonable control of Landlord (except financial inability)

shall excuse the performance by Landlord, for a period equal to the period of any said prevention, delay or stoppage, of any obligation hereunder.

15.15 Entire Agreement: This Lease constitutes the entire agreement between the parties, and there are no binding agreements or representations between the parties except as expressed herein. Tenant acknowledges that neither Landlord nor Landlord's Agents has made any legally binding representation or warranty as to any matter except those expressly set forth herein, including any warranty as to (i) whether the Premises may be used for Tenant's intended use under existing Law, (ii) the suitability of the Premises or the Project for the conduct of Tenant's business, or (iii) the condition of any improvements. There are no oral agreements between Landlord and Tenant affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between Landlord and Tenant or displayed by Landlord to Tenant with respect to the subject matter of this Lease. This instrument shall not be legally binding until it is executed by both Landlord and Tenant. No subsequent change or addition to this Lease shall be binding unless in writing and signed by Landlord and Tenant.

*[the balance of this page has been intentionally left blank; signature page follows]*

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease with the intent to be legally bound thereby, to be effective as of the Effective Date.

**LANDLORD:**

DWF III WALSH BOWERS, LLC,  
a Delaware limited liability company

By: Divco West Real Estate Services, Inc.,  
a Delaware corporation  
Its Agent

By: /s/ James Teng

Name: James Teng

Its: Managing Director

**TENANT:**

MIRAMAR LABS, INC.,  
a Delaware corporation

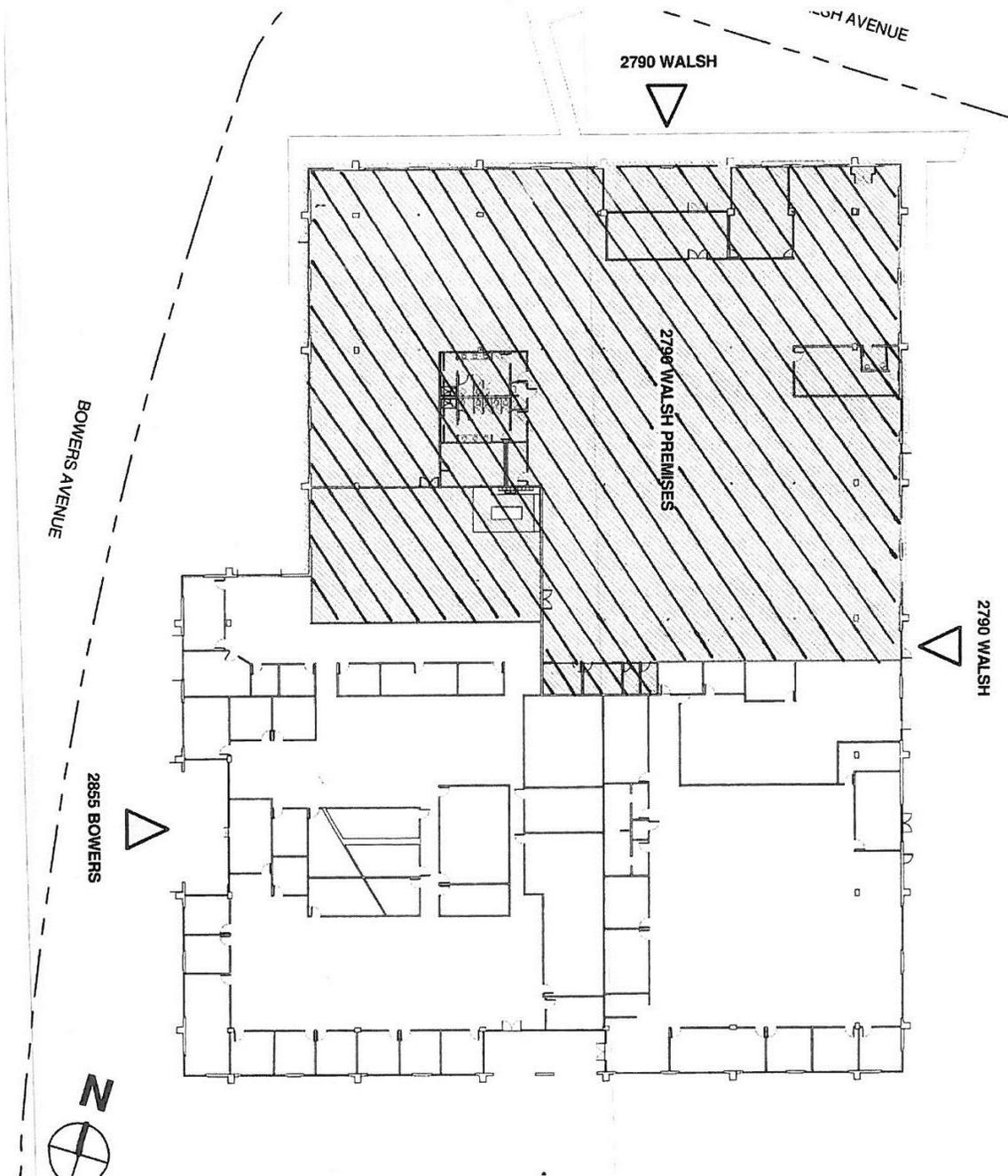
By: /s/ Brigid A. Makes

Name: Brigid A. Makes

Title: SVP & Chief Financial

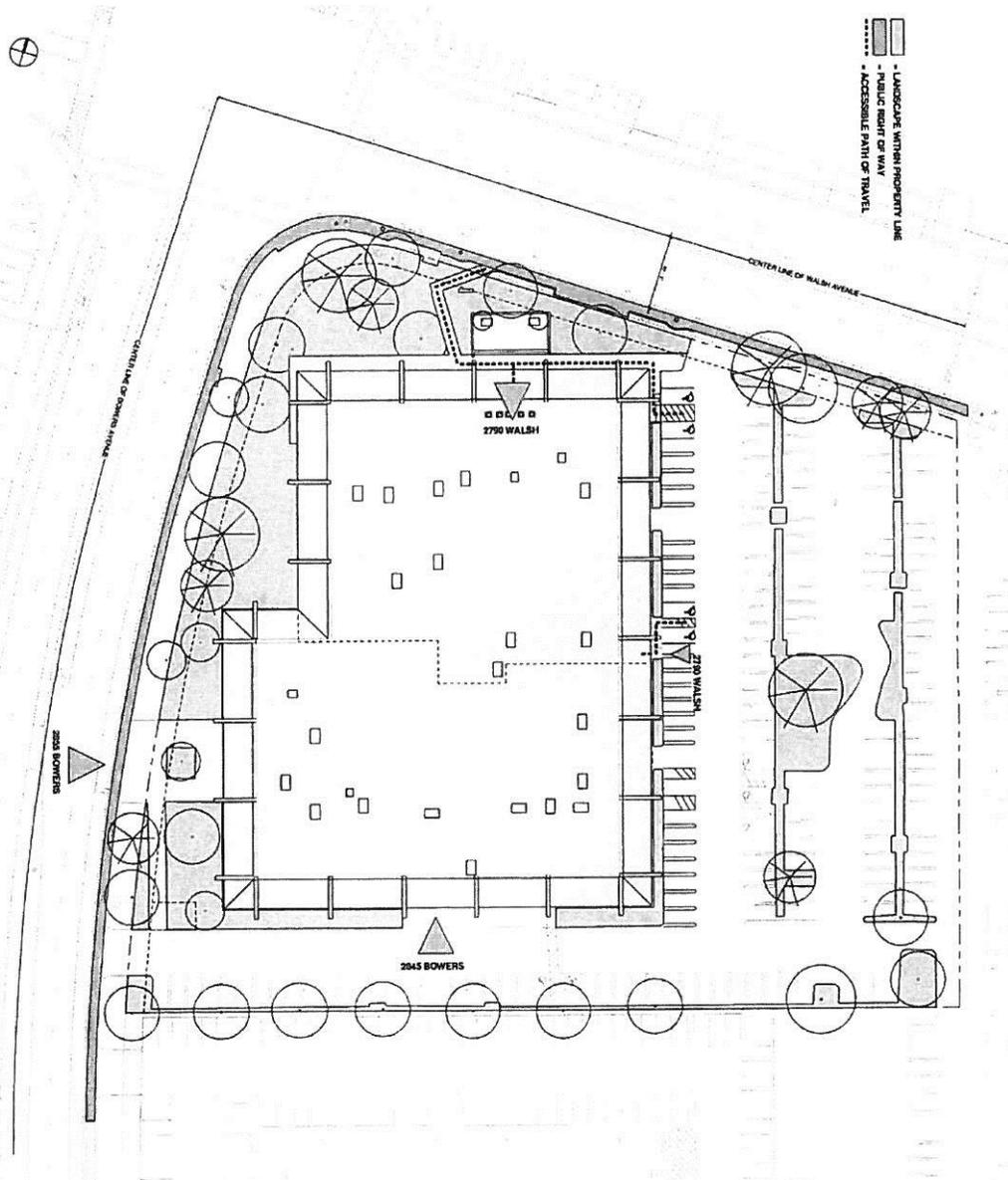
## EXHIBIT A OUTLINE OF PREMISES

Exhibit A is intended only to show the general outline of the Premises. It is not to be scaled; any measurements or distances shown should be taken as approximate. The inclusion of elevators, stairways, electrical and mechanical closets, and other similar facilities for the benefit of occupants of the Building does not mean such items are part of the Premises.



## EXHIBIT B - PROJECT SITE PLAN

Exhibit B attached hereto is intended only to show the general layout of the Complex as of the beginning of the Term of this Lease. It does not in any way supersede any of Landlord's rights set forth in the Lease with respect to arrangements and/or locations of public parts of the Building and/or Project and changes in such arrangements and/or locations. It is not to be scaled; any measurements or distances shown should be taken as approximate.



## EXHIBIT C - WORK LETTER FOR TENANT IMPROVEMENTS

(Tenant Performs)

This Exhibit C forms a part of that certain Lease (the “**Lease**”) by and between DWF III WALSH BOWERS, LLC, a Delaware limited liability company, as Landlord, and MIRAMAR LABS, INC., a Delaware corporation, as Tenant, to which this Exhibit is attached. If there is any conflict between this Exhibit and the Lease regarding the construction of the Tenant Improvements (hereinafter defined), this Exhibit shall govern. All capitalized terms referred to in this Exhibit shall have the same meaning provided in the Lease, except where expressly provided to the contrary in this Exhibit.

### ARTICLE 1 DEFINITIONS

1.1 Additional Definitions. Each of the following terms shall have the following meaning:

**Architect:** The architectural firm selected by Tenant and approved by Landlord in its good faith discretion to prepare the “Preliminary Plans” and “Final Plans” (as such terms are hereinafter defined).

**Contractor:** The general contractor selected by Tenant and approved by Landlord in its sole and absolute discretion to construct the Tenant Improvements. The general contractor must be licensed and bondable in the State of California. Tenant may request that Landlord approve three (3) or more Contractors prior to competitive bidding, in which case Tenant may select any one of the Contractors approved by Landlord.

**Landlord’s Allowance:** A total amount equal to \$292,560.00 to be paid by Landlord for the Construction Costs for the Tenant Improvements as provided in this Exhibit. Any unused portion of Landlord’s Allowance shall remain the property of Landlord, and Tenant shall have no interest in said funds. Tenant shall have until 270 days after the Delivery Date of this Lease (the “**Outside Date**”) to Substantially Complete the Tenant Improvements and use the Landlord’s Allowance for payment of Construction Costs for the Tenant Improvements. If Tenant has not Substantially Completed the Tenant Improvements and complied with the requirements in this Exhibit for payment of Landlord’s Allowance by the Outside Date, Tenant shall not be entitled to any remaining unused amount of Landlord’s Allowance.

**Substantial Completion, Substantially Complete, and Substantially Completed (or similar phrase):** The foregoing shall mean when the following have occurred or would have occurred but for any delay cause by Tenant:

(a) Tenant has delivered to Landlord a certificate from the Architect, in a form reasonably approved by Landlord, that the Tenant Improvements have been Substantially Completed substantially in accordance with the Final Plans, except “punch list” items which may be completed

within thirty (30) days without impairing Tenant's use of the Premises or a material portion thereof, and Landlord has approved of the work in its sole and absolute discretion; and

(b) Tenant has obtained from the appropriate governmental authority a final certificate of occupancy (or all building permits with all inspections approved or the equivalent) and all other approvals and permits for the Premises permitting occupancy and use of the Premises for its permitted use under the Lease.

**Tenant Improvements**: The improvements to be constructed in accordance with the Final Plans. Said work shall include architectural, mechanical and electrical work and life safety systems, and shall be in accordance with the criteria, procedures and schedules referred to in this Exhibit. The Tenant Improvements shall comply in all respects with all applicable laws, statutes, ordinances, building codes and regulations (collectively, "**Applicable Laws**").

**Construction Costs**: All costs, expenses, fees, taxes and charges to construct the Tenant Improvements, including, without limitation, the following:

- (1) architects, engineers and consultants in the preparation of the Preliminary Plans and the Final Plans, including mechanical, electrical, plumbing and structural drawings and of all other aspects of such plans for the Tenant Improvements, and for processing governmental applications and applications for payment, observing construction of the work, and other customary engineering, architectural, interior design and space planning services;
- (2) surveys, reports, environmental and other tests and investigations of the site and any improvements thereon;
- (3) labor, materials, equipment and fixtures supplied by the Contractor, its subcontractors and/or materialmen, including, without limitation, charges for a job superintendent and project representative;
- (4) the furnishing and installation of all heating, ventilation and air conditioning duct work, terminal boxes, distributing defusers and accessories required for completing the heating, ventilation and air-conditioning system in the Premises, including costs of meter and key control for after-hour usage, if required by Landlord;
- (5) all electrical circuits, wiring, lighting fixtures, and tube outlets furnished and installed throughout the Premises, including costs of meter;
- (6) all window and floor coverings in the Premises, including, without limitation, all treatment and preparatory work required for the installation of floor coverings over the concrete or other structural floor;
- (7) all fire and life safety control systems , such as fire walls, wiring and accessories installed within the Building;

(8) all plumbing, fixtures, pipes and accessories installed within the Building;

(9) fees charged by the city and/or county where the Building is located (including, without limitation, fees for building permits and approvals and plan checks) required for the work in the Building;

(10) the Construction Administrative Fee (hereinafter defined) payable to Landlord's agent and property manager;

(11) all taxes, fees, charges and levies by governmental and quasi-governmental agencies for authorization, approvals, licenses and permits; and all sales, use and excise taxes for the materials supplied and services rendered in connection with the installation and construction of the Tenant Improvements; and

(12) all costs and expenses incurred to comply with all Applicable Laws of any governmental authority for any work at the Project in order to construct the Tenant Improvements.

The term Construction Costs under this Exhibit shall not include (i) any fees, costs, expenses, compensation or other consideration payable to Tenant, or any of its officers, directors, employees or affiliates, or (ii) the cost any of Tenant's furniture, artifacts, trade fixtures, telephone and computer systems and related facilities, or equipment. Any fees or costs referred to in clauses (i) or (ii) above shall be paid by Tenant without resort to Landlord's Allowance.

## **ARTICLE 2 CONSTRUCTION OF TENANT IMPROVEMENTS**

### 2.1 Preparation of Plans.

(a) Preliminary Plans. As soon as is reasonably possible after the date of the Lease, Tenant shall submit to its Architect all additional information, including occupancy requirements for the Premises ("**Information**"), necessary to enable the Architect to prepare preliminary plans for the Tenant Improvements showing, among other things, all demising walls, corridors, entrances, exits, doors, interior design and partition, and the locations of all display and storage rooms and bathrooms. As soon as is commercially reasonable after the date hereof, Tenant shall cause the Architect to prepare preliminary plans for the Tenant Improvements and shall deliver two copies of same to Landlord for its review and written approval in its good faith discretion. Within ten (10) days after receipt of the preliminary plans, Landlord shall notify Tenant in writing that (i) Landlord approves of such preliminary plans or (ii) Landlord disapproves of such preliminary plans, the basis for disapproval and the changes requested by Landlord. If disapproved, Tenant shall cause the preliminary plans to be revised and shall submit the revised plans to Landlord for its review and approval as provided in this section. After approval of the preliminary plans as provided above, the preliminary plans shall be referred to as the "**Preliminary Plans.**"

(b) Final Plans. Tenant shall cause the Architect to prepare final working drawings, which shall be consistent with the Preliminary Plans, compatible with the design, construction and equipment of the Building, comply with all Applicable Laws, capable of logical measurement and construction, and contain all such information as may be required for obtaining all permits and other governmental approvals for the construction of the Tenant Improvements (the “**Working Drawings**”). As soon as is commercially reasonable after approval of the Preliminary Plans are approved by the parties as provided above, Tenant shall submit two copies of the Working Drawings to Landlord for its review and approval in its good faith discretion. Within ten (10) days after receipt of the Working Drawings, Landlord shall notify Tenant in writing that (i) Landlord approves of such Working Drawings, or (ii) Landlord disapproves of such Working Drawings, the basis for disapproval and the changes requested by Landlord. Tenant shall cause the Working Drawings to be revised and shall submit the revised Working Drawings to Landlord for its review and approval as provided in this section. The Working Drawings approved in writing by the parties shall be referred to as the “**Final Plans.**”

(c) General. It is the responsibility of Tenant to assure that the Final Plans and the Tenant Improvements constructed thereunder conform to all of the Applicable Laws. Tenant shall submit to Landlord one (1) reproducible and four (4) prints of the Final Plans and an electronic unlocked version in CAD format.

2.2 Selection and Approval of Certain Contractors. Any subcontractor performing any work on the life safety or alarm systems or work affecting the roof shall be subject to Landlord’s prior written approval in its sole and absolute discretion and Landlord may require the Tenant use Landlord’s contractor or a specific subcontractor for any such work. Landlord shall provide written notice of approval or disapproval within five (5) business days after Tenant’s request for such approval. The construction contract shall be subject to the prior written reasonable approval of Landlord and shall require, among other things, that the Contractor (a) obtain and deliver to Landlord evidence of insurance required by Landlord, and (b) execute, obtain and deliver to Tenant lien waivers in the form required under Applicable Law from the Contractor and all of its subcontractors and suppliers, and (c) monthly progress payments, with a ten percent (10%) retention, and (d) such other documents as the lender under any deed of trust may require.

2.3 Information Provided by Landlord. Acceptance or approval of any plan, drawing or specification, including, without limitation, the Preliminary Plans and the Final Plans, by Landlord shall not constitute the assumption of any responsibility by Landlord for the accuracy or sufficiency of such plans and material, and Tenant shall be solely responsible therefor. Tenant agrees and understands that the review of all plans pursuant to the Lease or this Exhibit by Landlord is to protect the interests of Landlord in the Building, and Landlord shall not be the guarantor of, nor responsible for, the correctness, completeness or accuracy of any such plans or compliance of such plans with Applicable Laws. Any information that may have been furnished to Tenant by Landlord or others about the mechanical, electrical, structural, plumbing or geological (including soil and sub-soil) characteristics of the Building or Project (hereinafter referred to as the “**Site Characteristics**”) are for Tenant’s convenience only, and Landlord does not represent or warrant that the Site Characteristics are accurate, complete or correct or that the Site Characteristics are as indicated. Any

information that has been furnished by Landlord to Tenant has been delivered on the expressed condition and understanding that Tenant will independently verify whether such information is accurate, complete or correct and not rely on such information provided by Landlord.

2.4 No Responsibility of Landlord. Landlord's approval of any plans, including, without limitation, the Preliminary Plans or the Final Plans, shall not: (i) constitute an opinion or agreement by Landlord that such plans and Tenant Improvements are in compliance with all Applicable Laws, (ii) impose any present or future liability on Landlord; (iii) constitute a waiver of Landlord's rights hereunder or under the Lease or this Exhibit; (iv) impose on Landlord any responsibility for a design and/or construction defect or fault in the Tenant Improvements, or (v) constitute a representation or warranty regarding the accuracy, completeness or correctness thereof.

2.5 Actual Review Costs. Tenant shall pay to Landlord its actual costs incurred by its architect in reviewing and approving the Preliminary Plans, Working Drawings and Final Plans. All such reimbursements shall be made within ten (10) days after receipt of written invoice for same.

2.6 Changes. After approval of the Preliminary Plans or Final Plans by Landlord and Tenant, any changes in the Preliminary Plans or Final Plans shall require the prior written consent of Landlord in its sole and absolute discretion and the parties shall follow the same process as was required under section 2.1 for approval of plans. Any change requested by Tenant that is approved in writing by Landlord shall be prepared by the Architect and shall be subject to the review and approval of Landlord's architect in its sole and absolute discretion. The cost of such changes, including the cost to revise such plans, obtain any additional permits and construct any additional improvements required as a result thereof, and the cost for materials and labor, and all other additional costs incurred by Landlord from resulting delays in completing the Tenant Improvements, shall be included as part of the Construction Costs for the Tenant Improvements.

2.7 Construction Budget for Tenant Improvements. After approval of the Final Plans by Landlord and Tenant as provided above, Tenant shall prepare a detailed estimate of the Construction Costs for the Tenant Improvements. Tenant shall deliver a copy of the construction budget to Landlord.

2.8 Building Permits and Approvals. Not later than after approval by Landlord and Tenant of the Final Plans and Construction Budget as provided above, Tenant or its Contractor shall submit the Final Plans to the appropriate governmental body for plan checking and all building permits and other governmental and quasi-governmental approvals.

2.9 Conduct of Work. Tenant shall confine the construction activity to within the Premises as much as possible and shall work in an orderly manner removing trash and debris from the project on a daily basis. At no time will pipes, wires, boards or other construction materials cross public areas where harm could be caused to the public. All such work shall be undertaken in strict compliance with all Applicable Laws and Landlord rules and regulations. If Tenant fails to comply with these requirements, Landlord shall have the right, but not the obligation, to cause remedial action (at Tenant's cost) as deemed necessary by Landlord to protect the public. Tenant shall

complete construction of the Tenant Improvements free and clear of all liens, security interests and encumbrances of any kind.

(a) Pre-construction Submittals to Landlord. A minimum of ten (10) days prior to the commencement of construction, Tenant shall submit the following items to Landlord:

(1) A certificate setting forth the proposed commencement date of construction and the estimated completion dates of construction work, fixturing work and projected opening date;

(2) Certificates of all insurance required under the Lease and this Exhibit;

(3) Copies of all building permits, and all other permits and approvals required by governmental agencies to construct the Tenant Improvements; and

(4) Copies of the construction contract with Tenant's Contractor.

(b) Delays. Tenant shall with reasonable diligence prosecute construction of the Tenant Improvements to complete all work by the Commencement Date. Any delay in completing such work, including any delay as a result of governmental delays, acts of God and other events beyond the control of Tenant, shall not extend or delay the time for the commencement of payment Rent or any other sum under the Lease.

(c) Correction of Work. Landlord may reject any portion of the Tenant Improvements which is defective or not in conformity with the Final Plans. Landlord shall not be responsible for correcting the portions of the Tenant Improvements which were defective or not in compliance with the Final Plans; all such work shall be the responsibility of Tenant at its sole cost and expense.

2.10 Notice of Completion; Copy of Record set of Plans. Within ten (10) days after completion of construction of the Tenant Improvements, Tenant shall cause a notice of completion (or the equivalent notice required under local law to provide notice to all contractors, subcontractors and materialmen that the work is completed and the time for filing any mechanic's lien is running) to be recorded in the Official Records of the County where the Building is located, and shall furnish a copy thereof to Landlord upon such recordation. If Tenant fails to do so, Landlord may execute and file the same on behalf of Tenant as Tenant's agent for such purpose, at Tenant's sole cost and expense. At the conclusion of construction: (i) Tenant shall cause the Architect and Contractor (A) to update the Final Plans as necessary to reflect all changes made to the Final Plans during the course of construction, (B) to certify to the best of their knowledge that the "record-set" of as-built drawings are true and correct, which certification shall survive the expiration or termination of this Lease, and (C) to deliver to Landlord two (2) sets of copies of such record set of drawings within ninety (90) days following issuance of a certificate of occupancy for the Premises; and (ii) Tenant shall deliver to Landlord a copy of all signed building permits and certificates of occupancy, and all warranties, guaranties, and operating manuals and information relating to the improvements, equipment and systems in the Premises.

2.11 Tenant's Parties and Insurance. The Contractor and all subcontractors, laborers, materialmen, and suppliers used by Tenant collectively shall be referred to as "**Tenant's Parties**".

(a) Indemnity. Tenant's indemnity of Landlord as set forth in the Lease shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to any act or omission of Tenant or Tenant's Parties, or any one directly or indirectly employed by any of them, or in connection with Tenant's non-payment of any amount arising out of the Tenant Improvements and/or Tenant's disapproval of all or any portion of any request for payment.

(b) Requirements of Tenant's Parties. Each of Tenant's Parties shall guarantee to Tenant and for the benefit of Landlord that the portion of the Tenant Improvements for which it is responsible shall be free from any defects in workmanship and materials for a period of not less than one (1) year from the date of completion thereof. Each of Tenant's Parties shall be responsible for the replacement or repair, without additional charge, of all work done or furnished in accordance with its contract that shall become defective within one (1) year after the later to occur of (i) completion of the work performed by such contractor or subcontractors, and (ii) the date when the Tenant Improvements have been Substantially Completed. The correction of such work shall include, without additional charge, all additional expenses and damages incurred in connection with such removal or replacement of all or any part of the Tenant Improvements, and/or the Building and/or common areas that may be damaged or disturbed thereby. All such warranties or guarantees as to material or workmanship of or with respect to the Tenant Improvements shall be contained in the construction contract or subcontract and shall be written such that such guarantees or warranties shall inure to the benefit of both Landlord and Tenant, as their respective interests may appear, and can be directly enforced by either. Tenant covenants to give to Landlord any assignment or other assurances which may be necessary to effect such right of direct enforcement.

(c) Insurance Requirements. In addition to the insurance requirements set forth in the Lease, Tenant shall comply with the following requirements:

(1) General Coverages. All of Tenant's Parties shall carry worker's compensation insurance covering all of their respective employees, and shall also carry commercial liability insurance, including property damage, all with limits, in form and with companies as are required to be carried by Tenant as set forth in the Lease.

(2) Special Coverage. Tenant shall carry "Builder's All Risk" insurance in an amount approved by Landlord covering the construction of the Tenant Improvements, and such other insurance as Landlord may require. Such insurance shall be in amounts and shall include such extended coverage endorsements as may be reasonably required by Landlord including, but not limited to, the requirement that all of Tenant's Parties shall carry excess liability and Products and Completed Operation Coverage insurance, each in amounts not less than \$1,000,000 per incident, \$2,000,000 in aggregate, and in form and with companies as are required to be carried by Tenant as set forth in the Lease.

(3) General Terms. Certificates for all insurance carried pursuant to the foregoing sections shall be delivered to Landlord before the commencement of construction of the

Tenant Improvements and before the Contractor's equipment is moved onto the site. All such policies of insurance must contain a provision that the company writing said policy will give Landlord thirty (30) days' prior written notice of any cancellation or lapse of the effective date or any reduction in the amounts of such insurance. In the event that the Tenant Improvements are damaged by any cause during the course of the construction thereof, Tenant shall immediately repair the same at Tenant's sole cost and expense. Tenant's Parties shall maintain all of the foregoing insurance coverage in force until the Tenant Improvements are fully completed and accepted by Landlord, except for any Products and Completed Operation Coverage insurance required by Landlord, which is to be maintained for ten (10) years following completion of the work and acceptance by Landlord and Tenant. All policies carried under this section shall insure Landlord and Tenant, as their interests may appear, as well as Contractor and Tenant's Parties. All insurance, except Workers' Compensation, maintained by Tenant's Parties shall preclude or waive subrogation claims by the insurer against anyone insured thereunder. Such insurance shall provide that it is primary insurance as respects the Landlord and that any other insurance maintained by Landlord is excess and noncontributing with the insurance required hereunder. The requirements for the foregoing insurance shall not derogate from the provisions for indemnification of Landlord by Tenant under the Lease or this Exhibit.

2.12 Labor Matters. Tenant shall perform or cause Tenant's contractor to perform all work in the making and/or installation of any repairs, alterations or improvements in a manner so as to avoid any labor dispute which causes or is likely to cause stoppage or impairment of work or delivery service or any other services in the Project. In the event there shall be any such stoppage or impairment as the result of any such labor dispute or potential labor dispute, Tenant shall immediately undertake such actions as may be necessary to eliminate such dispute or potential dispute, including, but not limited to, (a) removing all disputants from the job site until such time as the labor dispute no longer exists, (b) seeking an injunction in the event of a breach of contract between Tenant and Tenant's contractor, and (c) filing appropriate unfair labor practice charges in the event of a union jurisdictional dispute.

2.13 Temporary Facilities During Construction. Tenant shall obtain in its name and pay for all temporary utility facilities, and the removal of debris, as necessary and required in connection with the construction of the Premises. Storage of Tenant's contractors' construction material, tools, equipment and debris shall be confined to the Premises and any other areas which may be designated for such purposes by Landlord. Landlord shall not be responsible for any loss or damage to Tenant's and/or Tenant's contractors' equipment. In no event shall any materials or debris be stored in the malls or service or exit corridors of the Project.

2.14 Miscellaneous. The Tenant Improvements shall be subject to the inspection and approval of Landlord and its supervisory personnel. All contractors engaged by Tenant shall be bondable, licensed contractors, possessing good labor relations, capable of performing quality workmanship.

15.16 Construction Administrative Fee. Landlord, or an agent of Landlord, shall be paid a construction administrative fee (the "**Construction Administrative Fee**") equal to one and one-half percent (1.5%) of the amount of the Constructions Costs for the Tenant Improvements. The

Construction Administrative Fee shall be included in the Construction Costs. Landlord shall deduct from Landlord's Allowance and pay its agent the amount of Construction Administrative Fee on a monthly basis. Tenant shall be responsible for payment of the Construction Administrative Fee to the extent Construction Costs exceed the Landlord's Allowance.

### **ARTICLE 3 PAYMENT OF CONSTRUCTIONS COSTS**

3.1 Payment of Costs. Tenant shall pay for the Tenant Improvements, except for the Landlord's Allowance which Landlord shall advance as hereinafter provided. Landlord shall only be responsible for payment of up to the amount of Landlord's Allowance for the Tenant Improvements. If the Construction Costs for the Tenant Improvements are greater than the amount of the Landlord's Allowance, Tenant shall be solely responsible for such additional costs.

3.2 Payment by Landlord. Landlord shall make one payment of the Landlord's Allowance within thirty (30) days after receipt by Landlord of (i) the final certificate of occupancy for the Premises, (ii) copies of all applicable building permits reflecting final sign-off by the local governmental authority, (iii) a copy of the as-built Final Plans for the Tenant Improvements, and (iv) unconditional lien waivers from the general contractor and all subcontractors and suppliers (v) receipt and approval by Landlord of the Architect's certificate referred to in the definition of Substantial Completion in this Exhibit, which approval shall not be unreasonably withheld.

### **ARTICLE 4 GENERAL PROVISIONS**

4.1 Bonds. Upon the request of Landlord prior to commencing construction of the Tenant Improvements, Tenant shall deliver to Landlord certified copies of a bond issued by a surety company authorized to do business in the state where the Building is located and reasonably accepted to Landlord in principal amount not less than the full amount of the Tenant Improvement Construction Costs, issued on behalf of Tenant's general contractor, naming Tenant and Landlord (and if requested by Landlord, its lender under any deed of trust or other financing instrument affecting the Project or any portion thereof) as dual obligees. Notwithstanding the delivery by Tenant of such bond, Tenant shall pay promptly for all labor and materials supplied to Tenant in connection with the construction of the Tenant Improvements, shall not cause or permit any liens for such labor or materials to attach to the Land or the Building, and shall bond or discharge any such lien which may be filed or recorded within fifteen (15) days after Tenant receives actual notice of such filing or recording.

4.2 Tenant's Representative. Tenant hereby authorizes Shannon Holt of Tenant as Tenant's representative to act on its behalf and represents its interests with respect to all matters which pertain to the construction of Tenant Improvements, and to make decisions binding upon Tenant with respect to such matters.

**EXHIBIT D - ACCEPTANCE AGREEMENT**

**ACCEPTANCE AGREEMENT**

This Acceptance Agreement is made as of \_\_\_\_\_, by and between the parties hereto with regard to that certain Lease dated \_\_\_\_\_, by and between DWF III Walsh Bowers, LLC, a Delaware limited liability company, as Landlord (“**Landlord**”), and Miramar Labs, Inc., a Delaware corporation, as Tenant (“**Tenant**”), affecting those premises located at 2790 Walsh Avenue, Santa Clara, California. The parties hereto agree as follows:

1. Landlord delivered possession of the Premises to Tenant on \_\_\_\_\_, with all improvements and work, if any, required of completed in a good and workmanlike manner and otherwise in the condition required under the Lease and Tenant accepted possession of the Premises.
2. The Commencement Date of the Lease Term for the Premises is \_\_\_\_\_, and the Lease Term for the Premises expires on \_\_\_\_\_, unless sooner terminated according to the terms of the Lease.
3. Each party represents and warrants to the other that it is duly authorized to enter into this document and perform its obligations without the consent or approval of any other party and that the person signing on its behalf is duly authorized to sign on behalf of such party.

**LANDLORD:**

**TENANT:**

DWF III WALSH BOWERS, LLC,  
a Delaware limited liability company

MIRAMAR LABS, INC.,  
a Delaware corporation

By: Divco West Real Estate Services, Inc.,  
a Delaware corporation  
Its Agent

By: \_\_\_\_\_

Name: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Name: \_\_\_\_\_

Dated: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

## EXHIBIT E — OPTION TO EXTEND

This Exhibit E (this “**Exhibit**”) is made in connection with and is a part of that certain Lease by and between DWF III Walsh Bowers, LLC, a Delaware limited liability company, as Landlord, and Miramar Labs, Inc., a Delaware, as Tenant, (the “**Lease**”).

1. Definitions and Conflict. All capitalized terms referred to in this Exhibit shall have the same meaning as provided in the Lease, except as expressly provided to the contrary in this Exhibit. In case of any conflict between any term or provision of the Lease and any exhibits attached thereto and this Exhibit, this Exhibit shall control.

2. Option to Extend and Rent During the Extended Period: Tenant shall have one option to extend the original Term of the Lease for a period of five (5) years (the period shall be referred to as the “**Extension Period**”) by giving written notice of exercise of such option (“**Extension Option Notice**”) at least two hundred seventy (270) days, but not more than three hundred sixty-five (365) days, prior to the expiration of the Term. The Extension Period shall commence, if at all, immediately following the expiration of the original Term of the Lease. If Tenant is in default under any term or provision of the Lease on the date of giving an Extension Option Notice, or if Tenant is in default under any term or provision of the Lease on the date of the applicable Extension Period is to commence, the Extension Period at the option of Landlord shall not commence and the Lease shall expire at the end of original Term. The Extension Period shall be upon all of the terms and provisions of the Lease, except that (i) the Base Monthly Rent during such Extension Period shall be one hundred percent (100%) of then Fair Market Rent, but not less than the Base Monthly Rent payable during the last month prior to the commencement of the Extension Period, (ii) any work, allowance, free rent, or concession provided by Landlord in connection with the commencement of the initial Term shall not apply; and (iii) Tenant shall not have any additional option to extend.

2.1 Fair Market Rent. The term “**Fair Market Rent**” for purposes of determining Base Monthly Rent during the Extension Period shall mean the greater of (i) the Base Monthly Rent payable during the last month prior to the commencement of the Extension Period, or (ii) the base monthly rent generally applicable to similar triple net leases at comparable class buildings of comparable size, age, quality of the Premises in the Santa Clara area projected as of the first day of the Extension Period by giving due consideration for the quality of the Building and improvements therein (including the quality of the then existing improvements in the Premises), the quality of the tenants’ credit, for a term comparable to the Extension Period at the time the commencement of the Extension Period is scheduled to commence, and for comparable space that is not subleased or subject to another party’s expansion rights or not leased to a tenant that holds an ownership interest in the landlord, without any deduction for amortization or cost of tenant improvements, allowances, capital improvements or commissions whether or not incurred by Landlord, and otherwise subject to the terms and conditions of this Lease that will be applicable during the Extension Period.

2.2 Procedure to Determine Fair Market Rent. Landlord shall notify Tenant in writing of Landlord’s determination of the Fair Market Rent (“**Landlord’s FMR**”) within thirty (30) days after receipt of the Extension Option Notice. Within thirty (30) days after receipt of such written notice of Landlord’s FMR, Tenant shall have the right either to: (i) accept Landlord’s FMR,

or (ii) elect to have the Fair Market Rent determined in accordance with the appraisal procedure set forth below. The failure of Tenant to provide written notice of its election under the preceding sentence shall be deemed an acceptance of Landlord's FMR. The election (or deemed election ) by Tenant under this section shall be non-revocable and binding on the parties.

2.3 Appraisers. If Tenant has elected to have the Fair Market Rent determined by an appraisal, then within ten (10) days after receipt of Tenant's written notice of such an election, each party, by giving written notice to the other party, shall appoint a broker to render a written opinion of the Fair Market Rent for the Extension Period. Each broker must be a real estate broker licensed in the State where the Building is located for at least five years and with at least five years' experience in the appraisal of rental rates of leases or in the leasing of space in commercial buildings in the area in which the Building is located and otherwise unaffiliated with either Landlord or Tenant. The two brokers shall render their written opinion of the Fair Market Rent for the Extension Period to Landlord and Tenant within thirty (30) days after the appointment of the second broker. If the Fair Market Rent of each broker is within three percent (3%) of each other, then the average of the two appraisals of Fair Market Rent shall be the Fair Market Rent for the Extension Period. If one party does not appoint its broker as provided above, then the one appointed shall determine the Fair Market Rent. The Fair Market Rent so determined under this section shall be binding on Landlord and Tenant.

