

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-Q

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

For the quarterly period ended March 31, 2013

or

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

For the transition period from to

Commission File Number: 001-33301

ACCURAY INCORPORATED

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or Other Jurisdiction of Incorporation or Organization)

20-8370041

(IRS Employer Identification Number)

1310 Chesapeake Terrace

Sunnyvale, California 94089

(Address of Principal Executive Offices Including Zip Code)

(408) 716-4600

(Registrant's Telephone Number, Including Area Code)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 229.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See 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

Smaller reporting company

(Do not check if a smaller reporting company)

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

As of April 30, 2013, there were 74,115,872 shares of the Registrant's Common Stock, par value \$0.001 per share, outstanding.

Condensed Consolidated Balance Sheets as of March 31, 2013 and June 30, 2012	3
Condensed Consolidated Statements of Operations and Comprehensive Loss for the three and nine months ended March 31, 2013 and 2012	4
Condensed Consolidated Statements of Cash Flows for the nine months ended March 31, 2013 and 2012	5
Notes to Condensed Consolidated Financial Statements	6
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	17
Item 3. Quantitative and Qualitative Disclosures About Market Risk	25
Item 4. Controls and Procedures	25
PART II. Other Information	27
Item 1. Legal Proceedings	27
Item 1A. Risk Factors	27
Item 2. Unregistered Sales of Equity Securities and Use of Proceeds	32
Item 3. Defaults Upon Senior Securities	32
Item 4. Mine Safety Disclosures	32
Item 5. Other Information	32
Item 6. Exhibits	32
Signatures	34

[Table of Contents](#)

PART I. FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements

Accuray Incorporated
Condensed Consolidated Balance Sheets
(in thousands, except share and per share amounts)
(Unaudited)

	March 31, 2013	June 30, 2012 (1)
Assets		
Current assets:		
Cash and cash equivalents	\$ 181,526	\$ 143,504
Restricted cash	2,613	1,560
Accounts receivable, net of allowance for doubtful accounts of \$1,383 and \$1,700, respectively	53,992	67,890
Inventories	92,225	81,693
Prepaid expenses and other current assets	15,869	16,715
Deferred cost of revenue - current	7,345	4,896
Total current assets	353,570	316,258
Property and equipment, net	35,325	37,458
Goodwill	59,368	59,215
Intangible assets, net	34,102	49,819
Deferred cost of revenue - noncurrent	2,295	2,433
Other assets	12,418	7,987
Total assets	\$ 497,078	\$ 473,170
Liabilities and equity		
Current liabilities:		
Accounts payable	\$ 14,982	\$ 18,209
Accrued compensation	15,456	23,071
Other accrued liabilities	26,323	31,646
Customer advances - current	16,114	18,177
Deferred revenue - current	91,091	83,071
Total current liabilities	163,966	174,174
Long-term liabilities:		
Long-term other liabilities	4,322	5,988
Deferred revenue - noncurrent	9,087	9,675

Long-term debt	197,658	79,466
Total liabilities	375,033	269,303
Commitment and contingencies (Note 5)		
Equity:		
Preferred stock, \$0.001 par value; authorized: 5,000,000 shares; no shares issued and outstanding	—	—
Common stock, \$0.001 par value; authorized: 200,000,000 and 100,000,000 shares at March 31, 2013 and June 30, 2012, respectively; issued and outstanding: 74,096,245 and 71,864,268 shares at March 31, 2013 and June 30, 2012, respectively	74	72
Additional paid-in capital	420,511	409,143
Accumulated other comprehensive income	2,391	2,837
Accumulated deficit	(300,931)	(216,427)
Total stockholders' equity	122,045	195,625
Non-controlling interest	—	8,242
Total equity	122,045	203,867
Total liabilities and equity	<u>\$ 497,078</u>	<u>\$ 473,170</u>

(1) The condensed consolidated balance sheet at June 30, 2012 has been derived from audited consolidated financial statements.

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

[Table of Contents](#)

Accuray Incorporated
Condensed Consolidated Statements of Operations and Comprehensive Loss
(in thousands, except per share amounts)
(Unaudited)

	<u>Three Months Ended March 31,</u>		<u>Nine Months Ended March 31,</u>	
	<u>2013</u>	<u>2012</u>	<u>2013</u>	<u>2012</u>
Net revenue:				
Products	\$ 25,023	\$ 59,875	\$ 98,821	\$ 179,851
Services	45,524	41,720	132,253	127,218
Other	—	221	—	1,621
Total net revenue	<u>70,547</u>	<u>101,816</u>	<u>231,074</u>	<u>308,690</u>
Cost of revenue:				
Cost of products	18,403	32,401	60,976	103,574
Cost of services	32,091	33,100	99,743	103,626
Cost of other	—	204	—	708
Total cost of revenue	<u>50,494</u>	<u>65,705</u>	<u>160,719</u>	<u>207,908</u>
Gross profit	<u>20,053</u>	<u>36,111</u>	<u>70,355</u>	<u>100,782</u>
Operating expenses:				
Selling and marketing	12,646	12,449	41,296	40,047
Research and development	15,697	22,398	51,510	59,799
General and administrative	16,745	13,964	45,479	42,047
Total operating expenses	<u>45,088</u>	<u>48,811</u>	<u>138,285</u>	<u>141,893</u>
Loss from operations	<u>(25,035)</u>	<u>(12,700)</u>	<u>(67,930)</u>	<u>(41,111)</u>
Other expense, net	(5,565)	(838)	(8,849)	(8,074)
Loss before provision for income taxes	<u>(30,600)</u>	<u>(13,538)</u>	<u>(76,779)</u>	<u>(49,185)</u>
Provision for income taxes	603	1,247	1,867	2,152
Loss from continuing operations	<u>(31,203)</u>	<u>(14,785)</u>	<u>(78,646)</u>	<u>(51,337)</u>
Loss from discontinued operations (Note 9):				
Loss from operations of a discontinued variable interest entity	—	(1,748)	(3,505)	(5,470)
Impairment of indefinite lived intangible asset of discontinued variable interest entity	—	—	(12,200)	—
Loss from deconsolidation of a variable interest entity	—	—	(3,442)	—
Loss from discontinued operations, net of tax of \$0	<u>—</u>	<u>(1,748)</u>	<u>(19,147)</u>	<u>(5,470)</u>
Loss from discontinued operations attributable to non-controlling interest	—	(1,652)	(13,289)	(5,029)
Loss from discontinued operations attributable to stockholders	<u>—</u>	<u>(96)</u>	<u>(5,858)</u>	<u>(441)</u>
Net loss attributable to stockholders	<u>\$ (31,203)</u>	<u>\$ (14,881)</u>	<u>\$ (84,504)</u>	<u>\$ (51,778)</u>
Loss per share attributable to stockholders				
Basic and diluted - continuing operations	\$ (0.42)	\$ (0.21)	\$ (1.08)	\$ (0.73)
Basic and diluted - discontinued operations	\$ —	\$ (0.00)	\$ (0.08)	\$ (0.00)
Basic and diluted - net loss	\$ (0.42)	\$ (0.21)	\$ (1.16)	\$ (0.73)
Weighted average common shares used in computing loss per share				
Basic and diluted	<u>74,016</u>	<u>71,120</u>	<u>72,953</u>	<u>70,692</u>

Net loss attributable to stockholders	\$	(31,203)	\$	(14,881)	\$	(84,504)	\$	(51,778)
Foreign currency translation adjustment		(82)		(617)		(446)		1,750
Comprehensive loss	\$	<u>(31,285)</u>	\$	<u>(15,498)</u>	\$	<u>(84,950)</u>	\$	<u>(50,028)</u>

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

4

[Table of Contents](#)

Accuray Incorporated
Condensed Consolidated Statements of Cash Flows
(in thousands)
(Unaudited)

	<u>Nine Months Ended March 31,</u>	
	<u>2013</u>	<u>2012</u>
Cash Flows From Operating Activities		
Loss from continuing operations	\$ (78,646)	\$ (51,337)
Loss from discontinued operations	(19,147)	(5,470)
Adjustments to reconcile net loss to net cash used in operating activities		
Depreciation and amortization	19,845	24,512
Impairment of indefinite lived intangible asset	12,200	—
Share-based compensation	6,119	6,301
Accretion of interest on long-term debt	3,192	2,590
Provision for (recovery of) bad debt	(317)	997
Provision for write-down of inventories	1,718	2,007
Loss on disposal of property and equipment	585	245
Gain on previously held equity interest in Morphormics	(662)	—
Loss from deconsolidation of a variable interest entity	3,442	—
Changes in assets and liabilities:		
Restricted cash	(1,050)	(285)
Accounts receivable	13,238	(12,942)
Inventories	(12,248)	9,242
Prepaid expenses and other assets	693	4,368
Deferred cost of revenue	(2,333)	563
Accounts payable	(2,197)	(15,803)
Accrued liabilities	(12,313)	(15,577)
Customer advances	(2,185)	(6,333)
Deferred revenue	8,125	24,135
Net cash used in operating activities	<u>(61,941)</u>	<u>(32,787)</u>
Cash Flows From Investing Activities		
Purchases of property and equipment, net	(11,621)	(7,714)
Purchase of intangible asset	(232)	—
Acquisition of business, net of cash acquired	(3,861)	(1,384)
Net cash used in investing activities	<u>(15,714)</u>	<u>(9,098)</u>
Cash Flows From Financing Activities		
Proceeds from issuance of common stock	5,555	2,704
Proceeds from debt, net of costs	110,462	96,100
Net cash provided by financing activities	<u>116,017</u>	<u>98,804</u>
Effect of exchange rate changes on cash and cash equivalents	(340)	(1,497)
Net increase in cash and cash equivalents	<u>38,022</u>	<u>55,422</u>
Cash and cash equivalents at beginning of period	143,504	95,906
Cash and cash equivalents at end of period	<u>\$ 181,526</u>	<u>\$ 151,328</u>

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

5

[Table of Contents](#)

Accuray Incorporated
Notes to Condensed Consolidated Financial Statements
(Unaudited)

1. Summary of Significant Accounting Policies

Description of Business

Accuray Incorporated (together with its subsidiaries, the “Company” or “Accuray”) is incorporated in Delaware. The Company designs, develops and sells advanced radiosurgery and radiation therapy systems for the treatment of tumors throughout the body.

Basis of Presentation and Principles of Consolidation

The condensed consolidated financial statements include the accounts of the Company, its wholly-owned subsidiaries and a variable interest entity, Compact Particle Acceleration Corporation (“CPAC”) until its deconsolidation on December 21, 2012 (for further information, see Note 9, “Investment in CPAC”). All significant inter-company transactions and balances have been eliminated in consolidation.

The accompanying condensed consolidated financial statements have been prepared in accordance with United States generally accepted accounting principles, (“GAAP”), pursuant to the rules and regulations of the Securities and Exchange Commission (the “SEC”). Certain information and note disclosures have been condensed or omitted pursuant to such rules and regulations. The unaudited condensed consolidated financial statements have been prepared on the same basis as the annual financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary for a fair presentation of the periods presented. The results for the three and nine months ended March 31, 2013 are not necessarily indicative of the results to be expected for the year ending June 30, 2013, for any other interim period or for any future year.

Use of Estimates

The preparation of condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosures at the date of the financial statements. Key estimates and assumptions made by the Company relate to revenue recognition, business combinations and intangible asset impairment, inventories, share-based compensation expense, income taxes, loss contingencies and corporate bonus expenses and accruals. Actual results could differ materially from those estimates.

Concentration of Credit and Other Risks

The Company’s cash and cash equivalents are mainly deposited with several major financial institutions. At times, deposits in these institutions exceed the amount of insurance provided on such deposits. The Company has not experienced any losses in such accounts and believes that it is not exposed to any significant risk on these balances.

For the three and nine months ended March 31, 2013 and 2012, there were no customers that represented 10% or more of total net revenue. At March 31, 2013 and June 30, 2012, there was one customer and two customers, respectively, whose accounts receivable balances were 10% or more of the Company’s total accounts receivable.

Accounts receivable are typically not collateralized. The Company performs ongoing credit evaluations of its customers and maintains reserves for potential credit losses. Accounts receivable are deemed past due in accordance with the contractual terms of the agreement. Accounts are charged against the allowance for doubtful accounts once collection efforts are unsuccessful. Historically, such losses have been within management’s expectations.

Single source suppliers presently provide the Company with several components. In most cases, if a supplier was unable to deliver these components, the Company believes that it would be able to find other sources for these components subject to any regulatory qualifications, if required.