2.4 Third Appraiser. If the Fair Market Rent determined by the brokers is more than three percent (3%) apart, then the two brokers shall pick a third broker within ten (10) days after the two brokers have rendered their opinions of Fair Market Rent as provided above. If the two brokers are unable to agree on the third broker within said ten (10) day period, Landlord and Tenant shall mutually agree on the third broker within ten (10) days thereafter. If the parties do not agree on a third qualified broker within ten (10) days, then at the request of either Landlord or Tenant, such third broker shall be promptly appointed by the then Presiding Judge of the Superior Court of the State of California for the County where the Building is located. The third broker shall be a person who has not previously acted in such capacity for either party and must meet the qualifications stated above.

2.5 Impartial Appraisal. Within thirty (30) days after its appointment, the third broker (the "**Third Party**"), shall render its written opinion by selecting the Fair Market Rent made Landlord's or Tenant's broker to be the Fair Market Rent for the Extension Period. The Third Party may not offer any different opinion or recommendation of Fair Market Rent. The Fair Market Rent determined in accordance with the foregoing procedure shall be binding on the parties.

2.6 Appraisal Costs. Each party shall bear the cost of its own appraiser and one-half (1/2) the cost of the third appraiser, unless the Fair Market Rent of the Third Opinion is within five percent (5%) Landlord's FMR, in which case Tenant shall bear the entire cost of the third appraiser.

2.7 Acknowledgment of Rent. After the Fair Market Rent for the Extension Period has been established in accordance with the foregoing procedure, Landlord and Tenant shall

promptly execute an amendment to the Lease to reflect the minimum monthly rent for the Extension Period.

2.8 Personal Option. The foregoing option to extend is personal to the original Tenant signing the Lease (and its affiliates), but may not be assigned or transferred to or exercised by any other assignee, sublessee or transferee under a Transfer.

**EXHIBIT F — HAZARDOUS MATERIAL DISCLOSURE CERTIFICATE**

Initially, the information provided by you in this Hazardous Materials Disclosure Certificate is necessary for the Landlord (identified below) to evaluate and finalize a lease agreement with you as Tenant. After a lease agreement is signed by you and the Landlord (the "Lease Agreement"), on an annual basis in accordance with the Lease Agreement, you are to provide an update to the information initially provided by you in this certificate. Any and all capitalized terms used herein, which are not otherwise defined herein, shall have the same meaning ascribed to such term in the Lease Agreement. Any questions regarding this certificate should be directed to, and when completed, the certificate should be delivered to:

Landlord: DWF III Walsh Bowers, LLC  
c/o Divco West Real Estate Services, Inc.  
575 Market Street, 35th Floor  
San Francisco, CA 94015  
Attn.: Property Management

Name of (Prospective) Tenant: Miramar Labs

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Contact Person, Title and Telephone Number(s): \_\_\_\_\_  
\_\_\_\_\_

Contact Person for Hazardous Waste Materials Management and Manifests and Telephone Number(s):  
\_\_\_\_\_  
\_\_\_\_\_

Address of (Prospective) Premises: 2790 Walsh Avenue, Santa Clara, California.

Length of (Prospective) Initial Term: \_\_\_\_\_

**1. General Information:**

Describe the initial proposed operations to take place in, on, or about the Premises, including, without limitation, principal products processed, manufactured or assembled services and activities to be provided or otherwise conducted. Existing Tenants should describe any proposed changes to on-going operations.

\_\_\_\_\_  
\_\_\_\_\_

**2. Use, Storage and Disposal of Hazardous Materials**

2.1 Will any Hazardous Materials be used, generated, stored or disposed of in, on or about the Premises? Existing Tenants should describe any Hazardous Materials which continue to be used, generated, stored or disposed of in, on or about the Premises.

Wastes Yes [ ] No [ ]  
Chemical Products Yes [ ] No [ ]  
Other Yes [ ] No [ ]

If Yes is marked, please explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2.2 If Yes is marked in Section 2.1, ***attach as Schedule 1 a list of any Hazardous Materials*** to be used, generated, stored or disposed of in, on or about the Premises, including the applicable hazard class and an estimate of the quantities of such Hazardous Materials at any given time; estimated annual throughput; the proposed location(s) and method of storage (excluding nominal amounts of ordinary household cleaners and janitorial supplies which are not regulated by any Environmental Laws); and the proposed location(s) and method of disposal for each Hazardous Material, including, the estimated frequency, and the proposed contractors or subcontractors. Existing Tenants should attach a list setting forth the information requested above and such list should include actual data from on-going operations and the identification of any variations in such information from the prior year's certificate.

**3. Storage Tanks and Sumps**

3.1 Is any above or below ground storage of gasoline, diesel, petroleum, or other Hazardous Materials in tanks or sumps proposed in, on or about the Premises? Existing Tenants should describe any such actual or proposed activities.

Yes [ ] No [ ]

If yes, please explain: \_\_\_\_\_

**4. Waste Management**

4.1 Has your company been issued an EPA Hazardous Waste Generator I.D. Number? Existing Tenants should describe any additional identification numbers issued since the previous certificate.

Yes [ ] No [ ]

4.2 Has your company filed a biennial or quarterly reports as a hazardous waste generator? Existing Tenants should describe any new reports filed.

Yes [ ] No [ ]

If yes, attach a copy of the most recent report filed.

**5. Wastewater Treatment and Discharge**

5.1 Will your company discharge wastewater or other wastes to:

\_\_\_\_\_ storm drain? \_\_\_\_\_ sewer?  
\_\_\_\_\_ surface water? \_\_\_\_\_ no wastewater or other wastes discharged.

Existing Tenants should indicate any actual discharges. If so, describe the nature of any proposed or actual discharge(s).

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5.2 Will any such wastewater or waste be treated before discharge?

Yes [ ] No [ ]

If yes, describe the type of treatment proposed to be conducted. Existing Tenants should describe the actual treatment conducted.

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**6. Air Discharges**

6.1 Do you plan for any air filtration systems or stacks to be used in your company's operations in, on or about the Premises that will discharge into the air; and will such air emissions be monitored? Existing Tenants should indicate whether or not there are any such air filtration systems or stacks in use in, on or about the Premises which discharge into the air and whether such air emissions are being monitored.

Yes [ ]      No [ ]

If yes, please describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6.2                      Do you propose to operate any of the following types of equipment, or any other equipment requiring an air emissions permit? Existing Tenants should specify any such equipment being operated in, on or about the Premises.

_____ Spray booth(s)	_____ Incinerator(s)
_____ Dip tank(s)	_____ Other (Please describe)
_____ Drying oven(s)	_____ No Equipment Requiring Air Permits

If yes, please describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## 7.      **Hazardous Materials Disclosures**

7.1                      Has your company prepared or will it be required to prepare a Hazardous Materials management plan (“Management Plan”) pursuant to Fire Department or other governmental or regulatory agencies’ requirements? Existing Tenants should indicate whether or not a Management Plan is required and has been prepared.

Yes [ ]      No [ ]

If yes, attach a copy of the Management Plan. Existing Tenants should attach a copy of any required updates to the Management Plan.

7.2                      Are any of the Hazardous Materials, and in particular chemicals, proposed to be used in your operations in, on or about the Premises regulated under Proposition 65? Existing Tenants should indicate whether or not there are any new Hazardous Materials being so used which are regulated under Proposition 65.

Yes [ ]      No [ ]

If yes, please explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**8. Enforcement Actions and Complaints**

8.1 With respect to Hazardous Materials or Environmental Laws, has your company ever been subject to any agency enforcement actions, administrative orders, or consent decrees or has your company received requests for information, notice or demand letters, or any other inquiries regarding its operations? Existing Tenants should indicate whether or not any such actions, orders or decrees have been, or are in the process of being, undertaken or if any such requests have been received.

Yes [ ] No [ ]

If yes, describe the actions, orders or decrees and any continuing compliance obligations imposed as a result of these actions, orders or decrees and also describe any requests, notices or demands, and attach a copy of all such documents. Existing Tenants should describe and attach a copy of any new actions, orders, decrees, requests, notices or demands not already delivered to Landlord pursuant to the Lease Agreement.

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8.2 Have there ever been, or are there now pending, any lawsuits against your company regarding any environmental or health and safety concerns?

Yes [ ] No [ ]

If yes, describe any such lawsuits and attach copies of the complaint (s), cross-complaint(s), pleadings and all other documents related thereto as requested by Landlord. Existing Tenants should describe and attach a copy of any new complaint(s), cross-complaint(s), pleadings and other related documents not already delivered to Landlord pursuant to the Lease Agreement.

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8.3 Have there been any problems or complaints from adjacent Tenants, owners or other neighbors at your company's current facility with regard to environmental or health and safety concerns? Existing Tenants should indicate whether or not there have been any such problems or complaints from adjacent Tenants, owners or other neighbors at, about or near the Premises.

Yes [ ] No [ ]

If yes, please describe. Existing Tenants should describe any such problems or complaints not already disclosed to Landlord under the provisions of the Lease Agreement.

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## **9. Permits and Licenses**

9.1 Attach copies of all Hazardous Materials permits and licenses including a Transporter Permit number issued to your company with respect to its proposed operations in, on or about the Premises, including, without limitation, any wastewater discharge permits, air emissions permits, and use permits or approvals. Existing Tenants should attach copies of any new permits and licenses as well as any renewals of permits or licenses previously issued.

The undersigned hereby acknowledges and agrees that (A) this Hazardous Materials Disclosure Certificate is being delivered in connection with, and as required by, Landlord in connection with the evaluation and finalization of a Lease Agreement and will be attached thereto as an exhibit; (B) that this Hazardous Materials Disclosure Certificate is being delivered in accordance with, and as required by, the provisions of the Lease Agreement; and (C) that Tenant shall have and retain full and complete responsibility and liability with respect to any of the Hazardous Materials disclosed in the Hazardous Material Certificate notwithstanding Landlord's/Tenant's receipt and/or approval of such certificate. Tenant further agrees that none of the following described acts or events shall be construed or otherwise interpreted as either (a) excusing, diminishing or otherwise limiting Tenant from the requirement to fully and faithfully perform its obligations under the Lease with respect to Hazardous Materials, or (b) imposing upon Landlord, directly or indirectly, any duty or liability with respect to any such Hazardous Materials, including, without limitation, any duty on Landlord to investigate or otherwise verify the accuracy of the representations and statements made therein or to ensure that Tenant is in compliance with all Environmental Laws; (i) the delivery of such certificate to Landlord and/or Landlord's acceptance of such certificate, (ii) Landlord's review and approval of such certificate, (iii) Landlord's failure to obtain such certificate from Tenant at any time, or (iv) Landlord's actual or constructive knowledge of the types and quantities of Hazardous Materials being used, stored, generated, disposed of or transported on or about the Premises by Tenant or Tenant's Representatives. Notwithstanding the foregoing or anything to the contrary contained herein, the undersigned acknowledges and agrees that Landlord and its partners, lenders and representatives may, and will, rely upon the statements, representations, warranties, and certifications made herein and the truthfulness thereof in entering into the Lease Agreement and the continuance thereof throughout the term, and any renewals thereof, of the Lease Agreement.

I (print name) \_\_\_\_\_, acting with full authority to bind the (proposed) Tenant and on behalf of the (proposed) Tenant, certify, represent and warrant that the information contained in this certificate is true and correct.

(Prospective) Tenant:

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

SCHEDULE I  
TO HAZARDOUS MATERIALS DISCLOSURE CERTIFICATE

## HAZARDOUS MATERIAL DISCLOSURE CERTIFICATE

Initially, the information provided by you in this Hazardous Materials Disclosure Certificate is necessary for the Landlord (identified below) to evaluate and finalize a lease agreement with you as Tenant. After a lease agreement is signed by you and the Landlord (the "Lease Agreement"), on an annual basis in accordance with the Lease Agreement, you are to provide an update to the information initially provided by you in this certificate. Any and all capitalized terms used herein, which are not otherwise defined herein, shall have the same meaning ascribed to such term in the Lease Agreement. Any questions regarding this certificate should be directed to, and when completed, the certificate should be delivered to:

Landlord: DWF III Walsh Bowers, LLC  
c/o Divco West Real Estate Services, Inc.  
575 Market Street, 35th Floor  
San Francisco, CA 94015  
Attn.: Property Management

Name of (Prospective) Tenant: Miramar Labs

Mailing Address: 445 Indio Way Sunnyvale, CA 94085

Contact Person, Title and Telephone Number(s): Cynthia Kada, Director of Quality Assurance,  
(408) 940-8723

Contact Person for Hazardous Waste Materials Management and Manifests and Telephone Number(s):  
Sara Nakamura, Tel: 408-940-8722 or Cynthia Kada, Tel: 408-940-8723

Address of (Prospective) Premises: 2790 Walsh Road, Santa Clara, California.

Length of (Prospective) Initial Term: 5 years

### 1. General Information:

Describe the initial proposed operations to take place in, on, or about the Premises, including, without limitation, principal products processed, manufactured or assembled services and activities to be provided or otherwise conducted. Existing Tenants should describe any proposed changes to on-going operations.

### 2. Use, Storage and Disposal of Hazardous Materials

2.3 Will any Hazardous Materials be used, generated, stored or disposed of in, on or about the Premises? Existing Tenants should describe any Hazardous Materials which continue to be used, generated, stored or disposed of in, on or about the Premises.

Wastes	Yes [ X ]	No [ ]
Chemical Products	Yes [ X ]	No [ ]
Other	Yes [ X ]	No [ ]

If Yes is marked, please explain: Chemical & bio hazardous wastes are generated and temporarily stored on the premise. However, all wastes are shipped off-site for disposal by a Medical Waste Management company, Stericycle, formally known as AllChem, in San Jose, CA.

2.4 If Yes is marked in Section 2.1, ***attach as Schedule I a list of any Hazardous Materials*** to be used, generated, stored or disposed of in, on or about the Premises, including the applicable hazard class and an estimate of the quantities of such Hazardous Materials at any given time; estimated annual throughput; the proposed location(s) and method of storage (excluding nominal amounts of ordinary household cleaners and janitorial supplies which are not regulated by any Environmental Laws); and the proposed location(s) and method of disposal for each Hazardous Material, including, the estimated frequency, and the proposed contractors or subcontractors. Existing Tenants should attach a list setting forth the information requested above and such list should include actual data from on-going operations and the identification of any variations in such information from the prior year's certificate.

### 3. Storage Tanks and Sumps

3.2 Is any above or below ground storage of gasoline, diesel, petroleum, or other Hazardous Materials in tanks or sumps proposed in, on or about the Premises? Existing Tenants should describe any such actual or proposed activities.

Yes [ ] No [ X ]

If yes, please explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### 4. Waste Management

4.3 Has your company been issued an EPA Hazardous Waste Generator I.D. Number? Existing Tenants should describe any additional identification numbers issued since the previous certificate.

Yes [ X ]      No [ ]

4.4                      Has your company filed a biennial or quarterly reports as a hazardous waste generator? Existing Tenants should describe any new reports filed.

Yes [ ]              No [ X ]

If yes, attach a copy of the most recent report filed.

**5. Wastewater Treatment and Discharge**

5.3      Will your company discharge wastewater or other wastes to:

\_\_\_\_\_ storm drain?      \_\_\_\_\_ sewer?  
\_\_\_\_\_ surface water?        X   no wastewater or other wastes discharged.

Existing Tenants should indicate any actual discharges. If so, describe the nature of any proposed or actual discharge(s).

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5.4      Will any such wastewater or waste be treated before discharge?

Yes [ ]              No [ X ]

If yes, describe the type of treatment proposed to be conducted. Existing Tenants should describe the actual treatment conducted.

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**6. Air Discharges**

6.3                      Do you plan for any air filtration systems or stacks to be used in your company's operations in, on or about the Premises that will discharge into the air; and will such air emissions be monitored? Existing Tenants should indicate whether or not there are any such air filtration systems or stacks in use in, on or about the Premises which discharge into the air and whether such air emissions are being monitored.

Yes [ ]              No [ X ]

If yes, please describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6.4 Do you propose to operate any of the following types of equipment, or any other equipment requiring an air emissions permit? Existing Tenants should specify any such equipment being operated in, on or about the Premises.

<input type="checkbox"/> Spray booth(s)	<input type="checkbox"/> Incinerator(s)
<input type="checkbox"/> Dip tank(s)	<input type="checkbox"/> Other (Please describe)
<input type="checkbox"/> Drying oven(s)	<input checked="" type="checkbox"/> No Equipment Requiring Air Permits

If yes, please describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## 7. Hazardous Materials Disclosures

7.1 Has your company prepared or will it be required to prepare a Hazardous Materials management plan (“Management Plan”) pursuant to Fire Department or other governmental or regulatory agencies’ requirements? Existing Tenants should indicate whether or not a Management Plan is required and has been prepared.

Yes [ ] No [ X ]

If yes, attach a copy of the Management Plan. Existing Tenants should attach a copy of any required updates to the Management Plan.

7.2 Are any of the Hazardous Materials, and in particular chemicals, proposed to be used in your operations in, on or about the Premises regulated under Proposition 65? Existing Tenants should indicate whether or not there are any new Hazardous Materials being so used which are regulated under Proposition 65.

Yes [ ] No [ X ]

If yes, please explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**8. Enforcement Actions and Complaints**

8.4 With respect to Hazardous Materials or Environmental Laws, has your company ever been subject to any agency enforcement actions, administrative orders, or consent decrees or has your company received requests for information, notice or demand letters, or any other inquiries regarding its operations? Existing Tenants should indicate whether or not any such actions, orders or decrees have been, or are in the process of being, undertaken or if any such requests have been received.

Yes [ ] No [ X ]

If yes, describe the actions, orders or decrees and any continuing compliance obligations imposed as a result of these actions, orders or decrees and also describe any requests, notices or demands, and attach a copy of all such documents. Existing Tenants should describe and attach a copy of any new actions, orders, decrees, requests, notices or demands not already delivered to Landlord pursuant to the Lease Agreement.

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8.5 Have there ever been, or are there now pending, any lawsuits against your company regarding any environmental or health and safety concerns?

Yes [ ] No [ X ]

If yes, describe any such lawsuits and attach copies of the complaint(s), cross-complaint(s), pleadings and all other documents related thereto as requested by Landlord. Existing Tenants should describe and attach a copy of any new complaint (s), cross-complaint(s), pleadings and other related documents not already delivered to Landlord pursuant to the Lease Agreement.

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8.6 Have there been any problems or complaints from adjacent Tenants, owners or other neighbors at your company's current facility with regard to environmental or health and safety concerns? Existing Tenants should indicate whether or not there have been any such problems or complaints from adjacent Tenants, owners or other neighbors at, about or near the Premises.

Yes [ ] No [ X ]

If yes, please describe. Existing Tenants should describe any such problems or complaints not already disclosed to Landlord under the provisions of the Lease Agreement.

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## 9. Permits and Licenses

9.2 Attach copies of all Hazardous Materials permits and licenses including a Transporter Permit number issued to your company with respect to its proposed operations in, on or about the Premises, including, without limitation, any wastewater discharge permits, air emissions permits, and use permits or approvals. Existing Tenants should attach copies of any new permits and licenses as well as any renewals of permits or licenses previously issued.

The undersigned hereby acknowledges and agrees that (A) this Hazardous Materials Disclosure Certificate is being delivered in connection with, and as required by, Landlord in connection with the evaluation and finalization of a Lease Agreement and will be attached thereto as an exhibit; (B) that this Hazardous Materials Disclosure Certificate is being delivered in accordance with, and as required by, the provisions of the Lease Agreement; and (C) that Tenant shall have and retain full and complete responsibility and liability with respect to any of the Hazardous Materials disclosed in the Hazardous Material Certificate notwithstanding Landlord's/Tenant's receipt and/or approval of such certificate. Tenant further agrees that none of the following described acts or events shall be construed or otherwise interpreted as either (a) excusing, diminishing or otherwise limiting Tenant from the requirement to fully and faithfully perform its obligations under the Lease with respect to Hazardous Materials, or (b) imposing upon Landlord, directly or indirectly, any duty or liability with respect to any such Hazardous Materials, including, without limitation, any duty on Landlord to investigate or otherwise verify the accuracy of the representations and statements made therein or to ensure that Tenant is in compliance with all Environmental Laws; (i) the delivery of such certificate to Landlord and/or Landlord's acceptance of such certificate, (ii) Landlord's review and approval of such certificate, (iii) Landlord's failure to obtain such certificate from Tenant at any time, or (iv) Landlord's actual or constructive knowledge of the types and quantities of Hazardous Materials being used, stored, generated, disposed of or transported on or about the Premises by Tenant or Tenant's Representatives. Notwithstanding the foregoing or anything to the contrary contained herein, the undersigned acknowledges and agrees that Landlord and its partners, lenders and representatives may, and will, rely upon the statements, representations, warranties, and certifications made herein and the truthfulness thereof in entering into the Lease Agreement and the continuance thereof throughout the term, and any renewals thereof, of the Lease Agreement.

I (print name) Kathy O'Shaughnessy, acting with full authority to bind the (proposed) Tenant and on behalf of the (proposed) Tenant, certify, represent and warrant that the information contained in this certificate is true and correct.

(Prospective) Tenant:

By: /s/ Kathy O'Shaughnessy

Title: VP, Clinical/Regulatory/Quality Assurance

Date: 12/17/2013

SCHEDULE 1  
TO HAZARDOUS MATERIALS DISCLOSURE CERTIFICATE

LIST OF HAZARDOUS MATERIALS

Master Chemical Inventory and Medical Waste List Updated: 12/5/2013

Chemical Inventory														
Common Name (Mfg)	Description	Haz Class	Cas. No.	Physical Type	Storage					Quantities			Disposal	
					Pressure	Temp	Container	Location	Type	Max Daily	Largest Cont.	Units	Method	Frequency
1128-M-T (Dymax)	Adhesive	NA	NA	Liquid	ambient	ambient	Tube	R&D, Production	Controlled Temp. (Refrigerator)	0.009	0.003	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
222MS, Thrdlocker LS (Loctite)	Adhesive	NA	NA	Liquid	ambient	>100°F	Plastic Bottle	R&D, Production	Controlled Temp. (Refrigerator)	0.015	0.003	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
3311 Light Cure Adhesive (Loctite)	Adhesive	3	NA	Liquid	ambient	<ambient	Tube	R&D, Production	Controlled Temp. (Refrigerator)	0.125	0.025	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal

Master Chemical Inventory and Medical Waste List Updated: 12/5/2013

Chemical Inventory														
Common Name (Mfg)	Description	Haz Class	Cas. No.	Physical Type	Storage					Quantities			Disposal	
					Pressure	Temp	Container	Location	Type	Max Daily	Largest Cont	Units	Method	Frequency
3321 Light Cure Adhesive (Loctite)	Adhesive	3	NA	Liquid	ambient	<ambient	Tube	R&D, Production	Controlled Temp. (Refrigerator)	0.026	0.007	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
9681 Hysol® Epoxy (Loctite)	Adhesive	NA	NA	Liquid	ambient	<ambient	Tube	R&D, Production	Controlled Temp. (Refrigerator)	0.016	0.008	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
3-in-1 Multi-Purpose Oil (WD-40 Company)	Lubricant	NA	NA	Liquid	ambient	ambient	Plastic Bottle	Production	Inventory Shelf	12.500	0.063	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
3M Fastbond™ Contact Adhesive 30-NF Green (3M)	Contact Adhesive	NA	NA	Liquid	ambient	ambient	Plastic Bottle	R&D	Flammable Storage Cabinet	0.250	0.250	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
3M Fastbond™ Contact Adhesive 30-NF, Neutral (3M)	Contact Adhesive	NA	NA	Liquid	ambient	ambient	Plastic Bottle	R&D	Flammable Storage Cabinet	0.250	0.250	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
3M Super 77 Multipurpose Adhesive (3M)	Adhesive Spray	2.1	NA	Liquid	ambient	ambient	Aerosol Can	R&D, Production	Flammable Storage Cabinet	0.456	0.456	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
3M™ UV Screen Printable Adhesive SP7514 (3M)	Adhesive Spray	NA	NA	Liquid	ambient	ambient	Plastic Bottle	R&D	Flammable Storage Cabinet	0.250	0.250	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
4011 Prism Adhesive (Loctite)	Adhesive	3	NA	Liquid	ambient	ambient	Tube	R&D, Production	Controlled Temp. (Refrigerator)	0.176	0.044	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
4014 Prism Medical Adhesive (Loctite)	Adhesive	3	NA	Liquid	ambient	ambient	Tube	R&D, Production	Controlled Temp. (Refrigerator)	0.097	0.049	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
4305 Flashcure Light Cure (Loctite)	Adhesive	3	NA	Liquid	ambient	>ambient	Tube	R&D, Production	Controlled Temp. (Refrigerator)	0.315	0.063	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
4307 Flashcure® Adhesive (Loctite)	Adhesive	3	NA	Liquid	ambient	>ambient	Tube	R&D, Production	Controlled Temp. (Refrigerator)	0.234	0.078	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
4861 Prism Instant Adhesive (Loctite)	Adhesive	3	NA	Liquid	ambient	>ambient	Tube	R&D, Production	Controlled Temp. (Refrigerator)	0.097	0.049	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
460-PCCL105 Closed Loop Treatment (Nalco Company)	Closed Loop Treatment	NA	NA	Liquid	ambient	ambient	Plastic Bottle	R&D	Acid Storage Cabinet	2.000	1.000	gal	Shipped off-site for disposal	Rarely - Only Expired Chemicals, Shipped off-site for disposal

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Chemical Inventory														
Common Name (Mfg)	Description	Haz Class	Cas. No.	Physical Type	Storage					Quantities			Disposal	
					Pressure	Temp	Container	Location	Type	Max Daily	Largest Cont.	Units	Method	Frequency
5055 UV/V SIL (Loctite)	Silicone	NA	NA	Liquid	ambient	ambient	Tube	R&D, Production	Controlled Temp. (Refrigerator)	0.026	0.007	gal	N/A - used on products	Rarely - Only Expired Chemicals. Shipped off-site for disposal
5056™ Light Cure Adhesive Part No. 1214250 (Loctite)	Adhesive	3	NA	Liquid	ambient	ambient	Tube	Production	Controlled Temp. (Refrigerator)	0.159	0.053	lbs	N/A - used on products	Rarely - Only Expired Chemicals. Shipped off-site for disposal
70% Isopropyl Alcohol	70% Isopropyl Alcohol	3	67-63-0	Liquid	ambient	ambient	Plastic Bottle	R&D, Production	Flammable Storage Cabinet	6.000	1.000	gal	Shipped off-site for disposal	BI-yearly (6 gal per disposal)
7471 Primer T (Loctite)	Primer	3	NA	Liquid	ambient	>120°F	Tube	R&D, Production	Controlled Temp. (Refrigerator)	0.042	0.014	gal	N/A - used on products	Rarely - Only Expired Chemicals. Shipped off-site for disposal
9001-E-V3.7 (Dymax)	Silicone Adhesive	NA	NA	Liquid	ambient	>ambient	Tube	R&D, Production	Controlled Temp. (Refrigerator)	0.125	0.008	gal	N/A - used on products	Rarely - Only Expired Chemicals. Shipped off-site for disposal

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Chemical Inventory														
Common Name (Mfg)	Description	Haz Class	Cas. No.	Physical Type	Storage					Quantities			Disposal	
					Pressure	Temp	Container	Location	Type	Max Daily	Largest Cont.	Units	Method	Frequency
9-318-F (Dymax)	Adhesive	NA	NA	Liquid	ambient	>ambient	Tube	R&D, Production	Controlled Temp. (Refrigerator)	0.038	0.008	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
99& Isopropyl Alcohol	99& Isopropyl Alcohol	NA	67-63-0	Liquid	ambient	ambient	Plastic Bottle	R&D, Production	Flammable Storage Cabinet	6.000	1.000	gal	Shipped off-site for disposal	Bi-yearly (5 gal per disposal)
99.5% Isopropyl Alcohol	99.5% Isopropyl Alcohol	NA	NA	liquid	ambient	ambient	Plastic Bottle	R&D	Flammable Storage Cabinet	1.000	1.000	gal	Shipped off-site for disposal	Annually (1 gal per disposal)
Acetone	Acetone	3	67-64-1	Liquid	ambient	ambient	Plastic Bottle	R&D, Production	Flammable Storage Cabinet	1.000	1.000	gal	Shipped off-site for disposal	Annually (1 gal per disposal)
Activator-T™ (Cohler Enterprises)	Inorganic and organic salt mix	NA	NA	Liquid	ambient	ambient	Plastic Bottle	R&D	Acid Storage Cabinet	2.000	2.000	lbs	Shipped off-site for disposal	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Aluminum Powder	Aluminum Powder	4.3	NA	Solid	ambient	ambient	Glass	R&D, Production	Flammable Storage Cabinet	1.000	1.000	lbs	Shipped off-site for disposal	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Aluminum Sulfate, Hydrate (Lilly Miller)	Aluminum Sulfate, Hydrate	9	7384-31-8	Solid	ambient	ambient	Box	R&D	Base Storage Cabinet	4.000	4.000	lbs	Shipped off-site for disposal	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Amerway 200 Rosin Flux-RMA-25 (Amerway, Inc)	Rosin Flux	NA	NA	Liquid	ambient	ambient	Plastic Bottle	R&D	Flammable Storage Cabinet	2.000	1.000	gal	Shipped off-site for disposal	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Anchorlube G-771	Lubricant	NA	NA	Solid	ambient	ambient	Plastic Bottles	R&D	Lab Cabinets	0.031	0.031	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Aquasonic Clear® Ultrasound Gel	Ultrasound Gel	NA	NA	Solid	ambient	ambient	Tube	R&D, Clinic	Lab Cabinets	0.264	0.066	gal	N/A - used in clinic	NA
Araldite 2011 A (Huntsman)	Epoxy	NA	NA	Liquid	ambient	ambient	Tube	R&D	Lab Cabinets	0.028	0.014	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Araldite 2011 B (Huntsman)		NA	NA	Liquid	ambient	ambient	Tube	R&D						
Araldite 2043 A (Huntsman)	Epoxy	NA	NA	Liquid	ambient	ambient	Tube	R&D	Lab Cabinets	0.048	0.024	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Araldite 2043 B (Huntsman)		NA	NA	Liquid	ambient	ambient	Tube	R&D						
ArcticClean Step 2 Thermal Surface Purifier (Arctic Silver Inc)	Surface Cleaner	NA	NA	Liquid	ambient	ambient	Plastic Bottle	R&D, Production	Lab Cabinets	0.008	0.008	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
BADGER PROPEL (Badger)	Liquid Propellant	2.1	NA	Liquid	ambient	ambient	Aerosol Can	R&D	Lab Cabinets	0.810	0.081	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Betadine® Solution (Purdue Frederick Co.)	Betadine Solution	NA	NA	Liquid	ambient	ambient	Plastic Bottle	R&D, Clinic	Lab Cabinets	0.125	0.125	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Céramique High-Density Thermal Compound (Arctic Silver Inc)	Thermal Compound	NA	NA	Liquid	ambient	ambient	Tube	R&D	Lab Cabinets	0.194	0.049	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
CF1-135 (NuSil Tech)	Silicone Primer	3	NA	Liquid	ambient	ambient	Glass	R&D, Production	Flammable Storage Cabinet	0.008	0.008	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Charcoal, Activated	Charcoal, Activated	NA	7440-44-0	Solid	ambient	ambient	Plastic Bottle	R&D	Flammable Storage Cabinet	0.552	0.276	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal

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Chemical Inventory														
Common Name (Mfg)	Description	Haz Class	Cas. No.	Physical Type	Storage					Quantities			Disposal	
					Pressure	Temp	Container	Location	Type	Max Daily	Largest Cont.	Units	Method	Frequency
C-Iodine	C-Iodine	NA	10102-68-8	Liquid	ambient	ambient	Glass	Clinic	Lab Cabinets	0.625	0.125	gal	N/A - used in clinic	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Circuitworks 2400 (ITW Chemtronics)	Epoxy, Conductive 2-Part	NA	NA	Solid	ambient	ambient	Cylinder	R&D	Lab Cabinets	0.232	0.031	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Connector Coating (MG Chemicals)	Liquid Coating substitute for electrical tape. Coats wires, connectors etc.	NA	NA	Liquid	ambient	ambient	Glass	R&D	Flammable Storage Cabinet	0.050	0.050	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal

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Chemical Inventory														
Common Name (Mfg)	Description	Haz Class	Cas. No.	Physical Type	Storage					Quantities			Disposal	
					Pressure	Temp	Container	Location	Type	Max Daily	Largest Cont.	Units	Method	Frequency
Design Master - Platinum (Design Mater Color Tool)	Spray Paint	4.1	NA	Gas	ambient	ambient	aerosol Can+K113	R&D, Warehouse	Flammable Storage Cabinet	0.687	0.687	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Devcon® 5 Minute® Epoxy amber [1:1]	Epoxy, Conductive 2-Part	NA	NA	Liquid	ambient	ambient	Tube	R&D	Lab Cabinets	1.875	0.687	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Dow Corning® 736 Heat Resistant/Sealant (Dow Corning)	Sealant	NA	NA	Solid	ambient	ambient	Plastic Bottle	R&D, Production	Lab Cabinets	0.024	0.024	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Dow Corning® High Vacuum Grease (Dow Corning)	Grease	NA	NA	Grease	ambient	ambient	Tube	R&D	Flammable Storage Cabinet	0.330	0.330	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
DUPLI-COLOR™ Filler Primer, Gray (The Sherwin-Williams Co.)	Primer	NA	NA	Liquid	ambient	ambient	Aerosol Can	R&D	Flammable Storage Cabinet	0.625	0.625	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Duster Ultra Pure Duster (TechSpray)	Dusting Gas	NA	NA	Liquid	ambient	ambient	Cylinder	R&D, Production	Flammable Storage Cabinet	3.130	0.626	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
ECCOSTOCK HIK (Emerson & Cuming)	Low Loss Powder, Resins & Adhesive	NA	NA	Liquid	ambient	ambient	Can/Glass	R&D	Lab Cabinets	0.375	0.125	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
ECCOSTOCK HIK5000 (Emerson & Cuming)	Filled blend of vinyl monomers (Cured Sheet)	NA	NA	Liquid	ambient	ambient	Can/Glass	R&D	Lab Cabinets	0.125	0.125	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Electroking Dynamic Electrocleaning Solution (Cohler Enterprises)	Electrocleaning Solution	NA	NA	Solid	ambient	ambient	Plastic Bottle	R&D	Base Storage Cabinet	2.000	2.000	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Enzoi® Enzymatic Detergent (Advanced Sterilization Products)	Detergent	NA	NA	Liquid	ambient	ambient	Plastic Bottle	R&D, Production	Lab Cabinets	1.000	1.000	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
EPM-2421 Part A (NuSil Tech)	Silicone	NA	NA	Liquid	ambient	ambient	Glass	R&D	Flammable Storage Cabinet	0.013	0.013	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
EPM-2421 Part B (NuSil Tech)		NA	NA	Liquid	ambient	ambient	Glass	R&D						
EPM-2422 Part A (NuSil Tech)		NA	NA	Liquid	ambient	ambient	Glass	R&D						
EPM-2422 Part B (NuSil Tech)	Silicone	NA	NA	Liquid, Solid	ambient	ambient	Glass	R&D	Flammable Storage Cabinet	0.022	0.022	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Ethylene Glycol	Ethylene Glycol	NA	107-21-1	Liquid	ambient	ambient	Plastic Bottle	R&D	Lab Cabinets	1.057	1.057	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
F.P Monomer Self Cure (Flexbar Machine)	Curing Liquid	3	NA	Liquid	ambient	ambient	Plastic Bottle	R&D	Flammable Storage Cabinet	0.032	0.032	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
F.P Tray Polymer, #64 Blue, Shade #26151 (Flexbar Machine)	Blended, Pigmented, Filled Acrylic Polyerm	NA	NA	Solid	ambient	ambient	Glass	R&D	Flammable Storage Cabinet	1.000	1.000	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Facsimile Separator (Flexbar Machine)	Separator	NA	NA	Solid	ambient	ambient	Glass	R&D	Flammable Storage Cabinet	0.020	0.020	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal

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Chemical Inventory														
Common Name (Mfg)	Description	Haz Class	Cas. No.	Physical Type	Storage					Quantities			Disposal	
					Pressure	Temp	Container	Location	Type	Max Daily	Largest Cont.	Units	Method	Frequency
Fine-L-Kote SR, High Viscosity (TechSpray)	Silicone Conformal Coating	3	NA	Liquid	ambient	ambient	Aerosol Can	R&D	Flammable Storage Cabinet	0.750	0.750	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Fine-L-Kote UR, High Viscosity (TechSpray)	Urethane Conformal Coating	3	NA	Liquid	ambient	ambient	Aerosol Can	R&D	Flammable Storage Cabinet	1.500	0.750	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Flexbar Reprorubber Thin Pour Material (Flexbar Machine)	Vinyl Polysiloxine	NA	NA	Liquid	ambient	ambient	Glass	R&D	Lab Cabinets	0.100	0.100	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Flexible Polyurethane Foam, 3F (Art Stuf)	Polyether-based urethane polymers	NA	NA	Solid	ambient	ambient	Plastic Bottle	R&D	Lab Cabinets	2.000	2.000	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Flux-Off® Lead-Free (ITW Chemtronics)	Flux Remover	2.1	NA	Liquid	ambient	ambient	Aerosol Can	R&D, Production	Flammable Storage Cabinet	2.250	0.750	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Formalin 10%	Formalin	NA	NA	Liquid	ambient	ambient	Plastic Bottle	R&D	Flammable Storage Cabinet	0.000	5.500	gal	Shipped off-site for disposal	Only when this chemical is present - rarely purchase this chemical
GC Static Free Flux Remover (GC Electronics)	Static Remover	NA	NA	Liquid	ambient	ambient	Cylinder	R&D, Production	Lab Cabinets	2.258	1.129	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
GE16204 5TG-Tube (Momentive performance)	Sealant	NA	NA	Solid	ambient	40-120°F	Tube	R&D	Lab Cabinets	0.022	0.022	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Glycerine	Glycerine	NA	56-81-5	Liquid	ambient	ambient	Plastic jug	R&D	Flammable Storage Cabinet	1.000	1.000	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Goo Gone	Cleaner	3	NA	Liquid	ambient	ambient	Plastic bottle	R&D	Lab Cabinets	0.875	0.875	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Graphite	Graphite	NA	7782-72-5	Solid	ambient	ambient	Plastic bottle	R&D, MachineShop	Lab Cabinets	1.000	1.000	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
HIBICLEN® (GC America Inc)	Antimicrobial Agent	NA	NA	Liquid	ambient	ambient	Plastic Bottle	Clinical	Lab Cabinets	1.000	0.250	gal	N/A - used in clinic	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Hydrogen Peroxide 3%	Disinfectant	NA	NA	Liquid	ambient	ambient	Plastic Bottle	Clinical	Lab Cabinets	0.125	0.125	gal	N/A - used in clinic	Rarely - Only Expired Chemicals, Shipped off-site for disposal

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Chemical Inventory														
Common Name (Mfg)	Description	Haz Class	Cas. No.	Physical Type	Storage					Quantities			Disposal	
					Pressure	Temp	Container	Location	Type	Max Daily	Largest Cont.	Units	Method	Frequency
Hysol M-31CL Epoxy Hardener (Loctite)	Epoxy Resin	NA	NA	Liquid	ambient	>ambient	Tube	R&D, Production	Controlled Temp. (Refrigerator)	0.132	0.132	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Hysol M-31CL Epoxy Resin (Loctite)		NA	NA	Liquid	ambient	>ambient	Tube	R&D, Production	Controlled Temp. (Refrigerator)	0.132	0.132	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Hysol U-05FL Urethane Adhesive (Loctite)	Adhesive	NA	NA	Liquid	ambient	>100°F	Tube	R&D, Production	Controlled Temp. (Refrigerator)	0.026	0.026	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Iodine	Iodine	NA	7553-56-2	Liquid	ambient	ambient	Glass	R&D	Flammable Storage Cabinet	0.383	0.383	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Isopropanol	Isopropanol	NA	67-63-0	Liquid	ambient	ambient	Plastic Jug	R&D	Flammable Storage Cabinet	0.125	0.125	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
JB Kwik Epoxy Steel Resin Part A (JB Weld)	Epoxy	NA	NA	Solid	ambient	>100°F	Tube	R&D	Flammable Storage Cabinet	0.876	0.876	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
JB Kwik Epoxy Steel Hardener Part B (JB Weld)		NA	NA	Solid	ambient	>100°F	Tube	R&D						
Kilz 2 Latex (Masterchem Industries, LLC)	Latex	NA	NA	Liquid	ambient	ambient	Can	R&D	Flammable Storage Cabinet	1.000	1.000	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Krylon Brushed Metallic, Satin Nickel (Sherwin-Williams Co.)	Spray Paint	2.1	NA	Liquid	ambient	ambient	Aerosol Can	R&D	Flammable Storage Cabinet	1.375	0.068	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Krylon Fusion for Plastic Metallic Shimmer, Nickel Shimmer (Sherwin-Williams Co.)	Spray Paint	2.1	NA	Liquid	ambient	ambient	Aerosol Can	R&D	Flammable Storage Cabinet	0.500	0.500	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Krylon® Original Chrome (Sherwin-Williams Co.)	Spray Paint	2.1	NA	liquid	ambient	ambient	Aerosol Can	R&D	Flammable Storage Cabinet	0.500	0.500	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Lidocaine 2% (Vedco Quality Plus Products)	Lidocaine Injection	NA	NA	Liquid	ambient	ambient	Glass	Clinic	Lab Cabinets	0.026	0.026	gal	N/A - used in clinic	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Lidocaine HCL 1% (Hospira, Inc)	Lidocaine Injection	NA	NA	Liquid	ambient	ambient	glass	Clinic	Lab Cabinets	0.630	0.001	gal	N/A - used in clinic	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Lidocaine HCL 4% (Hospira, Inc)	Lidocaine Injection	NA	NA	Liquid	ambient	ambient	glass	Clinic	Lab Cabinets	0.005	0.001	gal	N/A - used in clinic	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Liqui-Nox (SPI Supplies)	Detergent	NA	NA	Liquid	ambient	ambient	Plastic Bottles	R&D	Lab Cabinets	1.000	1.000	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal

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Chemical Inventory														
Common Name (Mfg)	Description	Haz Class	Cas. No.	Physical Type	Storage				Quantities			Disposal		
					Pressure	Temp	Container	Location	Type	Max Daily	Largest Cont.	Units	Method	Frequency
LORD 363A (Lord Corp.)	Epoxy, Adhesive	NA	NA	Liquid	ambient	ambient	Tube	R&D	Flammable Storage Cabinet	0.008	0.008	gal	N/A - used on products	Rarely - Only Expired Chemicals. Shipped off-site for disposal
LORD 363B (Lord Corp.)		NA	NA	Liquid	ambient	ambient	Tube	R&D						
M-21HP Hydrol Medic Epoxy Hardener (Loctite)	Epoxy	NA	NA	Liquid	ambient	>ambient	Tube	R&D	Controlled Temp. (Refrigerator)	0.026	0.013	gal	N/A - used on products	Rarely - Only Expired Chemicals. Shipped off-site for disposal
M-21HP Hydrol Medic Epoxy Resin (Loctite)		NA	NA	Liquid	ambient	>ambient	Tube	R&D						

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Chemical Inventory														
Common Name (Mfg)	Description	Haz Class	Cas. No.	Physical Type	Storage					Quantities			Disposal	
					Pressure	Temp	Container	Location	Type	Max Daily	Largest Cont.	Units	Method	Frequency
MED-1000 (NuSil Tech)	Silicone	NA	NA	Liquid	ambient	ambient	glass	R&D	Flammable Storage Cabinet	0.500	0.500	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
MED1-4900-7 (NuSil Tech)		NA	NA	Solid	ambient	ambient	glass	R&D	Flammable Storage Cabinet	0.063	0.063	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
MED-162 (NuSil Tech)	Silicone Primer	3	NA	Solid	ambient	ambient	glass	R&D, Production	Flammable Storage Cabinet	0.250	0.125	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
MED-163 (NuSil Tech)	Silicone Primer	3	NA	Liquid	ambient	ambient	glass	R&D, Production	Lab Cabinets	0.008	0.008	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
MED2-4013 Part A (NuSil Tech)	Silicone	NA	NA	Liquid	ambient	>90°F	glass	R&D	Flammable Storage Cabinet	1.057	1.057	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
MED2-4013 Part B (NuSil Tech)		NA	NA	Liquid	ambient	ambient	glass	R&D						
MED3-4013 Part A (NuSil Tech)	Silicone	NA	NA	Liquid	ambient	>90°F	Plastic Bottles	R&D	Flammable Storage Cabinet	0.264	0.132	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
MED3-4013 Part B (NuSil Tech)		NA	NA	Liquid	ambient	ambient	Plastic Bottles	R&D						
MED-4011 Part A (NuSil Tech)	Silicone	NA	NA	Liquid	ambient	ambient	Plastic Bottle	R&D	Flammable Storage Cabinet	0.125	0.125	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
MED-4011 Part B (NuSil Tech)		NA	NA	Liquid	ambient	ambient	Plastic Bottle	R&D						
MED-4035 Part A (NuSil Tech)	Silicone	NA	NA	Solid	ambient	ambient	Plastic Bottles	R&D	Flammable Storage Cabinet	2.000	1.000	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
MED-4035 Part B (NuSil Tech)		NA	NA	Solid	ambient	ambient	Plastic Bottles	R&D						
MED4-4220 Part A (NuSil Tech)	Silicone	NA	NA	Liquid	ambient	ambient	Plastic	R&D, Production	Flammable Storage Cabinet	0.039	0.013	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
MED4-4220 Part B (NuSil Tech)		NA	NA	Liquid	ambient	ambient	Plastic Bottles							
MED-4900-2 (NuSil Tech)	Silicone	NA	NA	Liquid	ambient	>ambient	Tube	R&D, Production	Flammable Storage Cabinet	0.220	0.110	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
MED-4900-6 (NuSil Tech)	Polymer	NA	NA	Solid	ambient	ambient	Plastic Bottles	R&D	Flammable Storage Cabinet	0.026	0.013	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
MED-4940 Part A (NuSil Tech)	Silicone	NA	NA	Solid	ambient	ambient	Plastic Bottles	R&D	Lab Cabinets	0.026	0.013	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
MED-4940 Part B (NuSil Tech)		NA	NA	Solid	ambient	ambient	Plastic Bottles	R&D						
MED-4980 Part A (NuSil Tech)	Silicone	NA	NA	Liquid	ambient	ambient	Plastic Bottles	R&D, Production	Lab Cabinets	0.026	0.013	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
MED-4980 Part B (NuSil Tech)		NA	NA	Liquid	ambient	ambient	Plastic Bottles							
MED50-4900-6 (NuSil Tech)	Silicone	NA	NA	Solid	ambient	ambient	glass	R&D	Lab Cabinets	0.063	0.063	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
MED51-4900-7 (NuSil Tech)	Polymer	NA	NA	Solid	ambient	ambient	glass	R&D	Flammable Storage Cabinet	0.063	0.063	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Mobil Vactro Oil No. 4 (Exxon Mobil)	Lubricant	NA	NA	Liquid	ambient	ambient	Plastic Bottle	R&D, MachineShop	Flammable Storage Cabinet	1.000	1.000	gal	N/A - used on tools	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Mobil Vacuum Pump Oil	Lubricant	NA	NA	Liquid	ambient	ambient	Plastic Bottle	R&D, MachineShop	Flammable Storage Cabinet	0.250	0.250	gal	N/A - used on tools	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Mobil Velocite Oil No. 6	Circulating/gear oil	NA	NA	Liquid	ambient	ambient	Plastic Bottle	R&D, MachineShop	Flammable Storage Cabinet	1.000	1.000	gal	N/A - used on tools	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Mobilith SHC 100	Grease	NA	NA	Liquid	ambient	ambient	Plastic Bottle	R&D, MachineShop	Flammable Storage Cabinet	0.086	0.086	gal	N/A - used on tools	Rarely - Only Expired Chemicals, Shipped off-site for disposal

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Chemical Inventory														
Common Name (Mfg)	Description	Haz Class	Cas. No.	Physical Type	Storage				Quantities			Disposal		
					Pressure	Temp	Container	Location	Type	Max Daily	Largest Cont.	Units	Method	Frequency
MS-122DF PTFE Release Agent Dry Lubricant (Miller-Stephanson)	Release Agent/Dry Lubricant	NA	NA	Liquid	ambient	>125°F	Aerosol Can	R&D	Flammable Storage Cabinet	1,000	1,000	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Nickel (Alfa Aesar)	Nickel Powder	4.1	7440-02-0	Solid	ambient	ambient	Plastic Bottles	R&D	Flammable Storage Cabinet	1,102	1,102	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Nickel Chromium Powder (Alfa Aesar)	Nickel Chromium Powder	4.1	NA	Solid	ambient	ambient	Plastic Bottles	R&D	Flammable Storage Cabinet	0.220	0.220	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Partall® Paste # 2 (Rexco)	Wax Polishing	NA	NA	Solid	ambient	ambient	Tin	R&D	Flammable Storage Cabinet	2,000	1,000	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Plasti Dip Spray Blue (Plasti Dip International)	Coating	2.1	NA	Liquid	ambient	>120°F	Aerosol Can	R&D, Production	Flammable Storage Cabinet	0.688	0.688	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Plastic Polish #1 7010 (NOVUS Inc)	Clean and restore plastic surfaces	NA	NA	Liquid	ambient	ambient	Plastic Bottles	R&D	Lab Cabinets	1,260	0.063	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal

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Chemical Inventory														
Common Name (Mfg)	Description	Haz Class	Cas. No.	Physical Type	Storage					Quantities			Disposal	
					Pressure	Temp	Container	Location	Type	Max Daily	Largest Cont.	Units	Method	Frequency
Plastic Polish #2 7011 (NOVUS Inc)	Clean and restore plastic surfaces	NA	NA	Liquid	ambient	ambient	Plastic Bottles	R&D	Lab Cabinets	1.260	0.063	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Plastic Polish #3 (NOVUS Inc)	Clean and restore plastic surfaces	NA	NA	liquid	ambient	ambient	Plastic Bottles	R&D	Lab Cabinets	0.015	0.015	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Poi-Ease® 2300 Release Agent (Polytek Development Co)	Release Agent	2.1	NA	Liquid	ambient	ambient	Aerosol Can	R&D	Flammable Storage Cabinet	0.750	0.750	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Polocaine/Polocaine MPF (Fresenius Kabi, USA)	Lidocaine Injection	NA	NA	Liquid	ambient	ambient	glass	Clinic	Lab Cabinets	0.026	0.013	gal	N/A - used in clinic	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Polyethylene Powder (Chevron Phillip)	Resin	NA	NA	Solid	ambient	ambient	Plastic Bottles	R&D	Flammable Storage Cabinet	1.000	1.000	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Positive Developer (MG Chemicals)	Disolves exposed photoresist	NA	NA	Liquid	ambient	ambient	Plastic Bottle	R&D	Base Storage Cabinet	0.250	0.125	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Prism 4013 Instant Adhesive (Loctite)	Adhesive	3	NA	Liquid	ambient	ambient	Tube	R&D, Production	Controlled Temp. (Refrigerator)	0.088	0.044	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Prism 4061 Instant Adhesive (Loctite)	Adhesive	3	NA	Liquid	ambient	ambient	Tube	R&D, Production	Controlled Temp. (Refrigerator)	0.176	0.044	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Prism® 4541 Medical Device Instant Adhesive Surface Insensitive Gel	Adhesive	3	NA	Liquid	ambient	ambient	Tube	R&D, Production	Controlled Temp. (Refrigerator)	0.097	0.049	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Prism 7701 Primer (Loctite)	Primer	3	NA	Liquid	ambient	ambient	glass	Production	Controlled Temp. (Refrigerator)	0.027	0.014	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
PRO SOLUTION PREMIUM PVR (Sunnyside Corporation)	Solvent-Mixture	6.1	NA	Liquid	ambient	ambient	Aerosol Can	R&D	Flammable Storage Cabinet	0.250	0.250	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Pro-Strength Liquid-Plumr® Power Gel Clog Remover (Clorox)	Drain Cleaner, Drain Opener	NA	NA	Liquid	ambient	ambient	Plastic Bottles	R&D, Production	Base Storage Cabinet	1.875	0.625	gal	Shipped off-site for disposal	Annually (5 gal per disposal)
Propane (Bernz-O-matic)	Propane	2.1	74-98-6	Liquid	ambient	ambient	Cylinder	R&D	Flammable Storage Cabinet	0.881	0.881	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Propyl alcohol, N-(1-Propanol) (Pharmco Products, Inc.)	N-Propyl alcohol	3	71-23-8	Liquid	ambient	ambient	Plastic Bottle	R&D	Flammable Storage Cabinet	1.000	1.000	gal	Shipped off-site for disposal	Annually (5 gal per disposal)
R-2630 Part A (NuSil Tech)	Silicone	NA	NA	Liquid	ambient	ambient	Plastic Bottles	R&D	Flammable Storage Cabinet	0.250	0.125	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
R-2630 Part B (NuSil Tech)		NA	NA	Liquid	ambient	ambient	Plastic Bottles	R&D						
R-2631 Part A (NuSil Tech)	Silicone	NA	NA	Liquid	ambient	ambient	glass	R&D	Flammable Storage Cabinet	0.250	0.125	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
R-2631 Part B (NuSil Tech)		NA	NA	Liquid	ambient	ambient	glass	R&D						

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Chemical Inventory														
Common Name (Mfg)	Description	Haz Class	Cas. No.	Physical Type	Storage				Quantities			Disposal		
					Pressure	Temp	Container	Location	Type	Max Daily	Largest Cont.	Units	Method	Frequency
Resin Solution, UN1806 (Sher-Fab)	Unsaturated Polyester Resin	NA	NA	Liquid	ambient	ambient	Can	R&D	Flammable Storage Cabinet	0.130	0.130	gal	N/A - used on products	Rarely - Only Expired Chemicals. Shipped off-site for disposal

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Chemical Inventory														
Common Name (Mfg)	Description	Haz Class	Cas. No.	Physical Type	Storage					Quantities			Disposal	
					Pressure	Temp	Container	Location	Type	Max Daily	Largest Cont.	Units	Method	Frequency
Rosin Flux RA 300-25 (Amerway)	Soldering flux	NA	NA	Liquid	ambient	ambient	Can	R&D	Flammable Storage Cabinet	1.057	1.057	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
RP Super Filter Coat #412 (Research Products Corp.)	Filter coating	NA	NA	Liquid	ambient	ambient	Plastic Bottle	R&D	Lab Cabinets	0.080	0.080	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
RTV162 12C-Crtg (Waterford Plant)	Sealant	NA	NA	Liquid	ambient	ambient	Plastic Bottle	R&D	Flammable Storage Cabinet	0.021	0.021	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Sanosil S010 (Sanosil International, LLC)	Detergent	NA	NA	Liquid	ambient	ambient	Plastic Bottle	R&D	Lab Cabinets	1.000	1.000	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Silicone Conformal Coating (MG Chemicals)	Protective coating for PC boards	2.1	NA	Liquid	ambient	ambient	Aerosol Can	R&D, Production	Flammable Storage Cabinet	0.750	0.750	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Sodium Chloride (LabPro)	Sodium Chloride	NA	7647-14-5	Solid	ambient	ambient	Plastic Bottles	R&D	Base Storage Cabinet	1.000	1.000	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Sodium Hydroxide 4% (LabPro)	Sodium Hydroxide	8	1310-73-2	Liquid	ambient	ambient	Plastic Bottles	R&D	Base Storage Cabinet	0.250	0.250	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Sodium Persulfate (MG Chemicals)	Sodium Persulfate	5.1	7775-27-1	Solid	ambient	ambient	Plastic Bottles	R&D	Acid Storage Cabinet	1.102	1.102	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Specialty Coating Aerosol Plastic Primer (Rust-Oleum Corporation)	Plastic Primer	2.1	NA	Liquid	ambient	ambient	Aerosol Can	R&D, Wet Lab	Flammable Storage Cabinet	0.688	0.688	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
SPILFYTER® Formaldehyde Solidifier (NPS)	Formaldehyde Solidifier	NA	NA	Solid	ambient	ambient	Plastic Bottles	R&D	Lab Cabinets	0.264	0.264	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Sprayon Dry Film KRYTOX Mold Release (Sherwin-Williams)	Mold Release	2.1	NA	Liquid	ambient	ambient	Aerosol Can	R&D, Production	Flammable Storage Cabinet	0.750	0.750	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Sprayon MR™ 311 Dry Film Release Agent Aerosol (Sprayon Products)	Mold Release	2.1	NA	Liquid	ambient	ambient	Aerosol Can	R&D	Flammable Storage Cabinet	0.750	0.750	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Sprayon MR™ 314 Paintable Lecithin Release Agent (Sprayon Products)	Mold Release	2.1	NA	Liquid	ambient	ambient	Aerosol Can	R&D	Flammable Storage Cabinet	0.750	0.750	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Sprayon MR™ 315 Urethane & Styrene Silicone Release Agent	Silicone Release Agent	2.1	NA	Liquid	ambient	ambient	Aerosol Can	R&D	Flammable Storage Cabinet	0.750	0.750	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Stay-Silv White Flux (Harris Products Co.)	Brazing Flux	8	NA	Solid	ambient	ambient	Plastic Bottle	R&D	Lab Cabinets	1.000	1.000	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Super Shield Nickel Conductive Coating (MG Chemicals)	Coating	2.1	NA	Liquid	ambient	ambient	Cylinder	R&D, Production	Flammable Storage Cabinet	1.499	0.750	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Superior No. 510 (Superior Flux & Mfg Co)	Chloride-free, Inorganic Acid Flux	8	NA	Liquid	ambient	ambient	Plastic Bottle	R&D	Acid Storage Cabinet	1.000	1.000	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Superior No. 601 (Superior Flux & Mfg Co)	Silver brazing paste flux	NA	NA	Solid	ambient	ambient	Plastic Bottle	R&D	Acid Storage Cabinet	1.500	1.500	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal

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Chemical Inventory														
Common Name (Mfg)	Description	Haz Class	Cas. No.	Physical Type	Storage					Quantities			Disposal	
					Pressure	Temp	Container	Location	Type	Max Daily	Largest Cont.	Units	Method	Frequency
Superior No. 75 (Superior Flux & Mfg Co)	Soft-Soldering flux	8	NA	Liquid	ambient	ambient	Plastic Bottle	R&D	Acid Storage Cabinet	1.000	1.000	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
TAP Acrylic Cement (IPS Corporation)	Solvent cement for acrylics, polycarbonate, etc.	6.1	NA	Liquid	ambient	ambient	Tin	R&D	Lab Cabinets	0.300	0.030	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
TAP Flexible Expanding Foam Side A (Henry Co.)	Foam Resin	9 FGIII	NA	liquid	ambient	ambient	Plastic Bottle	R&D	Lab Cabinets	0.125	0.125	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
TAP Flexible Expanding Foam Side B (Henry Co.)		NA	NA	Liquid	ambient	ambient	glass	R&D		0.125	0.125	gal		
TAP Magic EP-Xtra® Formula (Steco Co)	Cutting Liquid	NA	NA	Liquid	ambient	ambient	Plastic Bottles	R&D	Lab Cabinets	1.000	1.000	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Tap Silicone RTV Thinner (Shin-Etsu)	Silicone Fluid	NA	NA	Liquid	ambient	ambient	Can	R&D	Lab Cabinets	0.016	0.016	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Tap Silicone RTV Thixotropic Additive (Rhodia)	Silicone	NA	NA	Liquid	ambient	ambient	Plastic Bottles	R&D	Lab Cabinets	0.125	0.125	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Tap Super Flexible Silicone RTV (Wacker)	Silicone	NA	NA	Liquid	ambient	ambient	Plastic Bottles	R&D	Lab Cabinets	8.000	8.000	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Tap Super Flexible Silicone RTV Catalyst (Wacker)	Silicone Fluid	NA	NA	Liquid	ambient	ambient	Plastic Bottles	R&D	Lab Cabinets	0.800	0.800	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
TAP X-30 Polyurethane Foam Side A/B (Henry Co)	Polyurethane Foam Resin	NA	NA	Liquid	ambient	ambient	Plastic Bottles	R&D	Flammable Storage Cabinet	0.125	0.125	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Termalene WG-40 (Bel-Ray Co.)	Lubricant	NA	NA	Liquid	ambient	ambient	Aerosol Can	R&D, Production	Flammable Storage Cabinet	0.284	0.284	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Tetanium Oxide, Anatase (Inframat Advanced Materials)	22N-0801A, Titanium Oxide	NA	13463-67-7	Solid	ambient	ambient	Plastic Bottles	R&D	Lab Cabinets	0.204	0.204	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Tiva Nickel-Mirror (Cohler Enterprises)	Sodium Salt Solution	NA	NA	Liquid	ambient	ambient	Plastic Bottle	R&D	Acid Storage Cabinet	0.250	0.250	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Toluene (Pharmco Products, Inc.)	Toluene	3	108-88-3	Liquid	ambient	ambient	Plastic Bottle	R&D	Flammable Storage Cabinet	1.000	1.000	gal	N/A - used on products	Annually
Toluidine Blue O (Fisher Scientific)	Powder Dye	NA	202-146-2	Solid	ambient	ambient	Glass	R&D	Lab Cabinets	0.011	0.011	lbs	Shipped off-site for disposal	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Touch n Foam MaxFill Maximum Expanding Sealant (Convenience Products)	Insulation	2	NA	gas	ambient	ambient	Cylinder	R&D	Flammable Storage Cabinet	3.000	0.750	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
TRA-BOND FDA 16 Hardener (Emerson & Cuming)	2-part Epoxy	8	NA	Liquid	ambient	ambient	Tube	R&D	Lab Cabinets	0.010	0.005	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
TRA-BOND FDA 16 Resin (Emerson & Cuming)		NA	NA	Liquid	ambient	ambient	Tube	R&D		0.010	0.005	lbs		

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Chemical Inventory														
Common Name (Mfg)	Description	Haz Class	Cas. No.	Physical Type	Storage					Quantities			Disposal	
					Pressure	Temp	Container	Location	Type	Max Daily	Largest Cont.	Units	Method	Frequency
Triton X-100 (Fisher Scientific)	Liquid Dye	NA	9002-93-1	Liquid	ambient	ambient	Glass	R&D	Lab Cabinets	0.026	0.026	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
TX151 (Balmar, LLC)	Solidifying Powder	NA	NA	Solid	ambient	ambient	Plastic Bottles	R&D	Lab Cabinets	3.000	3.000	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Unleaded Gasoline	Gasoline (emergency use for generator)	3	NA	Liquid	ambient	ambient	Plastic Bottles	R&D	Flammable Storage Cabinet	1.000	1.000	gal	N/A - used on machine	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Up & Up Carpet & Upholstery Cleaner "compare to Resolve Carpet Cleaner" (Target Generic Brand)	Stain Remover	2.1	NA	Liquid	ambient	ambient	Aerosol Can	R&D	Flammable Storage Cabinet	1.375	1.750	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
WD-40 (WD-40 Company)	Lubricant	2.1	NA	Liquid	ambient	ambient	Aerosol Can	R&D	Flammable Storage Cabinet	1.500	0.750	lbs	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Woolite® Oxy Deep® Carpet Stain & Odor Remover (Bissell Homecare, Inc.)	Stain Remover	NA	NA	Liquid	ambient	ambient	Plastic Spray	R&D	Lab Cabinets	0.170	0.170	gal	N/A - used on products	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Xylocaine 2% Viscous Solution (AstaZeneca)	Lidocaine Solution	NA	NA	Liquid	ambient	ambient	glass	Clinic	Lab Cabinets	0.026	0.005	gal	N/A - used in clinic	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Xylocaine® Injection 1% (AstaZeneca)	Lidocaine Injection	NA	NA	Liquid	ambient	ambient	glass	Clinic	Lab Cabinets	0.009	0.003	gal	N/A - used in clinic	Rarely - Only Expired Chemicals, Shipped off-site for disposal
Zero Charge Hand Lotion (TechSpray)	Anti-Static Hand Lotion	NA	NA	Liquid	ambient	ambient	Plastic Bottle	R&D, Production	Lab Cabinets	0.750	0.250	gal	N/A - used on employees	Rarely - Only Expired Chemicals, Shipped off-site for disposal

<b>Facility/Site</b>		<b>CERS ID</b>
<b>Miramar Labs, Inc.</b> 445 Indio Way Sunnyvale, CA 94085		<b>10440013</b>

<b>Submittal Status</b>
Submitted on 5/28/2013 by <i>Sara Nakamura</i> of Miramar Labs, Inc. (Sunnyvale, CA) Submittal was <i>Accepted</i> ; Processed on 7/8/2013 by <i>R Asuncion</i> for Sunnyvale Department of Public Safety

<b>Identification</b>					
Miramar Labs, Inc.			<b>Beginning Date</b>	<b>Ending Date</b>	
Operator Phone	<b>Business Phone</b>	<b>Business Fax</b>	4/10/2013	4/9/2014	
(408) 940-8700	(408) 940-8700		Dun & Bradstreet	<b>SIC Code</b>	<b>Primary NAICS</b>
				3845	

<b>Facility/Site Mailing Address</b>
445 Indio Way Sunnyvale, CA 94085

<b>Primary Emergency Contact</b>		
Shannon Holt		
Title		
Manager, Human Resources & Administration		
<b>Business Phone</b>	<b>24-Hour Phone</b>	<b>Pager Number</b>
(408) 940-8702	(650) 380-0455	

<b>Owner</b>
Darrell Zoromski (408) 940-8702 445 Indio Way Sunnyvale, CA 94085

<b>Secondary Emergency Contact</b>		
Title		
<b>Business Phone</b>	<b>24-Hour Phone</b>	<b>Pager Number</b>

<b>Billing Contact</b>	
Joan Caldwell (408) 940-8775 445 Indio Way Sunnyvale, CA 94085	jcalldwell@miramarlabs.com

<b>Environmental Contact</b>	
Sara Nakamura (408) 940-8722 445 Indio Way Sunnyvale, CA 94085	
snakamura@miramarlabs.com	

<b>Name of Signer</b>	<b>Signer Title</b>	<b>Document Preparer</b>
Sara Nakamura		Sara Nakamura
<b>Additional Information</b>		

<b>Locally-collected Fields</b>								
Some or all of the following fields may be required by your local regulator(s).								
<table border="1"> <tr> <td><b>Property Owner</b></td> </tr> <tr> <td>Phone</td> </tr> <tr> <td>Mailing Address</td> </tr> </table>	<b>Property Owner</b>	Phone	Mailing Address	<table border="1"> <tr> <td><b>Assessor Parcel Number (APN)</b></td> </tr> <tr> <td>Number of Employees</td> </tr> <tr> <td>Facility ID</td> </tr> <tr> <td>FA0263928</td> </tr> </table>	<b>Assessor Parcel Number (APN)</b>	Number of Employees	Facility ID	FA0263928
<b>Property Owner</b>								
Phone								
Mailing Address								
<b>Assessor Parcel Number (APN)</b>								
Number of Employees								
Facility ID								
FA0263928								

**Site Identification****Miramar Labs, Inc.**

445 Indio Way  
Sunnyvale, CA 94085  
County  
Santa Clara

CERS ID  
**10440013**

EPA ID Number  
CAL000341369

**Submittal Status**

Submitted on 5/28/2013 by *Sara Nakamura* of Miramar Labs, Inc. (Sunnyvale, CA)  
Submittal was *Accepted*; Processed on 7/8/2013 by *R Asuncion* for Sunnyvale Department of Public Safety

**Hazardous Materials**

Does your facility have on site (for any purpose) at any one time, hazardous materials at or above 55 gallons for liquids, 500 pounds for solids, or 200 cubic feet for compressed gases (include liquids in ASTs and USTs); or is regulated under more restrictive inventory local reporting requirements (shown below if present); or the applicable Federal threshold quantity for an extremely hazardous substance specified in 40 CFR Part 355, Appendix A or B; or handle radiological materials in quantities for which an emergency plan is required pursuant to 10 CFR Parts 30, 40 or 70?

No

**Underground Storage Tank(s) (UST)**

Does your facility own or operate underground storage tanks?

No

**Hazardous Waste**

Is your facility a Hazardous Waste Generator?

Yes

Does your facility treat hazardous waste on-site?

No

Is your facility's treatment subject to financial assurance requirements (for Permit by Rule and Conditional Authorization)?

No

Does your facility consolidate hazardous waste generated at a remote site?

No

Does your facility need to report the closure/removal of a tank that was classified as hazardous waste and cleaned on-site?

No

Does your facility generate in any single calendar month 1,000 kilograms (kg) (2,200 pounds) or more of federal RCRA hazardous waste, or generate in any single calendar month, or accumulate at any time, 1 kg (2.2 pounds) of RCRA acute hazardous waste; or generate or accumulate at any time more than 100 kg (220 pounds) of spill cleanup materials contaminated with RCRA acute hazardous waste.

No

Is your facility a Household Hazardous Waste (HHW) Collection site?

No

**Excluded and/or Exempted Materials**

Does your facility recycle more than 100 kg/month of excluded or exempted recyclable materials (per HSC 25143.2)?

No

Does your facility own or operate ASTs above these thresholds? Store greater than 1,320 gallons of petroleum products (new or used) in aboveground tanks or containers.

No

Does your facility have Regulated Substances stored onsite in quantities greater than the threshold quantities established by the California Accidental Release prevention Program (CalARP)?

No

**Additional Information**

No additional comments provided.



# ENVIRONMENTAL HEALTH PERMIT

**PERMIT HOLDER IS RESPONSIBLE FOR THIS PERMIT:** Renew on or before expiration date. If Permit Holder does not receive renewal notice present this Permit to the address below on or before the expiration date. Late payments are assessed penalty.

HOLT, SHANNON, BUSINESS MANAGER

MIRAMAR LABS  
445 INDIO WY  
SUNNYVALE, CA 94085

**PERMIT IS NOT TRANSFERABLE & MAY BE REVOKED FOR CAUSE.** Permit is void on change of owner. New owner must apply and pay for permit (s) prior to operation or penalties will be assessed.

SANTA CLARA COUNTY-DEPARTMENT OF ENVIRONMENTAL HEALTH  
1555 BERGER DR, SUITE 300, SAN JOSE, CA 951122716  
408-918-3400

## ENVIRONMENTAL HEALTH PERMIT

REGULATED FACILITY :

**MIRAMAR LABS INC  
445 INDIO WY  
SUNNYVALE, CA 94085**

Facility ID: FA0263928  
Account ID: AR1284802  
Issued: 6/12/2013

OWNER NAME :

**MIRAMAR LABS INC**

Permit # **PT0469183 4358 - MED WASTE GEN-OTHER**  
Program # **PR0388991 MIRAMAR LABS INC-MW**  
Valid From **7/1/2013 to 6/30/2014**

**JIM BLAMEY, Acting Director, Department of Environmental Health  
DISPLAY IN PUBLIC VIEW**



Linda S. Adams  
Secretary for  
Environmental Protection

## Department of Toxic Substances Control

Maureen F. Gorsen, Director  
1001 "I" Street  
P.O. Box 806  
Sacramento, California 95812-0806



Arnold Schwarzenegger  
Governor

ATTN: CYNTHIA KADA  
MIRAMAR LABS INC  
199 JEFFERSON DR  
MENLO PARK CA 94025

EPA ID Number Issued: March 16, 2009  
**Location Address:**  
445 INDIO WY  
SUNNYVALE CA 94089

**PERMANENT RECORD - DO NOT DESTROY  
YOUR CALIFORNIA EPA IDENTIFICATION NUMBER IS:**

# CAL000341369

This is to acknowledge that a permanent California Environmental Protection Agency Identification (EPA ID) Number has been assigned to your place of business.

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***An EPA ID Number is assigned to a person or business at a specific site. It is only valid for the location and person or business to which it was assigned. If your business has multiple generation sites, each site must have its own unique number. If you stop handling hazardous waste, move your business, change ownership, change mailing address, or change the type or amount of waste you handle, you must notify the Department of Toxic Substances Control immediately. If your business has moved, your EPA ID Number must be canceled. A new number must be obtained for your new location if you continue to generate hazardous waste.***

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This EPA ID Number must be used for all manifesting, record keeping, and reporting requirements. Please retain this notice in your files.

Department of Toxic Substances Control  
Office of Data Evaluation and Environmental Indicators  
Generator Information Services Section  
Telephone: (916) 255-1136 or California Only Toll-free Number: (800) 618-6942

Operator's Initials: ASanders

version: April 2008



Printed on Recycled Paper



SUNNYVALE DEPARTMENT OF PUBLIC SAFETY  
700 ALL AMERICA WAY  
SUNNYVALE, CA 94088

# FIRE PREVENTION & ENVIRONMENTAL PROGRAMS CONSOLIDATED PERMIT

BUREAU OF SPECIAL OPERATIONS  
SUNNYVALE DEPARTMENT OF PUBLIC SAFETY

PERMITTEE: MIRAMAR LABS

OCCUPANCY#: 9117002-N

ADDRESS: 445 INDIO WAY

DATE ISSUED: 11/4/2009

SUNNYVALE, CA 94085

DATE EXPIRES: 11/30/2014

Permit applicants and the applicants' agents and employees shall carry out the proposed activities listed in this permit in compliance with Sunnyvale Municipal Code, California Fire Code and other laws or regulations applicable thereto, whether specified or not, and in complete accordance with approved plans and specifications. **This permit is subject to annual fees and inspections.**

This facility has met all requirements for the following safety and environmental programs. These activities are permitted at this facility:

- FIRE CODE REGULATED OPERATIONS (Title 16.52 SMC)
- HAZARDOUS MATERIALS STORAGE (Title 20 SMC)
- UNDERGROUND STORAGE TANK OPERATIONS (Title 20 SMC)
- TOXIC GAS OPERATIONS (Title 16.53 SMC)
- CALIFORNIA ACCIDENTAL RELEASE PLAN (Cal/ARP)
- HAZARDOUS WASTE GENERATOR
- HAZARDOUS WASTE TREATMENT ON SITE

- The attached sheets contain the details and conditions of each permitted activity.
- If there are changes in any of the above permitted activities or if you have any questions related to this permit, please contact Fire Prevention & Environmental Services, Bureau of Special Operations at (408) 730-7212.