Revenue Recognition

The Company earns revenue from the sale of products, the operation of its shared ownership program, and the provision of related services, which include post-contract customer support (“PCS”), installation services, training and other professional services. The Company records its revenues net of any value added or sales tax. For arrangements with multiple elements, the Company allocates arrangement fees to product and services based upon Vendor Specific Objective Evidence of fair value of the respective elements, or Third-Party Evidence, or Best Estimate of Selling Price using the relative selling price method.

[Table of Contents](#)

Product Revenue

The majority of product revenue is normally generated from sales of CyberKnife and TomoTherapy systems. The Company sells its systems with PCS contracts, installation services, training, and at times, professional services. PCS contracts provide planned and corrective maintenance services, software updates, bug fixes, as well as call-center support. If the Company is responsible for installation, the Company recognizes revenue after installation and acceptance of the system; otherwise, revenue is recognized upon delivery.

Service Revenue

Service revenue is generated primarily from PCS (warranty period services and post warranty services), installation services, training, and professional services. PCS revenue is deferred and recognized over the service period. Installation service revenue is recognized concurrent with system revenue. Training and professional service revenues that are not deemed essential to the functionality of the systems are recognized as such services are performed.

Costs associated with service revenue are expensed when incurred, except when those costs are related to system upgrades where revenue recognition has been deferred. In those cases, the incremental costs are deferred and are recognized over the period of revenue recognition.

Shared ownership program

The Company also enters into arrangements under its shared ownership program with certain customers. These arrangements typically have a term of five years and provide the customer an option to purchase the system during the contractual term at pre-determined prices. Under the terms of this program, the Company retains title to its system, while the customer has use of the system. The Company generally receives a minimum monthly payment and earns additional revenues from the customer based upon its use of the system which are included in product revenue in the condensed consolidated statements of operations and comprehensive loss.

Other revenue

Other revenue primarily consists of research and development and construction contract revenues.

Long-term construction and manufacturing contracts

The Company recognizes revenue and cost of revenue related to long-term construction and manufacturing contracts using contract accounting on the percentage-of-completion or the completed contract method. The Company records such revenue under other revenue and cost of such revenue under cost of other revenue in the condensed consolidated statements of operations and comprehensive loss. Any loss provision identified from the total contract in the period is recorded as an increase to cost of revenue.

Loss Per Share

Basic and diluted loss per share is computed by dividing loss attributable to stockholders by the weighted average number of common shares outstanding during the period. The potential dilutive shares of the Company's common stock resulting from the assumed exercise of outstanding stock options, the vesting of Restricted Stock Units (RSUs), Market Stock Units (MSUs) and Performance-based Stock Units (PSUs), and the purchase of shares under the Employee Stock Purchase Plan (ESPP), as determined under the treasury stock method, are excluded from the computation of diluted loss per share because their effect would have been anti-dilutive.

A reconciliation of the numerator and denominator used in the calculation of basic and diluted loss per share attributable to stockholders follows (in thousands):

	Three Months Ended March 31,		Nine Months Ended March 31,	
	2013	2012	2013	2012
Numerator:				
Loss from operations used in computing loss per share from continuing operations	\$ (31,203)	\$ (14,785)	\$ (78,646)	\$ (51,337)
Loss from discontinued operations used in computing loss per share from discontinued operations	\$ —	\$ (96)	\$ (5,858)	\$ (441)
Net loss used in computing net loss per share	\$ (31,203)	\$ (14,881)	\$ (84,504)	\$ (51,778)
Denominator:				
Weighted average shares used in computing basic loss per share	74,016	71,120	72,953	70,692
Add: Dilutive stock options and awards outstanding	—	—	—	—
Weighted average shares used in computing diluted loss per share	74,016	71,120	72,953	70,692

7

[Table of Contents](#)

The 3.75% Convertible Senior Notes due August 1, 2016 (the "3.75% Convertible Notes") and the 3.50% Convertible Senior Notes due February 1, 2018 (the "3.50% Convertible Notes") are included in the calculation of diluted loss per share if their inclusion is dilutive under the if-converted method. The following table sets forth all potentially dilutive securities excluded from the computation in the table above because their effect would have been anti-dilutive (in thousands):

	As of March 31,	
	2013	2012
Stock options	5,257	7,925
RSUs, MSUs and PSUs	3,321	2,097
3.75% Convertible Notes	10,560	10,560
3.50% Convertible Notes	21,576	—
	40,714	20,582

Segment Information

The Company has determined that it operates in only one segment, as it only reports profit and loss information on an aggregate basis to its chief operating decision maker. The Company's long-lived assets maintained outside the United States are not material. Revenue by geographic region is based on the shipping addresses of the Company's customers. The following summarizes revenue by geographic region (in thousands):

	Three Months Ended March 31,		Nine Months Ended March 31,	
	2013	2012	2013	2012
Americas	\$ 28,372	\$ 46,655	\$ 99,262	\$ 149,766
Europe, Middle East, India and Africa	25,290	25,825	78,246	79,770
Asia (excluding Japan)	8,496	17,059	29,154	52,931
Japan	8,389	12,277	24,412	26,223
Total	\$ 70,547	\$ 101,816	\$ 231,074	\$ 308,690

Recent Accounting Pronouncements

In February 2013, the Financial Accounting Standards Board issued Accounting Standards Update No. 2013-02, *Comprehensive Income (Topic 220) — Reporting of Amounts Reclassified Out of Accumulated Other Comprehensive Income* (ASU 2013-02), to improve the reporting of reclassifications out of accumulated other comprehensive income. ASU 2013-02 requires an entity to report the effect of significant reclassifications out of accumulated other comprehensive income on the respective line items in net income if the amount being reclassified is required under GAAP to be reclassified in its entirety to net income. For other amounts that are not required under GAAP to be reclassified in their entirety from accumulated other comprehensive income to net income in the same reporting period, an entity is required to cross-reference other disclosures required under GAAP that provide additional detail about those

amounts. ASU 2013-02 is effective for the Company in its first quarter of fiscal 2014 with earlier adoption permitted, which should be applied prospectively. The Company does not expect that adoption of this guidance during fiscal 2014 will have a material impact on the Company's consolidated financial position, results of operations or cash flows.

2. Balance Sheet Components

Accounts receivable, net

Accounts receivable, net consisted of the following (in thousands):

	March 31, 2013	June 30, 2012
Accounts receivable	\$ 54,970	\$ 69,285
Unbilled fees and services	405	305
	55,375	69,590
Less: Allowance for doubtful accounts	(1,383)	(1,700)
Accounts receivable, net	<u>\$ 53,992</u>	<u>\$ 67,890</u>

8

[Table of Contents](#)

Financing receivables

A financing receivable is a contractual right to receive money, on demand or on fixed or determinable dates, that is recognized as an asset in the creditor's balance sheet. The Company's financing receivables, consisting of its accounts receivable with contractual maturities of more than one year totaled \$3.0 million and \$2.5 million at March 31, 2013 and June 30, 2012, respectively and are included in Other Assets in the condensed consolidated balance sheets. There was no balance in the allowance for doubtful accounts related to such financing receivables as of March 31, 2013 and June 30, 2012, respectively.

Inventories

Inventories consisted of the following (in thousands):

	March 31, 2013	June 30, 2012
Raw materials	\$ 37,780	\$ 34,579
Work-in-process	24,729	16,547
Finished goods	29,716	30,567
Inventories	<u>\$ 92,225</u>	<u>\$ 81,693</u>

Property and equipment, net

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

	March 31, 2013	June 30, 2012
Furniture and fixtures	\$ 6,495	\$ 5,921
Computer and office equipment	9,166	9,126
Software	9,420	9,429
Leasehold improvements	19,301	16,065
Machinery and equipment	37,173	33,493
Shared ownership systems	4,979	4,979
Construction in progress	1,241	3,787
	87,775	82,800
Less: Accumulated depreciation	(52,450)	(45,342)
Property and equipment, net	<u>\$ 35,325</u>	<u>\$ 37,458</u>

Depreciation expense related to property and equipment for the three and nine months ended March 31, 2013 was \$3.7 million and \$11.6 million, respectively. Depreciation expense related to property and equipment for the three and nine months ended March 31, 2012 was \$4.0 million and \$12.3 million, respectively.

3. Goodwill and Intangible Assets

Goodwill

Activity related to goodwill consisted of the following (in thousands):

	Nine Months Ended March 31, 2013	Year Ended June 30, 2012
Balance at the beginning of the period	\$ 59,215	\$ 54,474
Addition related to acquisition	77	—
Currency translation and other adjustments	76	—
Adjustments related to prior year acquisition (1)	—	4,741
Balance at the end of the period	<u>\$ 59,368</u>	<u>\$ 59,215</u>

(1) Primarily represents liabilities related to the TomoTherapy acquisition.

[Table of Contents](#)

Intangible Assets

The Company's intangible assets associated with completed acquisitions at March 31, 2013 and June 30, 2012 are as follows (in thousands):

	Useful Lives (in years)	March 31, 2013			June 30, 2012		
		Gross Carrying Amount	Accumulated Amortization	Net Amount	Gross Carrying Amount	Accumulated Amortization	Net Amount
Developed technology	5 - 6	\$ 48,556	\$ (15,096)	\$ 33,460	\$ 43,455	\$ (9,161)	\$ 34,294
Backlog	1.25	10,500	(10,500)	—	10,500	(8,867)	1,633
Distributor license	1.5 - 2.5	2,052	(1,410)	642	1,860	(768)	1,092
In-process research and development (CPAC)	Indefinite	—	—	—	12,800	—	12,800
		<u>\$ 61,108</u>	<u>\$ (27,006)</u>	<u>\$ 34,102</u>	<u>\$ 68,615</u>	<u>\$ (18,796)</u>	<u>\$ 49,819</u>

Prior to the deconsolidation of CPAC on December 21, 2012 (see Note 9, "Investment in CPAC"), the Company had noted certain impairment triggers based on results of research and development work carried out by CPAC. As a result, based on projected future usage of the in-process research and development ("IPR&D") technology by CPAC, an impairment charge of \$12.2 million was recorded during the three months ended September 30, 2012. The Company did not identify any impairment triggers on goodwill or any of its other definite-lived intangible and long-lived assets.

Amortization expense related to intangible assets for the three and nine months ended March 31, 2013 was \$2.2 million and \$8.2 million, respectively. Amortization expense related to intangible assets for the three and nine months ended March 31, 2012 was \$4.0 million and \$12.2 million, respectively.

The estimated future amortization expense of purchased intangible assets as of March 31, 2013 is as follows (in thousands):

Year Ending June 30,	Amount
2013 (remaining 3 months)	\$ 2,203
2014	8,382
2015	7,953
2016	7,953
2017	7,568
Thereafter	43
	<u>\$ 34,102</u>

4. Financial Instruments

The following tables summarize the fair value of financial instruments measured on a recurring basis as of March 31, 2013 and June 30, 2012 (in thousands):

Type of instrument and line item in condensed consolidated balance sheets	Fair value measurement using			Total balance
	Quoted Prices in Active Markets for Identical Instruments (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
Assets at March 31, 2013				
Money market funds - included in cash and cash equivalents	\$ —	\$ —	\$ —	\$ —
Certificate of deposits - included in cash and cash equivalents	\$ 5,038	\$ —	\$ —	\$ 5,038
Assets at June 30, 2012				
Money market funds - included in cash and cash equivalents	\$ 40,068	\$ —	\$ —	\$ 40,068
Certificate of deposits - included in cash and cash equivalents	\$ 6,742	\$ —	\$ —	\$ 6,742

[Table of Contents](#)

The following tables summarize the fair value of financial instruments that are not measured on a recurring basis as of March 31, 2013 and June 30, 2012 (in thousands):

Type of instrument and line item in condensed consolidated balance sheets	Fair value measurement using			Total balance
	Quoted Prices in Active Markets for Identical Instruments (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	

At March 31, 2013

3.75% Convertible Notes - included in long term debt	\$	—	\$	89,200	\$	—	\$	89,200
3.50% Convertible Notes - included in long term debt	\$	—	\$	123,200	\$	—	\$	123,200

At June 30, 2012

3.75% Convertible Notes - included in long term debt	\$	—	\$	101,400	\$	—	\$	101,400
--	----	---	----	---------	----	---	----	---------

Long-term debt is measured on a non-recurring basis using Level 2 inputs based upon observable inputs of the Company's underlying stock price and the time value of the conversion option, since observable quoted prices of the 3.75% Convertible Notes and the 3.50% Convertible Notes are not readily available.