Supervisor

**NOTE:** This permit is for the above-identified programs. Other related permits may be required to meet Fire Code, Building Code, or other Sunnyvale Municipal Code requirements. Where other permits or approvals are required, it is your responsibility to obtain them.

This Permit shall be kept on the premises designated therein at all times and shall be posted in a conspicuous location on the premises or shall be kept available for inspection at all times by an officer of the fire or police department or other authorized persons.

## HAZARDOUS MATERIALS STORAGE

**PERMITTEE:** MIRAMAR LABS

**ADDRESS:** 445 INDIO WAY

This facility has met all the requirements of Title 20 SMC (Hazardous Materials Storage) and is authorized to store the following regulated materials:

**HAZARDOUS MATERIALS SCHEDULE** (Quantity Range for Each Class Determined From Filed HMMP)

**DOT HAZARD CLASS      MATERIAL QUANTITY RANGE**

2.1 Flammable Gas

2.2 Non-Flammable Gas

2.3 Poison Gas

3 Flammable Liquids                      1

4 Flammable Solids

5.1 Oxidizers

5.2 Organic Peroxides

6.1 Poison Materials

6.2 Etiological Materials

8 Corrosives                                      1

9 Miscellaneous

• Regulated Materials Not DOT

• Cryogenic Gases

**QUANTITY RANGES:**

- 1 Up to and including 500 pounds for solids, 55 gallons for liquids and 200 cubic feet at STP for compressed gases.
- 2 Between 501 and 5,000 pounds for solids, 56 and 550 gallons for liquids and 201 and 2,000 cubic feet at STP for compressed gases.
- 3 Between 5,001 and 25,000 pounds for solids, 551 and 2,750 gallons for liquids and 2,001 and 10,000 cubic feet at STP for compressed gases.
- 4 Between 25,001 and 50,000 pounds for solids, 2,751 and 5,550 gallons for liquids and 10,001 and 20,000 cubic feet at STP for compressed gases.
- 5 More than 50,001 pounds for solids, 5,551 gallons for liquids and 20,001 cubic feet at STP for compressed gases.

**CONDITIONS:**

**ANNUAL INVENTORY CERTIFICATION:** You must report inventory changes within thirty (30) days (20.20.010 SMC). Provide a complete hazardous materials inventory annually or submit a certification that the inventory on file with the Fire Prevention & Environmental Services Unit is accurate.

## PERMIT CONDITIONS

Permit No: 43-9117 Facility: Miramar Labs

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**In order to maintain the operating permit, the permit holder must comply with all regulatory requirements, to include, but not all inclusive of the number items below:**

- \* The unified program agency or CUPA fee shall be paid for per county or city ordinance and/or state law, whichever is the more strict.
- \* Hazardous Waste Generator Program: CHSC Division 20, Chapter 6.5 Articles 1-13, Section 25100 et seq., and Title 22 CCR Chapter 20.

## MIRAMAR LABS, INC.

### 2006 STOCK PLAN

(amended June 6, 2016)

1. Purposes of the Plan. The purposes of this Plan are to attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentive to Employees, Directors and Consultants and to promote the success of the Company's business. Options granted under the Plan may be Incentive Stock Options or Nonstatutory Stock Options, as determined by the Administrator at the time of grant. Stock Purchase Rights may also be granted under the Plan.

2. Definitions. As used herein, the following definitions shall apply:

(a) “Administrator” means the Board or any of its Committees as shall be administering the Plan in accordance with Section 4 hereof.

(b) “Applicable Laws” means the requirements relating to the administration of stock option plans under U.S. state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws of any other country or jurisdiction where Options or Stock Purchase Rights are granted under the Plan.

(c) “Board” means the Board of Directors of the Company.

(d) “Change in Control” means the occurrence of any of the following events:

(i) Any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the “beneficial owner” (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the total voting power represented by the Company’s then outstanding voting securities, except that any change in the beneficial ownership of the securities of the Company as a result of a private financing of the Company that is approved by the Board, shall not be deemed to be a Change in Control; or

(ii) The consummation of the sale or disposition by the Company of all or substantially all of the Company’s assets; or

(iii) The consummation of a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation.

“Code” means the Internal Revenue Code of 1986, as amended. Any reference to a section of the Code herein will be a reference to any successor or amended section of the Code.

(e) “Committee” means a committee of Directors or of other individuals satisfying Applicable Laws appointed by the Board in accordance with Section 4 hereof.

(f) “Common Stock” means the Common Stock of the Company.

(g) “Company” means Miramar Labs, Inc., a Delaware corporation.

(h) “Consultant” means any person who is engaged by the Company or any Parent or Subsidiary to render consulting or advisory services to such entity.

(i) “Director” means a member of the Board.

(j) “Disability” means total and permanent disability as defined in Section 22(e)(3) of the Code.

(k) “Employee” means any person, including officers and Directors, employed by the Company or any Parent or Subsidiary of the Company. Neither service as a Director nor payment of a director's fee by the Company shall be sufficient to constitute “employment” by the Company.

(l) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(m) “Exchange Program” means a program under which (a) outstanding Options are surrendered or cancelled in exchange for Options of the same type (which may have lower exercise prices and different terms), Options of a different type, and/or cash, and/or (b) the exercise price of an outstanding Option is reduced. The terms and conditions of any Exchange Program will be determined by the Administrator in its sole discretion.

(n) “Fair Market Value” means, as of any date, the value of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation the Nasdaq National Market or The Nasdaq SmallCap Market of The Nasdaq Stock Market, its Fair Market Value shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system on the day of determination, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;

(ii) If the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, its Fair Market Value shall be the mean between the high bid and low asked prices for the Common Stock on the day of determination; or

(iii) In the absence of an established market for the Common Stock, the Fair Market Value thereof shall be determined in good faith by the Administrator.

(o) “Incentive Stock Option” means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code.

(p) “Nonstatutory Stock Option” means an Option not intended to qualify as an Incentive Stock Option.

(q) “Option” means a stock option granted pursuant to the Plan.

(r) “Option Agreement” means a written or electronic agreement between the Company and an Optionee evidencing the terms and conditions of an individual Option grant. The Option Agreement is subject to the terms and conditions of the Plan.

(s) “Optioned Stock” means the Common Stock subject to an Option or a Stock Purchase Right.

(t) “Optionee” means the holder of an outstanding Option or Stock Purchase Right granted under the Plan.

(u) “Parent” means a “parent corporation,” whether now or hereafter existing, as defined in Section 424(e) of the Code.

(v) “Plan” means this 2006 Stock Plan.

(w) “Restricted Stock” means Shares issued pursuant to a Stock Purchase Right or Shares of restricted stock issued pursuant to an Option.

(x) “Restricted Stock Purchase Agreement” means a written or electronic agreement between the Company and the Optionee evidencing the terms and restrictions applying to Shares purchased under a Stock Purchase Right. The Restricted Stock Purchase Agreement is subject to the terms and conditions of the Plan and the notice of grant.

(y) “Securities Act” means the Securities Act of 1933, as amended.

(z) “Service Provider” means an Employee, Director or Consultant.

(aa) “Share” means a share of the Common Stock, as adjusted in accordance with Section 13 below.

(bb) “Stock Purchase Right” means a right to purchase Common Stock pursuant to Section 11 below.

(cc) “Subsidiary” means a “subsidiary corporation,” whether now or hereafter existing, as defined in Section 424(f) of the Code.

3. Stock Subject to the Plan. Subject to the provisions of Section 13 of the Plan, the maximum aggregate number of Shares that may be subject to Options or Stock Purchase Rights and sold under the Plan is 20,298,750 Shares. The Shares may be authorized but unissued, or reacquired, Common Stock.

If an Option or Stock Purchase Right expires or becomes unexercisable without having been exercised in full, or is surrendered pursuant to an Exchange Program, the unpurchased Shares that were subject thereto shall become available for future grant or sale under the Plan (unless the Plan has terminated). However, Shares that have actually been issued under the Plan, upon exercise of either an Option or Stock Purchase Right, shall not be returned to the Plan and shall not become available for future distribution under the Plan, except that if unvested Shares of Restricted Stock are repurchased by the Company at their original purchase price, such Shares shall become available for future grant under the Plan.

4. Administration of the Plan.

(a) Administrator. The Plan shall be administered by the Board or a Committee appointed by the Board, which Committee shall be constituted to comply with Applicable Laws.

(b) Powers of the Administrator. Subject to the provisions of the Plan and, in the case of a Committee, the specific duties delegated by the Board to such Committee, and subject to the approval of any relevant authorities, the Administrator shall have the authority in its discretion:

(iv) to determine the Fair Market Value;

(v) to select the Service Providers to whom Options and Stock Purchase Rights may from time to time be granted hereunder;

(vi) to determine the number of Shares to be covered by each such award granted hereunder;

(vii) to approve forms of agreement for use under the Plan;

(viii) to determine the terms and conditions of any Option or Stock Purchase Right granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, the time or times when Options or Stock Purchase Rights may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Option or Stock Purchase Right or the Common Stock relating thereto, based in each case on such factors as the Administrator, in its sole discretion, shall determine;

(ix) to institute an Exchange Program;

(x) to prescribe, amend and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of satisfying applicable foreign laws;

(xi) to allow Optionees to satisfy withholding tax obligations by electing to have the Company withhold from the Shares to be issued upon exercise of an Option or Stock Purchase Right that number of Shares having a Fair Market Value equal to the minimum amount required to be withheld. The Fair Market Value of the Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined. All elections by Optionees to have Shares withheld

for this purpose shall be made in such form and under such conditions as the Administrator may deem necessary or advisable; and

(xii) to construe and interpret the terms of the Plan and Options granted pursuant to the Plan.

(c) Effect of Administrator's Decision. All decisions, determinations and interpretations of the Administrator shall be final and binding on all Optionees.

5. Eligibility. Nonstatutory Stock Options and Stock Purchase Rights may be granted to Service Providers. Incentive Stock Options may be granted only to Employees.

6. Limitations.

(a) Incentive Stock Option Limit. Each Option shall be designated in the Option Agreement as either an Incentive Stock Option or a Nonstatutory Stock Option. However, notwithstanding such designation, to the extent that the aggregate Fair Market Value of the Shares with respect to which Incentive Stock Options are exercisable for the first time by the Optionee during any calendar year (under all plans of the Company and any Parent or Subsidiary) exceeds \$100,000, such Options shall be treated as Nonstatutory Stock Options. For purposes of this Section 6(a), Incentive Stock Options shall be taken into account in the order in which they were granted. The Fair Market Value of the Shares shall be determined as of the time the Option with respect to such Shares is granted.

(b) At-Will Employment. Neither the Plan nor any Option or Stock Purchase Right shall confer upon any Optionee any right with respect to continuing the Optionee's relationship as a Service Provider with the Company, nor shall it interfere in any way with his or her right or the Company's right to terminate such relationship at any time, with or without cause, and with or without notice.

7. Term of Plan. Subject to stockholder approval in accordance with Section 19, the Plan shall become effective upon its adoption by the Board. Unless sooner terminated under Section 15, it shall continue in effect for a term of ten (10) years from the later of (i) the effective date of the Plan, or (ii) the earlier of the most recent Board or stockholder approval of an increase in the number of Shares reserved for issuance under the Plan.

8. Term of Option. The term of each Option shall be stated in the Option Agreement; provided, however, that the term shall be no more than ten (10) years from the date of grant thereof. In the case of an Incentive Stock Option granted to an Optionee who, at the time the Option is granted, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the term of the Option shall be five (5) years from the date of grant or such shorter term as may be provided in the Option Agreement.

9. Option Exercise Price and Consideration.

(a) Exercise Price. The per share exercise price for the Shares to be issued upon exercise of an Option shall be such price as is determined by the Administrator, but shall be subject to the following:

(i) In the case of an Incentive Stock Option

(A) granted to an Employee who, at the time of grant of such Option, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant.

(B) granted to any other Employee, the per Share exercise price shall be no less than 100% of the Fair Market Value per Share on the date of grant.

(ii) In the case of a Nonstatutory Stock Option

(A) granted to a Service Provider who, at the time of grant of such Option, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant.

(B) granted to any other Service Provider, the per Share exercise price shall be no less than 85% of the Fair Market Value per Share on the date of grant.

(iii) Notwithstanding the foregoing, Options may be granted with a per Share exercise price other than as required above in accordance with and pursuant to a transaction described in Section 424 of the Code.

(b) Forms of Consideration. The consideration to be paid for the Shares to be issued upon exercise of an Option, including the method of payment, shall be determined by the Administrator (and, in the case of an Incentive Stock Option, shall be determined at the time of grant). Such consideration may consist of, without limitation, (1) cash, (2) check, (3) promissory note, (4) other Shares, provided Shares acquired directly from the Company (x) have been owned by the Optionee, and not subject to a substantial risk of forfeiture, for more than six months on the date of surrender, and (y) have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which such Option shall be exercised, (5) consideration received by the Company under a cashless exercise program implemented by the Company in connection with the Plan, or (6) any combination of the foregoing methods of payment. In making its determination as to the type of consideration to accept, the Administrator shall consider if acceptance of such consideration may be reasonably expected to benefit the Company.

10. Exercise of Option.

(a) Procedure for Exercise; Rights as a Stockholder. Any Option granted hereunder shall be exercisable according to the terms hereof at such times and under such conditions as determined by the Administrator and set forth in the Option Agreement. An Option may not be exercised for a fraction of a Share. Except in the case of Options granted to officers, Directors and Consultants, Options shall become exercisable at a rate of no less than 20% per year over five (5) years from the date the Options are granted.

An Option shall be deemed exercised when the Company receives (i) written or electronic notice of exercise (in accordance with the Option Agreement) from the person entitled to exercise the Option, and (ii) full payment for the Shares with respect to which the Option is exercised. Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Option Agreement and the Plan. Shares issued upon exercise of an Option shall be issued in the name of the Optionee or, if requested by the Optionee, in the name of the Optionee and his or her spouse. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the Shares, notwithstanding the exercise of the Option. The Company shall issue (or cause to be issued) such Shares promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 13 of the Plan.

Exercise of an Option in any manner shall result in a decrease in the number of Shares thereafter available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(b) Termination of Relationship as a Service Provider. If an Optionee ceases to be a Service Provider, such Optionee may exercise his or her Option within thirty (30) days of termination, or such longer period of time as specified in the Option Agreement, to the extent that the Option is vested on the date of termination (but in no event later than the expiration of the term of the Option as set forth in the Option Agreement). Unless the Administrator provides otherwise, if on the date of termination the Optionee is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified by the Administrator, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(c) Disability of Optionee. If an Optionee ceases to be a Service Provider as a result of the Optionee's Disability, the Optionee may exercise his or her Option within six (6) months of termination, or such longer period of time as specified in the Option Agreement, to the extent the Option is vested on the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Option Agreement). Unless the Administrator provides otherwise, if on the date of termination the Optionee is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(d) Death of Optionee. If an Optionee dies while a Service Provider, the Option may be exercised within six (6) months following Optionee's death, or such longer period of time as specified in the Option Agreement, to the extent that the Option is vested on the date of death (but in no event later than the expiration of the term of such Option as set forth in the Option Agreement) by the Optionee's designated beneficiary, provided such beneficiary has been designated prior to Optionee's death in a form acceptable to the Administrator. If no such beneficiary has been designated by the Optionee, then such Option may be exercised by the personal representative of the Optionee's estate or by the person(s) to whom the Option is transferred pursuant to the Optionee's will or in accordance with the laws of descent and distribution. If, at the time of death, the Optionee is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall immediately revert to the Plan. If the Option is not so exercised within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(e) Leaves of Absence.

(i) Unless the Administrator provides otherwise, vesting of Options granted hereunder to officers and Directors shall be suspended during any unpaid leave of absence.

(ii) A Service Provider shall not cease to be an Employee in the case of (A) any leave of absence approved by the Company or (B) transfers between locations of the Company or between the Company, its Parent, any Subsidiary, or any successor.

(iii) For purposes of Incentive Stock Options, no such leave may exceed ninety (90) days, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, then three (3) months following the 91st day of such leave, any Incentive Stock Option held by the Optionee shall cease to be treated as an Incentive Stock Option and shall be treated for tax purposes as a Nonstatutory Stock Option.

11. Stock Purchase Rights.

(a) Rights to Purchase. Stock Purchase Rights may be issued either alone, in addition to, or in tandem with other awards granted under the Plan and/or cash awards made outside of the Plan. After the Administrator determines that it will offer Stock Purchase Rights under the Plan, it shall advise the offeree in writing or electronically of the terms, conditions and restrictions related to the offer, including the number of Shares that such person shall be entitled to purchase, the price to be paid, and the time within which such person must accept such offer. The terms of the offer shall comply in all respects with Section 260.140.42 of Title 10 of the California Code of Regulations. The offer shall be accepted by execution of a Restricted Stock Purchase Agreement in the form determined by the Administrator.

(b) Repurchase Option. Unless the Administrator determines otherwise, the Restricted Stock Purchase Agreement shall grant the Company a repurchase option exercisable within 90 days of the voluntary or involuntary termination of the purchaser's service with the Company for any reason (including death or disability). Unless the Administrator provides otherwise, the purchase price for Shares repurchased pursuant to the Restricted Stock Purchase Agreement shall be the original

price paid by the purchaser and may be paid by cancellation of any indebtedness of the purchaser to the Company. The repurchase option shall lapse at such rate as the Administrator may determine. Except with respect to Shares purchased by officers, Directors and Consultants, the repurchase option shall in no case lapse at a rate of less than 20% per year over five (5) years from the date of purchase.

(c) Other Provisions. The Restricted Stock Purchase Agreement shall contain such other terms, provisions and conditions not inconsistent with the Plan as may be determined by the Administrator in its sole discretion.

(d) Rights as a Stockholder. Once the Stock Purchase Right is exercised, the purchaser shall have rights equivalent to those of a stockholder and shall be a stockholder when his or her purchase is entered upon the records of the duly authorized transfer agent of the Company. No adjustment shall be made for a dividend or other right for which the record date is prior to the date the Stock Purchase Right is exercised, except as provided in Section 13 of the Plan.

12. Limited Transferability of Options and Stock Purchase Rights. Unless determined otherwise by the Administrator, Options and Stock Purchase Rights may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or the laws of descent and distribution, and may be exercised during the lifetime of the Optionee, only by the Optionee. If the Administrator in its sole discretion makes an Option or Stock Purchase Right transferable, such Option or Stock Purchase Right may only be transferred (i) by will, (ii) by the laws of descent and distribution, or (iii) to family members (within the meaning of Rule 701 of the Securities Act) through gifts or domestic relations orders, as permitted by Rule 701 of the Securities Act.

13. Adjustments; Dissolution or Liquidation; Merger or Change in Control.

(a) Adjustments. In the event that any dividend or other distribution (whether in the form of cash, Shares, other securities, or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, or exchange of Shares or other securities of the Company, or other change in the corporate structure of the Company affecting the Shares occurs, the Administrator, in order to prevent diminution or enlargement of the benefits or potential benefits intended to be made available under the Plan, may (in its sole discretion) adjust the number and class of Shares that may be delivered under the Plan and/or the number, class, and price of Shares covered by each outstanding Option or Stock Purchase Right; provided, however, that the Administrator shall make such adjustments to the extent required by Section 25102(o) of the California Corporations Code.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, the Administrator shall notify each Optionee as soon as practicable prior to the effective date of such proposed transaction. To the extent it has not been previously exercised, an Option or Stock Purchase Right will terminate immediately prior to the consummation of such proposed action.

(c) Merger or Change in Control. In the event of a merger of the Company with or into another corporation, or a Change in Control, each outstanding Option and Stock Purchase Right shall be assumed or an equivalent option substituted by the successor corporation or a Parent or Subsidiary of the successor corporation. In the event that the successor corporation in a merger or

Change in Control refuses to assume or substitute for the Option or Stock Purchase Right, then the Optionee shall fully vest in and have the right to exercise the Option or Stock Purchase Right as to all of the Optioned Stock, including Shares as to which it would not otherwise be vested or exercisable. If an Option or Stock Purchase Right becomes fully vested and exercisable in lieu of assumption or substitution in the event of a merger or Change in Control, the Administrator shall notify the Optionee in writing or electronically that the Option or Stock Purchase Right shall be fully exercisable for a period of time as determined by the Administrator, and the Option or Stock Purchase Right shall terminate upon expiration of such period. For the purposes of this paragraph, the Option or Stock Purchase Right shall be considered assumed if, following the merger or Change in Control, the option or right confers the right to purchase or receive, for each Share subject to the Option or Stock Purchase Right immediately prior to the merger or Change in Control, the consideration (whether stock, cash, or other securities or property) received in the merger or Change in Control by holders of Common Stock for each Share held on the effective date of the transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the merger or Change in Control is not solely common stock of the successor corporation or its Parent, the Administrator may, with the consent of the successor corporation, provide for the consideration to be received upon the exercise of the Option or Stock Purchase Right, for each Share subject to the Option or Stock Purchase Right, to be solely common stock of the successor corporation or its Parent equal in fair market value to the per share consideration received by holders of common stock in the merger or Change in Control.

14. Time of Granting Options and Stock Purchase Rights. The date of grant of an Option or Stock Purchase Right shall, for all purposes, be the date on which the Administrator makes the determination granting such Option or Stock Purchase Right, or such later date as is determined by the Administrator. Notice of the determination shall be given to each Service Provider to whom an Option or Stock Purchase Right is so granted within a reasonable time after the date of such grant.

15. Amendment and Termination of the Plan.

(a) Amendment and Termination. The Board may at any time amend, alter, suspend or terminate the Plan.

(b) Stockholder Approval. The Board shall obtain stockholder approval of any Plan amendment to the extent necessary and desirable to comply with Applicable Laws.

(c) Effect of Amendment or Termination. No amendment, alteration, suspension or termination of the Plan shall impair the rights of any Optionee, unless mutually agreed otherwise between the Optionee and the Administrator, which agreement must be in writing and signed by the Optionee and the Company. Termination of the Plan shall not affect the Administrator's ability to exercise the powers granted to it hereunder with respect to Options granted under the Plan prior to the date of such termination.

16. Conditions Upon Issuance of Shares.

(a) Legal Compliance. Shares shall not be issued pursuant to the exercise of an Option or Stock Purchase Right unless the exercise of such Option or Stock Purchase Right and the

issuance and delivery of such Shares shall comply with Applicable Laws and shall be further subject to the approval of counsel for the Company with respect to such compliance.

(b) Investment Representations. As a condition to the exercise of an Option or Stock Purchase Right, the Administrator may require the person exercising such Option or Stock Purchase Right to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required.

17. Inability to Obtain Authority. The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

18. Reservation of Shares. The Company, during the term of this Plan, shall at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

19. Stockholder Approval. The Plan shall be subject to approval by the stockholders of the Company within twelve (12) months after the date the Plan is adopted. Such stockholder approval shall be obtained in the degree and manner required under Applicable Laws.

20. Information to Optionees. The Company shall provide to each Optionee and to each individual who acquires Shares pursuant to the Plan, not less frequently than annually during the period such Optionee has one or more Options or Stock Purchase Rights outstanding, and, in the case of an individual who acquires Shares pursuant to the Plan, during the period such individual owns such Shares, copies of annual financial statements. The Company shall not be required to provide such statements to key employees whose duties in connection with the Company assure their access to equivalent information.

**MIRAMAR LABS, INC.**

**2006 STOCK PLAN**

**STOCK OPTION AGREEMENT**

Unless otherwise defined herein, the terms defined in the 2006 Stock Plan shall have the same defined meanings in this Stock Option Agreement.

**I. NOTICE OF STOCK OPTION GRANT**

**Name:**

**Address:**

The undersigned Optionee has been granted an Option to purchase Common Stock of the Company, subject to the terms and conditions of the Plan and this Option Agreement, as follows:

Date of Grant	_____
Vesting Commencement Date	_____
Exercise Price per Share	\$ _____
Total Number of Shares Granted	_____
Total Exercise Price	\$ _____
Type of Option:	_____ Incentive Stock Option _____ Nonstatutory Stock Option
Term/Expiration Date:	_____

**Vesting Schedule:**

This Option shall be exercisable, in whole or in part, according to the following vesting schedule:

[INSERT]

**Termination Period:**

This Option shall be exercisable for three (3) months after Optionee ceases to be a Service Provider. Upon Optionee's death or Disability, this Option may be exercised for one (1) year after Optionee ceases to be a Service Provider. In no event may Optionee exercise this Option after the Term/Expiration Date as provided above.

## II. AGREEMENT

1. Grant of Option. The Plan Administrator of the Company hereby grants to the Optionee named in the Notice of Grant (the “Optionee”) an option (the “Option”) to purchase the number of Shares set forth in the Notice of Grant, at the exercise price per Share set forth in the Notice of Grant (the “Exercise Price”), and subject to the terms and conditions of the Plan, which is incorporated herein by reference. Subject to Section 15(c) of the Plan, in the event of a conflict between the terms and conditions of the Plan and this Option Agreement, the terms and conditions of the Plan shall prevail.

If designated in the Notice of Grant as an Incentive Stock Option (“ISO”), this Option is intended to qualify as an Incentive Stock Option as defined in Section 422 of the Code. Nevertheless, to the extent that it exceeds the \$100,000 rule of Code Section 422(d), this Option shall be treated as a Nonstatutory Stock Option (“NSO”).

### 2. Exercise of Option.

(a) Right to Exercise. This Option shall be exercisable during its term in accordance with the Vesting Schedule set out in the Notice of Grant and with the applicable provisions of the Plan and this Option Agreement.

(b) Method of Exercise. This Option shall be exercisable by delivery of an exercise notice in the form attached as Exhibit A (the “Exercise Notice”) which shall state the election to exercise the Option, the number of Shares with respect to which the Option is being exercised, and such other representations and agreements as may be required by the Company. The Exercise Notice shall be accompanied by payment of the aggregate Exercise Price as to all exercised Shares. This Option shall be deemed to be exercised upon receipt by the Company of such fully executed Exercise Notice accompanied by the aggregate Exercise Price.

No Shares shall be issued pursuant to the exercise of an Option unless such issuance and such exercise comply with Applicable Laws. Assuming such compliance, for income tax purposes the Shares shall be considered transferred to the Optionee on the date on which the Option is exercised with respect to such Shares.

3. Optionee’s Representations. In the event the Shares have not been registered under the Securities Act of 1933, as amended, at the time this Option is exercised, the Optionee shall, if required by the Company, concurrently with the exercise of all or any portion of this Option, deliver to the Company his or her Investment Representation Statement in the form attached hereto as Exhibit B.

4. Lock-Up Period. Optionee hereby agrees that Optionee shall not offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any Common Stock (or other securities) of the Company or enter into any swap, hedging or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any Common Stock (or other securities) of the Company held by Optionee (other than those included in the registration) for a period specified by the representative of the underwriters of Common Stock

(or other securities) of the Company not to exceed one hundred eighty (180) days following the effective date of any registration statement of the Company filed under the Securities Act.

Optionee agrees to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriter which are consistent with the foregoing or which are necessary to give further effect thereto. In addition, if requested by the Company or the representative of the underwriters of Common Stock (or other securities) of the Company, Optionee shall provide, within ten (10) days of such request, such information as may be required by the Company or such representative in connection with the completion of any public offering of the Company's securities pursuant to a registration statement filed under the Securities Act. The obligations described in this Section 4 shall not apply to a registration relating solely to employee benefit plans on Form S-1 or Form S-8 or similar forms that may be promulgated in the future, or a registration relating solely to a Commission Rule 145 transaction on Form S-4 or similar forms that may be promulgated in the future. The Company may impose stop-transfer instructions with respect to the shares of Common Stock (or other securities) subject to the foregoing restriction until the end of said one hundred eighty (180) day period. Optionee agrees that any transferee of the Option or shares acquired pursuant to the Option shall be bound by this Section 4.

5. Method of Payment. Payment of the aggregate Exercise Price shall be by any of the following, or a combination thereof, at the election of the Optionee:

- (a) cash or check;
- (b) consideration received by the Company under a formal cashless exercise program adopted by the Company in connection with the Plan; or
- (c) surrender of other Shares which, (i) in the case of Shares acquired from the Company, either directly or indirectly, have been owned by the Optionee, and not subject to a substantial risk of forfeiture, for more than six (6) months on the date of surrender, and (ii) have a Fair Market Value on the date of surrender equal to the aggregate Exercise Price of the exercised Shares.

6. Restrictions on Exercise. This Option may not be exercised until such time as the Plan has been approved by the stockholders of the Company, or if the issuance of such Shares upon such

exercise or the method of payment of consideration for such shares would constitute a violation of any Applicable Law.

7. Non-Transferability of Option. This Option may not be transferred in any manner otherwise than by will or by the laws of descent or distribution and may be exercised during the lifetime of Optionee only by Optionee. The terms of the Plan and this Option Agreement shall be binding upon the executors, administrators, heirs, successors and assigns of the Optionee.

8. Term of Option. This Option may be exercised only within the term set out in the Notice of Grant, and may be exercised during such term only in accordance with the Plan and the terms of this Option.

9. Tax Obligations.

(a) Withholding Taxes. Optionee agrees to make appropriate arrangements with the Company (or the Parent or Subsidiary employing or retaining Optionee) for the satisfaction of all federal, state, local and foreign income and employment tax withholding requirements applicable to the Option exercise. Optionee acknowledges and agrees that the Company may refuse to honor the exercise and refuse to deliver Shares if such withholding amounts are not delivered at the time of exercise.

(b) Notice of Disqualifying Disposition of ISO Shares. If the Option granted to Optionee herein is an ISO, and if Optionee sells or otherwise disposes of any of the Shares acquired pursuant to the ISO on or before the later of (1) the date two years after the Date of Grant, or (2) the date one year after the date of exercise, the Optionee shall immediately notify the Company in writing of such disposition. Optionee agrees that Optionee may be subject to income tax withholding by the Company on the compensation income recognized by the Optionee.

10. Entire Agreement; Governing Law. The Plan is incorporated herein by reference. The Plan and this Option Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and Optionee with respect to the subject matter hereof, and may not be modified adversely to the Optionee's interest except by means of a writing signed by the Company and Optionee. This agreement is governed by the internal substantive laws but not the choice of law rules of California.

11. No Guarantee of Continued Service. OPTIONEE ACKNOWLEDGES AND AGREES THAT THE VESTING OF SHARES PURSUANT TO THE VESTING SCHEDULE HEREOF IS EARNED ONLY BY CONTINUING AS A SERVICE PROVIDER AT THE WILL OF THE COMPANY (NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED THIS OPTION OR ACQUIRING SHARES HEREUNDER). OPTIONEE FURTHER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS A SERVICE PROVIDER FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND SHALL NOT INTERFERE IN ANY WAY WITH OPTIONEE'S RIGHT OR THE COMPANY'S RIGHT TO TERMINATE OPTIONEE'S RELATIONSHIP AS A SERVICE PROVIDER AT ANY TIME, WITH OR WITHOUT CAUSE.

Optionee acknowledges receipt of a copy of the Plan and represents that he or she is familiar with the terms and provisions thereof, and hereby accepts this Option subject to all of the terms and provisions thereof. Optionee has reviewed the Plan and this Option Agreement in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Option Agreement and fully understands all provisions of the Option Agreement. Optionee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Administrator upon any questions arising under the Plan or this Option Agreement. Optionee further agrees to notify the Company upon any change in the residence address indicated below.

OPTIONEE

MIRAMAR LABS, INC.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
By

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Residence Address

**EXHIBIT A**  
**2006 STOCK PLAN**  
**EXERCISE NOTICE**

Miramar Labs, Inc.  
199 Jefferson Drive  
Menlo Park, CA 94025  
Attention: \_\_\_\_\_

1. Exercise of Option. Effective as of today, \_\_\_\_\_, 20\_\_, the undersigned (“Optionee”) hereby elects to exercise Optionee’s option to purchase \_\_\_\_\_ shares of the Common Stock (the “Shares”) of Miramar Labs, Inc. (the “Company”) under and pursuant to the 2006 Stock Plan (the “Plan”) and the Stock Option Agreement dated \_\_\_\_\_, 20\_\_ (the “Option Agreement”).

2. Delivery of Payment. Optionee herewith delivers to the Company the full purchase price of the Shares, as set forth in the Option Agreement, and any and all withholding taxes due in connection with the exercise of the Option.

3. Representations of Optionee. Optionee acknowledges that Optionee has received, read and understood the Plan and the Option Agreement and agrees to abide by and be bound by their terms and conditions.

4. Rights as Stockholder. Until the issuance of the Shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. The Shares shall be issued to the Optionee as soon as practicable after the Option is exercised in accordance with the Option Agreement. No adjustment shall be made for a dividend or other right for which the record date is prior to the date of issuance except as provided in Section 13 of the Plan.

5. Company’s Right of First Refusal. Before any Shares held by Optionee or any transferee (either being sometimes referred to herein as the “Holder”) may be sold or otherwise transferred (including transfer by gift or operation of law), the Company or its assignee(s) shall have a right of first refusal to purchase the Shares on the terms and conditions set forth in this Section 5 (the “Right of First Refusal”).

(a) Notice of Proposed Transfer. The Holder of the Shares shall deliver to the Company a written notice (the “Notice”) stating: (i) the Holder’s bona fide intention to sell or otherwise transfer such Shares; (ii) the name of each proposed purchaser or other transferee (“Proposed Transferee”); (iii) the number of Shares to be transferred to each Proposed Transferee; and (iv) the bona

for a cash price or other consideration for which the Holder proposes to transfer the Shares (the “Offered Price”), and the Holder shall offer the Shares at the Offered Price to the Company or its assignee(s).

(b) Exercise of Right of First Refusal. At any time within thirty (30) days after receipt of the Notice, the Company and/or its assignee(s) may, by giving written notice to the Holder, elect to purchase all, but not less than all, of the Shares proposed to be transferred to any one or more of the Proposed Transferees, at the purchase price determined in accordance with subsection (c) below.

(c) Purchase Price. The purchase price (“Purchase Price”) for the Shares purchased by the Company or its assignee(s) under this Section 5 shall be the Offered Price. If the Offered Price includes consideration other than cash, the cash equivalent value of the non-cash consideration shall be determined by the Board of Directors of the Company in good faith.

(d) Payment. Payment of the Purchase Price shall be made, at the option of the Company or its assignee(s), in cash (by check), by cancellation of all or a portion of any outstanding indebtedness of the Holder to the Company (or, in the case of repurchase by an assignee, to the assignee), or by any combination thereof within thirty (30) days after receipt of the Notice or in the manner and at the times set forth in the Notice.

(e) Holder’s Right to Transfer. If all of the Shares proposed in the Notice to be transferred to a given Proposed Transferee are not purchased by the Company and/or its assignee(s) as provided in this Section 5, then the Holder may sell or otherwise transfer such Shares to that Proposed Transferee at the Offered Price or at a higher price, provided that such sale or other transfer is consummated within 120 days after the date of the Notice, that any such sale or other transfer is effected in accordance with any applicable securities laws and that the Proposed Transferee agrees in writing that the provisions of this Section 5 shall continue to apply to the Shares in the hands of such Proposed Transferee. If the Shares described in the Notice are not transferred to the Proposed Transferee within such period, a new Notice shall be given to the Company, and the Company and/or its assignees shall again be offered the Right of First Refusal before any Shares held by the Holder may be sold or otherwise transferred.

(f) Exception for Certain Family Transfers. Anything to the contrary contained in this Section 5 notwithstanding, the transfer of any or all of the Shares during the Optionee’s lifetime or on the Optionee’s death by will or intestacy to the Optionee’s immediate family or a trust for the benefit of the Optionee’s immediate family shall be exempt from the provisions of this Section 5. “Immediate Family” as used herein shall mean spouse, lineal descendant or antecedent, father, mother, brother or sister. In such case, the transferee or other recipient shall receive and hold the Shares so transferred subject to the provisions of this Section 5, and there shall be no further transfer of such Shares except in accordance with the terms of this Section 5.

(g) Termination of Right of First Refusal. The Right of First Refusal shall terminate as to any Shares upon the earlier of (i) the first sale of Common Stock of the Company to the general public, or (ii) a Change in Control in which the successor corporation has equity securities that are publicly traded.

6. Tax Consultation. Optionee understands that Optionee may suffer adverse tax consequences as a result of Optionee's purchase or disposition of the Shares. Optionee represents that Optionee has consulted with any tax consultants Optionee deems advisable in connection with the purchase or disposition of the Shares and that Optionee is not relying on the Company for any tax advice.

7. Restrictive Legends and Stop-Transfer Orders.

(a) Legends. Optionee understands and agrees that the Company shall cause the legends set forth below or legends substantially equivalent thereto, to be placed upon any certificate(s) evidencing ownership of the Shares together with any other legends that may be required by the Company or by state or federal securities laws:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "ACT") AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT OR, IN THE OPINION OF COMPANY COUNSEL SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS IN COMPLIANCE THEREWITH.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFER AND A RIGHT OF FIRST REFUSAL HELD BY THE ISSUER OR ITS ASSIGNEE(S) AS SET FORTH IN THE EXERCISE NOTICE BETWEEN THE ISSUER AND THE ORIGINAL HOLDER OF THESE SHARES, A COPY OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE ISSUER. SUCH TRANSFER RESTRICTIONS AND RIGHT OF FIRST REFUSAL ARE BINDING ON TRANSFEREES OF THESE SHARES.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER FOR A PERIOD NOT TO EXCEED 180 DAYS FOLLOWING THE EFFECTIVE DATE OF THE UNDERWRITTEN PUBLIC OFFERING OF THE COMPANY'S SECURITIES AND MAY NOT BE SOLD OR OTHERWISE DISPOSED OF BY THE HOLDER WITHOUT THE CONSENT OF THE COMPANY OR THE MANAGING UNDERWRITER.