5. Commitments and Contingencies**Commitments**

The Company's contractual obligations were presented in the Annual Report on Form 10-K for the previous annual reporting period ended June 30, 2012. There have been no material changes outside of the ordinary course of business in those obligations during the three and nine months ended March 31, 2013, except for the issuance of the 3.50% Convertible Notes during February 2013. See Note 8, "Debt" for additional information about the 3.50% Convertible Notes. Future payments expected for the 3.75% Convertible Notes and the 3.50% Convertible Notes as of March 31, 2013 are as follows (in thousands):

<u>Year Ending June 30,</u>	<u>Amount</u>
2013 (remaining 3 months)	\$ 1,944
2014	7,775
2015	7,775
2016	7,775
2017	104,338
2018	117,348
Thereafter	—
	<u>\$ 246,955</u>

These amounts represent principal and interest cash payments over the life of the debt obligations, including anticipated interest payments that are not recorded on the Company's condensed consolidated balance sheet. Any conversion, redemption or purchase of Convertible Notes would impact cash payments.

Litigation

From time to time, the Company is involved in legal proceedings arising in the ordinary course of its business. Currently, management believes the Company does not have any probable and estimable loss related to any current legal proceedings and claims that would individually or in the aggregate materially adversely affect its financial condition or operating results. In excess of amounts accrued, management believes that there is a reasonable possibility that losses may be incurred for current legal proceedings. Management currently estimates a range of loss between zero and \$3 million in the aggregate for such legal proceedings, where it is possible to make such estimates. Litigation is inherently unpredictable and is subject to significant uncertainties, some of which are beyond the Company's control. Should any of these estimates and assumptions change or prove to have been incorrect, the Company could incur significant charges related to legal matters which could have a material impact on its results of operations, financial position and cash flows.

Best Medical Trade Secret Litigation

On September 3, 2009, Best Medical International, Inc. ("Best Medical") filed a lawsuit against the Company in the U.S. District Court for the Western District of Pennsylvania, claiming that the Company induced certain individuals to leave the employment of Best Medical and join the Company in order to gain access to Best Medical's confidential information and trade secrets. Best Medical is seeking monetary damages and other relief. The Company filed a motion for summary judgment on May 20, 2011, Best Medical filed its response on June 21, 2011, and the Company filed a response to their response on July 8, 2011. On October 25, 2011, the court granted summary judgment in favor of the Company on all counts. On November 21, 2011 Best Medical filed a notice of appeal, and the parties await a ruling by the appellate court.

[Table of Contents](#)**Best Medical Patent Litigation**

On August 6, 2010, Best Medical filed an additional lawsuit against the Company in the U.S. District Court for the Western District of Pennsylvania, claiming that the Company has infringed U.S. Patent No. 5,596,619, a patent that Best Medical alleges protects a method and apparatus for conformal radiation therapy. In December 2010 Best Medical amended its complaint by claiming that the Company also infringed U.S. Patent Nos. 6,038,283 and 7,266,175, both of which Best Medical alleges cover methods and apparatus for conformal radiation therapy. In March 2011, the Court dismissed with prejudice all counts against the Company, except for two counts of alleged willful infringement of two of the patents. Following several procedural rulings by the court, Best Medical moved to voluntarily dismiss one of the two remaining patent claims on June 28, 2011, which the court granted on June 30, 2011, leaving only one patent (U.S. Patent No. 6,038,283) at issue in the case. A mandatory mediation hearing was held in March 2013 during which the parties failed to reach settlement and another mediation hearing is scheduled for May 2013. If the parties fail to reach settlement then, we will continue to litigate this case. Best Medical is seeking declaratory and injunctive relief, as well as unspecified compensatory and treble damages and other relief.

Rotary Systems

On April 28, 2011, a former supplier to TomoTherapy, Rotary Systems Incorporated, filed suit in Minnesota state court, Tenth Judicial District, Anoka County, against TomoTherapy alleging misappropriation of trade secrets, as well as several other counts alleging various theories of injury. Rotary Systems alleges TomoTherapy misappropriated Rotary Systems' trade secrets pertaining to a component previously purchased from Rotary Systems, which component TomoTherapy now purchases from a different supplier. The suit alleges TomoTherapy improperly supplied the alleged trade secrets to its present supplier, Dynamic Sealing Technologies Inc. (also a named defendant in the suit). Rotary Systems has made an unspecified claim for damages of greater than \$50,000. TomoTherapy moved to dismiss the case on May 19, 2011, and on August 29, 2011, the court granted the motion to dismiss with respect to all counts other than the count alleging misappropriation of trade secrets. On May 21, 2012, the court granted the Company's motion for sanctions, in part, and gave Rotary Systems sixty days to identify the alleged trade secrets with specificity or face dismissal of its claim with prejudice. The court held a hearing on September 20, 2012 to review Rotary System's amended complaint and set a calendar for discovery. The court ruled on the amended complaint, and the parties have started discovery, which is expected to be completed by October 2013.

Radiation Stabilization Solutions Patent Litigation

On September 15, 2011, Radiation Stabilization Solutions LLC ("RSS") filed a patent infringement complaint in the United States District Court for the Northern District of Illinois, Eastern Division. The complaint, alleged the Company's sale of the TomoHD product induces infringement of or contributorily infringes U.S. Patent No. 6,118,848, or the '848 Patent, and sought unspecified monetary damages for the alleged infringement. The complaint also named Varian Medical Systems, Inc., BrainLab AG, BrainLab, Inc., Elekta AB and Elekta, Inc. as defendants, alleging that certain of their products also infringe the '848 patent. On October 27, 2011, the Court dismissed the complaint without prejudice because non-resident defendants had been improperly named in the complaint.

On October 28, 2011, RSS filed a new complaint against the Company and a customer of the Company in the United States District Court for the Northern District of Illinois, Eastern Division. The new complaint repeats the original complaint's allegations against the Company and seeks unspecified monetary damages for the alleged infringement. The complaint further alleges that the customer directly and indirectly infringes the '848 patent, and seeks unspecified monetary damages for the alleged infringement. RSS also filed individual suits against each of Varian and Elekta and several of their respective customers. RSS served the complaint on Accuray and its customer on December 7, 2011. On January 30, 2012 the Company filed a motion to dismiss the complaint, and the Court heard oral argument for the motion on June 29, 2012. On August 21, 2012, the court granted the Company's motion in part and gave RSS leave to amend the complaint. On September 21, 2012, RSS filed an amended complaint. On November 2, 2012, the Company and RSS entered into a settlement agreement, under which the Company paid \$150,000 to resolve all outstanding claims.

Accuray Securities Complaint

On November 1, 2012, a complaint was filed in Santa Clara County Superior Court purportedly on behalf of a class of shareholders seeking to enjoin the shareholder vote to be held at our annual meeting scheduled for November 30, 2012. The complaint named as defendants the Company and the members of the board of directors and alleged that the disclosures in the proxy statement for the annual meeting concerning the advisory vote on executive compensation and the proposal to amend the certificate of incorporation to increase the number of authorized shares are inadequate and constitute a breach of fiduciary duty. In addition to an injunction, the complaint sought unspecified monetary damages and other relief. The annual meeting was held on November 30, 2012. On December 28, 2012, the plaintiffs requested dismissal of the case from the court without prejudice, which was granted on January 3, 2013.

[Table of Contents](#)

Sarif Biomedical Patent Litigation

On January 28, 2013, Sarif Biomedical filed a patent infringement complaint against the Company in the United States District Court for Delaware. The complaint alleges the Company's CyberKnife System directly infringes U.S. Patent No. 5,755,725 and seeks unspecified monetary damages for the alleged infringement.

Software License Indemnity

Under the terms of the Company's software license agreements with its customers, the Company agrees that in the event the software sold infringes upon any patent, copyright, trademark, or any other proprietary right of a third party, it will indemnify its customer licensees against any loss, expense, or liability from any damages that may be awarded against its customer. The Company includes this infringement indemnification in all of its software license agreements and selected managed services arrangements. In the event the customer cannot use the software or service due to infringement and the Company cannot obtain the right to use, replace or modify the license or service in a commercially feasible manner so that it no longer infringes, then the Company may terminate the license and provide the customer a refund of the fees paid by the customer for the infringing license or service. The Company has not recorded any liability associated with this indemnification, as it is not aware of any pending or threatened actions that represent probable losses as of March 31, 2013.

6. Acquisition

On July 16, 2012, the Company acquired the remaining 90% of the outstanding shares of Morphormics, Inc. ("Morphormics"), a privately-held developer of medical imaging software based in North Carolina. The purpose of this acquisition was to enable the Company to extend auto-contouring capabilities for both the CyberKnife and TomoTherapy systems to improve disease specific workflows. The Company previously held 10% of the outstanding shares of Morphormics which was carried at zero value prior to the acquisition and re-measured to its acquisition-date fair value of \$0.7 million based on the fair value of the consideration transferred. The acquisition has been accounted for as a business combination using purchase accounting and Morphormics' results of operations are included in the condensed consolidated financial statements from July 16, 2012. The acquisition was not considered a material business combination and was funded through cash on-hand. In accordance with the terms of the acquisition agreement, \$0.9 million of the purchase consideration was paid on April 16, 2013 and was included in other accrued liabilities in the condensed consolidated balance sheet at March 31, 2013. The Company has not incurred material severance or acquisition-related costs.

The fair value of total purchase consideration paid and payable for 100% of Morphormics' equity interest as of the acquisition date was as follows (in thousands):

Cash paid and payable	\$	5,385
-----------------------	----	-------

Fair value of pre-existing investment in Morphormics

662

Total \$ 6,047

The total purchase price was allocated to the net tangible and intangible assets acquired and liabilities assumed based on their fair values as of the acquisition date as follows (in thousands):

Cash and cash equivalents	\$ 668
Accounts receivable	283
Other current assets	7
Amortizable intangible assets - developed technology	5,100
Goodwill	77
Accrued compensation	(88)
Total purchase price	<u>\$ 6,047</u>

Pro forma results of operations for the acquisition have not been presented because they are not material to the Company's condensed consolidated statements of operations and comprehensive loss, balance sheets, or cash flows.

[Table of Contents](#)

7. Share-Based Compensation

The following table summarizes the share-based compensation charges included in the Company's condensed consolidated statements of operations and comprehensive loss (in thousands):

	Three Months Ended March 31,		Nine Months Ended March 31,	
	2013	2012	2013	2012
Cost of revenue	\$ 477	\$ 276	\$ 1,043	\$ 1,271
Selling and marketing	256	165	803	545
Research and development	462	504	1,455	1,673
General and administrative	873	800	2,818	2,812
	<u>\$ 2,068</u>	<u>\$ 1,745</u>	<u>\$ 6,119</u>	<u>\$ 6,301</u>

At March 31, 2013 and June 30, 2012, capitalized share-based compensation expenses of \$0.6 million and \$0.4 million, respectively, were included as a component of inventories.

Performance-Based Awards ("PSUs")

During fiscal 2012, the Compensation Committee of the Board of Directors of the Company approved the granting of PSUs to employees of the Company which vest only upon meeting certain financial performance criteria during the performance period commencing on the first day of the Company's 2012 fiscal year and ending on the last day of the Company's 2013 fiscal year. If the PSUs do not become vested as a result of the Company's performance during the performance period, all PSUs are automatically forfeited by the participants effective as of the last day of the performance period. During fiscal 2012, approximately 1.0 million PSUs were granted to employees valued at approximately \$3.9 million which was based on the fair value of the Company's common stock on the grant date and will be recognized over the requisite performance period based on management's assessment of the probability of achieving the performance criteria. Approximately 0.6 million PSUs are outstanding as of March 31, 2013.

As of March 31, 2013, management assessed that it was not probable that the performance criteria would be met during the performance period and accordingly, no compensation cost has been recognized for the PSUs to date or during the three months ended March 31, 2013. If in a future period management revises its assessment and concludes that it is probable that the performance criteria will be met, the Company will record a cumulative catch-up compensation charge for the PSUs in that period. Remaining compensation charges would be recognized ratably over the remaining performance period.

Market Stock Unit ("MSU") program

In October 2012, the Compensation Committee approved a new performance equity program, referred to as the market stock unit program ("MSU Program"). The MSU Program uses the Russell 2000 index as a performance benchmark and requires that the Company's total stockholder return exceed that of the Russell 2000. Based on a sliding scale of how much the Russell 2000 benchmark is exceeded, participating executives can earn up to a maximum of 150% of the target number of shares over two measurement periods, one at the end of fiscal 2014 and another at the end of fiscal 2015. During the nine months ended March 31, 2013, 0.4 million MSUs were granted to participating executives. The MSUs were valued at approximately \$1.5 million based on a Monte-Carlo simulation on the grant date and will be recognized over a weighted average period of 1.8 years.

8. Debt

3.75% Convertible Senior Notes due August 2016

On August 1, 2011, the Company issued the 3.75% Convertible Notes to certain qualified institutional buyers or QIBs. The 3.75% Convertible Notes were offered and sold to the QIBs pursuant to Rule 144A under the Securities Act of 1933, as amended. The net proceeds from the \$100 million offering, after deducting the initial purchaser's discount and commission and the related offering costs, were approximately \$96.1 million. The offering costs and the initial purchaser's discount and commission (which are recorded in Other Assets) are both being amortized to interest expense using the effective interest method over five years. The 3.75% Convertible Notes bear interest at a rate of 3.75% per year, payable semi-annually in arrears in cash on February 1 and August 1 of each year, beginning on February 1, 2012. The 3.75% Convertible Notes will mature on August 1, 2016, unless earlier repurchased, redeemed or converted.

The 3.75% Convertible Notes were issued under an Indenture between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee. Holders of the 3.75% Convertible Notes may convert their 3.75% Convertible Notes at any time on or after May 1, 2016 until the close of business on the business day immediately preceding the maturity date. Prior to May 1, 2016, holders of the 3.75% Convertible Notes may convert their 3.75% Convertible Notes only under the following circumstances: (1) during any calendar quarter after the calendar quarter ending September 30, 2011, and only during such calendar quarter, if the closing sale price of the Company's common stock for each of 20 or more trading days in the 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter exceeds 130% of the conversion price in effect on the last trading day of the immediately preceding calendar quarter; (2) during the five consecutive business days immediately after any five consecutive trading-day period (such five consecutive trading-day period, the "Note Measurement Period") in which the trading price per \$1,000 principal amount of 3.75% Convertible Notes for each trading day of that Note Measurement Period was equal to or less than 98% of the product of the closing sale price of shares of the Company's common stock and the

[Table of Contents](#)

applicable conversion rate for such trading day; (3) if the Company calls any or all of the 3.75% Convertible Notes for redemption, at any time prior to the close of business on the business day immediately preceding the redemption date; or (4) upon the occurrence of specified corporate transactions as described in the Indenture. Upon conversion by holders of the 3.75% Convertible Notes, the Company will have the right to pay or deliver, as the case may be, cash, shares of common stock of the Company or a combination thereof, at the Company's election. At any time on or prior to the 33rd business day immediately preceding the maturity date, the Company may irrevocably elect to (a) deliver solely shares of common stock of the Company in respect of the Company's conversion obligation or (b) pay cash up to the aggregate principal amount of the 3.75% Convertible Notes to be converted and pay or deliver, as the case may be, cash, shares of common stock of the Company or a combination thereof in respect of the remainder, if any, of the Company's conversion obligation in excess of the aggregate principal amount of the 3.75% Convertible Notes being converted. The initial conversion rate is 105.5548 shares of the Company's common stock per \$1,000 principal amount of 3.75% Convertible Notes (which represents an initial conversion price of approximately \$9.47 per share of the Company's common stock). The conversion rate, and thus the conversion price, are subject to adjustment as further described below.

Holders of the 3.75% Convertible Notes who convert their 3.75% Convertible Notes in connection with a "make-whole fundamental change," as defined in the Indenture, may be entitled to a make-whole premium in the form of an increase in the conversion rate. Additionally, in the event of a "fundamental change," as defined in the Indenture, holders of the 3.75% Convertible Notes may require the Company to purchase all or a portion of their 3.75% Convertible Notes at a fundamental change repurchase price equal to 100% of the principal amount of 3.75% Convertible Notes, plus accrued and unpaid interest, if any, to, but not including, the fundamental change repurchase date.

On or after August 1, 2014 and prior to the maturity date, the Company may redeem for cash all or a portion of the 3.75% Convertible Notes if the closing sale price of its common stock exceeds 130% of the applicable conversion price (the initial conversion price is approximately \$9.47 per share of common stock) of such 3.75% Convertible Notes for at least 20 trading days during any consecutive 30 trading-day period (including the last trading day of such period).

In accordance with Accounting Standards Codification ("ASC") 470-20, *Debt with Conversion and Other Options*, the Company separately accounts for the liability and equity conversion components of the 3.75% Convertible Notes. The principal amount of the liability component of the 3.75% Convertible Notes was \$75.9 million as of the date of issuance based on the present value of its cash flows using a discount rate of 10%, our approximate borrowing rate at the date of the issuance for a similar debt instrument without the conversion feature. The carrying value of the equity conversion component was \$24.1 million. A portion of the initial purchaser's discount and commission and the offering costs totaling \$0.9 million was allocated to the equity conversion component. The liability component will be accreted to the principal amount of the 3.75% Convertible Notes using the effective interest method over five years.

The following table presents the carrying value of the 3.75% Convertible Notes as of March 31, 2013 (in thousands):

Carrying amount of the equity conversion component	\$ 23,189
Principal amount of the 3.75% Convertible Notes	\$ 100,000
Unamortized debt discount (1)	(17,342)
Net carrying amount	\$ 82,658

(1)As of March 31, 2013, the remaining period over which the unamortized debt discount will be amortized is 40 months using an effective interest rate of 10.0%.

3.50% Convertible Senior Notes due February 2018

In February 2013, the Company issued \$115 million aggregate principal amount of its 3.50% Convertible Notes to certain qualified institutional buyers or QIBs. The 3.50% Convertible Notes were offered and sold to the QIBs pursuant to Rule 144A under the Securities Act of 1933, as amended. The net proceeds from the offering, after deducting the initial purchaser's discount and commission and the related offering costs, were approximately \$110.5 million. The offering costs and the initial purchaser's discount and commission (which are recorded in Other Assets) are both being amortized to interest expense using the effective interest method over five years. The 3.50% Convertible Notes bear interest at a rate of 3.50% per year, payable semi-annually in arrears in cash on February 1 and August 1 of each year, beginning on August 1, 2013. The 3.50% Convertible Notes will mature on February 1, 2018, unless earlier repurchased, redeemed or converted.

The 3.50% Convertible Notes were issued under an Indenture between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee. Holders of the 3.50% Convertible Notes may convert their 3.50% Convertible Notes at any time until the close of business on the business day immediately preceding the maturity date. The 3.50% Convertible Notes are convertible, as described below into common stock of Accuray at an initial conversion rate equal to 187.6877 shares of common stock per \$1,000 principal amount of the 3.50% Convertible Notes, which is equivalent to a conversion price of approximately \$5.33 per share of common stock, subject to adjustment.

Holders of the 3.50% Convertible Notes who convert their 3.50% Convertible Notes in connection with a "make-whole fundamental change", as defined in the Indenture, may be entitled to a make-whole premium in the form of an increase in the conversion rate. Additionally, in the event of a "fundamental change," as defined in the Indenture, holders of the 3.50% Convertible

[Table of Contents](#)

Notes may require the Company to purchase all or a portion of their 3.50% Convertible Notes at a fundamental change repurchase price equal to 100% of the principal amount of 3.50% Convertible Notes, plus accrued and unpaid interest, if any, to, but not including, the fundamental change repurchase date.

In accordance with guidance in ASC 470-20, *Debt with Conversion and Other Options* and ASC 815-15, *Embedded Derivatives*, the Company determined that the embedded conversion components of the 3.50% Convertible Note do not require bifurcation and separate accounting. The \$115 million principal amount of the 3.50% Convertible Note has been recorded in Long-term Debt on the condensed consolidated balance sheet as of March 31, 2013.

A summary of interest expenses on the 3.75% Convertible Note and the 3.50% Convertible Note for the three and nine months ended March 31, 2013 and 2012 were as follows (in thousands):

	Three months ended March 31,		Nine months ended March 31,	
	2013	2012	2013	2012
Interest expense related to contractual interest coupon	\$ 1,441	\$ 937	\$ 3,316	\$ 2,500
Interest expense related to amortization of debt discount	1,093	992	3,192	2,590
	<u>\$ 2,534</u>	<u>\$ 1,929</u>	<u>\$ 6,508</u>	<u>\$ 5,090</u>

9. Investment in CPAC

On December 21, 2012, the Company and CPAC entered into a Purchase Agreement and Release (the "Purchase Agreement"), whereby all the equity and debt investments held by the Company in CPAC were purchased by CPAC for a nominal consideration. Additionally, the Company assigned all its rights to the Dielectric Wall Accelerator ("DWA") technology licensed from Lawrence Livermore National Security, LLC to CPAC. As a result of the Purchase Agreement, the Company has concluded that it is no longer the primary beneficiary of CPAC since it does not have any variable interests in that entity. Accordingly, the Company has deconsolidated CPAC and recorded a loss of \$3.4 million during the three months ended December 31, 2012 due to the write-down of the carrying value of CPAC's net liabilities, the write-off of the receivables from CPAC and the non-controlling interest in CPAC, net of cash consideration received. The results of operations of CPAC, including the loss on deconsolidation of CPAC and the losses attributable to the non-controlling interest recorded during the three and nine months ended March 31, 2013 and 2012 have been disclosed as discontinued operations in the condensed consolidated statements of operations and comprehensive loss.

10. Restructuring Charges

During December 2012, the company vacated an office facility and recorded a charge of \$1.4 million in general and administrative expenses during the three months ended December 31, 2012 for the remaining lease obligations on the facility, net of estimated sub-lease income. The company also recorded a change of \$0.3 million in general and administrative expenses during the three months ended December 31, 2012 related to the disposition of certain fixed assets and leasehold improvements at this facility.

During the three months ended December 31, 2012, the company also recorded severance related charges of \$2.2 million in general and administrative expenses due to the departure of Dr. Euan S.Thomson (former Chief Executive Officer), Mr. Chris Raanes (former Chief Operating Officer) and certain other employees.

On January 3, 2013, the Company announced a restructuring of operations to focus on improving commercial execution and position the Company to support sustainable revenue growth and profitability. The restructuring is expected to reduce staffing by approximately 13 percent and was heavily concentrated in the United States. During the three months ended March 31, 2013, the Company substantially completed the restructuring exercise, reduced its global workforce under this program by 108 full-time employees and recorded \$4.9 million in charges for severance and related benefits for all affected employees. At March 31, 2013, approximately \$2.0 million of the restructuring related liabilities were included in accrued compensation in the condensed consolidated balance sheet. The Company does not expect any significant severance-related charges to be incurred during the fourth quarter of fiscal 2013 and expects the remaining activities under this program to be substantially completed by the end of fiscal 2013. The Company expects annualized savings of approximately \$17 million to \$19 million of compensation related expenses as a result of this restructuring of operations. Restructuring charges are reflected within general and administrative expenses in the condensed consolidated statements of operations and comprehensive loss.

[Table of Contents](#)

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

The following discussion and analysis of our financial condition as of March 31, 2013 and results of operations for the three and nine months ended March 31, 2013 and 2012 should be read together with our condensed consolidated financial statements and related notes included elsewhere in this report. Statements made in this quarterly report on Form 10-Q that are not statements of historical fact are forward-looking statements and are subject to the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995. Forward-looking statements in this report relate, but are not limited, to: expectations related to profitability and cash flows in fiscal 2013; sufficiency of cash resources and expected cash flows to fund future operations; expected uses of cash during fiscal 2013; the anticipated drivers of our future capital requirements; the impact of our prior sales reorganization on sales performance, particularly in the United States; the expected impact of and benefits from our recent restructuring of operations; anticipated increases in service revenue; the ongoing impact of purchase accounting adjustments; our expectations regarding the factors that will impact sales, competitive positioning and long-term success for our CyberKnife and TomoTherapy Systems; our expectations regarding the impact on our revenues and business of the introduction of our new CyberKnife and TomoTherapy Systems; the anticipated risks associated with our foreign operations and fluctuations in the U.S. dollar; the impact of recent legislation and regulation on our business; and the impact of the medical device excise tax on our business. Forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from expectations, including risks detailed from time to time under the heading "Risk Factors" in Part II, Item 1A of this report, Part I, Item 1A of the Company's annual report on Form 10-K for fiscal year 2012, Part II, Item 1A of the

Company's quarterly reports on Form 10-Q for the quarters ended September 30, 2012 and December 31, 2012, respectively. Forward-looking statements speak only as of the date the statements are made and are based on information available to the Company at the time those statements are made and/or management's good faith belief as of that time with respect to future events. The Company assumes no obligation to update forward-looking statements to reflect actual performance or results, changes in assumptions or changes in other factors affecting forward-looking information, except to the extent required by applicable securities laws. Accordingly, investors should not place undue reliance on any forward-looking statements.