(b) Stop-Transfer Notices. Optionee agrees that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate "stop transfer" instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records.

(c) Refusal to Transfer. The Company shall not be required (i) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Exercise Notice or (ii) to treat as owner of such Shares or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares shall have been so transferred.

8. Successors and Assigns. The Company may assign any of its rights under this Exercise Notice to single or multiple assignees, and this Exercise Notice shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth, this Exercise Notice shall be binding upon Optionee and his or her heirs, executors, administrators, successors and assigns.

9. Interpretation. Any dispute regarding the interpretation of this Exercise Notice shall be submitted by Optionee or by the Company forthwith to the Administrator which shall review such dispute at its next regular meeting. The resolution of such a dispute by the Administrator shall be final and binding on all parties.

10. Governing Law; Severability. This Exercise Notice is governed by the internal substantive laws but not the choice of law rules, of California. In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Exercise Notice will continue in full force and effect.

11. Entire Agreement. The Plan and Option Agreement are incorporated herein by reference. This Exercise Notice, the Plan, the Option Agreement and the Investment Representation Statement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and Optionee with respect to the subject matter hereof, and may not be modified adversely to the Optionee's interest except by means of a writing signed by the Company and Optionee.

Submitted by:  
OPTIONEE

Accepted by:  
MIRAMAR LABS, INC.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
By

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address:  
  
\_\_\_\_\_  
  
\_\_\_\_\_

\_\_\_\_\_  
Address:  
  
\_\_\_\_\_  
  
\_\_\_\_\_

\_\_\_\_\_  
Date Received

## EXHIBIT B

### INVESTMENT REPRESENTATION STATEMENT

OPTIONEE:

COMPANY:           MIRAMAR LABS, INC.

SECURITY:         COMMON STOCK

AMOUNT:

DATE:

In connection with the purchase of the above-listed Securities, the undersigned Optionee represents to the Company the following:

(a) Optionee is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Securities. Optionee is acquiring these Securities for investment for Optionee's own account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act of 1933, as amended (the "Securities Act").

(b) Optionee acknowledges and understands that the Securities constitute "restricted securities" under the Securities Act and have not been registered under the Securities Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Optionee's investment intent as expressed herein. In this connection, Optionee understands that, in the view of the Securities and Exchange Commission, the statutory basis for such exemption may be unavailable if Optionee's representation was predicated solely upon a present intention to hold these Securities for the minimum capital gains period specified under tax statutes, for a deferred sale, for or until an increase or decrease in the market price of the Securities, or for a period of one year or any other fixed period in the future. Optionee further understands that the Securities must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. Optionee further acknowledges and understands that the Company is under no obligation to register the Securities. Optionee understands that the certificate evidencing the Securities will be imprinted with any legend required under applicable state securities laws.

(c) Optionee is familiar with the provisions of Rule 701 and Rule 144, each promulgated under the Securities Act, which, in substance, permit limited public resale of "restricted securities" acquired, directly or indirectly from the issuer thereof, in a non-public offering subject to the satisfaction of certain conditions. Rule 701 provides that if the issuer qualifies under Rule 701 at the time of the grant of the Option to the Optionee, the exercise will be exempt from registration under the Securities Act. In the event the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), ninety (90) days thereafter (or such longer period as any market stand-off agreement may require) the Securities exempt under

Rule 701 may be resold, subject to the satisfaction of certain of the conditions specified by Rule 144, including: (1) the resale being made through a broker in an unsolicited “broker’s transaction” or in transactions directly with a market maker (as said term is defined under the Exchange Act); and, in the case of an affiliate, (2) the availability of certain public information about the Company, (3) the amount of Securities being sold during any three month period not exceeding the limitations specified in Rule 144(e), and (4) the timely filing of a Form 144, if applicable.

In the event that the Company does not qualify under Rule 701 at the time of grant of the Option, then the Securities may be resold in certain limited circumstances subject to the provisions of Rule 144, which requires the resale to occur not less than one year after the later of the date the Securities were sold by the Company or the date the Securities were sold by an affiliate of the Company, within the meaning of Rule 144; and, in the case of acquisition of the Securities by an affiliate, or by a non-affiliate who subsequently holds the Securities less than two years, the satisfaction of the conditions set forth in sections (1), (2), (3) and (4) of the paragraph immediately above.

(d) Optionee further understands that in the event all of the applicable requirements of Rule 701 or 144 are not satisfied, registration under the Securities Act, compliance with Regulation A, or some other registration exemption will be required; and that, notwithstanding the fact that Rules 144 and 701 are not exclusive, the Staff of the Securities and Exchange Commission has expressed its opinion that persons proposing to sell private placement securities other than in a registered offering and otherwise than pursuant to Rules 144 or 701 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales, and that such persons and their respective brokers who participate in such transactions do so at their own risk. Optionee understands that no assurances can be given that any such other registration exemption will be available in such event.

Signature of Optionee:

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Date:

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## MIRAMAR LABS, INC.

### INDEMNIFICATION AGREEMENT

This Indemnification Agreement (this “*Agreement*”) is dated as of \_\_\_\_\_, 2016 and is between Miramar Labs, Inc., a Delaware corporation (the “*Company*”), and «Indemnitee» (“*Indemnitee*”).

#### RECITALS

- A. Indemnitee’s service to the Company substantially benefits the Company.
- B. Individuals are reluctant to serve as directors or officers of corporations or in certain other capacities unless they are provided with adequate protection through insurance or indemnification against the risks of claims and actions against them arising out of such service.
- C. Indemnitee does not regard the protection currently provided by applicable law, the Company’s governing documents and any insurance as adequate under the present circumstances, and Indemnitee may not be willing to serve as a director or officer without additional protection.
- D. In order to induce Indemnitee to continue to provide services to the Company, it is reasonable, prudent and necessary for the Company to contractually obligate itself to indemnify, and to advance expenses on behalf of, Indemnitee as permitted by applicable law.
- E. This Agreement is a supplement to and in furtherance of the indemnification provided in the Company’s certificate of incorporation and bylaws, and any resolutions adopted pursuant thereto, and this Agreement shall not be deemed a substitute therefor, nor shall this Agreement be deemed to limit, diminish or abrogate any rights of Indemnitee thereunder.

The parties therefore agree as follows:

1. **Definitions.**

(a) A “*Change in Control*” shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

(i) *Acquisition of Stock by Third Party.* Any Person (as defined below) is or becomes the Beneficial Owner (as defined below), directly or indirectly, of securities of the Company representing fifteen percent (15%) or more of the combined voting power of the Company’s then outstanding securities;

(ii) *Change in Board Composition.* During any period of two consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constitute the Company’s board of directors, and any new directors (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in Sections 1(a)(i), 1(a)(iii) or 1(a)(iv)) whose election by

the board of directors or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of the members of the Company's board of directors;

(iii) *Corporate Transactions*. The effective date of a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the surviving entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving entity;

(iv) *Liquidation*. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets; and

(v) *Other Events*. Any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any similar schedule or form) promulgated under the Securities Exchange Act of 1934, as amended, whether or not the Company is then subject to such reporting requirement.

For purposes of this Section 1(a), the following terms shall have the following meanings:

(1) "**Person**" shall have the meaning as set forth in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended; *provided, however*, that "**Person**" shall exclude (i) the Company, (ii) any trustee or other fiduciary holding securities under an employee benefit plan of the Company, and (iii) any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(2) "**Beneficial Owner**" shall have the meaning given to such term in Rule 13d-3 under the Securities Exchange Act of 1934, as amended; *provided, however*, that "**Beneficial Owner**" shall exclude any Person otherwise becoming a Beneficial Owner by reason of (i) the stockholders of the Company approving a merger of the Company with another entity or (ii) the Company's board of directors approving a sale of securities by the Company to such Person.

(b) "**Corporate Status**" describes the status of a person who is or was a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of the Company or any other Enterprise.

(c) "**DGCL**" means the General Corporation Law of the State of Delaware.

(d) “**Disinterested Director**” means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(e) “**Enterprise**” means the Company and any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary.

(f) “**Expenses**” include all reasonable attorneys’ fees, retainers, court costs, transcript costs, fees and costs of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also include (i) Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond or other appeal bond or their equivalent, and (ii) for purposes of Section 12(d), Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee’s rights under this Agreement or under any directors’ and officers’ liability insurance policies maintained by the Company. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(g) “**Independent Counsel**” means a law firm, or a partner or member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (other than as Independent Counsel with respect to matters concerning Indemnitee under this Agreement, or other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “**Independent Counsel**” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

(h) “**Proceeding**” means any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, including any appeal therefrom and including without limitation any such Proceeding pending as of the date of this Agreement, in which Indemnitee was, is or will be involved as a party, a potential party, a non-party witness or otherwise by reason of (i) the fact that Indemnitee is or was a director or officer of the Company, (ii) any action taken by Indemnitee or any action or inaction on Indemnitee’s part while acting as a director or officer of the Company, or (iii) the fact that he or she is or was serving at the request of the Company as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of the Company or any other Enterprise, in each case whether or not serving in such capacity at the time any liability or Expense is incurred for which indemnification or advancement of expenses can be provided under this Agreement.

(i) Reference to “*other enterprises*” shall include employee benefit plans; references to “*fin*es” shall include any excise taxes assessed on a person with respect to any employee benefit plan; references to “*serv*ing at the request of the Company” shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “*not opposed to the best interests of the Company*” as referred to in this Agreement.

2. **Indemnity in Third-Party Proceedings.** The Company shall indemnify Indemnitee in accordance with the provisions of this Section 2 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 2, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee or on his or her behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not *opposed to the best* interests of the Company and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

3. **Indemnity in Proceedings by or in the Right of the Company.** The Company shall indemnify Indemnitee in accordance with the provisions of this Section 3 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 3, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company. No indemnification for Expenses shall be made under this Section 3 in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged by a court of competent jurisdiction to be liable to the Company, unless and only to the extent that the Delaware Court of Chancery or any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification for such expenses as the Delaware Court of Chancery or such other court shall deem proper.

4. **Indemnification for Expenses of a Party Who is Wholly or Partly Successful.** To the extent that Indemnitee is a party to or a participant in and is successful (on the merits or otherwise) in defense of any Proceeding or any claim, issue or matter therein, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection therewith. To the extent permitted by applicable law, if Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, in defense of one or more but less than all claims, issues or matters in such Proceeding, the Company

shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with (a) each successfully resolved claim, issue or matter, and (b) any claim, issue or matter related to any such successfully resolved claim, issue or matter. For purposes of this section, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

5. **Indemnification for Expenses of a Witness.** To the extent that Indemnitee is, by reason of his or her Corporate Status, a witness in any Proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified to the extent permitted by applicable law against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith.

6. **Additional Indemnification.**

(a) Notwithstanding any limitation in Sections 2, 3 or 4, the Company shall indemnify Indemnitee to the fullest extent permitted by applicable law if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee or on his or her behalf in connection with the Proceeding or any claim, issue or matter therein.

(b) For purposes of Section 6(a), the meaning of the phrase "*to the fullest extent permitted by applicable law*" shall include, but not be limited to:

(i) the fullest extent permitted by the provision of the DGCL that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the DGCL; and

(ii) the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

7. **Exclusions.** Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any Proceeding (or any part of any Proceeding):

(a) for which payment has actually been made to or on behalf of Indemnitee under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid;

(b) for an accounting or disgorgement of profits pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of federal, state or local statutory law or common law, if Indemnitee is held liable therefor (including pursuant to any settlement arrangements);

(c) for any reimbursement of the Company by Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnitee from the sale of securities of the Company, as required in each case under the Securities Exchange Act of 1934, as amended (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the “*Sarbanes-Oxley Act*”), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act), if Indemnitee is held liable therefor;

(d) initiated by Indemnitee and not by way of defense, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees, agents or other indemnitees, unless (i) the Company’s board of directors authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law, (iii) otherwise authorized in Section 12(d) or (iv) otherwise required by applicable law; or

(e) if prohibited by applicable law.

#### 8. **Advances of Expenses.**

(a) The Company shall advance the Expenses incurred by Indemnitee in connection with any Proceeding prior to its final resolution, and such advancement shall be made as soon as reasonably practicable, but in any event no later than 60 days, after the receipt by the Company of a written statement or statements requesting such advances from time to time (which shall include invoices received by Indemnitee in connection with such Expenses but, in the case of invoices in connection with legal services, any references to legal work performed or to expenditure made that would cause Indemnitee to waive any privilege accorded by applicable law shall not be included with the invoice). Advances shall be unsecured and interest free and made without regard to Indemnitee’s ability to repay such advances. Indemnitee hereby undertakes to repay any advance to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Company. This Section 8 shall not apply to the extent advancement is prohibited by law and shall not apply to any Proceeding for which indemnity is not permitted under this Agreement, but shall apply to any Proceeding referenced in Section 7(b) or 7(c) prior to a determination that Indemnitee is not entitled to be indemnified by the Company.

#### 9. **Procedures for Notification and Defense of Claim.**

(a) Indemnitee shall notify the Company in writing of any matter with respect to which Indemnitee intends to seek indemnification or advancement of Expenses as soon as reasonably practicable following the receipt by Indemnitee of notice thereof. The written notification to the Company shall include, in reasonable detail, a description of the nature of the Proceeding and the facts underlying the Proceeding. The failure by Indemnitee to notify the Company will not relieve the Company from any liability which it may have to Indemnitee hereunder or otherwise than under this Agreement, except to the extent that such failure or delay materially prejudices the Company.

(b) If, at the time of the receipt of a notice of a Proceeding pursuant to the terms hereof, the Company has directors' and officers' liability insurance in effect, the Company shall give prompt notice of the commencement of the Proceeding to the insurers in accordance with the procedures set forth in the applicable policies. The Company shall thereafter take all commercially-reasonable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(c) In the event the Company may be obligated to make any indemnity in connection with a Proceeding, the Company shall be entitled to assume the defense of such Proceeding with counsel approved by Indemnitee, which approval shall not be unreasonably withheld. After the retention of such counsel by the Company, the Company will not be liable to Indemnitee for any fees or expenses of counsel subsequently incurred by Indemnitee with respect to the same Proceeding. Notwithstanding the Company's assumption of the defense of any such Proceeding, the Company shall be obligated to pay the fees and expenses of Indemnitee's separate counsel to the extent (i) the employment of separate counsel by Indemnitee is authorized by the Company, (ii) counsel for the Company or Indemnitee shall have reasonably concluded that there is a conflict of interest between the Company and Indemnitee in the conduct of any such defense such that Indemnitee needs to be separately represented, (iii) the fees and expenses are non-duplicative and reasonably incurred in connection with Indemnitee's role in the Proceeding despite the Company's assumption of the defense; (iv) the Company is not financially or legally able to perform its indemnification obligations, or (v) the Company shall not have retained, or shall not continue to retain, such counsel to defend such Proceeding. The Company shall have the right to conduct such defense as it sees fit in its sole discretion. Regardless of any provision in this Agreement, Indemnitee shall have the right to employ counsel in any Proceeding at Indemnitee's personal expense. The Company shall not be entitled, without the consent of Indemnitee, to assume the defense of any claim brought by or in the right of the Company.

(d) Indemnitee shall give the Company such information and cooperation in connection with the Proceeding as may be reasonably appropriate.

(e) The Company shall not be liable to indemnify Indemnitee for any settlement of any Proceeding (or any part thereof) without the Company's prior written consent, which shall not be unreasonably withheld.

(f) The Company shall have the right to settle any Proceeding (or any part thereof) without the consent of Indemnitee.

#### **10. Procedures upon Application for Indemnification.**

(a) To obtain indemnification, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee *and as is reasonably* necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of the Proceeding. Any delay in providing the request will not relieve the Company from its obligations under this Agreement, except to the extent such failure is prejudicial.

(b) Upon written request by Indemnitee for indemnification pursuant to Section 10(a), a determination with respect to Indemnitee's entitlement thereto shall be made in the specific case (i) if a Change in Control shall have occurred, by Independent Counsel in a written opinion to the Company's board of directors, a copy of which shall be delivered to Indemnitee or (ii) if a Change in Control shall not have occurred, if required by applicable law (A) by a majority vote of the Disinterested Directors, even though less than a quorum of the Company's board of directors, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Company's board of directors, (C) if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Company's board of directors, a copy of which shall be delivered to Indemnitee or (D) if so directed by the Company's board of directors, by the stockholders of the Company. If it is determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten days after such determination. Indemnitee shall cooperate with the person, persons or entity making the determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information that is not privileged or otherwise protected from disclosure and that is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including attorneys' fees and disbursements) reasonably incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company, to the extent permitted by applicable law.

(c) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 10(b), the Independent Counsel shall be selected as provided in this Section 10(c). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Company's board of directors, and the Company shall give written notice to Indemnitee advising him or her of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Company's board of directors, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within ten days after such written notice of selection shall have been given, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; *provided, however*, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within 20 days after the later of (i) submission by Indemnitee of a written request for indemnification pursuant to Section 10(a) hereof and (ii) the final disposition of the Proceeding, the parties have not agreed upon an Independent Counsel, either the Company or Indemnitee may petition a court of competent jurisdiction for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and for the appointment as Independent

Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 10(b) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 12(a) of this Agreement, the Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing). The Company shall pay the reasonable fees and expenses of any Independent Counsel.

#### 11. **Presumptions and Effect of Certain Proceedings.**

(a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall, to the fullest extent not prohibited by law, presume that Indemnitee is entitled to indemnification under this Agreement, and the Company shall, to the fullest extent not prohibited by law, have the burden of proof to overcome that presumption.

(b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself create a presumption that Indemnitee did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his or her conduct was unlawful.

(c) Neither the knowledge, actions nor failure to act of any other director, officer, agent or employee of the Enterprise shall be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

#### 12. **Remedies of Indemnitee.**

(a) Subject to Section 12(e), in the event that (i) a determination is made pursuant to Section 10 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 8 or 12(d) of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 10 of this Agreement within 90 days after the later of the receipt by the Company of the request for indemnification or the final disposition of the Proceeding, (iv) payment of indemnification pursuant to this Agreement is not made (A) within ten days after a determination has been made that Indemnitee is entitled to indemnification or (B) with respect to indemnification pursuant to Sections 4, 5 and 12(d) of this Agreement, within 30 days after receipt by the Company of a written request therefor, or (v) the Company or any other person or entity takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or proceeding designed to deny, or to recover from, Indemnitee the benefits provided or intended to be provided to Indemnitee hereunder, Indemnitee shall be entitled to an adjudication by a court of competent jurisdiction of his or her entitlement to such indemnification or advancement of Expenses. Alternatively, Indemnitee, at his or her option, may seek an award in arbitration with respect to his or her entitlement to such indemnification or advancement of Expenses, to be

conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee shall commence such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 12(a); *provided, however*, that the foregoing clause shall not apply in respect of a proceeding brought by Indemnitee to enforce his or her rights under Section 4 of this Agreement. The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration in accordance with this Agreement.

(b) Neither (i) the failure of the Company, its board of directors, any committee or subgroup of the board of directors, Independent Counsel or stockholders to have made a determination that indemnification of Indemnitee is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor (ii) an actual determination by the Company, its board of directors, any committee or subgroup of the board of directors, Independent Counsel or stockholders that Indemnitee has not met the applicable standard of conduct, shall create a presumption that Indemnitee has or has not met the applicable standard of conduct. In the event that a determination shall have been made pursuant to Section 10 of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration *commenced pursuant to* this Section 12 shall be conducted in all respects as a *de novo* trial, or arbitration, on the merits, and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 12, the Company shall, to the fullest extent not prohibited by law, have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be.

(c) To the fullest extent not prohibited by law, the Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 12 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement. If a determination shall have been made pursuant to Section 10 of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 12, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statements not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) To the extent not prohibited by law, the Company shall indemnify Indemnitee against all Expenses that are incurred by Indemnitee in connection with any action for indemnification or advancement of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company to the extent Indemnitee is successful in such action, and, if requested by Indemnitee, shall (as soon as reasonably practicable, but in any event no later than 60 days, after receipt by the Company of a written request therefor) advance such Expenses to Indemnitee, subject to the provisions of Section 8. Such advances shall be subject to Indemnitee's agreement to repay the sums advanced if the court (or arbitrator) finds that each material argument or defense advanced by Indemnitee in such action or arbitration was either frivolous or not made in good faith.

(e) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification shall be required to be made prior to the final disposition of the Proceeding.

13. **Contribution.** To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amounts incurred by Indemnitee, whether for Expenses, judgments, fines or amounts paid or to be paid in settlement, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the events and transactions giving rise to such Proceeding; and (ii) the relative fault of Indemnitee and the Company (and its other directors, officers, employees and agents) in connection with such events and transactions.

14. **Non-exclusivity.** The rights of indemnification and to receive advancement of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Company's certificate of incorporation or bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Company's certificate of incorporation and bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change, subject to the restrictions expressly set forth herein or therein. Except as expressly set forth herein, no right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. Except as expressly set forth herein, the *assertion* or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

15. **Primary Responsibility.** The Company acknowledges that to the extent Indemnitee is serving as a director on the Company's board of directors at the request or direction of a venture capital fund or other entity and/or certain of its affiliates (collectively, the "**Secondary Indemnitors**"), Indemnitee may have certain rights to indemnification and advancement of expenses provided by such Secondary Indemnitors. The Company agrees that, as between the Company and the Secondary Indemnitors, the Company is primarily responsible for amounts required to be indemnified or advanced under the Company's certificate of incorporation or bylaws or this Agreement and any obligation of the Secondary Indemnitors to provide indemnification or advancement for the same amounts is secondary to those Company obligations. To the extent not in contravention of any insurance policy or policies providing liability or other insurance for the Company or any director, trustee, general partner, managing member, officer, employee, agent or fiduciary of the Company or any other Enterprise, the Company waives any right of contribution or subrogation against the Secondary Indemnitors with respect to the liabilities for which the Company is primarily responsible under this Section 15. In the event of any payment by the Secondary Indemnitors of amounts otherwise required to be indemnified or advanced by the Company under

the Company's certificate of incorporation or bylaws or this Agreement, the Secondary Indemnitors shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee for indemnification or advancement of expenses under the Company's certificate of incorporation or bylaws or this Agreement or, to the extent such subrogation is unavailable and contribution is found to be the applicable remedy, shall have a right of contribution with respect to the amounts paid. The Secondary Indemnitors are express third-party beneficiaries of the terms of this Section 15.

16. **No Duplication of Payments.** The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnitee has otherwise actually received payment for such amounts under any insurance policy, contract, agreement or otherwise.

17. **Insurance.** To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, trustees, general partners, managing members, officers, employees, agents or fiduciaries of the Company or any other Enterprise, Indemnitee shall be covered by such policy or policies to the same extent as the most favorably-insured persons under such policy or policies in a comparable position.

18. **Subrogation.** In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

19. **Services to the Company.** Indemnitee agrees to serve as a director or officer of the Company or, at the request of the Company, as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of another Enterprise, for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders his or her resignation or is removed from such position. Indemnitee may at any time and for any reason resign from such position (subject to any other contractual obligation or any obligation imposed by operation of law), in which event the Company shall have no obligation under this Agreement to continue Indemnitee in such position. This Agreement shall not be deemed an employment contract between the Company (or any of its subsidiaries or any Enterprise) and Indemnitee. Indemnitee specifically acknowledges that any employment with the Company (or any of its subsidiaries or any Enterprise) is at will, and Indemnitee may be discharged at any time for any reason, with or without cause, with or without notice, except as may be otherwise expressly provided in any executed, written employment contract between Indemnitee and the Company (or any of its subsidiaries or any Enterprise), any existing formal severance policies adopted by the Company's board of directors or, with respect to service as a director or officer of the Company, the Company's certificate of incorporation or bylaws or the DGCL. No such document shall be subject to any oral modification thereof.

20. **Duration.** This Agreement shall continue until and terminate upon the later of (a) ten years after the date that Indemnitee shall have ceased to serve as a director or officer of the Company or as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of any other Enterprise, as applicable; or (b) one year after the final termination of any Proceeding, including any appeal, then pending in respect of which Indemnitee is granted rights of

indemnification or advancement of Expenses hereunder and of any proceeding commenced by Indemnitee pursuant to Section 12 of this Agreement relating thereto.

21. **Successors.** This Agreement shall be binding upon the Company and its successors and assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company, and shall inure to the benefit of Indemnitee and Indemnitee's heirs, executors and administrators. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company, by written agreement, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

22. **Severability.** Nothing in this Agreement is intended to require or shall be construed as requiring the Company to do or fail to do any act in violation of applicable law. The Company's inability, pursuant to court order or other applicable law, to perform its obligations under this Agreement shall not constitute a breach of this Agreement. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions of this Agreement (including without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (ii) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (iii) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

23. **Enforcement.** The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director or officer of the Company.

24. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; *provided, however*, that this Agreement is a supplement to and in furtherance of the Company's certificate of incorporation and bylaws and applicable law.

25. **Modification and Waiver.** No supplement, modification or amendment to this Agreement shall be binding unless executed in writing by the parties hereto. No amendment, alteration or repeal of this Agreement shall adversely affect any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his or her Corporate Status prior to such amendment, alteration or repeal. No waiver of any of the provisions of this

Agreement shall constitute or be deemed a waiver of any other provision of this Agreement nor shall any waiver constitute a continuing waiver.

26. **Notices.** All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid, or otherwise delivered by hand, messenger or courier service addressed:

(a) if to Indemnitee, to Indemnitee's address, as shown on the signature page of this Agreement or in the Company's records, as may be updated in accordance with the provisions hereof; or

(b) if to the Company, to the attention of the Chief Executive Officer or Chief Financial Officer of the Company at 2790 Walsh Avenue, Santa Clara, CA 95051, or at such other current address as the Company shall have furnished to Indemnitee, with a copy (which shall not constitute notice) to Philip Oettinger at Wilson Sonsini Goodrich & Rosati, P.C., 650 Page Mill Road, Palo Alto, California 94304.

Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given (i) if delivered by hand, messenger or courier service, when delivered (or if sent *via* a nationally-recognized overnight courier service, freight prepaid, specifying next-business-day delivery, one business day after deposit with the courier), or (ii) if sent *via* mail, at the earlier of its receipt or five days after the same has been deposited in a regularly-maintained receptacle for the deposit of the United States mail, addressed and mailed as aforesaid.

27. **Applicable Law and Consent to Jurisdiction.** This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 12(a) of this Agreement, or except as mutually agreed by the parties in writing, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Court of Chancery, and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court of Chancery for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, The Corporation Trust Company, Wilmington, Delaware as its agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court of Chancery, and (v) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court of Chancery has been brought in an improper or inconvenient forum.

28. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute

one and the same Agreement. This Agreement may also be executed and delivered by facsimile signature and in counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

29. **Captions.** The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

*(signature page follows)*

The parties are signing this Indemnification Agreement as of the date stated in the introductory sentence.

**MIRAMAR LABS, INC.**

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*(Signature)*

---

*(Print Name)*

---

*(Title)*

---

**INDEMNITEE**

---

*(Signature)*

---

*(Print Name)*

---

*(Street address)*

---

*(City, State and ZIP)*

---

Confidential

October 16, 2006

Mr. Steven Kim  
1969 Farndon Avenue  
Los Altos, CA 94024

Dear Steve,

On behalf of Foundry Newco X (the "Company"), I am pleased to offer you the position of Entrepreneur in Residence (EIR), reporting to me as President & CEO. The terms of your relationship with the Company will be as indicated herein.

1. You will become the Entrepreneur in Residence. As such, you will have responsibilities as determined by me, primarily relating to assisting The Foundry team in the identification and evaluation of new ideas as the potential technology basis for Newco X. Once the technology has been identified, you also have the responsibility of managing the design and development efforts for the Company.

2. You will be paid a base monthly salary of \$17,916.67. This salary will be paid at the end of each month (subject to normal required withholding). Since this is a salaried position, there will be no overtime pay.

3. You will accrue 10 hours of paid time off per month.

4. The Company will recommend that its Board of Directors grant you an employee incentive stock option to purchase 250,000 shares of Common Stock (equivalent to 2.5% of the shares outstanding as of your start date). The option will have an exercise price equal to the fair market value of such Common stock on the date of board approval. The option will vest 25% on your one-year anniversary, and then at a rate of 1/48<sup>th</sup> per month, with the option being fully vested after four (4) years from your date of hire.

5. The Company will pay your COBRA benefits or the equivalent until such time as a policy for major medical, Dental and Life insurance is available through the Company.

6. You will sign the Company's standard Employee Agreement (which will also be provided to you shortly) prior to the initiation of your employment. In addition, you will abide by the Company's policy that prohibits any new employee from bringing with him or her from any previous

employer any confidential information, trade secrets, or proprietary materials or processes of such former employer.

7. You will agree to follow the Company's policy that employees must not disclose any information regarding salary, bonuses, or stock purchase or option allocations to other employees, either directly or indirectly.

8. You will be an employee-at-will, where either party, with or without notice, and with or without cause, may terminate employment at any time.

9. Your start date will be as soon as mutually acceptable, but will not be later than Monday, November 6, 2006.

10. In accordance with Federal regulations, please bring proof of your identity and authorization to work in the U.S. when you begin work. This documentation must be provided no later than your third working day.

11. This offer will remain open until close of business on Monday, October 23, 2006, and constitutes the entire agreement between the parties, superseding all other agreements or understanding, except for the Non-Disclosure Agreement you signed with the Company.

Steve, I am extremely pleased to extend you this offer, and look forward to the opportunity of working closely with you to make Foundry Newco X an exciting and successful venture.

Sincerely,

/s/ Hanson S. Gifford, III

Hanson S. Gifford, III

President & CEO

The foregoing terms are hereby understood and accepted:

Signed: /s/ Steven Kim

Date: 10/17/06

## MIRAMAR LABS, INC

### EMPLOYMENT AGREEMENT

This Employment Agreement (the “*Agreement*”) is entered into, effective as of September 21<sup>st</sup>, 2011, by and between Miramar Labs, Inc. (the “*Company*”) and Brigid Makes (“*Executive*”).

#### WITNESSETH:

**WHEREAS**, the Company desires to retain the services of Executive as its Chief Financial Officer (“*CFO*”), and Executive desires and is willing to begin employment with the Company in that capacity;

**WHEREAS**, the Company provided and Executive accepted an offer of employment pursuant to terms set forth in an offer letter dated [September 8, 2011] (the “*Offer Letter*”); and BAM comment: is this still valid?

**WHEREAS**, the Company and Executive desire to embody the terms and conditions of Executive’s employment in a written employment agreement, which will supersede all prior agreements of employment, whether written or oral, between the Company and Executive, including, without limitation, the Offer Letter.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the parties agree as follows:

1. Duties and Scope of Employment.

(a) Positions and Duties. Executive’s first day of employment at the Company shall be September 26, 2011 (the “*Effective Date*”). As of the Effective Date, Executive will serve as the Company’s CFO reporting to the Company’s President and Chief Executive Officer (the “*CEO*”). Executive will render such business and professional services in the performance of her duties, consistent with Executive’s position within the Company, as will reasonably be assigned to her by the Board. The period Executive is employed by the Company under this Agreement is referred to herein as the “*Employment Term*”. Executive’s specific duties will include, but are not limited to, the following:

- (i) helping the CEO manage the financial operations of the Company;
- (ii) preparing the Company’s financial statements and developing internal controls related to financial reporting;
- (iii) working with the Company’s management team to accomplish corporate goals including the creation of a sustainable, high value company with quality revenues;
- (iv) securing additional operating capital as necessary to finance continued growth of the Company;

(v) preparing the Company for a strategic acquisition or initial public offering or alternatively, managing an ongoing private entity with cash reserves;

(vi) partnering with the CEO to create, communicate, and execute on a strategic vision for the Company;

(vii) developing and overseeing a Company budget and comparing the Company's actual financial performance to the budget;

(viii) regulating and approving expense allocations in compliance with internal controls on spending;

(ix) helping to develop appropriate compensation programs and goals for employees of the Company and motivating such employees to achieve those goals;

(x) evaluating and implementing an ERP system and other financial system infrastructure;

(xi) assisting in recruiting additional talented employees to the Company and providing direction and coaching to existing employees;

(xii) arbitrating problems, proposing creative solutions, and leveraging opportunities across departments within the Company;

(xiii) reporting on financial performance to the Company's Audit Committee and Board of Directors;

(xiv) monitoring progress of the Company through financial metrics and developing other key indicators to measure performance; and

(xv) ensuring compliance with applicable laws, such as Sarbanes-Oxley, and implementing best practices for sound financial management.

(b) Obligations. During the Employment Term, Executive will devote Executive's full business efforts and time to the Company and will use good faith efforts to discharge Executive's obligations under this Agreement to the best of Executive's ability and in accordance with each of the Company's corporate guidance and ethics guidelines, conflict of interests policies and code of conduct, including, without limitation, Company policy not to disclose any information regarding salary, bonuses, or stock purchase or option allocations to other employees, either directly or indirectly. For the duration of the Employment Term, Executive agrees not to actively engage in any other employment, occupation, or consulting activity for any direct or indirect remuneration without the prior approval of the Board, which approval will not be unreasonably withheld; provided, however, that Executive may, without the approval of the Board, serve in any capacity with any civic, educational, social, or charitable organization, provided such services do not interfere with Executive's obligations to the Company.

(c) Prior Agreements. Executive hereby represents and warrants to the Company that she is not party to any contract, understanding, agreement or policy, written or otherwise, which

would be breached by her entering into, or performing services under, this Agreement. Executive further represents that she has disclosed to the Company in writing all threatened, pending, or actual claims against Executive of which she is aware, that are unresolved and still outstanding as of the date of this Agreement and will do so again as of the Effective Date, in each case, as a result of her employment with her current employer (or any other previous employer) or her membership on any boards of directors.

(d) Other Entities. Executive agrees to serve and may be appointed, without additional compensation, as an officer and director for any of the Company's subsidiaries, partnerships, joint ventures, limited liability companies and other affiliates, including entities in which the Company has a significant investment as determined by the Company. As used in this Agreement, the term "affiliates" will include any entity controlled by, controlling, or under common control of the Company.

2. At-Will Employment. Executive and the Company agree that Executive's employment with the Company constitutes "at-will" employment. Executive and the Company acknowledge that this employment relationship may be terminated at any time, upon written notice to the other party, with or without good cause or for any or no cause, at the election of either the Company or Executive. Executive understands and agrees that neither her job performance nor promotions, commendations, bonuses or the like from the Company give rise to or in any way serve as the basis for modification, amendment, or extension, by implication or otherwise, of her employment with the Company

3. Compensation.

(a) Base Salary. As of the Effective Date, the Company will pay Executive an annual salary of \$300,000 as compensation for her services (such annual salary, as is then effective, to be referred to herein as "**Base Salary**"), paid periodically in accordance with the Company's normal payroll practices, but not less than monthly, and be subject to the usual, required withholdings. Executive will not be eligible for overtime pay.

(b) Moving Allowance. The Company will reimburse Executive through payroll, in an amount not to exceed \$25,000, for 50% of the moving expenses (i.e. total moving costs of \$50,000) incurred by Executive in relocating her principal residence closer to the Company's principal offices. Such reimbursement shall be made by the Company to Executive in the next regularly scheduled payroll following sufficient proof of such expenses, as determined in Company's sole judgment.

4. Stock Options.

(a) Option Grant. The Company will recommend to the Board, at the first meeting of the Board following the Effective Date, that Executive be granted a stock option, which will be, to the extent possible under the \$100,000 rule of Section 422(d) of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**"), an "incentive stock option" (as defined in Section 422 of the Code), to purchase 550,000 shares of the Company's common stock (the "**Option**"). The Option represents five percent (1.25%) of the Company's total outstanding shares calculated on a fully-diluted basis as of the date of the Offer Letter. The exercise price per share for the Option will be equal to the fair market value per share of an underlying share of Company common stock on the date of grant, as determined by the Board. Twenty-five percent (25%) of the shares subject to the Option shall vest on

the one (1) year anniversary of the vesting commencement date for the Option, subject to Executive's continued service with the Company through such date, and no shares shall vest before such date. The remaining shares subject to the Option shall vest monthly over the next thirty-six (36) months in equal monthly amounts subject to Executive's continued service with the Company through each such vesting date. The Option shall be subject to the terms, definitions and conditions, including vesting requirements, of the Company's 2006 Stock Plan (the "*Equity Plan*") and a stock option agreement between Executive and the Company (the "*Option Agreement*"), both of which are incorporated herein by reference. No right to any stock is earned or accrued until such time that vesting occurs, nor does the grant confer any right to continue vesting or employment.