In this report, "Accuray," the "Company," "we," "us," and "our" refer to Accuray Incorporated and its subsidiaries.

Overview

Products and Markets

We believe we are a leading radiation oncology company with a history of rapid innovations. Our leading edge technologies are designed specifically to deliver radiosurgery, stereotactic body radiation therapy, intensity modulated radiation therapy, image guided radiation therapy and adaptive radiation therapy that is tailored to the specific needs of each patient. Our suite of products includes the CyberKnife® Systems and the TomoTherapy® Systems. The systems are generally complementary offerings, serving generally separate patient populations treated by the same medical specialty.

The CyberKnife Systems are robotic systems designed to deliver radiosurgery treatments to cancer tumors anywhere in the body. They are the only dedicated, full body robotic radiosurgery systems on the market. Radiosurgery is an alternative to traditional surgery for tumors and is performed on an outpatient basis in one to five treatment sessions. It allows for the treatment of patients who otherwise would not be treated with radiation, who may not be good candidates for surgery, or who desire non-surgical treatments. The use of radiosurgery with CyberKnife Systems to treat tumors throughout the body has grown significantly in recent years, but currently represents only a small portion of the patients who develop tumors treatable with CyberKnife Systems. A determination of when it may or may not be appropriate to use a CyberKnife System for treatment is at the discretion of the treating physician and depends on the specific patient. However, given the CyberKnife Systems' design to treat focal tumors, the CyberKnife Systems are generally not used to treat (1) very large tumors, which are considerably wider than the radiation beam that can be delivered by CyberKnife Systems, (2) diffuse wide-spread disease, as is often the case for late stage cancers, because they are not localized (though CyberKnife Systems might be used to treat a focal area of the disease) and (3) systemic disease, like leukemias and lymphomas, which are not localized to an organ, but rather involve cells throughout the body.

In October 2012, we formally introduced two new versions of our technology platforms: the CyberKnife M6 Series and the TomoTherapy H Series. We expect that these new platforms will drive future orders and revenue growth. However, due to an aggressive product development and launch plan as well as certain manufacturing and supply issues affecting the new CyberKnife M6 Series with the Multileaf Collimator, or MLC, including low manufacturing yields with the MLC, we have experienced, and may continue to experience, delays in new orders and sales of these systems, which has had and may continue to have an adverse impact on our revenue levels and our business. Further continuation of these manufacturing and supply issues or the occurrence of new manufacturing and supply issues with either the CyberKnife M6 Series or the TomoTherapy H Series may adversely affect market acceptance of these new systems and negatively impact our revenue and our overall business.

[Table of Contents](#)

We believe that the long term success of the CyberKnife System is dependent on a number of factors including the following:

- Adoption of our recently introduced new CyberKnife platform and receipt of regulatory clearances associated with such new platform;
- Change in medical practice to utilize radiosurgery more regularly as an alternative to surgery or other treatments;
- Greater awareness among doctors and patients of the benefits of radiosurgery with the CyberKnife Systems;
- Continued evolution in clinical studies demonstrating the safety, efficacy and other benefits of using the CyberKnife Systems to treat tumors in various parts of the body;
- Continued advances in technology that improve the quality of treatments and ease of use of the CyberKnife Systems;
- Improved access to radiosurgery with the CyberKnife Systems in various countries through regulatory approvals;
- Medical insurance reimbursement policies that cover CyberKnife System treatments; and
- Expansion of sales of CyberKnife Systems in countries throughout the world.

The TomoTherapy Systems are advanced, fully integrated and versatile radiation therapy systems for the treatment of a wide range of cancer types. We began selling TomoTherapy Systems after our acquisition of TomoTherapy Incorporated on June 10, 2011. Radiation therapy is used in a variety of ways, often to treat tissue surrounding a tumor area after surgical removal of the tumor and also as the primary treatment for tumors. Radiation therapy treatments impact both cancer cells as well as healthy tissue; therefore the total prescribed radiation dose is divided into many fractions and delivered in an average of 25 to 35 treatment sessions over several weeks. Radiation therapy has been widely available and used in developed countries for decades, though many developing countries do not currently have a sufficient number of radiation therapy systems to adequately treat their domestic cancer patient populations. The number of radiation therapy systems in use and sold each year is currently many times larger than the number of radiosurgery systems. Large companies, including Varian Medical Systems, Inc. and Elekta AB, generate most of the sales in this market. We believe the TomoTherapy Systems offer clinicians and patients significant benefits over other radiation therapy systems in the market. We believe our ability to capture more sales in this established market will be influenced by a number of factors including the following:

- Adoption of our recently introduced new TomoTherapy platform and receipt of regulatory clearances associated with such new platform;
- Greater awareness among doctors and patients of the benefits of radiation therapy using TomoTherapy Systems;
- Advances in technology which improve the quality of treatments and ease of use of TomoTherapy Systems;

- Greater awareness among doctors of the improvement in reliability of TomoTherapy Systems; and
- Expansion of TomoTherapy System sales in countries throughout the world.

Sale of Our Products

Generating revenue from the sale of our systems is a lengthy process. Selling our systems, from first contact with a potential customer to a signed sales contract that meets our backlog criteria, generally spans six months to two years. The time from receipt of a signed contract to revenue recognition is governed generally by the time required by the customer to build, renovate or prepare the treatment room for installation of the system. This time varies significantly, generally from six to twenty-four months.

In the United States, we market to customers, including hospitals and stand-alone treatment facilities, directly through our sales organization. Outside the United States, we market to customers in over 92 countries directly and through distributors. We have sales and service offices in Japan and many countries in Europe and Asia.

The following table shows the number of systems installed by geographic region as of March 31, 2013:

	CyberKnife	TomoTherapy	Total
Americas	158	217	375
Europe, Middle East, India and Africa	64	100	164
Asia (excluding Japan)	36	60	96
Japan	25	33	58
Total	283	410	693

18

[Table of Contents](#)

International sales of our products account for a significant and growing portion of our total net revenue. Revenue derived from sales outside of the United States was approximately \$42.2 million and \$55.2 million for the three months ended March 31, 2013 and 2012, respectively, and represented 60% and 54% of our net sales during these periods, respectively. Revenue derived from sales outside of the United States was approximately \$131.8 million and \$158.9 million for the nine months ended March 31, 2013 and 2012, respectively, and represented 57% and 51% of our net sales during these periods, respectively.

Backlog

We report backlog in the following manner:

- Products: Orders for systems, upgrades, and our shared ownership program are reported in backlog, excluding amounts attributable to PCS (warranty period services and post warranty services), installation, training and professional services.
- Service: Orders for PCS, installation services, training and professional services are not reported in backlog.

For orders that cover both products and services, only the portion of the order that is recognized as product revenue is reported as backlog. The portion of the order that is recognized as service revenue (for example, PCS) is not included in reported backlog. Additionally, orders for TomoTherapy Systems made on or before June 30, 2011, that met the historical TomoTherapy backlog criteria have been grandfathered into, and are included in, our backlog, with the exception of orders that would have “aged out” as of June 30, 2011. TomoTherapy previously did not have an “age out” criteria, so we have adjusted the TomoTherapy backlog to age out orders where 2.5 years have passed from the time the order entered TomoTherapy’s backlog. As of March 31, 2013, product only backlog was \$297.9 million as compared to \$279.6 million as of March 31, 2012.

In order for the product portion of a sales agreement to be counted as backlog, it must meet the following criteria:

- The contract is signed and properly executed by both the customer and us. A customer purchase order that is signed and incorporates the terms of our contract quote will be considered equivalent to a signed and executed contract;
- The contract is non-contingent—it either has cleared all its contingencies or contains no contingencies when signed;
- We have received a minimum deposit or a letter of credit; the sale is a direct channel sale to a government entity, or the product has shipped to a customer with credit sufficient to cover the minimum deposit;
- The specific end customer site has been identified by the customer in the written contract or written amendment; and
- Less than 2.5 years have passed since the contract met all the criteria above.

Although our backlog includes only contractual agreements from our customers to purchase CyberKnife Systems or TomoTherapy Systems, we cannot provide assurance that we will convert backlog into recognized revenue due to factors outside our control, which includes, without limitation, changes in customers’ needs or financial condition, changes in government or health insurance reimbursement policies, changes to regulatory requirements, or other reasons for cancellation of orders.

We also use book-to-bill ratios to assess the quality and growth of our backlog. The ratio is calculated for a period as new orders booked and included in backlog upon meeting criteria described above less any orders cancelled from backlog, and the resultant net orders being divided by total product revenue recognized during that period.

19

Results of Continuing Operations

Three and nine month periods ended March 31, 2013 compared to three and nine month periods ended March 31, 2012

Net Revenue

(Dollars in thousands)	Three Months Ended March 31,		Variance	Variance in Percent	Nine Months Ended March 31,		Variance	Variance in Percent
	2013	2012			2013	2012		
Products	\$ 25,023	\$ 59,875	\$ (34,852)	-58%	\$ 98,821	\$ 179,851	\$ (81,030)	-45%
Services	45,524	41,720	3,804	9%	132,253	127,218	5,035	4%
Other	—	221	(221)	-100%	—	1,621	(1,621)	-100%
Net Revenue	\$ 70,547	\$ 101,816	\$ (31,269)	-31%	\$ 231,074	\$ 308,690	\$ (77,616)	-25%

Total revenues during the three months ended March 31, 2013 decreased by 31% from the three months ended March 31, 2012 primarily due to lower product revenues. We recognized revenues on 9 units during the three months ended March 31, 2013 as compared to 21 units during the three months ended March 31, 2012. The decrease in units along with a decline in average selling price per unit resulted in decreases in product revenues of \$34.9 million during the three months ended March 31, 2013 as compared to the three months ended March 31, 2012.

Total revenues during the nine months ended March 31, 2013 decreased by 25% from the nine months ended March 31, 2012 primarily due to lower product revenues. We recognized revenues on 36 units during the nine months ended March 31, 2013 as compared to 69 units during the nine months ended March 31, 2012. This resulted in decreases in product revenues of \$81.0 million during the nine months ended March 31, 2013 as compared to the nine months ended March 31, 2012. During the three and nine months ended March 31, 2013, product revenues from the sale of our units have continued to be slow primarily in the North American and Asia-Pacific regions due to the slowdown in capital expenditures by hospitals, continued uncertainties around economic growth in certain key markets, and the lack of availability of the new models of the CyberKnife System and the TomoTherapy System.

Services revenues during the three and nine months ended March 31, 2013 increased by \$3.8 million and \$5.0 million, respectively, from the three and nine months ended March 31, 2012. Service revenues during the three and nine months ended March 31, 2012 included \$1.9 million and \$10.6 million, respectively, of service revenues arising from purchase accounting adjustments related to the TomoTherapy acquisition which was completed in June 2011. Such purchase accounting adjustments were not material during the three and nine months ended March 31, 2013. Excluding such adjustments, service revenues increased by \$5.7 million and \$15.6 million, respectively, during the three and nine months ended March 31, 2013 as compared to the three and nine months ended March 31, 2012 primarily due to increases in sales of higher priced maintenance contracts, particularly to customers using the TomoTherapy systems, as well as an increase in our installed base. We expect our service revenue to increase as our installed base continues to grow.

Gross Profit

(Dollars in thousands)	Three Months Ended March 31,				Nine Months Ended March 31,			
	2013 (Dollars in thousands)	(% of net revenue)	2012 (Dollars in thousands)	(% of net revenue)	2013 (Dollars in thousands)	(% of net revenue)	2012 (Dollars in thousands)	(% of net revenue)
Gross profit	\$ 20,053	28.4%	\$ 36,111	35.5%	\$ 70,355	30.4%	\$ 100,782	32.6%
Products	6,620	26.5%	27,474	45.9%	37,845	38.3%	76,277	42.4%
Services	13,433	29.5%	8,620	20.7%	32,510	24.6%	23,592	18.5%
Other	—	0.0%	17	7.7%	—	0.0%	913	56.3%

The overall gross profit margin during the three and nine months ended March 31, 2013 declined by 7.1 percentage points and 2.2 percentage points, respectively, as compared to the three and nine months ended March 31, 2012. Product margins were lower during the three and nine months ended March 31, 2013 primarily due to higher cost of units sold attributed to higher per-unit production-related costs resulting from lower volume of production and lower revenues per unit, partially offset by the favorable impact of a net reduction in purchase accounting adjustments resulting from the acquisition of TomoTherapy on June 10, 2011. Service margins were higher during the three and nine months ended March 31, 2013 primarily due to improvements in the reliability of the TomoTherapy Systems leading to reduced parts usage and other cost saving initiatives, partially offset by the unfavorable impact of a net reduction in purchase accounting adjustments resulting from the acquisition of TomoTherapy on June 10, 2011.

In accordance with purchase accounting standards, a number of adjustments were recorded to the value of assets and liabilities of TomoTherapy as of the closing of the acquisition on June 10, 2011. These included the write-up of inventory based on selling price rather than cost of manufacturing, the write-down of deferred product revenue, the write-up of deferred service revenue, and the recording of intangible assets related to developed technology and to backlog existing at the time of the acquisition. On the acquisition date, deferred service and product revenues were valued at cost plus a reasonable margin. Purchase accounting adjustments decreased gross profits for the three months ended March 31, 2012 by \$2.7 million as follows: Product revenues were reduced by \$1.3 million while product cost of revenues was increased by \$3.8 million; Services revenues were increased by \$1.9 million while services cost of revenues was decreased by \$0.5 million. Purchase

accounting adjustments reduced gross profit for the nine months ended March 31, 2012 by \$11.8 million as follows: Product revenues were reduced by \$1.9 million, while product cost of revenues was increased by \$19.7 million; Services revenues were increased by \$10.6 million while services cost of revenues was increased by \$0.8 million. Purchase accounting adjustments reduced gross profit for the three and nine months ended March 31, 2013 by \$1.7 million and \$6.9 million, respectively, resulting primarily from the increases in product cost of revenues by \$1.7 million and \$6.8 million, respectively.

Selling and Marketing

(Dollars in thousands)	March 31,			Variance in Percent	March 31,			Variance in Percent
	2013	2012	Variance		2013	2012	Variance	
Selling and marketing	\$ 12,646	\$ 12,449	\$ 197	2%	\$ 41,296	\$ 40,047	\$ 1,249	3%
Percentage of net revenue	17.9%	12.2%			17.9%	13.0%		

Selling and marketing expenses increased by \$0.2 million during the three months ended March 31, 2013 as compared to the three months ended March 31, 2012 primarily due to higher compensation related costs of \$0.8 million and travel related costs of \$0.2 million, resulting from a re-organization of the marketing function, partially offset by cost control initiatives, resulting in lower facilities and information technology related expenses of \$0.5 million and tradeshow and advertising related expenses of \$0.3 million.

Selling and marketing expenses increased by \$1.2 million during the nine months ended March 31, 2013 as compared to the nine months ended March 31, 2012 primarily due to higher tradeshow and advertising related expenses of \$1.8 million and consulting expenses of \$0.3 million related to the introduction of two new products at an industry trade show in October 2012, partially offset by lower travel related expenses of \$0.5 million and other operational expenses of \$0.2 million due to cost control initiatives.

Research and Development

(Dollars in thousands)	Three Months Ended March 31,			Variance in Percent	Nine Months Ended March 31,			Variance in Percent
	2013	2012	Variance		2013	2012	Variance	
Research and development	\$ 15,697	\$ 22,398	\$ (6,701)	-30%	\$ 51,510	\$ 59,799	\$ (8,289)	-14%
Percentage of net revenue	22.3%	22.0%			22.3%	19.4%		

Research and development expenses decreased by \$6.7 million during the three months ended March 31, 2013 as compared to the three months ended March 31, 2012 primarily due to decreases in consulting and project related costs of \$3.4 million and facilities and information technology related costs of \$1.8 million due to cost control initiatives and a reduction in development related activities after the two new product introductions at an industry trade show in October 2012 as well as lower compensation related costs of \$0.9 million and travel related costs of \$0.5 million resulting from a re-organization of the research and development function.

Research and development expenses decreased by \$8.3 million during the nine months ended March 31, 2013 as compared to the nine months ended March 31, 2012 primarily due to decreases in consulting and project related costs of \$5.3 million and facilities and information technology related costs of \$1.7 million due to cost control initiatives and a reduction in development related activities after the two new product introductions at an industry trade show in October 2012 as well as lower compensation related costs of \$0.7 million and travel related costs of \$0.6 million resulting from a re-organization of the research and development function during the three months ended March 31, 2013.

General and Administrative

(Dollars in thousands)	Three Months Ended March 31,			Variance in Percent	Nine Months Ended March 31,			Variance in Percent
	2013	2012	Variance		2013	2012	Variance	
General and administrative	\$ 16,745	\$ 13,964	\$ 2,781	20%	\$ 45,479	\$ 42,047	\$ 3,432	8%
Percentage of net revenue	23.7%	13.7%			19.7%	13.6%		

General and administrative expenses increased by \$2.8 million during the three months ended March 31, 2013 as compared to the three months ended March 31, 2012 primarily due to \$4.9 million of severance charges incurred due to the restructuring of operations announced in January 2013. This was partially offset by lower compensation related costs of \$1.1 million, lower consulting, legal and accounting related expenses of \$0.6 million and lower travel and operational expenses of \$0.4 million due to cost control initiatives.

General and administrative expenses increased by \$3.4 million during the nine months ended March 31, 2013 as compared to the nine months ended March 31, 2012 primarily due to \$7.2 million of severance charges incurred for the departure of our former CEO, COO and other employees in the three months ended December 31, 2012 and the restructuring of operations announced in January 2013 and \$1.7 million related to lease acceleration and fixed asset disposal charges from vacating an office facility during December 2012. This was partially offset by lower consulting, legal and accounting related expenses of \$2.8 million, lower compensation related costs of \$2.1 million, lower facilities and information technology related costs of \$0.3 million and lower travel and operational related expenses of \$0.2 million due to cost control initiatives.

[Table of Contents](#)

Other Expense, Net

(Dollars in thousands)	Three Months Ended March 31,			Variance in Percent	Nine Months Ended March 31,			Variance in Percent
	2013	2012	Variance		2013	2012	Variance	
Other expense, net	\$ (5,565)	\$ (838)	\$ (4,727)	564%	\$ (8,849)	\$ (8,074)	\$ (775)	10%

Net other expense increased by \$4.7 million during the three months ended March 31, 2013 as compared to the three months ended March 31, 2012. During the three months ended March 31, 2013, we recognized net other expense of \$5.6 million primarily due to \$2.8 million of interest expense related to our 3.75% Convertible Notes and 3.50% Convertible Notes and \$2.5 million of foreign currency losses primarily resulting from the depreciation of the Japanese Yen against the U.S. Dollar. During the three months ended March 31, 2012, we recognized net other expense of \$0.8 million primarily due to \$2.0 million of interest expense related to our 3.75% Convertible Notes, partially offset by foreign currency gains of \$1.2 million primarily due to the strengthening of the Euro and the Swiss Franc against the U.S. Dollar.

Net other expense increased by \$0.8 million during the nine months ended March 31, 2013 as compared to the nine months ended March 31, 2012. During the nine months ended March 31, 2013, we recognized net other expense of \$8.8 million primarily due to \$7.0 million of interest expense related to our 3.75% Convertible Notes and 3.50% Convertible Notes and \$2.2 million of foreign currency losses primarily resulting from the depreciation of the Japanese Yen against the U.S. Dollar, partially offset by a \$0.7 million gain on our previously held equity interest in Morphormics, Inc., resulting from our

acquisition of Morphormics on July 16, 2012. During the nine months ended March 31, 2012, we recognized net other expense of \$8.1 million primarily due to \$5.3 million of interest expense related to our 3.75% Convertible Notes, which were issued on August 1, 2011 and \$2.6 million of foreign currency losses primarily resulting from the strengthening of the U.S. Dollar against the Euro and the Swiss Franc.

Provision for Incomes Taxes

(Dollars in thousands)	Three Months Ended March 31,		Variance	Variance in Percent	Nine Months Ended March 31,		Variance	Variance in Percent
	2013	2012			2013	2012		
Provision for income taxes	\$ 603	\$ 1,247	\$ (644)	-52%	\$ 1,867	\$ 2,152	\$ (285)	-13%
<i>Percentage of loss before provision for income taxes</i>	<i>-2.0%</i>	<i>-9.2%</i>			<i>-2.4%</i>	<i>-4.4%</i>		

On a quarterly basis, we provide for income taxes based upon an estimated annual effective income tax rate. Income tax expenses were \$0.6 million and \$1.9 million for the three and nine months ended March 31, 2013 respectively, compared to income tax expenses of \$1.2 million and \$2.2 million for the three and nine months ended March 31, 2012 respectively. The decrease in tax expenses were primarily related to the release of tax reserves in certain foreign subsidiaries due to the expiration of statutes of limitation and the completion of tax audits.

Restructuring Charges

During December 2012, we vacated an office facility and recorded a charge of \$1.4 million in general and administrative expenses during the three months ended December 31, 2012 for the remaining lease obligations on the facility, net of estimated sub-lease income. We also recorded a charge of \$0.3 million in general and administrative expenses during the three months ended December 31, 2012 related to the disposition of certain fixed assets and leasehold improvements at this facility.

During the three months ended December 31, 2012, we also recorded severance related charges of \$2.2 million in general and administrative expenses due to the departure of Dr. Euan S. Thomson (former Chief Executive Officer), Mr. Chris Raanes (former Chief Operating Officer) and certain other employees.

On January 3, 2013, management announced a restructuring of operations to focus on improving commercial execution and position the Company to support sustainable revenue growth and profitability. The restructuring is expected to reduce staffing by approximately 13 percent and was heavily concentrated in the United States. During the three months ended March 31, 2013, we substantially completed the restructuring exercise, reduced its global workforce under this program by 108 full-time employees and recorded \$4.9 million in charges for severance and related benefits for all affected employees. At March 31, 2013, approximately \$2.0 million of the restructuring related liabilities were included in accrued compensation in the condensed consolidated balance sheet. We do not expect any significant severance-related charges to be incurred during the fourth quarter of fiscal 2013 and expect the remaining activities under this program to be substantially completed by the end of fiscal 2013. Management expects annualized savings of approximately \$17 million to \$19 million of compensation related expenses as a result of this restructuring of operations. Restructuring charges are reflected within general and administrative expenses in the condensed consolidated statements of operations and comprehensive loss.

Loss from Discontinued Operations

The results of operations of CPAC, including the loss on deconsolidation of CPAC and the losses attributable to the non-controlling interest recorded during the three and nine months ended March 31, 2013 and 2012, respectively, have been disclosed as discontinued operations.

Impairment of Indefinite Lived Intangible Assets

We incurred \$12.2 million of impairment charges related to the write-down of our in-process research and development (IPR&D) asset during the first quarter of fiscal 2013, based on results of research and development work carried out by CPAC, then a variable interest entity consolidated by us. See Note 3, "Goodwill and Intangible Assets" for details.

Loss from Deconsolidation of CPAC

On December 21, 2012, the Company and CPAC entered into a Purchase Agreement and Release, whereby all the equity and debt investments held by us in CPAC were purchased by CPAC for a nominal consideration. Additionally, we assigned all our rights to the DWA technology licensed from Lawrence Livermore National Security, LLC to CPAC. As a result of the Purchase Agreement, we concluded that we are no longer the primary beneficiary of CPAC since we do not have any variable interests in that entity. Accordingly, we have deconsolidated CPAC and recorded a loss of \$3.4 million during the second quarter of fiscal 2013 due to the write-down of the carrying value of CPAC's net liabilities, the write-off of the receivables from CPAC and the non-controlling interest in CPAC, net of cash consideration received.

Equity Awards

Performance-based Awards ("PSUs")

During fiscal 2012, the Compensation Committee of our Board of Directors of the Company approved the granting of Performance-Based Stock Units ("PSUs") to employees of the Company which vest only upon meeting certain financial performance criteria during the performance period commencing on the first day of our 2012 fiscal year and ending on the last day of our 2013 fiscal year. In the event that the PSUs do not become vested as a result of the Company's performance during the performance period, all PSUs are automatically

forfeited by the participants effective as of the last day of the performance period. During fiscal 2012, approximately 1.0 million PSUs were granted to employees valued at approximately \$3.9 million which was based on the fair value of the Company's common stock on the grant date and will be recognized over the requisite performance period based on our assessment of the probability of achieving the performance criteria. Approximately 0.6 million PSUs are outstanding as of March 31, 2013.