5. Severance.

(a) Termination without Cause or for Good Reason. If Executive's employment is terminated by the Company other than for Cause, death or disability or by Executive for Good Reason prior to a Change of Control, or within the twelve (12) month period immediately following a Change of Control, then, subject to Section 5(b) below, Executive will receive: (i) continued payment of Executive's Base Salary as then in effect (less applicable withholdings), for nine (9) months, payable in accordance with the Company's normal payroll policies; (ii) full vesting with respect to Executive's then outstanding unvested equity awards (including the Option) that are subject to time-based vesting (i.e., excluding any awards that vest based on performance or other similar objectives), and (iii) reimbursement for premiums paid for continued health benefits under COBRA for Executive (and any eligible dependents) under the Company's group health plans until the earlier of (A) nine (9) months (provided Executive and/or any eligible dependents validly elects to continue coverage under COBRA), or (B) the date upon which Executive and/or Executive's eligible dependents loses eligibility for COBRA.

(b) Separation Agreement and Release of Claims. The receipt of any severance or other benefits pursuant to Section 5(a) will be subject to Executive signing and not revoking a separation agreement and release of claims in a form acceptable to the Company within (60) days following Executive's employment termination date or such earlier date required by the release agreement (such deadline, the "*Release Deadline*"). No severance or other benefits will be paid or provided until the separation agreement and release agreement becomes effective. If the release does not become effective by the Release Deadline, Executive will forfeit any rights to severance under this letter. Upon the release becoming effective, any payments delayed from the date Executive terminates employment through the effective date of the release will be payable in a lump sum without interest as soon as administratively practicable after the Release Deadline and all other amounts will be payable in accordance with the payment schedule applicable to each payment or benefit.

6. Limitation on Payments. In the event that the benefits provided for in this Agreement or otherwise payable to Executive (x) constitute "parachute payments" within the meaning of Section 280G of the Code and (y) but for this Section 6, would be subject to the excise tax imposed by Section 4999 of the Code, then Executive's benefits will be either (i) delivered in full, or (ii) delivered as to such lesser extent which would result in no portion of such benefits being subject to excise tax under Section 4999 of the Code, whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the excise tax imposed by Section 4999, results in the receipt

by Executive on an after-tax basis, of the greatest amount of benefits, notwithstanding that all or some portion of such benefits may be taxable under Section 4999 of the Code. If a reduction in amounts to be paid must be made, any non-cash amounts will be reduced prior to the reduction of any cash amounts. Unless the Company and Executive otherwise agree in writing, any determination required under this Section 6 will be made in writing by a well-recognized independent public accounting firm chosen by the Company (the “*Accountants*”), whose determination will be conclusive and binding upon Executive and the Company for all purposes. For purposes of making the calculations required by this Section 6, the Accountants may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and Executive will furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make a determination under this Section 6. The Company will bear all costs the Accountants may reasonably incur in connection with any calculations contemplated by this Section 6.

7. Employee Benefits.

(a) Generally. During the Employment Term, Executive is entitled to participate in the employee benefit plans currently and hereafter maintained by the TriNet Employer Group, Inc., without limitation, the medical, dental, vision, life, flexible spending account and disability plans. TriNet Employer Group, Inc. may cancel or change the benefit plans and programs it offers to the Company’s employees at any time. Accordingly, you will be able to participate in any Company-sponsored retirement plan, subject to the provisions of the plan.

(b) Paid Time Off. During the Employment Term, Executive will be entitled to twenty (20) days of paid time off (“*PTO*”), which will accrue at a rate of thirteen and one-third (13 and 1/3) hours per month, in accordance with the Company’s PTO policy. PTO shall be taken at such time as mutually and reasonably agreed by Executive and the Company. Executive will receive paid holidays in accordance with the Company’s regular holiday practices.

8. Expenses. The Company will reimburse Executive for reasonable travel, entertainment and other expenses incurred by Executive in the furtherance of the performance of Executive’s duties hereunder, in accordance with the Company’s expense reimbursement policy as in effect from time to time.

9. Termination of Employment. In the event Executive’s employment with the Company terminates for any reason, Executive will be entitled to any (a) unpaid Base Salary accrued up to the effective date of termination; (b) pay for accrued but unused PTO; (c) benefits or compensation as provided under the terms of any employee benefit and compensation agreements or plans applicable to Executive; and (d) unreimbursed business expenses required to be reimbursed to Executive; and (e) rights to indemnification Executive may have under the Company’s Certificate of Incorporation, Bylaws, the Agreement, or separate indemnification agreement, as applicable.

10. Code Section 409A. Notwithstanding anything to the contrary in this Agreement solely with respect to the timing of the payment of any severance payments or benefits other than payment on account of Executive’s termination due to Executive’s death, if Executive is a “*specified employee*” within the meaning of Section 409A of the Code and any regulations and guidance promulgated

thereunder (“**Section 409A**”) at the time of Executive’s termination of employment, then to the extent any severance payments payable to Executive pursuant to this Agreement, and any other severance payments or separation benefits are a plan or part of a plan providing for the “**deferral of compensation**” under Section 409A (together, the “**Deferred Compensation Separation Benefits**”) otherwise due to Executive on or within the six (6) month period following Executive’s termination of employment will accrue during such six (6) month period and will become payable in a lump sum payment on the date six (6) months and one (1) day following the date of Executive’s termination of employment, unless Executive dies following the termination of her employment, in which case, the Deferred Compensation Separation Benefits will be paid to the personal representative of Executive’s estate (which shall be Executive’s living trust, or if there is none, her probate estate) as soon as practicable following her death. All subsequent Deferred Compensation Separation Benefits, if any, will be payable in accordance with the payment schedule applicable to each payment or benefit. It is the intent of this Agreement to comply with the requirements of Section 409A so that none of the severance payments and benefits to be provided hereunder will be subject to the additional tax imposed under Section 409A, and any ambiguities herein will be interpreted to so comply.

11. Definitions.

(a) Cause. For purposes of this Agreement, “**Cause**” shall mean:

(i) Executive’s continued failure to perform her assigned duties or responsibilities after notice thereof from the Company describing the failure to perform such duties or responsibilities, and the executive has been provided a reasonable cure period of not less than sixty (60) days;

(ii) Executive engaging in any act of dishonesty, fraud or misrepresentation;

(iii) Executive’s violation of any federal or state law or regulation applicable to the business of the Company or its affiliates;

(iv) Executive’s breach of any confidentiality agreement or invention assignment agreement between Executive and the Company (or any affiliate of the Company); or

(v) Executive being convicted of, or entering a plea of nolo contendere to, any crime or committing any act of moral turpitude.

(b) Change of Control. For purposes of this Agreement, “**Change of Control**” shall mean a merger, acquisition or other transaction (excluding an equity financing conducted primarily for the purpose of raising capital) in which the owners of at least fifty-one percent (51%) of the outstanding stock of the Company are different after such transaction than before such transaction.

(c) Good Reason. For purposes of this Agreement, “**Good Reason**” shall mean solely and specifically, the occurrence of any of the following without consent of Executive:

(i) a reduction in Executive’s Base Salary or guaranteed bonus;

(ii) a material diminution of Executive’s job duties or responsibilities; or

(iii) a change in the location of Executive's employment of more than fifty (50) miles; and

anything herein to the contrary notwithstanding, Executive will not resign for Good Reason without first providing the Company (i) written notice within seven (7) days of the event that Executive believes constitutes Good Reason specifically identifying the acts or omissions constituting the grounds for Good Reason and (ii) a reasonable cure period of not less than seven (7) days following the date of such notice.

12. Indemnification. Subject to applicable law, Executive will be provided indemnification to the maximum extent permitted by the Company's Certificate of Incorporation or Bylaws, including, if applicable, any directors and officers insurance policies, with such indemnification to be on terms determined by the Board or any of its committees, but on terms no less favorable than provided to any other Company executive officer or director and subject to the terms of any separate written indemnification agreement.

13. Confidential Information, Invention Assignment, and Arbitration. Executive has executed, or agrees to execute on or before the Effective Date, the Company's standard form of At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement.

14. Assignment. This Agreement will be binding upon and inure to the benefit of (a) the heirs, executors and legal representatives of Executive upon Executive's death, and (b) any successor of the Company. Any such successor of the Company will be deemed substituted for the Company under the terms of this Agreement for all purposes. For this purpose, "successor" means any person, firm, corporation, or other business entity which at any time, whether by purchase, merger, or otherwise, directly or indirectly acquires all or substantially all of the assets or business of the Company. None of the rights of Executive to receive any form of compensation payable pursuant to this Agreement may be assigned or transferred except by will or the laws of descent and distribution. Any other attempted assignment, transfer, conveyance, or other disposition of Executive's right to compensation or other benefits will be null and void.

15. Notices. All notices, requests, demands and other communications called for hereunder will be in writing and will be deemed given (i) on the date of delivery if delivered personally; (ii) one (1) day after being sent overnight by a well-established commercial overnight service; or (iii) four (4) days after being mailed by registered or certified mail, return receipt requested, prepaid and addressed to the parties or their successors at the following addresses, or at such other addresses as the parties may later designate in writing:

If to the Company:           Miramar Labs, Inc  
  Attn: Chief Executive Officer  
  445 Indio Way  
  Sunnyvale, CA 94085-4203

If to Executive:                Brigid Makes  
  1959 Hillside Ct.  
  Stillwater, MN 55082  
  at the last residential address known by the Company.

16.    Severability. If any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Agreement will continue in full force and effect without said provision.

17.    Integration. This Agreement, together with the At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement and the Option Agreement, represents the entire agreement and understanding between the parties as to the subject matter herein and supersedes all prior or contemporaneous agreements whether written or oral, including, without limitation, the Offer Letter. No waiver, alteration, or modification of any of the provisions of this Agreement will be binding unless in a writing and signed by duly authorized representatives of the parties hereto. In entering into this Agreement, no party has relied on or made any representation, warranty, inducement, promise, or understanding that is not in this Agreement. To the extent that any provisions of this Agreement conflict with those of any other agreement to be signed upon Executive's hire, the terms in this Agreement will prevail.

18.    Waiver of Breach. The waiver of a breach of any term or provision of this Agreement, which must be in writing, will not operate as or be construed to be a waiver of any other previous or subsequent breach of this Agreement.

19.    Headings. All captions and Section headings used in this Agreement are for convenient reference only and do not form a part of this Agreement.

20.    Taxation. All payments made pursuant to this Agreement will be subject to withholding of any applicable taxes. Executive acknowledges that she has reviewed with her own tax advisors the federal, state, local and foreign tax consequences of payments and transactions described in this Agreement and she is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. Executive understands that she (and not the Company) shall be responsible for any tax liability (other than employment tax liability owed by the Company) that may arise as a result of the payments and transactions contemplated by this Agreement.

21.    Governing Law. This Agreement will be governed by the laws of the state of California without regard to its conflict of laws provisions.

22.    Acknowledgment. Executive acknowledges that she has had the opportunity to discuss this matter with and obtain advice from her private attorney, has had sufficient time to, and has carefully

read and fully understands all the provisions of this Agreement, and is knowingly and voluntarily entering into this Agreement.

23. Counterparts. This Agreement may be executed in counterparts, and each counterpart will have the same force and effect as an original and will constitute an effective, binding agreement on the part of each of the undersigned.

**IN WITNESS WHEREOF**, each of the parties has executed this Agreement, in the case of the Company by a duly authorized officer, as of the day and year written below.

**COMPANY:**

MIRAMAR LABS, INC.

/s/ Darrell Zoromski  
Darrell Zoromski  
President and Chief Executive Officer

Date: September 25, 2011

**EXECUTIVE:**

/s/ Brigid Makes  
Brigid Makes

Date: September 21, 2011

**[SIGNATURE PAGE TO BRIGID MAKES EMPLOYMENT AGREEMENT]**

## AMENDMENT TO THE EMPLOYMENT AGREEMENT

This Amendment to the Employment Agreement (the “**Amendment**”) by and among Miramar Labs, Inc. a Delaware corporation (the “**Company**”), and Brigid Makes, an individual (“**Executive**”), is dated as of May 28<sup>th</sup>, 2013, and amends the Employment Agreement by and among the Company and Executive, dated September 21<sup>st</sup>, 2011 (the “**Agreement**”).

### RECITALS

WHEREAS, the Company and Executive desire to amend certain provisions of the Agreement in order to clarify the timing of the severance payments in accordance with Section VI.B.2 of Internal Revenue Service Notice 2010-6, as amended by Internal Revenue Service Notice 2010-80; and

WHEREAS, Section 17 of the Agreement provides that it may be altered or amended with the written consent of the Company and Executive.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and Executive, intending legally to be bound, hereby agree as follows:

### AGREEMENT

1. Amendment to Section 5(b). The Section 5(b) of the Agreement is hereby amended and restated in its entire to read as follows:

“(b) Separation Agreement and Release of Claims. The receipt of any severance or other benefits pursuant to Section 5(a) will be subject to Executive signing and not revoking a separation agreement and release of claims (together, the “**Release**”) in a form acceptable to the Company that becomes effective and irrevocable within (60) days following Executive’s employment termination date (the “**Release Deadline**”) or such earlier date required by the Release. No severance or other benefits will be paid or provided unless the Release becomes effective and irrevocable. If the Release does not become effective by the Release Deadline, Executive will forfeit any rights to severance or any other benefits under this Agreement. If the Release becomes effective by the Release Deadline, payment of severance or other benefits under this Agreement will commence on the Company’s next regular payroll period following the 60-day anniversary of the date of Executive’s termination. Except as required by Section 10, any payments delayed from the date Executive terminates employment through the Release Deadline will be payable in a lump sum without interest on the Company’s next regular payroll period following the 60-day anniversary of the date of Executive’s termination, and all other amounts will be payable in accordance with the payment schedule applicable to each payment or benefit for the remainder of the 9-month period following the date of Executive’s termination.”

2. Effect of Amendment. Except as set forth in this Amendment, the provisions of the Agreement will remain unchanged and will continue in full force and effect.

3. Entire Agreement. This Amendment and the Agreement constitute the full and entire understanding and agreement between the Company and Executive with regard to the subjects hereof and thereof. No provision of this Amendment may be amended, modified, waived or discharged unless such amendment, waiver, modification or discharge is agreed to in writing signed by Executive and a duly authorized officer of the Company other than Executive.

4. Counterparts. This Amendment may be executed in several counterparts, each of which so executed will be deemed to be an original, but all of which together will constitute the same instrument. Any signature page delivered by a fax machine or telecopy machine will be binding to the same extent as an original signature page.

5. Governing Law. The provisions of this Amendment will be construed and interpreted under the laws of the State of California without giving effect to the principles of conflict of laws thereof. To the extent not otherwise provided for by Section 21 of the Agreement, the Company and Executive consent to the exclusive jurisdiction of all state and federal courts located in Santa Clary County, California for the purpose of any suit, action or other proceeding arising out of, or in connection with this Amendment.

**IN WITNESS WHEREOF**, each of the parties has executed this Amendment as of the day and year written above.

**MIRAMAR LABS, INC.**

/s/ Bernard E. Shay

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By: Bernard Shay

**EXECUTIVE:**

/s/ Brigid Makes

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By: Brigid Makes

## MIRAMAR LABS, INC

### EMPLOYMENT AGREEMENT

This Employment Agreement (the “*Agreement*”) is entered into, effective as of May 27, 2016 (the “*Effective Date*”), by and between Miramar Labs, Inc. (the “*Company*”) and R. Michael Kleine (“*Executive*”).

#### WITNESSETH:

**WHEREAS**, the Company and the Executive entered into an offer letter agreement on November 25, 2013 (the “*Offer Letter*”), pursuant to which Executive agreed to serve as the Company’s President and Chief Executive Officer (“*CEO*”), reporting to the Chairman of the Company’s Board of Directors (the “*Board*”).

**WHEREAS**, the Company desires for Executive to continue to serve as the Company’s CEO, and Executive desires and is willing to continue employment with the Company in such capacity; and

**WHEREAS**, the Company and Executive desire to embody the terms and conditions of Executive’s employment in a written employment agreement, which will supersede all prior agreements of employment, whether written or oral, between the Company and Executive, including, without limitation, the Offer Letter.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the parties agree as follows:

1. Duties and Scope of Employment.

(a) Positions and Duties. As of the Effective Date, Executive will continue to serve as the Company’s CEO reporting to the Chairman of the Board. Executive will render such business and professional services in the performance of his duties, consistent with Executive’s position within the Company, as will reasonably be assigned to him by the Board. The period Executive is employed by the Company under this Agreement is referred to herein as the “*Employment Term*”.

(b) Obligations. During the Employment Term, Executive will devote Executive’s full business efforts and time to the Company and will use good faith efforts to discharge Executive’s obligations under this Agreement to the best of Executive’s ability and in accordance with each of the Company’s corporate guidance and ethics guidelines, conflict of interests policies and code of conduct, including, without limitation, Company policy not to disclose any information regarding salary, bonuses, or stock purchase or option allocations to other employees, either directly or indirectly. For the duration of the Employment Term, Executive agrees not to actively engage in any other employment, occupation, or consulting activity for any direct or indirect remuneration without the prior approval of the Board, which approval will not be unreasonably withheld; provided, however, that Executive may, without the

approval of the Board, serve in any capacity with any civic, educational, social, or charitable organization, provided such services do not interfere with Executive's obligations to the Company.

(c) Prior Agreements. Executive hereby represents and warrants to the Company that he is not party to any contract, understanding, agreement or policy, written or otherwise, which would be breached by her entering into, or performing services under, this Agreement. Executive further represents that he has disclosed to the Company in writing all threatened, pending, or actual claims against Executive of which he is aware, that are unresolved and still outstanding as of the Effective Date, in each case, as a result of his employment with any previous employer or his membership on any boards of directors.

(d) Other Entities. Executive agrees to serve and may be appointed, without additional compensation, as an officer and director for any of the Company's subsidiaries, partnerships, joint ventures, limited liability companies and other affiliates, including entities in which the Company has a significant investment as determined by the Company. As used in this Agreement, the term "affiliates" will include any entity controlled by, controlling, or under common control of the Company.

2. At-Will Employment. Executive and the Company agree that Executive's employment with the Company constitutes "at-will" employment. Executive and the Company acknowledge that this employment relationship may be terminated at any time, upon written notice to the other party, with or without good cause or for any or no cause, at the election of either the Company or Executive. Executive understands and agrees that neither her job performance nor promotions, commendations, bonuses or the like from the Company give rise to or in any way serve as the basis for modification, amendment, or extension, by implication or otherwise, of her employment with the Company

3. Compensation.

(a) Base Salary. As of the Effective Date, the Company will pay Executive an annual salary of \$453,000 as compensation for his services (such annual salary, as is then effective, to be referred to herein as "**Base Salary**"), paid periodically in accordance with the Company's normal payroll practices, but not less than monthly, and be subject to the usual, required withholdings. Executive will not be eligible for overtime pay.

(b) Target Bonus. Executive will be eligible to receive an annual bonus of up to forty percent (40%) of Executive's Base Salary, less applicable withholdings, upon achievement of performance objectives to be mutually agreed upon by Executive and the Board, provided that the Board will determine whether such performance objectives have been achieved in its sole discretion (the "Target Bonus"). The Target Bonus, or any portion thereof, will be paid in Quarter 1 of the calendar year following the year in which the Board determines that the Target Bonus has been earned, but in no event shall the Target Bonus be paid after the later of (i) the fifteenth (15th) day of the third (3rd)

month following the close of the Company's fiscal year in which the Target Bonus is earned or (ii) March 15 following the calendar year in which the Target Bonus is earned.

(c) Housing Allowance. The Company will reimburse Executive through payroll, in an amount not to exceed \$5,000 per month, for housing expenses in the Bay Area. Each such reimbursement shall be made by the Company to Executive in the next regularly scheduled payroll following sufficient proof of such expenses, as determined in Company's sole judgment.

(d) Review and Adjustments. Executive's Base Salary, Target Bonus, and other compensatory arrangements will be subject to review and adjustment in accordance with the Company's applicable policies.

#### 4. Stock Options.

(a) Option Grant. On July 17, 2014, the Board granted Executive a stock option to purchase 2,969,439 shares of the Company's common stock (the "**First Option**"). On October 9, 2014, the Board granted Executive a stock option to purchase an additional 559,615 shares of the Company's common stock (the "**Second Option**," and together with the First Option, the "**Options**"). The Options represent five and one-half percent (5.50%) of the Company's total outstanding shares calculated on a fully-diluted basis as of the post-closing of the Series D financing. The exercise price per share for each Option is \$0.49, which is equal to the fair market value per share of an underlying share of Company common stock on the date of grant, as determined by the Board. The vesting schedule of each Option will remain as follows: Twenty-five percent (25%) of the shares subject to the Option shall vest on the one (1) year anniversary of the vesting commencement date for the Option, subject to Executive's continued service with the Company through such date, and the remaining shares subject to the Option will vest monthly over the next thirty-six (36) months in equal monthly amounts subject to Executive's continued service with the Company through each such vesting date. Each Option shall continue to be subject to the terms, definitions and conditions, including vesting requirements, of the Company's 2006 Stock Plan (the "**Equity Plan**") and a stock option agreement between Executive and the Company (each an "**Option Agreement**"), both of which are incorporated herein by reference. No right to any stock is earned or accrued until such time that vesting occurs, nor does the grant confer any right to continue vesting or employment.

(b) Change in Control. If, during the twelve (12)-month period after a Change in Control, (i) Executive terminates her employment with the Company (or any affiliate) for Good Reason or (ii) the Company (or any affiliate) terminates Executive's employment without Cause, Executive will be entitled to accelerated vesting as to one hundred percent (100%) of the then unvested portion of all of Executive's outstanding stock options, including, for the avoidance of any doubt, the Options.

5. Limitation on Payments. In the event that the benefits provided for in this Agreement or otherwise payable to Executive (x) constitute "parachute payments" within the meaning of Section

280G of the Code and (y) but for this Section 5 would be subject to the excise tax imposed by Section 4999 of the Code, then Executive's benefits will be either (i) delivered in full, or (ii) delivered as to such lesser extent which would result in no portion of such benefits being subject to excise tax under Section 4999 of the Code, whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the excise tax imposed by Section 4999, results in the receipt by Executive on an after-tax basis, of the greatest amount of benefits, notwithstanding that all or some portion of such benefits may be taxable under Section 4999 of the Code. If a reduction in amounts to be paid must be made, any non-cash amounts will be reduced prior to the reduction of any cash amounts. Unless the Company and Executive otherwise agree in writing, any determination required under this Section 5 will be made in writing by a well-recognized independent public accounting firm chosen by the Company (the "*Accountants*"), whose determination will be conclusive and binding upon Executive and the Company for all purposes. For purposes of making the calculations required by this Section 5, the Accountants may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and Executive will furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make a determination under this Section 5. The Company will bear all costs the Accountants may reasonably incur in connection with any calculations contemplated by this Section 5.

6. Employee Benefits.

(a) Generally. During the Employment Term, Executive is entitled to participate in the employee benefit plans currently and hereafter maintained by the Company, without limitation, the medical, dental, vision, life, flexible spending account and disability plans. The Company may cancel or change the benefit plans and programs it offers to the Company's employees at any time. Accordingly, Executive will be able to participate in any Company-sponsored retirement plan, subject to the provisions of the applicable plan.

(b) Paid Time Off. During the Employment Term, Executive will be entitled to fifteen (15) days of paid time off ("*PTO*"), which will accrue at a rate of ten (10) hours per month, in accordance with the Company's PTO policy. PTO shall be taken at such time as mutually and reasonably agreed by Executive and the Company. Executive will receive paid holidays in accordance with the Company's regular holiday practices.

(c) Expenses. The Company will reimburse Executive for reasonable travel, entertainment and other expenses incurred by Executive in the furtherance of the performance of Executive's duties hereunder, in accordance with the Company's expense reimbursement policy as in effect from time to time.

7. Termination of Employment. In the event Executive's employment with the Company terminates for any reason, Executive will be entitled to any (a) unpaid Base Salary accrued up to the effective date of termination; (b) pay for accrued but unused PTO; (c) benefits or compensation as provided under the terms of any employee benefit and compensation agreements or plans applicable to Executive; and (d) unreimbursed business expenses required to be reimbursed to Executive; and (e) rights to indemnification Executive may have under the Company's Certificate of Incorporation, Bylaws, the Agreement, or separate indemnification agreement, as applicable.

8. Code Section 409A. Notwithstanding anything to the contrary in this Agreement solely with respect to the timing of the payment of any severance payments or benefits other than payment on account of Executive's termination due to Executive's death, if Executive is a "*specified employee*" within the meaning of Section 409A of the Code and any regulations and guidance promulgated thereunder ("**Section 409A**") at the time of Executive's termination of employment, then to the extent any severance payments payable to Executive pursuant to this Agreement, and any other severance payments or separation benefits are a plan or part of a plan providing for the "*deferral of compensation*" under Section 409A (together, the "**Deferred Compensation Separation Benefits**") otherwise due to Executive on or within the six (6) month period following Executive's termination of employment will accrue during such six (6) month period and will become payable in a lump sum payment on the date six (6) months and one (1) day following the date of Executive's termination of employment, unless Executive dies following the termination of her employment, in which case, the Deferred Compensation Separation Benefits will be paid to the personal representative of Executive's estate (which shall be Executive's living trust, or if there is none, her probate estate) as soon as practicable following her death. All subsequent Deferred Compensation Separation Benefits, if any, will be payable in accordance with the payment schedule applicable to each payment or benefit. It is the intent of this Agreement to comply with the requirements of Section 409A so that none of the severance payments and benefits to be provided hereunder will be subject to the additional tax imposed under Section 409A, and any ambiguities herein will be interpreted to so comply.

9. Definitions.

(a) Cause. For purposes of this Agreement, "**Cause**" shall mean:

(i) Executive's continued failure to perform her assigned duties or responsibilities after notice thereof from the Company describing the failure to perform such duties or responsibilities, and the executive has been provided a reasonable cure period of not less than sixty (60) days;

(ii) Executive engaging in any act of dishonesty, fraud or misrepresentation;

(iii) Executive's violation of any federal or state law or regulation applicable to the business of the Company or its affiliates;

(iv) Executive's breach of any confidentiality agreement or invention assignment agreement between Executive and the Company (or any affiliate of the Company); or

(v) Executive being convicted of, or entering a plea of nolo contendere to, any crime or committing any act of moral turpitude.

(b) Change in Control. For purposes of this Agreement, "***Change in Control***" shall have the same meaning as such term is defined in the Equity Plan.

(c) Good Reason. For purposes of this Agreement, "Good Reason" shall mean Executive's resignation within thirty (30) days following the expiration of any Company cure period (discussed below) following the occurrence of any of the following, without Executive's express written consent:

(i) a material reduction in Executive's Base Salary or Target Bonus opportunity;

(ii) a material diminution of Executive's job duties or responsibilities; or

(iii) a change in the location of Executive's employment of more than fifty (50) miles.

Executive's resignation will not be deemed to be for Good Reason unless Executive has first provided the Company with written notice of the acts or omissions constituting the grounds for "Good Reason" within ninety (90) days of the initial existence of the grounds for "Good Reason" and a reasonable cure period of not less than thirty (30) days following the date the Company receives such notice, and such condition has not been cured during such period.

10. Indemnification. Subject to applicable law, Executive will be provided indemnification to the maximum extent permitted by the Company's Certificate of Incorporation or Bylaws, including, if applicable, any directors and officers insurance policies, with such indemnification to be on terms determined by the Board or any of its committees, but on terms no less favorable than provided to any other Company executive officer or director and subject to the terms of any separate written indemnification agreement.

11. Confidential Information, Invention Assignment, and Arbitration. Executive agrees to continue to be subject to the terms and conditions of the At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement executed by Executive and the Company.

12. Assignment. This Agreement will be binding upon and inure to the benefit of (a) the heirs, executors and legal representatives of Executive upon Executive's death, and (b) any successor of the Company. Any such successor of the Company will be deemed substituted for the Company

under the terms of this Agreement for all purposes. For this purpose, “successor” means any person, firm, corporation, or other business entity which at any time, whether by purchase, merger, or otherwise, directly or indirectly acquires all or substantially all of the assets or business of the Company. None of the rights of Executive to receive any form of compensation payable pursuant to this Agreement may be assigned or transferred except by will or the laws of descent and distribution. Any other attempted assignment, transfer, conveyance, or other disposition of Executive’s right to compensation or other benefits will be null and void.

13. Notices. All notices, requests, demands and other communications called for hereunder will be in writing and will be deemed given (i) on the date of delivery if delivered personally; (ii) one (1) day after being sent overnight by a well-established commercial overnight service; or (iii) four (4) days after being mailed by registered or certified mail, return receipt requested, prepaid and addressed to the parties or their successors at the following addresses, or at such other addresses as the parties may later designate in writing:

If to the Company: Miramar Labs, Inc  
Attn: Chairman of the Board, c/o Mark Deem  
2790 Walsh Avenue  
Santa Clara, CA 95051

If to Executive: R. Michael Kleine  
at the last residential address known by the Company.

14. Severability. If any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Agreement will continue in full force and effect without said provision.

15. Integration. This Agreement, together with the At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement and the Option Agreement, represents the entire agreement and understanding between the parties as to the subject matter herein and supersedes all prior or contemporaneous agreements whether written or oral, including, without limitation, the Offer Letter. No waiver, alteration, or modification of any of the provisions of this Agreement will be binding unless in a writing and signed by duly authorized representatives of the parties hereto. In entering into this Agreement, no party has relied on or made any representation, warranty, inducement, promise, or understanding that is not in this Agreement. To the extent that any provisions of this Agreement conflict with those of any other agreement to be signed upon Executive’s hire, the terms in this Agreement will prevail.

16. Waiver of Breach. The waiver of a breach of any term or provision of this Agreement, which must be in writing, will not operate as or be construed to be a waiver of any other previous or subsequent breach of this Agreement.

17. Headings. All captions and Section headings used in this Agreement are for convenient reference only and do not form a part of this Agreement.

18. Taxation. All payments made pursuant to this Agreement will be subject to withholding of any applicable taxes. Executive acknowledges that she has reviewed with her own tax advisors the federal, state, local and foreign tax consequences of payments and transactions described in this Agreement and she is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. Executive understands that she (and not the Company) shall be responsible for any tax liability (other than employment tax liability owed by the Company) that may arise as a result of the payments and transactions contemplated by this Agreement.

19. Governing Law. This Agreement will be governed by the laws of the state of California without regard to its conflict of laws provisions.

20. Acknowledgment. Executive acknowledges that she has had the opportunity to discuss this matter with and obtain advice from her private attorney, has had sufficient time to, and has carefully read and fully understands all the provisions of this Agreement, and is knowingly and voluntarily entering into this Agreement.

21. Counterparts. This Agreement may be executed in counterparts, and each counterpart will have the same force and effect as an original and will constitute an effective, binding agreement on the part of each of the undersigned.

**IN WITNESS WHEREOF**, each of the parties has executed this Agreement, in the case of the Company by a duly authorized officer, as of the day and year written below.

**COMPANY:**

MIRAMAR LABS, INC.

/s/ Mark Deem

Date: June 5, 2016

Mark Deem

Chairman of the Board of Directors

**EXECUTIVE:**

/s/ R. Michael Kleine

Date: June 1, 2016

R. Michael Kleine

**[SIGNATURE PAGE TO R. MICHAEL KLEINE EMPLOYMENT AGREEMENT]**

## SUPPLY AGREEMENT

This SUPPLY AGREEMENT (this “Agreement”), effective as of November 13<sup>th</sup>, 2014 (the “Effective Date”), is made by and between Miramar Labs, Inc., having a place of business at 2790 Walsh Ave., Santa Clara, Ca., (“Company”), and Broadband Wireless, LLC., having a place of business at 280 Greg St. Reno, NV 89502 (“Supplier”). Company and Supplier may be referred to herein each, individually, as a “Party” or, collectively, as the “Parties”.

### BACKGROUND

A. Company has a need for and desires to purchase Product(s) (as defined herein) for use in its microwave console; and

B. Supplier produces, supplies, and desires to sell such Product(s) to Company for use in Company’s microwave console, all on the terms and conditions set forth herein below.

NOW THEREFORE, for and in consideration of the covenants, conditions, and undertakings hereinafter set forth, it is agreed by and between the Parties as follows:

### ARTICLE 1

#### DEFINITIONS

As used in this Agreement, the following capitalized terms shall have the meanings indicated below:

##### 1.1

“Applicable Laws” shall mean all laws, ordinances, rules and regulations of any governmental or regulatory authority within the United States that apply to the manufacture and supply of Products, including without limitation (a) all applicable federal, state and local laws and regulations; (b) the U.S. Federal Food, Drug and Cosmetic Act (“FDCA”), (c) regulations and guidelines of the FDA and other Regulatory Agencies and (d) current Quality System Regulations (QSR) promulgated by the FDA.

##### 1.2

“Facility” shall mean the QSR manufacturing facility located at 280 Greg St. Reno, NV 89502.

##### 1.3

“FDA” shall mean the United States Food and Drug Administration, or any successor agency thereto.

##### 1.4

Intellectual Property Rights means all rights (including rights of ownership, rights of license to use, rights arising through use and rights the subject of applications to register) in and to: Trademarks; Trade Secrets; Copyrights, Patents; and all designs, patents, copyright, processes, methods, inventions, product formulations, eligible layout rights and other intellectual property

rights of all kinds whether or not registered and protected by law and applications for any of the foregoing.

1.5

“Product” shall mean the product described in Exhibit A hereto, which is manufactured and supplied to Company by Supplier under this Agreement.

1.6

“Regulatory Agency” shall mean any governmental regulatory authority in the United States involved in regulating any aspect of the conduct, development, manufacture, market approval, sale, distribution, packaging or use of pharmaceutical products, including the FDA.

1.7

“Specifications” shall mean the specifications set forth and in Company’s Amplifier Specifications PN0514D and PN0514E.

## ARTICLE 2

### SUPPLY

2.1

Product Supply. Subject to the terms and conditions of this Agreement, Supplier shall supply to Company all quantities of the Product ordered by Company under this Agreement.

2.2

Form of Orders. Company’s orders for Product shall be made pursuant to a written purchase order on its standard form, and will provide for shipment in accordance with reasonable delivery schedules and lead times as may be agreed upon from time to time by Supplier and Company so long as the maximum lead time shall not exceed sixty (60) days unless otherwise agreed to by the Parties. ANY ADDITIONAL OR INCONSISTENT TERMS OR CONDITIONS OF ANY PURCHASE ORDER, ACKNOWLEDGMENT OR SIMILAR STANDARDIZED FORM GIVEN OR RECEIVED PURSUANT TO THIS AGREEMENT WILL HAVE NO EFFECT AND SUCH TERMS AND CONDITIONS ARE HEREBY EXCLUDED.

2.3

Acceptance. Supplier shall accept and fill purchase orders that have been issued by Company in compliance with this Article 2. Supplier shall confirm its receipt of purchase orders submitted by Company by notifying Company or its designees, as the case may be, within three (3) business days after receiving such purchase order. For the avoidance of doubt, in the event Supplier does not so notify Company within such three (3) day period, then such purchase order shall be deemed received and accepted.

2.4

Packaging. All Product delivered hereunder shall be suitably packed for shipment by Supplier in accordance with good commercial practice with respect to protection of such Product

during transportation and marked for shipment to Company's specified receiving point. Each package will be individually labeled with a description of its contents, including the manufacturer lot number, quantity of Product, date of manufacture and expiration date as applicable.

2.5

Price. Prices for Products hereunder may only be changed by express written consent of the parties. Price increases of more than 3% must be supported by evidence of cost increases.

### ARTICLE 3

#### PAYMENTS

3.1

Price. The price to be paid by Company per unit of Product shall be as set forth on Exhibit B hereto and Company shall pay such price in accordance with the payment schedule described therein.

3.2

Invoicing; Payment.

3.2.1

Product Invoices. Supplier shall submit an invoice to Company upon shipment of Product ordered by Company under this Agreement for all amounts due with respect to such shipment. All invoices will be sent to the address specified in the applicable purchase order, and each invoice will state the aggregate and unit price for Product in a given shipment, plus any insurance, taxes, or other costs incident to the purchase or shipment initially paid by Supplier but to be borne by Company under this Agreement. Amounts payable shall be adjusted to reflect amounts advanced for subcomponent purchases. All undisputed invoices shall be due and payable within thirty (30) days of Company's acceptance of the Product.

3.2.2

Subcomponent Invoices. Supplier shall submit an invoice to Company upon receipt of a Subcomponent Purchase Order ("Subcomponent Invoice"). All Subcomponent Invoices will be sent to the address specified in the applicable Subcomponent Purchase Order, and each invoice will state the aggregate and unit price for subcomponents in a given order. All undisputed subcomponent invoices shall be due and payable within thirty (30) days of Company's receipt of proof of purchase of such subcomponents.

3.3

Taxes. All taxes (and any related penalties or interest) imposed on any payment by Company to Supplier shall be the sole responsibility of Supplier.

3.4

Currency. All amounts payable by Company hereunder will be made in United States

Dollars. Unless otherwise set forth, all amounts specified in any purchase order shall be deemed specified in United States Dollars.

## ARTICLE 4

### SUBCOMPONENTS

#### 4.1

Subcomponent Purchases. Company may, from time to time, issue purchase orders to Supplier for the purchase of subcomponents used in the manufacture of Product, including, without limitation, Company's Purchase Order Number 15731 issued prior to the execution of this Agreement ("Subcomponent Purchase Order"). In the event Company issues such Subcomponent Purchase Order, Supplier shall purchase such subcomponents, properly store and retain such subcomponents in inventory for use solely in the manufacture of Products. Company shall own and have title to such subcomponents.