As of March 31, 2013, we have assessed that it was not probable that the performance criteria would be met during the performance period and accordingly, no compensation cost has been recognized for the PSUs to date or during the three months ended March 31, 2013. If in a future period management revises its assessment and concludes that it is probable that the performance criteria will be met, we will record a cumulative catch-up compensation charge for the PSUs in that period. Remaining compensation charges for the PSUs would be recognized ratably over the remaining performance period.

Market Stock Unit (“MSU”) program

In October 2012, the Compensation Committee approved a new performance equity program, referred to as the market stock unit program (“MSU Program”). The MSU Program uses the Russell 2000 index as a performance benchmark and requires that the Company’s total stockholder return exceed that of the Russell 2000. Based on a sliding scale of how much the Russell 2000 benchmark is exceeded, participating executives can earn up to a maximum of 150% of the target number of shares over two measurement periods, one at the end of fiscal 2014 and another at the end of fiscal 2015. During the nine months ended March 31, 2013, 0.4 million MSUs were granted to participating executives. The MSUs were valued at approximately \$1.5 million based on a Monte-Carlo simulation on the grant date and will be recognized over a weighted average period of 1.8 years.

Liquidity and Capital Resources

At March 31, 2013, we had \$181.5 million in cash and cash equivalents. We expect to use cash for the balance of fiscal 2013 driven primarily by operating losses and capital expenditures. Cash from operations could be affected by various risks and uncertainties, including, but not limited to the risks included in Part II, Item 1A of this Form 10-Q and in Part I, Item 1A titled “Risk Factors” of Form 10-K for the year ended June 30, 2012. Also refer to Note 8, “Debt,” to the condensed consolidated financial statements for discussion of the 3.75% Convertible Notes and the 3.50% Convertible Notes. Based on our current business and financial plan and revenue prospects, we believe that we will have sufficient cash resources and anticipated cash flows to fund our operations for at least the next 12 months.

Cash Flows From Operating Activities

Net cash used in operating activities was \$61.9 million for the nine months ended March 31, 2013 which was attributable to a net loss of \$97.8 million, comprised of \$78.7 million from continuing operations and \$19.1 million from discontinued operations, and cash used for working capital purposes of \$10.2 million. This was primarily offset by \$46.1 million of non-cash charges, which primarily included depreciation and amortization expenses of \$19.8 million, \$12.2 million of impairment charges related to in-process research and development assets, share-based compensation expenses of \$6.1 million, loss on deconsolidation of CPAC of \$3.4 million, accretion of interest expense on the 3.75% Convertible Notes of \$3.2 million and inventory write-downs of \$1.7 million. Cash used for working capital was primarily attributed to increases in inventory balances of \$12.2 million due to delays in manufacturing newly introduced products and decreases in accounts payable and accrued liabilities of \$14.5 million due to timing of vendor payments, payment of accrued bonuses for the prior fiscal year, reduction of compensation related accruals, payments for inventory buy-back obligations and other liabilities. This was partially offset by decreases in accounts receivable of \$13.2 million due to lower billings and increases in deferred revenue of \$8.1 million mainly from increases in deferrals for support services due to an increase in the install base.

Net cash used in operating activities was \$32.8 million for the nine months ended March 31, 2012 which was attributable to a net loss of \$56.8 million, comprised of \$51.3 million from continuing operations and \$5.5 million from discontinued operations, and cash used for working capital purposes of \$12.6 million. This was partially offset by \$36.7 million of non-cash charges, which primarily included \$24.5 million of depreciation and amortization expenses, \$6.3 million of share-based compensation expense, accretion of interest expense on the 3.75% Convertible Notes of \$2.6 million, \$2.0 million for provision for write-down of inventories and \$1.0 million for provision for bad debts. Cash used for working capital was primarily attributed to increases in accounts receivable of \$12.9 million due to higher billings, decreases in accounts payable of \$15.8 million due to timing of vendor payments and decreases in accrued liabilities of \$15.6 million due to payments for acquisition related, value-added tax related, and other liabilities, decreases in customer deposits of \$6.3 million due to lower minimum deposit requirements on new orders and partially offset by cash flow from decreases in inventory balances of \$9.2 million due to usage and increases in deferred revenues of \$24.1 million due to increased shipments and billings.

Cash Flows From Investing Activities

Net cash used in investing activities was \$15.7 million for the nine months ended March 31, 2013, which primarily consisted of the purchase of property and equipment of \$11.6 million and \$3.9 million related to the acquisition of Morphormics.

[Table of Contents](#)

Net cash used in investing activities was \$9.1 million for the nine months ended March 31, 2012, which consisted of purchases of property and equipment of \$7.7 million and \$1.4 million related to the acquisition of TomoTherapy.

Cash Flows From Financing Activities

Net cash provided by financing activities was \$116.0 million for the nine months ended March 31, 2013. In February 2013, we issued the 3.50% Convertible Notes for net proceeds of \$110.5 million. In addition, we received \$5.5 million attributable to proceeds from the exercise of common stock options and the purchase of common stock under our equity compensation plans.

Net cash provided by financing activities was \$98.8 million for the nine months ended March 31, 2012. In August 2011, we issued the 3.75% Convertible Notes for net proceeds of \$96.1 million. In addition, we received \$2.7 million attributable to proceeds from the exercise of common stock options and the purchase of common stock under our equity compensation plans.

Operating Capital and Capital Expenditure Requirements

Our future capital requirements depend on numerous factors. These factors include but are not limited to the following:

- Revenue generated by sales of our products, our shared ownership program and service plans;

- Costs associated with our sales and marketing initiatives and manufacturing activities;
- Facilities, equipment and IT systems required to support current and future operations;
- Rate of progress and cost of our research and development activities;
- Costs of obtaining and maintaining FDA and other regulatory clearances of our products;
- Effects of competing technological and market developments;
- Number and timing of acquisitions and other strategic transactions; and
- Costs associated with the integration of TomoTherapy.

If our cash and cash equivalents are insufficient to satisfy our liquidity requirements, we may seek to sell additional equity or debt securities or obtain additional credit facilities. The sale of additional equity or convertible debt securities could result in dilution to our stockholders. If additional funds are raised through the issuance of debt securities, these securities could have rights senior to those associated with our common stock and could contain covenants that would restrict our operations. Additional financing may not be available at all, or in amounts or on terms acceptable to us. If we are unable to obtain this additional financing, we may be required to reduce the scope of our planned product development and marketing efforts.

Contractual Obligations and Commitments

We presented our contractual obligations in our Annual Report on Form 10-K for the previous annual reporting period ended June 30, 2012. There have been no material changes outside of the ordinary course of business in those obligations during the current quarter, except for the issuance of 3.50% Convertible Notes during February 2013. See Note 8, "Debt," to the condensed consolidated financial statements for additional information. The following is a schedule summarizing our obligations to make future payments under the 3.75% Convertible Notes and the 3.50% Convertible Notes as of March 31, 2013:

	Total	Payments due by period			
		Less than 1 year	1 - 3 years	3 - 5 years	More than 5 years
3.75% Convertible Note	\$ 112,500	\$ 3,750	\$ 7,500	\$ 101,250	\$ —
3.50% Convertible Note	134,455	4,026	8,050	122,379	—
Total	\$ 246,955	\$ 7,776	\$ 15,550	\$ 223,629	\$ —

These amounts represent principal and interest cash payments over the life of the debt obligations, including anticipated interest payments that are not recorded on our consolidated balance sheet. Any conversion, redemption or purchase of Convertible Notes would impact our cash payments.

[Table of Contents](#)

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements.

Critical Accounting Policies and Estimates

The discussion and analysis of our financial condition and results of operations is based on our condensed consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP"). The preparation of these condensed consolidated financial statements requires management to make estimates and judgments that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements, as well as revenue and expenses during the reporting periods. We evaluate our estimates and judgments on an ongoing basis. We base our estimates on historical experience and on various other factors we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities. Actual results could therefore differ materially from those estimates if actual conditions differ from our assumptions.

During the three and nine months ended March 31, 2013, there have been no changes to the critical accounting policies and estimates as discussed in Part II, Item 7 of our Form 10-K for the year ended June 30, 2012, which we believe are those related to revenue recognition, business combinations and intangible asset impairment, inventories, share-based compensation expense, income taxes, loss contingencies and corporate bonus expense and accruals.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Foreign Currency Exchange Rate Risk

Future fluctuations in the value of the U.S. dollar may affect the price competitiveness of our products outside the United States. For direct sales outside the United States, we sell in both U.S. dollars and local currencies, which could expose us to additional foreign currency risks, including changes in currency exchange rates. Our operating expenses in countries outside the United States, are payable in foreign currencies and therefore expose us to currency risk. To the extent that management can predict the timing of payments under sales contracts or for operating expenses that are denominated in foreign currencies, we may engage in hedging transactions to mitigate such risks in the future.

Interest Rate Risk

At March 31, 2013, we had \$5.0 million of cash equivalents invested in certificates of deposit. Our earnings would not be materially affected by interest rate risk due to the low interest rate on these highly liquid investments.

Equity Price Risk

On August 1, 2011, we issued \$100 million aggregate principal amount of the 3.75% Convertible Notes. Upon conversion, we can settle the obligation by issuing our common stock, cash or a combination thereof at an initial conversion rate equal to 105.5548 shares of common stock per \$1,000 principal amount of the 3.75% Convertible Notes, which is equivalent to a conversion price of approximately \$9.47 per share of common stock, subject to adjustment. There is no equity price risk if the share price of our common stock is below \$9.47 upon conversion of the 3.75% Convertible Notes. For every \$1 that the share price of our common stock exceeds \$9.47, we expect to issue an additional \$10.6 million in cash or shares of our common stock, or a combination thereof, if all of the 3.75% Convertible Notes are converted.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow for timely decisions regarding required disclosure.

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of March 31, 2013. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that as of March 31, 2013 our disclosure controls and procedures were effective to provide reasonable assurance that the information required to be disclosed by us in the reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

25

[Table of Contents](#)

Changes in Internal Control Over Financial Reporting

During the three months ended March 31, 2013, there was no change in our internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations of Internal Control Over Financial Reporting

Internal control over financial reporting cannot provide absolute assurance of achieving financial reporting objectives because of its inherent limitations. Internal control over financial reporting is a process that involves human diligence and compliance and is subject to lapses in judgment and breakdowns resulting from human failures. Internal control over financial reporting also can be circumvented by collusion or improper management override. Because of such limitations, there is a risk that material misstatements may not be prevented or detected on a timely basis by internal control over financial reporting. However, these inherent limitations are known features of the financial reporting process. Therefore, it is possible to design into the process safeguards to reduce, though not eliminate, this risk. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and in reaching a reasonable level of assurance, management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

26

[Table of Contents](#)

PART II. OTHER INFORMATION

Item 1. Legal Proceedings.

Please refer to Note 5, "Commitments and Contingencies," to the condensed consolidated financial statements above for a description of certain legal proceedings currently pending against the Company. From time to time we are involved in legal proceedings arising in the ordinary course of our business.

Item 1A. Risk Factors.

The risks described in Item 1A. Risk Factors, in our Annual Report on Form 10-K for the fiscal year ended June 30, 2012, could materially and adversely affect our business, operations and financial condition. These risk factors do not identify all risks that we face—our business, operations and financial conditions also could be affected by factors that are not presently known to us or that we currently consider to be immaterial to our operations. The Risk Factors section of our Annual Report on Form 10-K for the fiscal year ended June 30, 2012 remains current as updated by our Quarterly Report on Form 10-Q for the quarters ended September 30, 2012 and December 31, 2012 with the exception of the revised and additional risk factors below that amend and supplement the risk factors previously disclosed.

We have a large accumulated deficit, may incur future losses and may be unable to achieve profitability.

As of March 31, 2013, we had an accumulated deficit of \$300.9 million. We may incur net losses in the future, particularly as we resolve the manufacturing and supply issues with our new CyberKnife M6 Series with the MLC, and restructure our selling and marketing activities. Our ability to achieve and sustain long-term profitability is largely dependent on our ability to successfully market and sell the CyberKnife and TomoTherapy Systems and to control our costs and effectively manage our growth. We cannot assure you that we will be able to achieve profitability. In the event we fail to achieve profitability, our stock price could decline.

Third parties may claim we are infringing their intellectual property, and we could suffer significant litigation or licensing expenses or be prevented from selling our product.