#### 4.2

Title Transfer. Upon payment by Company of any Subcomponent Invoice, the materials purchased under the associated Subcomponent Purchase Order shall, notwithstanding their physical location, become the property of Company ("Company Subcomponents").

#### 4.3

Security Interests. Company shall have a security interest in all Company Subcomponents stored at Supplier's facilities or facilities under Supplier's control. On request of Company, Supplier will execute financing statements and other instruments that Company may request to perfect Company's security interest.

#### 4.4

Delivery. Supplier shall, upon request by Company, deliver all Company Subcomponents to Company or Company's designee.

## ARTICLE 5

### DELIVERY; ACCEPTANCE

#### 5.1

Delivery. Supplier shall deliver the quantities of Product ordered by Company on the dates specified in Company's purchase orders submitted. All Product shipments shall be delivered FOB Company's Dock, freight collect. The carrier shall be selected by agreement between Company and Supplier, except that if no such agreement is reached, Company shall select the carrier. Each shipment shall be insured for the benefit of Company.

#### 5.2

Acceptance. Acceptance by Company of Product delivered by Supplier shall be subject to inspection by Company or its designee. If on such inspection or testing Company or its designee discovers (a) visible damage to the Products, (b) that the Products are degraded due to heat or

instability, or (c) that any Product fails to conform with the Specifications therefor or otherwise fails to conform to the warranties given by Supplier under this Agreement. Company or such designee may reject such Product, which rejection will be accomplished by giving written notice to Supplier. Upon request from Supplier, Company shall return the rejected Product in accordance with Supplier's reasonable instructions and at Supplier's expense. In the event that Supplier and Company agree (or there is an independent finding) that any Products failed to comply with the Specification, the Warranties set forth herein or Applicable Law. Supplier shall use its best efforts to replace properly rejected Product within the shortest possible time and in any event within thirty (30) days after Supplier's receipt of notice thereof. In the event all or part of a shipment of Product is rejected prior to Company's payment therefor. Company may withhold such payment until receipt of replacement Product that conform with the Specifications therefor and to the warranties given by Supplier under this Agreement.

### 5.3

Latent Defects. Notwithstanding anything to the contrary herein, if Company first discovers that any Product fails to conform with the Specifications or is otherwise defective only after Company's acceptance thereof, and such failure would not have been readily discoverable from a reasonable inspection or review of the Products or its associated documentation provided by Supplier (collectively, "Latent Defects"). Company shall have the continuing right to reject the Products, provided it notifies Supplier of the Latent Defect within fifteen (15) business days after the discovery of the Latent Defect.

## ARTICLE 6

### QUALITY

#### 6.1

Quality System. Supplier shall establish, document, and maintain a quality system compliant with 21 CFR Part 820 (US FDA) and EN ISO 13485:2012 (ISO 13485:2003) as applicable and including, but not limited to the following elements:

##### 6.1.1

Document and Records Control (21 CFR 820.40, 820.184; ISO 13458 4.2): Supplier shall maintain a document and revision control system for all specifications and procedures associated with product to be delivered to company. Records shall be maintained as described below.

##### 6.1.2

Management Responsibility (21 CFR 820.20; ISO 13458 5.1, 5.3, 5.5, 5.6, 4.2.2): Supplier's top management shall provide evidence of its commitment to the development and implementation of the quality system and maintain its effectiveness.

##### 6.1.3

Personnel/Training (21 CFR 820.25; ISO 13458 6.2): Personnel performing work affecting product quality shall be competent on the basis of appropriate education, training, skills, and experience.

#### 6.1.4

Equipment Control (21 CFR 820.70(g); ISO 13458 7.6): Supplier shall ensure all equipment used in manufacturing, test, and inspection of product meets specified requirements and is appropriately designed, constructed, maintained, and when necessary, verified or calibrated at specified intervals.

#### 6.1.5

Work Environment (21 CFR 820.70(f); ISO 13458 6.3, 6.4): Supplier shall determine and manage the work environment needed to achieve conformity to product requirements.

#### 6.1.6

Purchasing and Material Controls (21 CFR 820.50, 820.60, 820.140, 820.150, 8.20.80; ISO 13458 7.4, 7.5.3.3): Supplier shall establish criteria for selection, evaluation, and reevaluation of suppliers to ensure ability to supply product in accordance with requirements. Records of results of evaluations and any necessary actions arising from evaluations shall be maintained. Change control shall be applied to all suppliers. Any changes from original product supplied (material, source, manufacturing processes, etc.) must be approved by Customer. Supplier shall ensure purchased products and services meet applicable requirements upon receipt.

#### 6.1.7

Production and Process Control (21 CFR 820.70; ISO 13458 6.2, 7.5.1.1, 7.5.1.2.1, 7.5.2): Supplier shall develop, conduct, control, and monitor production processes to ensure product conforms to specifications.

#### 6.1.8

Control of Nonconforming Product (21 CFR 820.90; ISO 13458 8.3): Supplier shall ensure material not conforming to specified requirements is appropriately identified, segregated to prevent inadvertent use, documented, evaluated, and dispositioned.

#### 6.1.9

Internal Audits (21 CFR 820.22; ISO 13458 8.2.2): Supplier shall establish procedures for quality audits and conduct such audits at planned intervals to ensure the quality system is in compliance with established requirements, is effectively implemented, and maintained.

#### 6.1.10

Corrective and Preventive Action (21 CFR 820.100; ISO 13485 8.5.2, 8.5.3): Supplier shall establish and maintain documented procedures for implementing corrective and preventive action. Supplier shall take action to eliminate cause of nonconformities in order to prevent recurrence (corrective action) and determine action to eliminate causes of potential nonconformities to prevent occurrence (preventive action).

#### 6.2

Product Quality. All Product delivered by Supplier hereunder shall meet the applicable Specifications and shall be manufactured at the Facility in accordance with the Applicable Laws.

### 6.3

Quality Control. Prior to each shipment of Product, Supplier shall perform quality control testing procedures and inspections to verify that the Product to be shipped conforms fully to the applicable Specifications. Each shipment of Product shall be accompanied by a certificate of analysis in a form acceptable to Company and describing all current requirements of the Specifications, results of test performed certifying that the Product supplied have been manufactured, controlled and released at the Facility in accordance with the Specifications and Applicable Laws.

### 6.4

Inspections. Supplier shall permit Company or its representatives and Company's Notified Body under European Council Directive 93/42/EEC to inspect and audit at any time during Supplier's normal business hours and work shifts, the facilities used, production lines, in-process and finished goods and relevant books and records relevant to Company's products in order to determine Supplier's compliance with Applicable Laws and this Agreement.

### 6.5

Recalls. Any decision by Company to recall any Product shall be made by Company, provided, however, that if Supplier reasonably believes a recall may be necessary with respect to any Product provided under this Agreement, Supplier shall immediately notify Company in writing. Company will promptly notify Supplier of any such decision to recall the Products. Supplier shall bear all costs and expenses arising out or resulting from any recall of Products resulting from (a) Supplier's breach of its representation and warranties, (b) Supplier's gross negligence or willful misconduct, or (c) the Product otherwise presenting a possible safety risk.

### 6.6

Records. Supplier shall maintain a Device History Record ("DHR") for all products delivered to Company.

#### 6.6.1

Content. The DHR will contain the following:

- a)  
Serial/Lot number and Quantity released for Shipment
- b)  
A copy of the Certificate of Analysis for the associated serial/  
lot number
- c)  
Production Records including Test and Inspection data and  
Component Traceability

d)  
Final Inspection Record including Completed Inspection and Test Form(s)

e)  
Identification of all Non-Conforming Material Reports, Deviations, and Corrective or Preventive Actions associated with the lot

#### 6.6.2

Maintenance. Supplier shall maintain DHR's for a period of ten (10) years from date of product shipment or forward original records to Company upon request. Supplier will notify Company at least 30 days prior to destroying any records and will not destroy such records without approval from Company.

### ARTICLE 7

#### REPRESENTATIONS AND WARRANTIES

##### 7.1

Product Warranties. Supplier represents and warrants that:

##### 7.1.1

Specifications. All Product supplied hereunder shall comply with the applicable Specifications and, if applicable, shall conform with the information shown on the certificate of analysis provided for the particular shipment above for a minimum of twenty-four (24) months;

##### 7.1.2

Applicable Laws. The Facility, the manufacturing and supply activities contemplated herein, and all Product supplied hereunder shall comply with all Applicable Laws. Without limiting the foregoing, at the time of delivery to Company, none of the Product shall be adulterated or misbranded within the meaning of the FDCA, as amended and in effect at the time of shipment.

##### 7.1.3

No Encumbrance. Title to all Product provided to Company under this Agreement shall pass as provided in this Agreement, free and clear of any security interest, lien, or other encumbrance.

##### 7.2

Disclaimer. EXCEPT AS PROVIDED IN THIS ARTICLE 6, NEITHER PARTY MAKES ANY WARRANTIES OR CONDITIONS (EXPRESS, IMPLIED, STATUTORY OR OTHERWISE) WITH RESPECT TO THE SUBJECT MATTER HEREOF AND EACH PARTY EXPRESSLY DISCLAIMS ANY SUCH ADDITIONAL WARRANTIES.

### ARTICLE 8

#### TERM AND TERMINATION

8.1

Term. The term of this Agreement shall commence on the Effective Date and continue in full force until the 5th anniversary of the Effective Date, unless terminated earlier in accordance with the terms of this Agreement.

8.2

Miramar shall have the right to terminate this Agreement at any time, in its sole discretion, by giving Distributor nine (9) months prior written notice of such termination.

8.3

Termination for Breach. Either Party may terminate this Agreement upon written notice in the event that the other Party shall have materially breached this Agreement, and such breach is not cured within thirty (30) days after receiving written notice of such breach. Notwithstanding the foregoing, if during such thirty (30) day period, the allegedly breaching Party disputes that it has materially breached this Agreement, then the other Party shall not have the right to terminate this Agreement until it has been finally determined in accordance with the terms of this Agreement that the allegedly breaching Party has materially breached this Agreement, and such Party fails to comply herewith within thirty (30) days thereafter.

8.4

Effect of Expiration or Termination.

8.4.3

Rights and Obligations. Termination or expiration of this Agreement shall not relieve a Party from any liability that, at the time of such termination or expiration, has already accrued to the other Party.

8.4.4

Survival. The provisions of Article 7 (Representations and Warranties), Article 9 (“Confidentiality and Intellectual Property”), Article 10 (Indemnification”), and Article 11 (“General”) of this Agreement shall survive the termination of this Agreement for any reason.

## **ARTICLE 9**

### **CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

9.1

Confidential Information. Company may from time to time disclose to Supplier Confidential Information. “Confidential Information” means any information disclosed by Company to Supplier that, if disclosed in tangible form, is marked “confidential” or with other similar designation to indicate its confidential or proprietary nature or, if disclosed orally, is indicated orally to be confidential or proprietary by the Party disclosing the information at the time of the disclosure and is confirmed in writing as confidential or proprietary by Company within forty-five (45) days after such disclosure. Notwithstanding the foregoing or anything herein to the contrary, Confidential Information shall not include any information that, in each case as demonstrated by written

documentation: (a) was already known to Supplier, other than under an obligation of confidentiality, at the time of disclosure; (b) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the Supplier; (c) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission of the Supplier in breach of this Agreement; or (d) was subsequently lawfully disclosed to the Supplier by a person other than Company.

#### 9.2

Confidentiality. Supplier shall hold and maintain in strict confidence all Confidential Information of Company. Without limiting the foregoing, Supplier shall use or disclose the Confidential Information of Company, except as otherwise permitted by this Agreement or as may be necessary or useful to exercise its rights or perform its obligations under this Agreement. Nothing contained in this Article shall prevent Supplier from disclosing any Confidential Information of the other Party to the extent required by court order; provided that if Supplier is so required by court order to make any such disclosure, other than pursuant to a confidentiality agreement, it will give reasonable advance notice to Company of such disclosure and will use its reasonable efforts to secure confidential treatment of such information.

#### 9.3

License. Supplier acknowledges that the Products are the products of Company and Supplier shall not manufacture Products for, or supply Products to, any third party. Company's patents or other intellectual property rights, which cover the Products, are licensed to Supplier solely to manufacture the Products for supply to Company under this Agreement and for no other purpose. Further, during the term of this Agreement and the two (2) year period commencing on the end of the term of this Agreement, Supplier will not, without Company's express written consent develop, tool or sell any product that uses technology substantially similar to the unique technology of Company (i.e. microwave for dermatology) or substantially similar construction as the Product.

#### 9.4

Intellectual Property. The Supplier acknowledges the Company's exclusive ownership of all Intellectual Property Rights and ownership of the Product, including any modifications or improvements thereto ("Product Improvements") and the tooling for the Product. Any product improvements shall be the property of Company. Supplier hereby assigns to Company all right, title and interest in and to all Product Improvements and all intellectual property rights therein. Supplier shall promptly notify Company of all Product Improvements of which Supplier is aware and shall assist Company, at Company's request and expense, to seek and maintain intellectual property protection for all Product Improvements. As used herein, Product Improvements shall include all design information and all improvements, enhancements or changes to the Product. Product Improvements excludes any improvements made by Supplier to its generally applicable manufacturing methods. Supplier will deliver all tooling paid by the Company relating to the Products to Company within thirty (30) days of Company's request. Supplier acknowledges that Supplier received no right to, and Supplier covenants that Supplier will not, supply the Products to any third party.

## ARTICLE 10

### INDEMNIFICATION

Supplier shall indemnify, defend, and hold harmless Company, its directors, officers, employees, agents, successors and assigns from and against all liabilities, expenses, and costs (including reasonable attorneys' fees and court costs) arising out of any claim, complaint, suit, proceeding, or cause of action brought against any of them by a third party resulting from: (a) use of the Products; (b) the negligent or intentionally wrongful acts or omissions of Supplier; or (c) breach by Supplier of any of its representations and warranties under this Agreement.

## ARTICLE 11

### GENERAL

#### 11.1

Governing Law. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the United States and the State of California, without reference to conflict of laws principles and excluding the 1980 U.N. Convention on Contracts for the International Sale of Goods.

#### 11.2

Disputes. In the event of any dispute or claim arising out of or in connection with this Agreement, or the performance, breach or termination thereof, either Supplier or Company may, by written notice to the other Party, have such dispute referred to the Chief Executive Officers (or equivalent) of Supplier and Company, for attempted resolution by good faith negotiations within thirty (30) days after such notice is received by such other Party. If the Parties are unable to resolve such dispute within such thirty (30) day period, such dispute shall be finally settled by binding arbitration by Judicial Arbitration and Mediation Services, Inc. (JAMS) under its rules of arbitration, by three (3) arbitrators appointed in accordance with said rules, unless the Parties to the dispute have agreed to have only one (1) arbitrator. The decision and/or award rendered by the arbitrator(s) shall be written, final and non-appealable, and judgment on such decision and/or award may be entered in any court of competent jurisdiction. The arbitral proceedings and all pleadings and evidence shall be in the English language. Any evidence originally in a language other than English shall be submitted with a certified English translation accompanied by an original or true copy thereof. The place of arbitration shall be in the State of Delaware, U.S.A. The costs of any arbitration, including administrative fees and fees of the arbitrator(s), shall be shared equally by the Parties to the dispute, unless otherwise determined by the arbitrator(s). Each Party shall bear the cost of its own attorneys' and expert fees. The Parties agree that, any provision of applicable law notwithstanding, they will not request, and the arbitrator shall have no authority to award, punitive or exemplary damages against any Party.

#### 11.3

Implied Obligations. This Agreement sets forth all of the rights and obligations of the Parties with respect to the subject matter hereof.

11.4

Assignment. The rights and obligations of each Party under this Agreement may not be assigned or otherwise transferred to a third party without the prior written consent of the other Party. Any assignment in violation of this Article shall be null and void. Notwithstanding the foregoing, either Party may transfer or assign its rights and obligations under this Agreement, without the consent of the other Party, to a successor to all or substantially all of its business or assets relating to this Agreement whether by sale, merger, operation of law or otherwise if the assignee or transferee has agreed to be bound by the terms and conditions of this Agreement.

11.5

Notices. Any notice or report required or permitted to be given or made under this Agreement by either Party shall be in writing and delivered to the other Party at its address indicated in this Agreement (or to such other address as a Party may specify by notice under this Agreement) by courier or by registered or certified airmail, postage prepaid, courier service, or by facsimile, which facsimile is promptly confirmed, in writing, by registered or certified airmail, postage prepaid. All notices shall be effective as of the date received by the addressee.

If to Supplier:      Broadband Wireless, LLC  
                                  280 Greg St.  
                                  Reno, NV 89502  
                                  Attn: Jim McKee, President  
                                  Fax: 775 329-5545

If to Company:      Miramar Labs  
                                  2790 Walsh Avenue  
                                  Santa Clara, CA 95051  
                                  Attn: CEO  
                                  Fax: 408-579-8795

11.6

Limitation of Liability. EXCEPT TO THE EXTENT SUPPLIER MAY BE REQUIRED TO INDEMNIFY THE OTHER PARTY UNDER THIS AGREEMENT OR ANY WILLFUL BREACH OF THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR INCIDENTAL DAMAGES (INCLUDING LOST OR ANTICIPATED REVENUES OR PROFITS RELATING TO THE SAME), ARISING FROM ANY CLAIM RELATING TO THIS AGREEMENT, WHETHER SUCH CLAIM IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF AN AUTHORIZED REPRESENTATIVE OF SUCH PARTY IS ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SAME.

11.7

Headings. Headings included herein are for convenience only, do not form a part of this Agreement, and shall not be used in any way to construe or interpret this Agreement.

11.8

Non-Waiver. Any waiver of the terms and conditions hereof must be explicitly in writing. The waiver by either of the Parties of any breach of any provision hereof by the other shall not be construed to be a waiver of any succeeding breach of such provision or a waiver of the provision itself.

11.9

Severability. Should any section, or portion thereof, of this Agreement be held invalid by reason of any law, statute, or regulation existing now or in the future in any jurisdiction by any court of competent authority or by a legally enforceable directive of any governmental body, such section or portion thereof will be validly reformed so as to approximate the intent of the Parties as nearly as possible and, if unreformable, will be deemed divisible and deleted with respect to such jurisdiction, but the Agreement will not otherwise be affected.

11.10

Independent Contractors. The relationship of Company and Supplier established by this Agreement is that of independent contractors. Nothing in this Agreement shall be construed to create any other relationship between Company and Supplier. Neither Party shall have any right, power, or authority to assume, create or incur any expense, liability, or obligation, express or implied, on behalf of the other.

11.11

Entire Agreement. This Agreement, together with the Exhibits hereto, constitutes and contains the entire understanding and agreement of the Parties respecting the subject matter hereof and cancels and supersedes any and all prior and contemporaneous negotiations, correspondence, understandings and agreements between the Parties, whether oral or written, regarding such subject matter. Notwithstanding the foregoing, to the extent the terms and conditions of the body of this Agreement conflict with the terms and conditions of any Exhibit hereto, the terms and conditions of the body of this Agreement shall govern. No agreement or understanding varying or extending this Agreement shall be binding upon either Party, unless set forth in a writing which specifically refers to the Agreement that is signed by duly authorized officers or representatives of the respective Parties, and the provisions of the Agreement not specifically amended thereby shall remain in full force and effect.

11.12

Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement.

COMPANY

SUPPLIER

By: /s/ B.E. Shay

By: /s/ J. McKee

Name: Bernard Shay

Name: James McKee

Title: General Counsel

Title: President

## **EXHIBIT A**

### **PRODUCT DESCRIPTION**

1. **PN0514-D Amplifier**. [\*\*\*] meeting the specifications in Miramar Labs PN0514D Drawing.
2. **PN0514-E Amplifier**. [\*\*\*] meeting the specifications in Miramar Labs PN0514E Drawing.

**EXHIBIT B**

**PRICES**

**A. For Delivery Schedules of [\*\*\*], the following pricing shall apply:**

1. PN0514-D Amplifier:

In order quantities of [***], the price would be:	[***]
In order quantities of [***], the price would be	[***]
In order quantities of [***], the price would be	[***]
In order quantities of [***], the price would be	[***]

2. PN0514-E Amplifier:

In order quantities of [***], the price would be:	[***]
In order quantities of [***], the price would be	[***]
In order quantities of [***], the price would be	[***]
In order quantities of [***], the price would be	[***]

**B. For Delivery Schedules of [\*\*\*], the following pricing shall apply:**

1. PN0514-D Amplifier:

In order quantities of [***], the price would be:	[***]
In order quantities of [***], the price would be	[***]
In order quantities of [***], the price would be	[***]
In order quantities of [***], the price would be	[***]

2. PN0514-E Amplifier:

In order quantities of [***], the price would be:	[***]
In order quantities of [***], the price would be	[***]
In order quantities of [***], the price would be	[***]
In order quantities of [***], the price would be	[***]

[\*\*\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

## CONTRACT MANUFACTURING SERVICE AGREEMENT

This Agreement, dated and effective as of 2012/11/06 (“Effective Date”) is between **Miramar Labs, Inc.**, a corporation located at 445 Indio Way, Sunnyvale, CA 94085, USA, the Manufacturer (“MFR”), and **Healthcare Technology International Limited**, located at 15/F, Block B, Veristrong Industrial Centre, 36 Au Pui Wan Street, Fotan, Hong Kong, the Contract Manufacturer (“CM”).

Whereas MFR has expertise in designing and marketing of devices as Manufacturer; CM has expertise in tool making, plastic part molding and electronic product assembly. CM is offering contract manufacturing service to MFR to manufacture the miraDry bioTip (sterile disposable dermatologic treatment accessory) subassembly (“Product”) under the following terms.

### 1. Scope

- 1.1. This Agreement applies to all Purchase Orders issued by MFR to CM.
- 1.2. This Agreement also applies to all products provided by CM to MFR.

### 2. Product Design

- 2.1. CM will manufacture the Product in accordance to the specifications provided by MFR (see Addendum C). MFR will maintain the Design History File and all associated documents (input, output, design FMEA, verification, and validation). Copies of relevant Design History File documentation will be provided to CM upon project commencement. The original Design History File will be maintained by MFR.
- 2.2. MFR shall inspect samples from each pilot lot in accordance with the incoming inspection criteria specified in Addendum C and provide inspection report to CM within 5 business days after receipt.
- 2.3. The CM is not allowed to make any modification to the Product that would cause it to be non-conformant to the specifications or design, including but not limited to modifications that affect external appearance, functionality, regulatory approbation or performance, changes in components, materials, sub-suppliers, engineering or production process, or manufacturing location without MFR’s written consent. MFR’s written consent to changes may include effective date and or implementation timeline.
- 2.4. CM will obtain MFR’s written approval on all proposed design changes.

### **3. Quality & Regulatory**

#### 3.1. Quality System Requirements

- 3.1.1. CM will maintain an FDA registered facility and ISO 13485 quality system certified by a Notified Body or CMDCAS Registrar for the manufacture of Products.
- 3.1.2. MFR shall evaluate Supplier's quality system to initially qualify CM and at appropriate intervals to ensure continued suitability. Evaluations include review of CM's documented procedures, quality system records and on-site audits/inspections relevant to this Agreement.
- 3.1.3. MFR shall re-evaluate CM's quality system at least once annually through a written quality survey and conduct on-site audits at least once every 3 years. MFR reserves the right to evaluate the CM's quality system and operations, including on-site audits/inspections relevant to MFR's Product at any time during CM's normal business hours, with 7 calendar days of prior notice.
- 3.1.4. CM shall address any deficiencies identified during evaluations in a timeline approved by the MFR.
- 3.1.5. MFR will provide the Quality regulation before tooling and quality specification, specimen, special purpose test equipment for prototype, and functional prototypes to CM for building engineering samples, engineering pilot, production pilot (PP) and mass production. Both parties review PP statistics after corrective and preventive actions to agree on quality specification and counter-sign marginal specimens to govern outgoing quality and internal cost of mass production.

#### 3.2. Quality Control

- 3.2.1. CM will manufacture Products in an ISO Class 8 compliant controlled environment to minimize Product exposure to airborne particulates. CM shall establish and maintain procedures including maintenance, adjustment, and inspection procedures to adequately control conditions to minimize risk of Product exposure to particulates and bioburden in a manner acceptable to MFR and compliant with ISO 14644-1: 1999, Cleanrooms and associated controlled environments – Part 1:

Classification of air cleanliness; ISO 14644-2: 2000, Part 2; Specifications for testing and monitoring to prove continued compliance with ISO 14644-1; ISO 14644-3: 2005, Part 3: Test methods; ISO 14644-5: 2004, Part 5: Operations, and 14698-1:2003 Cleanrooms and associated controlled environments – Biocontamination control, Part 1 – General principles and methods. Initial environmental specifications include temperature and humidity, and any subsequent changes must be approved in writing by MFR.

- 3.2.2. CM shall establish and maintain requirements for the health, cleanliness, personal practices, and clothing of personnel to minimize Product exposure to particulates and bioburden and adequately control contact between personnel and Product.
- 3.2.3. In accordance with ISO 13485, CM will allow MFR audits and random process and Product inspections to evaluate CM processes and verify Product conformance. MFR reserves the right to conduct audits during CM's normal work hours with 7 calendar days of prior notice. CM shall, either upon request by MFR or in the normal course of business, carry out similar audits to their suppliers.

3.2.4.

CM shall address any non-conformances to FDA regulations, ISO requirements or this agreement identified during MFR audits in a timeline approved in writing by the MFR.

3.3. Incoming Inspection

- 3.3.1. MFR shall inspect Product in accordance with the incoming inspection criteria specified in Addendum C.
- 3.3.2. MFR shall notify CM and provide defect statistics and samples within 10 business days after determining that a lot has failed incoming inspection.
- 3.3.3. In the event of a disagreement between MFR and CM, a mutually agreed upon third party investigator shall be utilized. The expense for this service shall be paid by the party determined to be at fault by the investigator.

3.4. Remedies for Defective Product

3.4.1. The CM shall remedy defective goods as soon as possible, but not to exceed 30 calendar days after confirmation of defect. If requested by CM, MFR shall return defective Product to CM at CM's cost.

3.5. Regulatory Inspection

3.5.1. MFR shall be solely responsible for all contacts and communications with the FDA and other Governmental Authorities with respect to all matters relating to the Product and regulatory approvals. The MFR and CM shall coordinate activities necessary to ensure ongoing readiness for regulatory inspections pertaining to Products or the services provided hereunder by CM.

3.5.2. CM shall notify MFR and provide MFR with copies of any notices or communications of any inspection, investigation, inquiry, regulatory action, or other material Governmental notice or communication by or from the FDA or other Governmental Authorities relating to the Product or the services provided hereunder promptly, but in no case later than 3 business days after CM becomes aware of such notices or communications. MFR shall have the right to be present at and to participate in any such inspection or other regulatory action with respect to the Product. CM shall provide MFR with copies of any inspection; findings or observations and any other documentation received by CM from the FDA or any other Governmental Authority, including, without limitation, any FDA Form 483 or Warning Letters up to the condition allowed by law. CM shall provide any proposed response thereto 3 business days prior to required response for MFR's review and approval prior to submission. No such responses shall include any false or misleading information with respect to the Product or MFR.

3.5.3. CM shall provide immediate notice to MFR upon notice of debarment, suspension, or other regulatory restriction on their ability to provide services contemplated hereunder.

3.5.4.

To the extent MFR determines it necessary for regulatory

compliance, CM shall grant MFR full access to CM's Master File and all other manufacturing and shipment records associated with MFR.

### 3.6. Records for Lot Traceability

3.6.1. CM will maintain the Device History Record ("DHR"). A copy of the DHR for each production lot will be provided to MFR for final review and product release. The DHR will contain the following:

- a) Lot number and Quantity released for Shipment
- b) Certificate of Compliance (C of C) showing product release authorization
- c) Label Records including Label Line Clearance Form
- d) Device History Records including Router Sheets (work order) and Production Records including Test and Inspection data as requested in writing by MFR and Component Traceability information as requested in writing by MFR
- e) Final Inspection Record including Completed Inspection Forms
- f) Shipping Documents
- g) All Non-Conforming Material Reports

3.6.2. CM will maintain all Records for a period of seven (7) years or forward original records to MFR upon request by MFR. CM will notify MFR at least 30 days prior to destroying any records and will not destroy such records without approval from MFR.

### 3.7. Change Control

3.7.1. CM will have the primary role in designing processes to carry out the terms of this Agreement and shall maintain all associated documents, including, without limitation, the DHR, MFR related drawings, the Device Specifications, test specifications and procedures, process FMEA, process verification, process validation and all other documents required to maintain full compliance with the terms of this Agreement ("Records"). All such records shall be confidential to and the sole property of MFR.

MFR will review and approve process changes proposed by CM prior to implementation.

3.7.2. CM will maintain a specification and revision control system for all MFR related drawings. CM will obtain prior written approval by MFR for any changes to Device Specification. CM will generate and maintain the Device Master Records (“DMRs”) for the devices and provide copies of such DMRs to MFR within ten (10) calendar days after request.

3.7.3.

CM will maintain the specifications and procedures for test methods developed by MFR. CM shall obtain MFR’s written approval for any changes in MFR’s specifications, procedures or methods. CM shall validate all test methods used on Devices and provide MFR with written proof of such validation, including validation data collected, within ten (10) calendar days of MFR’s request for such proof.

### 3.8. Regulatory Reporting Obligations

3.8.1. MFR shall be solely responsible for (i) receiving all Product complaints and reports of Product adverse events and malfunctions, and all communications with complainants and provide appropriate information to CM; and (ii) filing all required regulatory reports for the Product or the Regulatory Approvals, including, without limitation, any medical device reports or other adverse event reports relating to the Product.

3.8.2. CM shall provide information regarding any complaints, reports of adverse events or malfunctions relating to the Product due to manufacturing fault to MFR within 5 business days of receipt.

3.8.3. When requested by MFR, CM will conduct complaint investigations for the Product manufactured by CM (including investigation of products or services purchased by CM for use in MFR’s Product) and will follow-up as soon as possible, but no later than twenty-one (21) calendar days. CM will respond to requests for corrective action in writing as soon as possible after receipt, but within fourteen (14) calendar days of request. Responses to Corrective Actions shall address the following:

a) Root cause of nonconformity

- b) Correction required to address existing nonconformities
- c) Corrective action plan to prevent recurrence of nonconformities
- d) Implementation timeline (correction and corrective action)
- e) Effectiveness check of corrective action

### 3.9. Quality Reports

3.9.1. CM shall provide a report to MFR on a monthly basis containing mutually agreed upon quality information and metrics. The report shall be provided no later than the 10th calendar day of each month with information current to the last calendar day of the preceding month.

### 3.10. Approved Supplier List

3.10.1. CM will maintain an Approved Supplier List. Approved suppliers will be selected and qualified under the CM's supplier management process, compliant with FDA QSR and ISO 13485 requirements. Suppliers providing products or services used in MFR's Product must be approved in writing by MFR.

3.10.2. CM will have purchasing authority for all materials and services associated with materials used in the production of the Product. CM will maintain appropriate procedures in accordance with applicable ISO and QSR regulations, including component identification and traceability. CM will only purchase products and services used in MFR's Products from suppliers on the Approved Supplier List.

## 4. **Tooling and Equipment**

4.1. A list of tooling and equipment (including fixtures) needed to manufacture the MFR's Product is listed in Addendum A. The list distinguishes between items being consigned to CM by MFR free of charge, and items to be developed by CM per quotation and Purchase Order. All tooling and equipment developed for the manufacture and testing of MFR's Products shall be the sole and exclusive property of MFR. Addendum A may be modified by mutual consent of CM and MFR to add or remove items as necessary.

- 4.2. Any costs associated with Product design changes requiring modifications to any of the items listed in Addendum A shall be agreed to in writing and paid by MFR.
- 4.3. Tooling and equipment to be developed by CM shall be quoted with the following minimum payment terms:
- a)  
Up front deposit of 50% of tooling and development cost plus 100% of equipment and fixture cost
  - b)  
2<sup>nd</sup> progress payment of 30% of tooling and development cost
  - c)  
Balance payment of remaining 20% of tooling and development cost
- 4.4. Maintenance and Calibration
- 4.4.5. CM assures all tooling and equipment used in the manufacture and test of MFR Product shall be maintained fit for production at all times in good working order and under calibration control if it is determined necessary by both parties.
- 4.4.6. CM shall ensure all inspection, measuring, and test equipment is suitable for its intended purposes and is capable of producing valid results. Suitability includes limits for accuracy and precision. CM shall establish and maintain schedules for the calibration and preventive maintenance in accordance with the manufacturer's recommendations. Calibration standards shall be traceable to recognized standards.
- 4.4.7. MFR shall specify maintenance and calibration schedule to CM for MFR owned tooling and equipment and shall pay for associated costs. Payment terms to be agreed to in writing by CM and MFR.
- 4.4.8. CM owned tools, furniture, and processing equipment shall be maintained and calibrated by CM at their own cost.
- 4.4.9. Consumable items used in the manufacture of the Product are the responsibility of CM.

#### 4.5. Disposition

4.5.3. For any MFR owned tooling or equipment which has not been utilized in the manufacture of Product within the past 12 months, CM shall notify MFR that the tooling or equipment shall be withdrawn from service. MFR shall have 30 calendar days from this notice to tell CM what to do with the tooling and equipment. CM shall provide options for disposition and costs. Tooling or equipment returned to MFR will be shipped at MFR's cost.

### 5. **Forecast and Ordering**

- 5.1. MFR will use its commercially reasonable efforts to provide CM with a 12 month rolling non-binding forecast of its intended purchases and requested deliveries. This non-binding forecast will be updated quarterly with subsequent updates as needed. Such forecast will be for used for planning purposes only and will in no way create an obligation on MFR's part to purchase Product.
- 5.2. CM will use provided forecast to plan their capacity and advise MFR of long lead materials, capital requirements such as tooling and resources needed to support the plan. MFR may choose to purchase specific long lead materials to support the extended forecast, but will do so only with an expressly written Purchase Order ("P.O.") for said material. MFR will ensure that the amount of finished goods inventory, work in process, and raw materials ("Inventory") is limited to that amount required to support the agreed upon lead times and Purchase Orders, unless otherwise agreed to by MFR purchase order. The costs associated with any excess inventory not authorized in writing by MFR will be borne by CM.
- 5.3. If and when MFR desires to commit to purchase a product or material, MFR shall issue a P.O. in written or electronic form describing the Product, identifying the product by MFR product number, specifying the quantity, price, delivery date, shipping and any other information required. CM shall make its best efforts to accept each MFR P.O. unless such P.O. is inconsistent with applicable terms of this Agreement and will respond to MFR within 3 business days after receipt of the Purchase Order. When written or electronic acknowledgment of receipt and acceptance of a P.O. is made by CM, the P.O. shall be deemed a commitment to purchase and sell the specified Products pursuant to the applicable terms of this

Agreement. In the event of any conflict between the terms of this agreement and the terms of any P.O., the terms of this Agreement shall control.

- 5.4. Upon acceptance of P.O., CM shall provide immediate notice to MFR if they are unable to deliver to the terms, either quantity or delivery date.
- 5.5. The MFR shall have the option to defer delivery of all or part of any binding P.O. up to 2 months subject to written notice 30 calendar days before scheduled delivery.
- 5.6. Cancellation notice

5.6.4.

CM shall periodically update MFR with order lead-time for long lead-time material and cancellation lead-time for those cancellable materials.

- 5.7. Obsolete and Unused Material

5.7.2.

In the event of P.O. cancellation and design changes that result in obsolete material, the MFR agrees to pay for materials committed to in open Purchase Orders for raw material, work-in-process and finished goods, except to the extent that CM has a readily available use for such materials, for example they can be used for another customer. CM will send an invoice for the cost of the obsolete material plus 10% material overhead charge to MFR. MFR to pay invoice within 30 days.

5.7.3.

If material is unused for over 2 months and without open P.O. for product the material is used for, CM will send an invoice for the cost of the unused material plus 10% material overhead charge to MFR. MFR to pay invoice within 30 days. The unused material will be kept as MFR's consigned material for deposition.

- 5.8. Stop Production Notice

- 5.8.3. MFR may, in writing, direct CM to stop the production of Products during any stage of the manufacturing process (a "Stop Production Notice"). MFR has the right to direct CM to prepare Products up through a

particular level of the manufacturing process and to hold such partially completed Products pending resolutions to be implemented as a result of error correction activities. If such a Stop Production Notice from MFR is not due to CM's negligence or failure to perform its obligations under this Agreement, MFR shall be responsible for the actual and reasonable costs of downtime and idle capacity charges incurred by CM resulting from a Stop Production Notice and for the actual and reasonable costs associated with the holding of partially completed Products and any required rework of Product.

## **6. Logistics & Shipping**

6.1. CM will pack and package Product using agreed upon methods or best practices to protect the Product from deterioration or damage during processing, storage, handling, and shipment.

6.2.

Products manufactured under this agreement will be packaged with labeling that states "Manufactured for MIRAMAR LABS, Inc." or equivalent.

6.3. Delivery

6.3.4. Delivery terms: FOB Hong Kong.

6.3.5. CM shall quote a delivery date in writing upon acceptance of each Purchase Order from MFR.

6.3.6.

CM agrees to meet this delivery date within a tolerance of +/-10 business days for sea freight and +/-3 business days for airfreight.

6.3.7. MFR shall specify the shipping method at least 2 weeks prior to the shipment date.

6.3.8. In the event the CM is unable to ship Product in time for the agreed upon delivery date due to CM's fault, then CM shall pay for the additional incurred cost for expedited freight to make up delay for minimal urgent quantity requested by MFR and agreed to by CM. CM's liability is limited to less than 10% of the Product price of the portion of the shipment that is 31 or more days late according to CM's confirmed schedule.

6.3.9. CM shall deliver Product in accordance with the Delivery Date set forth in the relevant Purchase Order. TIME IS OF THE ESSENCE IN MEETING THE REQUIREMENTS OF ALL PURCHASE ORDERS AND IN DELIVERY OF ALL PRODUCTS.

6.3.10. If MFR requests to expedite a shipment of Product on CM's confirmed schedule, CM is entitled to charge an expedite fee and will provide MFR a quotation for the fee.

6.4. CM's Export Documents (License(s))

6.4.4. CM is responsible for obtaining and maintaining all export license(s) required for delivery of the Product to MFR under this Agreement to MFR's designated location.

6.4.5. CM shall issue all documentation that may be required by law or regulation regarding the export or re-export of the Product to the MFR's designated location.

6.5. MFR's Import Documents

6.5.5. MFR is responsible for obtaining and maintaining any regulatory compliance and import license(s) required for delivery of the Product to MFR.

6.5.6. CM shall reasonably cooperate with MFR to the extent required to sell the Product.

**7. Pricing and Credit Payment**

7.1. Initial pricing for Product is set forth in Addendum B. The price(s) set forth in Addendum B shall be itemized to include the costs of materials, labor, overhead and profit. When MFR places a P.O., CM will confirm price changes if costs exceed 3% of previous quote. Both parties will review cost every 6 months.

7.2. The pricing shall be forecast for six (6) months and shall be updated by CM on a quarterly basis, or more frequently if requested in writing by MFR. As volumes of Purchase Orders and experience with the Product increase, it is anticipated that the costs to supply Products will decline and, in connection with that decline, CM agrees to negotiate in good faith reductions to the initial price set forth in Addendum B. If there are price increases in transportation, components or labor

costs, MFR agrees to negotiate in good faith increases to the initial price set forth in Addendum B to reflect such additional costs.

- 7.3. Any design change for the Products required by MFR shall be subject to mutual agreement of the parties on the effect of such design change on pricing of the Product. If there is no agreement reached regarding pricing, MFR and CM each has the right to terminate this Agreement pursuant to Clause 8.1.
- 7.4. Invoice & Payment
  - 7.4.7. MFR agrees to pay all invoices within 7 business days of receipt for Engineering and Tooling charges and Pilot Production shipments; and net 45 calendar days from date of invoice within bank credit limit. For invoices exceeding credit limit, MFR agrees to pay 50% deposit upon placing order and the remaining balance before CM ships Product.
- 7.5. Payment Reduction or Deferment
  - 7.5.4. No Set Off clause. MFR agrees to settle valid payment according to Purchase Order terms for the delivery of finished goods and any counter claims shall be paid instead of offsetting by CM after agreement on responsibility.
- 7.6. Currency & Taxes
  - 7.6.4. All money terms shall be in US Dollars.
  - 7.6.5. Payment to CM shall incur no tax withholding. Provided, however, that payments shall be made in accordance with applicable law agreed to in Clause 22.
- 7.7. Reimbursable Expenses
  - 7.7.1. MFR will reimburse CM only for expenses which are expressly authorized in this Agreement or authorized in writing by MFR prior to being incurred by CM. EXCEPT AS EXPRESSLY SET FORTH HEREIN, NO OTHER COSTS OR EXPENSES ARE REIMBURSABLE UNDER THIS AGREEMENT.
- 7.8. CM must pay all refunds to MFR in full within 30 business days of receiving notice of MFR request for refund, provided that such refunds are justified under

the terms of this Agreement. Payment by refund will be either by credit towards MFR's payment, or by Telegraph Transfer, or by Electronic Funds Transfer, at sole discretion of MFR.

## **8. Terms and Termination of Agreement**

8.1. The term of this Agreement shall commence on the Effective Date upon exchange of signed copies from both parties and remain in effect for at least 3 calendar years ending December 31<sup>st</sup>, and will renew automatically unless terminated by either party by giving following written notices to the other party:

- a) immediately if bankrupt, Insolvent; or
- b) immediately after failure to cure breach due to other than Force Majeure within 30 calendar days after written notice sent; or
- c) immediately after failure to cure breach due to Force Majeure within 60 calendar days after written notice sent; or
- d) at least six (6) months written notice in all other cases.

8.2. If CM desires to terminate this agreement, CM agrees to accept and fulfill one end-of-life P.O. from MFR.

8.3. Effects of Termination

8.3.8. Obligations. All obligations that accrued prior to the effective date of termination (including without limitation, payment obligations) shall survive termination.

8.3.9. Return of Confidential Information. Each party shall promptly destroy with certification of destruction or return to the other party all Confidential Information from the disclosing party.

8.3.10. Survival. The following provisions shall survive any termination of this Agreement: Clauses 9, 11, 12, 13, 14, 16, 17 and 23.

## **9. Notices**

9.1. All Notices must be made in writing and delivered personally, by courier, via registered mail with acknowledgement of receipt, or by electronic means with printed acknowledgement of receipt, and addressed:

a) To the CM:

Attn: Division General Manager  
Healthcare Technology International Limited  
15/F, Block B, Veristrong Industrial Centre  
36 Au Pui Wan Street  
Fotan, Hong Kong  
Fax: (852) 2343-7310

b) To the MFR:

Attn: Vice President of Manufacturing  
Miramar Labs, Inc.  
445 Indio Way  
Sunnyvale, CA 94085, USA  
Fax: 408-940-8795

## **10. Insurance**

10.1. MFR shall maintain product liability insurance covering MFR and CM. CM's quotation excludes product liability insurance.

## **11. Indemnification**

11.1. MFR Indemnification Obligations. MFR shall indemnify, defend and hold CM harmless from and against any third party claims, losses, liabilities, damages, cost (including court or arbitration costs) and expense (collectively, "Losses") incurred by CM as a result of (i) any defect in MFR's design of the Product; (ii) any Intellectual Property ("IP") infringement or product liability claim directly resulting from CM's compliance with MFR's Product specifications (Clause 2); (iii) a material breach by MFR of its representations, warranties, covenants or obligations under this Agreement, or (iv) any gross negligence or willful misconduct of MFR, except Losses to the extent resulting from any action or

inaction of CM for which CM is required to indemnify MFR pursuant to Clause 11.2 hereof.

- 11.2. CM Indemnification Obligations. CM shall indemnify, defend and hold MFR harmless from and against any third party Losses incurred by MFR as a result of (i) any failure of the Product to meet the Product specifications (Clause 2) or comply with MFR's written instructions; (ii) CM's violation of GMP or any other applicable Laws; (iii) a material breach by CM of its representations, warranties, covenants or obligations under this Agreement; or (iv) any gross negligence or willful misconduct of CM, except Losses to the extent resulting from any action or inaction of MFR for which MFR is required to indemnify CM pursuant to Section 11.1 hereof.

## 12. Warranty Disclaimer

- 12.1. CM warrants Product for 13 months from the date code for repair or replacement.
- 12.2. Except as set forth in this Agreement, CM does not provide any warranty of:
- c) Merchantability and fitness for any particular use;
  - d) Compatibility with any other product; or
  - e) Misuse by user or design fault.
- 12.3. Notwithstanding the foregoing disclaimer, CM warrants that the Products shall be:
- a) manufactured in accordance with U.S. 21 CFR 820 FDA Good Manufacturing Practices and in accordance with all other regulatory requirements applicable for the Products for sale in the United States as notified by MFR, and for such other countries as MFR shall specify from time to time as notified by MFR;
  - b) manufactured in accordance with the agreed upon Product specifications (Clause 2);
  - c) shall operate in accordance with the Product design (Clause 2); and
  - d) all versions of its Products which are sold and licensed to MFR comply with Directive 2011/65/EU Restriction of Hazardous Substances (RoHS), and will be documented for MFR and its

customers as meeting the RoHS Compliance definition per the directive.

**13. Limitation of Liability**

13.1. Neither party shall be liable hereunder for any indirect, punitive, incidental or consequential loss or damages of the counter-party or third party.

**14. Field Failure and Recalls**

14.1. All regulatory assessments including complaint investigations, Medical Device Reports (“MDRs”) to FDA and all applicable Regulatory Jurisdictions determination and decisions to recall Product will be the responsibility of MFR. MFR shall make reasonable efforts to notify CM within two (2) business days of becoming aware that any regulatory agency has issued a recall of Products. CM is responsible for acknowledging receipt of MFR’s notification and taking the actions listed below as soon as reasonably possible. In no event shall MFR’s failure to notify CM of a recall within two (2) business days relieve CM of any of its responsibilities hereunder. However, CM shall not be liable for the cost of any product built that could have been avoided by CM had timely notification been provided to CM, when such information was available and known.

14.2. MFR is responsible for field returns due to design defects; while CM will be responsible for manufacturing defects and restricted to remedy under Clause 3.4. CM will be liable for any additional out of pocket costs incurred by MFR as a result of CM’s failure to meet its warranty obligations.

14.3. For purposes of this Agreement, “Epidemic Failures” shall mean Product failures within thirteen (13) months after the date of delivery of the Product, equal to or in excess of 1% of any particular lot, 1% of all shipments within a particular timeframe, or any defect that may result in a safety related concern, resulting from substantially similar defects including without limitation components with inherent or latent defects. Notwithstanding the foresaid, the Epidemic Failure shall not include any Product failure that is directly caused by Product designs and specification solely provided by MFR or materials provided or assigned by MFR, manufacturing process or quality control procedure instructed by MFR, or sub-supplier designated by MFR.

14.4. In the event that any of the Products are recalled because of Epidemic Failure where such Epidemic failure results from CM failing to meet its obligations under this Agreement including without limitation due to CM's failure to meet its warranty, negligence or use of non-conforming parts, CM agrees to indemnify MFR in relation to all losses, actions, proceedings, liabilities, claims, demands, expenses, and costs (including legal costs, but excluding loss of profit or loss due to consequential, incidental, or indirect damage) arising or relating in any way to the recall, and CM will replace the affected lot and pay a maximum of 20% of the FOB value of the lot for recall cost compensation.

## **15. Force Majeure**

15.1. Both parties are not liable for damage of breach owing to acts of God or other causes beyond its reasonable control. The breaching party has to notify the other party of the breach within 5 business days the force majeure event begins or ends. In case the breaching party cannot recover after 60 calendar days, the other party may terminate the Agreement with written notice to the affected party.

## **16. Intellectual Property**

16.1. MFR Intellectual Property. All intellectual property, tangible and intangible including without limitation, and any and all data, results, analyses, techniques, inventions, improvements, discoveries, ideas, processes, know-how, patents, patent applications, copyrights, trademarks, formulations, trade secrets and other proprietary information and rights (collectively, "Intellectual Property") that is invented solely by MFR before and during the term of this agreement shall be the sole and exclusive property of MFR.

16.2. CM Intellectual Property. Except as expressly set forth herein, all intellectual property, tangible and intangible including without limitation, and any and all data, results, analyses, techniques, inventions, improvements, discoveries, ideas, processes, know-how, patents, patent applications, copyrights, trade secrets and other proprietary information and rights (collectively, "Intellectual Property") that is invented solely by CM or its' associated companies before and during the term of this agreement shall be the sole and exclusive property of CM or the assigned and associated entities.

- 16.3. Product Intellectual Property. CM acknowledges the MFR's exclusive ownership of all Intellectual Property Rights related to the Product and ownership of the Product (including any modifications thereto) whether created by MFR or CM separately or jointly, the unique processes used in the manufacture of the Product, all unique documentation used in the manufacture of the Product and the tooling for the Product ("Product Intellectual Property"). CM further acknowledges that all such Intellectual Property, unique processes, unique documentation and tooling are confidential to MFR and shall be treated as Confidential Information under this Agreement. Any Product Improvements shall be the property of MFR. CM hereby assigns to MFR all right, title and interest in and to all Product Intellectual Property, Product Improvements and all intellectual property rights therein. CM shall promptly notify MFR of all Product Improvements of which CM is aware and shall assist MFR, at MFR's request and expense, to seek and maintain intellectual property protection for all Product Improvements. As used herein, "Product Improvements" means all design information and all improvements, enhancements or changes to any Product, processes for manufacturing such Product or tooling for such Product. Product Improvements excludes any improvements made by CM to its generally applicable manufacturing methods.
- 16.4. CM will deliver all tooling and equipment (including fixtures) paid by MFR to MFR within thirty (30) calendar days of MFR's request. CM acknowledges that CM received no right to, and CM covenants that CM will not, supply Products to any third party.
- 16.5. Infringement
- a) In the event there is proven infringement by one party the Infringed Party is entitled to injunctive relief and compensation.
  - b) Each party shall provide the other with prompt written notice of any claims made (or threatened) by third parties alleging invalidity or infringement of CM or MFR Intellectual Property.
- 16.6. Confidential Information & Trade Secret
- a) As used herein, Confidential Information means all information or data (including all oral and visual information and all information

or data recorded in writing or electronic writing) which is clearly identified by a Party as confidential at the time of disclosure;

- b) During the continuance of this Agreement and for a period of four (4) years after the termination or expiration of this Agreement, each Party agrees: i) not to disclose or cause to be disclosed either directly or indirectly to any person, any Confidential Information of the other Party without the prior written approval of the other Party other than to its affiliates and its and their employees, officers, directors, contractors and agents who need to know such information to exercise the receiving party's rights and perform its obligations under this Agreement, if such representatives are bound to protect the other party's proprietary and confidential information on terms no less protective of such information than the terms herein and the receiving party shall be responsible for any breach of this Clause by any such representatives; ii) to safeguard the Confidential Information of the other Party in the same manner the receiving party safeguards its own proprietary and confidential information of like character (but using no less than reasonable care); and iii) only use such Confidential Information of the other Party except to exercise its rights and perform its obligations under this Agreement. For the avoidance of doubt, all specifications and tooling for the Products are the Confidential Information of the Purchaser.
- c) The obligations imposed on the Parties by Clause a) do not apply to any information which:
  - 1) is in, or after the date of this Agreement enters into, the public domain;
  - 2) was received lawfully by the receiving Party from a third party not being subject to any obligation or confidence regarding such information;
  - 3) is required by law to be disclosed; provided that if a court or any other governmental entity orders the receiving Party to produce any of the disclosing Party's Confidential

Information, the receiving Party shall (i) to the extent permitted by law, promptly notify the disclosing Party of such order, (ii) produce only the information specifically required to be disclosed, and (iii) cooperate with the disclosing Party's objections regarding the disclosure.

**17. Non-Solicitation/Non-Compete**

- 17.1. No Party or its directors, employees or agents shall directly or indirectly solicit, divert or engage any business partners, directors, employees or agents of the other party for a period of 2 years after the termination of this Agreement.
- 17.2. During the term of this Agreement and for two years after expiration or termination, CM shall not manufacture competing products for any party other than those expressly approved in writing by MFR. In no event shall CM, either during the term of this Agreement thereafter manufacture any products which incorporate MFR's Intellectual Property or confidential information or which are designed to be used with MFR's products for itself or any third party.

**18. Relationship of Parties**

- 18.1. The relationship between the MFR and CM established in this Agreement is that of independent contractors, and nothing contained herein shall be deemed to create a relationship of employer and employee, principal and agent, partners, or otherwise. Neither party shall have any authority to obligate the other in any respect nor hold itself out as having any such authority. All personnel of either party shall not represent themselves as employees of the counter party.
- 18.2. MFG hereby grants to CM a limited license to use MFR's Intellectual Property and Confidential Information solely for the purpose of manufacturing Products in China for MFR under the terms of this Agreement. No other right or license is granted or may be implied by the terms of this Agreement. All licenses granted hereunder shall expire upon the termination of this Agreement.

**19. Assignment**

- 19.1. A Party may not assign any of its rights under this Agreement without the prior written consent of the other Party; provided however that MFR may assign this Agreement to an acquirer of all or substantially all of the business or assets of MFR. CM shall not subcontract or delegate any of its obligations under this

Agreement to any affiliate or third party without MFR's prior written consent and provided that such affiliate or third party agrees in writing to be bound by provisions no less protective of MFR's Confidential Information than Clause 16 hereof and provisions which assign to CM all Product Improvements so that such Product Improvements shall be assigned to MFR hereunder. Any assignment, transfer, subcontracting or delegation not in accordance with the foregoing shall be void.

**20. Severability**

20.1. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If such provision could be limited to become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

**21. Waiver**

21.1. The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

**22. Interpretation and Applicable Law**

22.1. The provisions of this Agreement shall be interpreted according to the laws of England, notwithstanding its conflict of laws provisions.

**23. Dispute Resolution**

23.1. Arbitration. Any controversy or claim arising out of or relating to this Agreement shall be determined by arbitration in accordance with the International Arbitration Rules of the International Centre for Dispute Resolution. The number of arbitrators shall be three (3). The place of arbitration shall be London, England. The language(s) of the arbitration shall be English. The official text of the Agreement or any notices given shall be in English. In the event of any dispute concerning the construction or meaning of this Agreement, reference shall be made only to this Agreement as written in English, and not to any other translation into any other language. The award shall be rendered within two (2) months of the commencement of the arbitration, unless such time limit is extended by the arbitrator(s). It is the intent of the Parties that, barring extraordinary circumstances, arbitration proceedings will be concluded within

thirty (30) calendar days from the date the arbitrator(s) are appointed. The arbitrator(s) may extend this time limit in the interests of justice. Failure to adhere to this time limit shall not constitute a basis for challenging the award. Consistent with the expedited nature of arbitration, pre-hearing information exchange shall be limited to the reasonable production of relevant, non-privileged documents explicitly referred to by a party for the purpose of supporting relevant facts presented in its case, carried out expeditiously. This Agreement, and any and all disputes arising in connection with this Agreement, will be governed by the laws of England.

23.2. Mediation. Once the demand for arbitration is initiated, the parties agree to attempt to settle any controversy or claim arising out of or relating to this Agreement, or a breach thereof by mediation, administered by the International Centre for Dispute Resolution under its International Mediation Rules at the request of either party. The number of mediators shall be one. The place of mediation shall be London, England. The language of the mediation shall be English. Mediation may proceed concurrently with arbitration and shall not be a condition precedent to any stage of the arbitration process.

23.3. Costs. Each Party must bear its own costs of and incidental to the preparation, execution, and completion of this Agreement.

23.4. Injunctive Relief. Notwithstanding anything to the contrary herein, in the event of any actual or imminent infringement of MFR's Intellectual Property rights or disclosure of MFR's Confidential Information, MFR shall have the right to seek, obtain and enforce injunctive relief from any court of competent jurisdiction.

## **24. Entire Agreement**

24.1. This Agreement, together with any Addendums, comprises the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersedes all prior understandings, agreements, representations, and correspondence with respect to the subject matter hereof.

## **25. Amendment**

25.1. No modification, alteration or waiver of this Agreement, together with any Addendums, shall be binding upon the Parties unless made in writing and signed and exchanged by the duly authorized representative of the Parties.

**26. Further Assurance**

26.1. Each Party Agrees to execute such further papers, agreements, documents, instruments and the like as may be necessary or desirable to effect the purpose of this Agreement and to carry out its provisions.

**EXECUTED AS AN AGREEMENT**

**SIGNED** for and on behalf of **Healthcare Technology International Limited (CM)**

By: /s/ James Li

Name: James Li

Title: Division General Manager

By executing this Agreement, the signatory warrants that the signatory is duly authorized to execute this agreement on behalf of **CM**.

**SIGNED** for and behalf of **Miramar Labs, Inc. (MFR)**

By: /s/ Steve Higa

Name: Steve Higa

Title: VP, Manufacturing

By executing this Agreement, the signatory warrants that the signatory is duly authorized to execute this agreement on behalf of **MFR**.

**Addendum A**  
**Tooling and Equipment List**

### MMR Equipment & Fixture Control List

Item	Control No.	Equipment/Fixture Description	E/F/M	Owned by	Location	Chinese Name	No.	Photo	Remark/ [Chinese]
1	[***]	[***]	Fixture	MMR	[Chinese]	[***]	[***]	[***]	Remake New in AML
2	[***]	[***]	Fixture	MMR	[Chinese]	[***]	[***]	[***]	Remake New in AML
3	[***]	[***]	Fixture	MMR	[Chinese]	[***]	[***]	[***]	Remake New in AML
4	[***]	[***]	Machine	Factory	[Chinese]	[***]	[***]	[***]	Use AML's
5	[***]	[***]	Fixture	MMR	[Chinese]	[***]	[***]	[***]	Reuse current fixture
6	[***]	[***]	Equipment	Factory	[Chinese]	[***]	[***]	[***]	Remake New with conveyor in AML
7	[***]	[***]	Fixture	MMR	[Chinese]	[***]	[***]	[***]	Remake New with conveyor in AML
8	[***]	[***]	Fixture	MMR	[Chinese]	[***]	[***]	[***]	MMR's fixture transfer to AML
9	[***]	[***]	Fixture	MMR	[Chinese]	[***]	[***]	[***]	Transfer to AML (may need to remake new in AML)
10	[***]	[***]	Fixture	MMR	[Chinese]	[***]	[***]	[***]	Transfer to AML (may need to remake new for AMLs USW machine)
11	[***]	[***]	Fixture	MMR	[Chinese]	[***]	[***]	[***]	Transfer to AML
12	[***]	[***]	Fixture	MMR	QC1	[***]	[***]	[***]	Transfer to AML
13	[***]	[***]	Fixture	MMR	QC1	[***]	[***]	[***]	Transfer to AML (maybe need to remake to suit AML's pull force equipment)
14	[***]	[***]	Machine	MMR	[Chinese]	[***]	[***]	[***]	Transfer to AML
15	[***]	[***]	Equipment	Factory	[Chinese]	[***]	[***]	[***]	Transfer to AML
16	[***]	[***]	Equipment	MMR	[Chinese]	[***]	[***]	[***]	Transfer to AML
17	[***]	[***]	Equipment	MMR	[Chinese]	[***]	[***]	[***]	Transfer to AML
18	[***]	[***]	Equipment	MMR	[Chinese]	[***]	[***]	[***]	Transfer to AML
19	[***]	[***]	Equipment	MMR	[Chinese]	[***]	[***]	[***]	Transfer to AML
20	[***]	[***]	Fixture	MMR	[Chinese]	[***]	[***]	[***]	Transfer to AML
21	[***]	[***]	Equipment	Factory	[Chinese]	[***]	[***]	[***]	AML to supply
22	[***]	[***]	Equipment	Factory	[Chinese]	[***]	[***]	[***]	AML to supply
23	[***]	[***]	Machine	Factory	[Chinese]	[***]	[***]	[***]	AML to supply
24	[***]	[***]	Machine	Factory	[Chinese]	[***]	[***]	[***]	AML to supply
25	[***]	[***]	Equipment	Factory	[Chinese]	[***]	[***]	[***]	AML to supply
26	[***]	[***]	Machine	Factory	[Chinese]	[***]	[***]	[***]	AML to supply
27	[***]	[***]	Equipment	Factory	QC1	[***]	[***]	[***]	AML to supply
28	[***]	[***]	Equipment	Factory	QC1	[***]	[***]	[***]	AML to supply
29	[***]	[***]	Machine	Factory	[Chinese]	[***]	[***]	[***]	AML to supply
30	[***]	[***]	Machine	Factory	[Chinese]	[***]	[***]	[***]	AML to supply

31	[***]	[***]	Machine	Factory	[Chinese]	[***]	[***]	[***]	AML to supply
32	[***]	[***]	Machine	Factory	[Chinese]	[***]	[***]	[***]	AML to supply
33	[***]	[***]	Equipment	Factory	[Chinese]	[***]	[***]	[***]	AML to supply
34	[***]	[***]	Equipment	Factory	QC1	[***]	[***]	[***]	AML to supply
35	[***]	[***]	Equipment	Factory	QC1	[***]	[***]	[***]	Transfer to AML & AML to supply

## Addendum B

### Initial Pricing

<b>Product</b>	<b>Reference Specification</b>	<b>Lead Time from Purchase Order to Delivery</b>	<b>Minimum Order Quantity (MOQ)</b>	<b>Unit Price</b>
G4 bioTip Assy	PN2091, Revision E	3 months	***]	***]

Remark:

All of the Lead-time from purchasing order to delivery, Minimum order quantity, unit price will be amended due to the change of the material suppliers.

The minimum order quantity of GLS pre-color resin is [\*\*\*]. The MOQ of purchasing order of G4 biotip will be increased after MFR approves to use the GLS pre-color resin. CM will charge the rest of the resin to MFR if the resin cannot use up within one year.

**HEALTHCARE TECHNOLOGY INTERNATIONAL LIMITED**

15/F., Blk B, Veristrong Ind, Centre, 34-36 Au Pui Wan Street, Fotan, NT, HK

Tel: 852-23424148

Fax: 852-23437310

Date : 15<sup>th</sup> Feb 2012  
TO : Miramar Labs  
FM : Felix Yu / Raymond Lau  
CC : Peter Mok, Michelle Lum, James Li  
Subject : Quotation for G4 BioTip

Revision	Description	Date
A	Initial Quote	9 <sup>th</sup> April 2011
B	Revised Quote	13 <sup>th</sup> Sept 2011
C	Revised NRE and PCB Tooling	23 <sup>rd</sup> Sept 2011
D	Revised Production setup cost	11 <sup>th</sup> Nov 2011
E	Revised Unit Price	15 <sup>th</sup> Feb 2012

Dear Sir,

G4 BioTip is an OEM project from Miramar Labs. This quote is based on discussion with Miramar Labs & ZaoTech on 10<sup>th</sup> Feb 2012. The unit price was amended due to the material price changed. Enclosed is the update quotation for G4 BioTip.

**Quotation****1. G4 BioTip Unit Price**

Stage	MOQ (Units)	FOB HK Unit Price (USD)
G4 Bio Tip	***]	***]

**Remarks:**

*Pls refer the details breakdown in appendix A.*

*The price for the ES/EP/PP will quote separate after confirmation on the qty that required.*

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Page 1 of 5

# HEALTHCARE TECHNOLOGY INTERNATIONAL LIMITED

15/F., Blk B, Veristrong Ind, Centre, 34-36 Au Pui Wan Street, Fotan, NT, HK

Tel: 852-23424148

Fax: 852-23437310

## 2 Tooling

Item	Description	Amount	Total
1	[***]	[***]	[***]
2	[***]	[***]	
3	[***]	[***]	
4	[***]	[***]	
5	[***]	[***]	
	[***]	[***]	
6	[***]	[***]	
7	[***]	[***]	
8	[***]	[***]	
8	[***]	[***]	

Remark : [\*\*\*]

## 3. Production Jig & Fixture Setup

Item	Description	Cost (USD)
1	[***]	[***]
2	[***]	
3	[***]	

Remark: The production setup cost didn't include any specified equipment. If there is require specified equipment which will quote separately

Assume following equipment is consigned by customer.

- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]

If it is not fit to use in HTI's equipment, separate charge on the re-build fixture will be provided.

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# HEALTHCARE TECHNOLOGY INTERNATIONAL LIMITED

15/F., Blk B, Veristrong Ind, Centre, 34-36 Au Pui Wan Street, Fotan, NT, HK

Tel: 852-23424148

Fax: 852-23437310

## 4. Testing Fixture

Item	Test station Description	Equipment	Qty	total
A	***	***	***	***
B	***	***	***	

*\*Remarks:*

a) *The quote is not including the [\*\*\*].*

b) *Assume following testers are consigned by Miramar Labs.*

- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]
- [\*\*\*]

## 5. NRE

Engineering follow up from ES to MP stage

[\*\*\*]

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# HEALTHCARE TECHNOLOGY INTERNATIONAL LIMITED

15/F., Blk B, Veristrong Ind, Centre, 34-36 Au Pui Wan Street, Fotan, NT, HK

Tel: 852-23424148

Fax: 852-23437310

	<b>TASK</b>	<b>DELIVERABLES</b>	<b>Resp.</b>	<b>Applicable</b>
1	[***]	[***]	AML	Yes
2	[***]	[***]	AML	Yes
3	[***]	[***]	AML	Yes
4	[***]	[***]	AML	Yes
5	[***]	[***]	AML	Yes
6	[***]	[***]	AML	Yes
7	[***]	[***]	AML	Yes
8	[***]	[***]	AML	Yes
9	[***]	[***]	AML	Yes
10	[***]	[***]	AML	Yes
11	[***]	[***]	AML	Yes
12	[***]	[***]	AML	Yes
13	[***]	[***]	AML	Yes
14	[***]	[***]	AML& Cust	
15	[***]	[***]	AML	Yes
16	[***]	[***]	AML	Yes
17	[***]	[***]	AML	Yes

Remark :

If customer issue order with [\*\*\*], HTI will absorb [\*\*\*] on the NRE cost.

## 6. Preliminary Schedule — Pls refer to Appendix B

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## **Addendum C**

**PN2091 bio Tip Assembly, ev. C (Drawing/BOM)**

**Cosmetic Specification (Zao Tech., Dated 5/22/12)**

**W10050 G4 Bio Tip Incoming Inspection (Work Instruction)**

Notes:

1. USE IN CONJUNCTION WITH [\*\*\*].
2. COSMETIC REQUIREMENTS FOR INDIVIDUAL PARTS ALSO APPLY AT THE ASSEMBLY LEVEL.
3. INSPECTION REQUIREMENTS:
  1. MIRAMAR LABS: INSPECT PER W10050.
4. ASSEMBLY COSMETIC REQUIREMENTS:
  2. [\*\*\*]
  3. [\*\*\*]
  4. [\*\*\*]
  5. [\*\*\*]
  6. [\*\*\*]
5. PACKAGING:
  1. [\*\*\*]
  2. [\*\*\*]
  3. [\*\*\*]
6. C OF C REQUIRED INCLUDING PART NUMBER, REV, QTY, LOT NUMBER
7. COPY OF WORK ORDER/LOT HISTORY RECORD ESTABLISHING MATERIAL/COMPONENT TRACEABILITY REQUIRED.

[\*\*\*]

[\*\*\*]

[\*\*\*]

## G4 BIOTIP ASSEMBLY

Miramar Labs  
PN2091 Rev. C  
EO 11-1484

Item	Qty	Description	Miramar Labs P/N	Miramar Labs Sub-Part	MFG MFG P/N	Vendor Vendor P/N	Remarks
1	***	***	PN2045				
2	***	***	PN2090				
	***	***		PN1782	PALL	PTF045LROP	PROVIDED BY ML
3	***	***	PN2089				
	***	***		PN2118	POLYZEN	N/A	PROVIDED BY ML
4	***	***	PN2010				
	***	***		PN2009			
	***	***		PN2011			
5	***	***	PN2328				
6	***	***	PN2097				
	***	***		PN2096			
	***	***		PN2098			
7	***	***	PN2329				
8	***	***	PN2087				
9	***	***	PN2088				
10	***	***	PN2109				
	***	***		PN2030			
11	***	***	PN2110				
	***	***		PN2029			
12	***	***	PN2226				



# Zao Technology Innovations, Inc

Product Design, Tooling, and Manufacturing Specialists

## MMR G4 bioTip Cosmetic Specification

2012.05.22



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## **Surface definition- A Class**

[\*\*\*]



## **Surface definition- B Class**

[\*\*\*]



## **Surface definition- C Class**

[\*\*\*]



## Class D

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- Covered, non-visible by user



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# Cosmetic Specification

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## Miramar G4 BioTip Cosmetic Specification

Defects description	Acceptance Criteria				Classification	
	A	B	C	D	Major	Minor
Surface cosmetic						
[***]	[***]	[***]	[***]		X	
[***]	[***]	[***]	[***]			X
[***]	[***]	[***]	[***]			X
[***]	[***]	[***]	[***]			X
[***]	[***]	[***]	[***]			X
[***]	[***]	[***]	[***]		X	
[***]	[***]	[***]	[***]			X
[***]	[***]	[***]	[***]			X
[***]	[***]	[***]	[***]			X
[***]	[***]	[***]	[***]			X
[***]	[***]	[***]	[***]			X
[***]	[***]	[***]	[***]		X	
[***]	[***]	[***]	[***]			X
[***]	[***]	[***]	[***]			X
[***]	[***]	[***]	[***]			X

## Cosmetic Specification

---

### Part Level Cosmetic Specification

Defects description	Acceptance Criteria				Classification	
	A	B	C	D	Major	Minor
[***]	[***]				X	
[***]	[***]					X
[***]	[***]				X	
[***]	[***]				X	
[***]	[***]					X
[***]	[***]					X
[***]	[***]				X	

Checking criteria:

Class A: [\*\*\*]

Class B: [\*\*\*]

Class C: [\*\*\*]

light source: [\*\*\*]



## Rev Block

Date	Rev No.	Person	Description of Change
2012.05.22	0	Janette	Release for PP/MP



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8



Thank You!

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Please contact us with further questions

[infozt@zaotech.com](mailto:infozt@zaotech.com)



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	<i>Document Name</i>	<i>Document Number</i>	<i>Revision</i>	<i>Date Effective</i>
	<b>Work Instruction, G4 bioTip Incoming Inspection</b>	<b>WIOO50</b>	<b>B</b>	<b>10/5/11</b>

Revision	EO#	Initiator	Summary of Changes
A	11-1365	P. Bentley	New release
B	11-1580	P Bentley	Change 6.7.4 from 35mmHg. Typo corrections and other clarifications.

**1.0 PURPOSE:**

This document describes the procedure for inspecting and acceptance of incoming lots of G4 bioTips from contract manufacturers.

**2.0 REFERENCES:**

PN2091 G4 bioTip Assembly Drawing  
OP0007 Material Controls

**3.0 RESPONSIBILITIES:**

Manufacturing, Quality Assurance and Research and Development are responsible for performing the functions described in this procedure.

**4.0 EQUIPMENT/MATERIALS:**

- 4.1 [\*\*\*]
- 4.2 [\*\*\*]
- 4.3 [\*\*\*]
- 4.4 [\*\*\*]
- 4.5 [\*\*\*]
- 4.6 [\*\*\*]

**5.0 AQL LEVEL**

- 5.1 [\*\*\*]
- 5.2 [\*\*\*]

Note. Remove qty to be inspected from the lot under the flow hood to prevent contamination of the balance of the lot.

**6.0 PROCEDURE:**

- 6.1 Receive lots of bioTips per OP0007
- 6.2 Record all inspection data on form FM0011.

	<i>Document Name</i>	<i>Document Number</i>	<i>Revision</i>	<i>Date Effective</i>
	<b>Work Instruction, G4 bioTip Incoming Inspection</b>	<b>WIOO50</b>	<b>B</b>	<b>10/5/11</b>

Page 2 of 2

- 6.3** Inspect assemblies for any cosmetic defects:
  - 6.3.1** Per PN2091 drawing note section 4.
  - 6.3.2** Ensure labels and PCBs are in the proper orientation.
  - 6.3.3** [\*\*\*]
  - 6.3.4** Any other anomalies
- 6.4** Per [\*\*\*]. Note: Non-circled FAI dimensions may be measured using any appropriate method.
- 6.5** Using [\*\*\*]
- 6.6** [\*\*\*]
  
- 6.7** Place [\*\*\*] and run test as follows:
  - 6.7.1** [\*\*\*]
  - 6.7.2** [\*\*\*]
  - 6.7.3** [\*\*\*]
  - 6.7.4** [\*\*\*]
  - 6.7.5** [\*\*\*]
- 6.8** Place [\*\*\*] and run test as follows:
  - 6.8.1** [\*\*\*]
  - 6.8.2** [\*\*\*]
  - 6.8.3** [\*\*\*]
  - 6.8.4** [\*\*\*]
  - 6.8.5** [\*\*\*]
- 6.9** Record pass/fail status and process per OP0007.
- 6.10** Label inspected units with their lot number and store them as Retain Samples.
- 6.11** Send an additional [\*\*\*] testing. Results are for informational purposes only.

June 13, 2016

**United States Securities and Exchange Commission**  
**Office of the Chief Accountant**  
**100 F Street, N.E.**  
**Washington, D.C. 20549**

Re: Miramar Labs, Inc. (formerly KTL Bamboo International Corp.)

Ladies and Gentleman:

We have read the statements under item 4.01 in the Form 8-K dated June 13, 2016, of Miramar Labs, Inc. (formerly KTL Bamboo International Corp.) (the “Company”) to be filed with the Securities and Exchange Commission and we agree with such statements therein as related to our firm. We have no basis to, and therefore, do not agree or disagree with the other statements made by the Company in the Form 8-K.

Sincerely,

/s/ BF Borgers CPA PC  
Certified Public Accountants  
Lakewood, CO

### **Consent of Independent Registered Public Accounting Firm**

We consent to the use in this Registration Statement on Form S-1 of Miramar Labs, Inc. and its subsidiary (collectively, the "Company") of our report dated May 18, 2016, except for the effects of the reverse stock split described in Note 14 as to which the date is June 13, 2016, relating to the consolidated financial statements of the Company (which report expresses an unqualified opinion and includes an explanatory paragraph relating to the Company's ability to continue as a going concern), appearing in the Prospectus, which is part of this Registration Statement.

We also consent to the reference to our firm under the heading "Experts" in such Prospectus.

/s/ SingerLewak LLP

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SingerLewak LLP

San Jose, California

October 14, 2016