The medical device industry is characterized by a substantial amount of litigation over patent and other intellectual property rights. In particular, the field of radiation treatment of cancer is well established and crowded with the intellectual property of competitors and others. We also expect that other participants will enter the field. A number of companies in our market, as well as universities and research institutions, have issued patents and have filed patent applications which relate to the use of radiation therapy and stereotactic radiosurgery to treat cancerous and benign tumors.

Determining whether a product infringes a patent involves complex legal and factual issues, and the outcome of patent litigation actions is often uncertain. We have not conducted an extensive search of patents issued to third parties, and no assurance can be given that third-party patents containing claims covering our products, parts of our products, technology or methods do not exist, have not been filed, or could not be filed or issued. Because of the number of patents issued and patent applications filed in our technical areas or fields, our competitors or other third parties may assert that our products and the methods we employ in the use of our products are covered by United States or foreign patents held by them. For example, on August 6, 2010, Best Medical International, Inc., or Best Medical, filed a lawsuit against Accuray in the U.S. District court for the Western District of Pennsylvania, claiming Accuray has infringed U.S. Patent No. 5,596,619, a patent that Best Medical alleges protects a method and apparatus for conformal radiation therapy, and on December 16, 2010, Best Medical filed an amended complaint, claiming that the Company also infringes U.S. Patent Nos. 6,038,283 and 7,266,175, both of which Best Medical alleges cover methods and apparatus for conformal radiation therapy. On March 9, 2011, the Court dismissed with prejudice all counts against the Company, except for two counts of alleged willful infringement of two of the patents. The Court issued a Scheduling Order on May 12, 2011 appointing a special master for claim construction, and setting a claim construction hearing on January 10, 2012. Best Medical moved to voluntarily dismiss one of the two remaining patents on June 28, 2011, which the court granted on June 30, 2011, leaving only one patent at issue in the case. The Court held a claim construction hearing on May 17, 2012 and in January 2013, the Court issued the claim construction order. During a mandatory mediation held on March 25, 2013, the parties failed to reach a settlement agreement and a new mediation hearing is scheduled for May 16, 2013. If the parties fail to reach a settlement agreement then, we expect the matter to move into discovery and litigation. Best Medical is seeking declaratory and injunctive relief as well as unspecified compensatory and treble damages and other relief.

In addition, because patent applications can take many years to issue and because publication schedules for pending applications vary by jurisdiction, there may be applications now pending of which we are unaware, and which may result in issued patents which our current or future products infringe. Also, because the claims of published patent applications can change between publication and patent grant, there may be published patent applications that may ultimately issue with claims that we infringe. There could also be existing patents that one or more of our products or parts may infringe and of which we are unaware. As the number of competitors in the market for less invasive cancer treatment alternatives grows, and as the number of patents issued in this area grows, the possibility of patent infringement claims against us increases. Regardless of the merit of infringement claims, they can be time-consuming, result in costly litigation and diversion of technical and management personnel. Some of our competitors may be able to sustain the costs of complex patent litigation more effectively than we can

[Table of Contents](#)

because they have substantially greater resources. In addition, any uncertainties resulting from the initiation and continuation of any litigation could have a material adverse effect on our ability to raise funds, if necessary, to continue our operations.

In the event that we become subject to a patent infringement or other intellectual property lawsuit and if the relevant patents or other intellectual property were upheld as valid and enforceable and we were found to infringe or violate the terms of a license to which we are a party, we could be prevented from selling our products unless we could obtain a license or were able to redesign the product to avoid infringement. Required licenses may not be made available to us on acceptable terms or at all. If we were unable to obtain a license or successfully redesign our system, we might be prevented from selling our system. If there is an allegation or determination that we have infringed the intellectual property rights of a competitor or other person, we may be required to pay damages, enter into a settlement or pay ongoing royalties. In these circumstances, we may be unable to sell our products at competitive prices or at all, and thus, our business and operating results could be harmed.

We could become subject to product liability claims, product recalls, other field actions and warranty claims that could be expensive, divert management's attention and harm our business.

Our business exposes us to potential liability risks that are inherent in the manufacturing, marketing and sale of medical device products. We may be held liable if a CyberKnife or TomoTherapy System causes injury or death or is found otherwise unsuitable during usage. Our products incorporate sophisticated components and computer software. Complex software can contain errors, particularly when first introduced. In addition, new products or enhancements may contain undetected errors or performance problems that, despite testing, are discovered only after installation. Because our products are designed to perform complex surgical and therapeutic procedures involving delivery of radiation to the body, defects, even if small, could result in a number of complications, some of which could be serious and could harm or kill patients. Any weaknesses in training and services associated with our products may also result in product liability lawsuits. It is also possible that defects in the design, manufacture or labeling of our products might necessitate a product recall or other field corrective action, which may result in warranty claims beyond our expectations and may harm our reputation and create adverse publicity. A product liability claim, regardless of its merit or eventual outcome, could result in significant legal defense costs. We may also be subject to claims for property damage or economic loss related to, or resulting from, any errors or defects in our products, or the installation, servicing and support of our products, or any professional services rendered in conjunction with our products. The coverage limits of our insurance policies may not be adequate to cover future claims. If sales of our products increase or we suffer future product liability claims, we may be unable to maintain product liability insurance in the future at satisfactory rates or with adequate amounts of coverage. A product liability claim, any product recalls or other field actions or excessive warranty claims, whether arising from defects in design or manufacture or labeling, could negatively affect our sales or require a change in the design, manufacturing process or the indications for which the CyberKnife or TomoTherapy Systems may be used, any of which could harm our reputation and business and result in a decline in revenue.

In addition, if a product we designed or manufactured is defective, whether due to design or manufacturing, or labeling defects, improper use of the product or other reasons, we may be required to notify regulatory authorities and/or to recall the product, possibly at our expense. We have voluntarily conducted recalls and product corrections in the past, including four recalls for the CyberKnife System and two recalls for the TomoTherapy System during fiscal year 2012 and two recalls for the CyberKnife System in fiscal year 2013. Accuray initiated each of these recalls. No serious adverse health consequences have been reported in connection with these recalls, and the costs associated with each such recall were not material. A required notification of

a correction or removal to a regulatory authority or recall could result in an investigation by regulatory authorities of our products, which could in turn result in required recalls, restrictions on the sale of the products or other civil or criminal penalties. The adverse publicity resulting from any of these actions could cause customers to review and potentially terminate their relationships with us. These investigations, corrections or recalls, especially if accompanied by unfavorable publicity, patient injury or termination of customer contracts, could result in our incurring substantial costs, losing revenues and damaging our reputation, each of which would harm our business.

Modifications, upgrades and future products related to the CyberKnife or TomoTherapy Systems or new indications may require new FDA 510(k) clearances or premarket approvals, and such modifications, or any defects in design, manufacture or labeling may require us to recall or cease marketing the CyberKnife or TomoTherapy Systems until approvals or clearances are obtained.

The CyberKnife and TomoTherapy Systems are medical devices that are subject to extensive regulation in the United States by local, state and the federal government, including by the FDA. The FDA regulates virtually all aspects of a medical device's design, development, testing manufacturing, labeling, storage, record keeping, adverse event reporting, sale, promotion, distribution and shipping. Before a new medical device, or a new intended use or indication of or claim for an existing product, can be marketed in the United States, it must first receive either premarket approval or 510(k) clearance from the FDA, unless an exemption exists. Either process can be expensive and lengthy. The FDA's 510(k) clearance process generally takes from three to twelve months, but it can last longer. The process of obtaining premarket approval is much more costly and uncertain than the 510(k) clearance process and it generally takes from one to three years, or even longer, from the time the application is filed with the FDA. Despite the time, effort and cost, there can be no assurance that a particular device or a modification of a device will be approved or cleared by the FDA through either the premarket approval process or 510(k) clearance process. Even if we are granted regulatory clearances or approvals, they may include significant limitations on the indicated uses of the product, which may limit the market for those products, and how those products can be promoted.

[Table of Contents](#)

Medical devices may be marketed only for the indications for which they are approved or cleared. The FDA also may change its policies, adopt additional regulations, or revise existing regulations, each of which could prevent or delay premarket approval or 510(k) clearance of our device, or could impact our ability to market our currently cleared device. We are also subject to medical device reporting regulations which require us to report to the FDA if our products cause or contribute to a death or a serious injury, or malfunction in a way that would likely cause or contribute to a death or a serious injury. We also are subject to Quality System regulations. Our products are also subject to state regulations and various worldwide laws and regulations.

A component of our strategy is to continue to upgrade the CyberKnife and TomoTherapy Systems. Upgrades previously released by us required 510(k) clearance before we were able to offer them for sale. We expect our future upgrades will similarly require 510(k) clearance; however, future upgrades may be subject to the substantially more time consuming data generation requirements and uncertain premarket approval or clearance process. If we were required to use the premarket approval process for future products or product modifications, it could delay or prevent release of the proposed products or modifications, which could harm our business.

The FDA requires device manufacturers to make their own determination of whether or not a modification requires an approval or clearance; however, the FDA can review a manufacturer's decision not to submit for additional approvals or clearances. Any modification to an FDA approved or cleared device that would significantly affect its safety or efficacy or that would constitute a major change in its intended use would require a new premarket approval or 510(k) clearance. The FDA has recently issued a draft guidance that, if finalized, will result in manufacturers needing to seek a significant number of new or additional clearances for changes made to legally marketed devices. We cannot assure you that the FDA will agree with our decisions not to seek approvals or clearances for particular device modifications or that we will be successful in obtaining premarket approvals or 510(k) clearances for modifications.

We have obtained 510(k) clearance for the CyberKnife System for the treatment of tumors anywhere in the body where radiation is indicated, and we have obtained 510(k) clearance for the TomoTherapy Systems to be used as integrated systems for the planning and delivery of IMRT for the treatment of cancer. The TomoTherapy Systems provide precise delivery of radiation to tumors while minimizing the delivery of radiation to vital healthy tissue. The TomoTherapy Systems deliver the radiation therapy, or stereotactic radiotherapy or radiosurgery, treatment in accordance with the physician approved plan using IMRT techniques delivered in a helical tomographic pattern. We have made modifications to the CyberKnife and TomoTherapy Systems in the past and may make additional modifications in the future that we believe do not or will not require additional approvals or clearances. If the FDA disagrees, based on new finalized guidance and requires us to obtain additional premarket approvals or 510(k) clearances for any modifications to the CyberKnife or TomoTherapy Systems and we fail to obtain such approvals or clearances or fail to secure approvals or clearances in a timely manner, we may be required to cease manufacturing and marketing the modified device or to recall such modified device until we obtain FDA approval or clearance and we may be subject to significant regulatory fines or penalties.

In addition, even if the CyberKnife and TomoTherapy Systems are not modified, the FDA and similar governmental authorities in other countries in which we market and sell our products have the authority to require the recall of our products in the event of material deficiencies or defects in design, manufacture or labeling. A government mandated recall, or a voluntary recall by us, could occur as a result of component failures, manufacturing errors or design defects, including defects in labeling and user manuals. We have voluntarily conducted recalls and product corrections in the past, including four such recalls for the CyberKnife System and two such recalls for the TomoTherapy System during fiscal year 2012 and two recalls for the CyberKnife System in fiscal year 2013. Accuray voluntarily initiated each of these recalls. To date, no serious health consequences have been reported in connection with these recalls, and the costs associated with each such recall were not material. We cannot ensure that the FDA will not require that we take additional actions to address problems that resulted in previous recalls. Any recall could divert management's attention, cause us to incur significant expenses, generate negative publicity, harm our reputation with customers, negatively affect our future sales and business, require redesign of the CyberKnife or TomoTherapy Systems, and harm our operating results. In these circumstances, we may also be subject to significant enforcement action. If any of these events were to occur, our ability to introduce new or enhanced products in a timely manner would be adversely affected, which in turn would harm our future growth.

If we are found to have violated laws protecting the confidentiality of patient health information that we possess, we could be subject to contractual liability and civil or criminal penalties, which could increase our liabilities and harm our reputation or our business.

There are a number of federal and state laws protecting the confidentiality of certain patient health information, including patient records, and restricting the use and disclosure of that protected information. In particular, the U.S. Department of Health and Human Services, or HHS, has promulgated patient privacy rules under the Health Insurance Portability and Accountability Act of 1996, or HIPAA. These privacy rules protect medical records and other personal health information of patients by limiting their use and disclosure, giving patients the right to access, amend and seek accounting of their own health

information and limiting most uses and disclosures of health information to the minimum amount reasonably necessary to accomplish the intended purpose. The HIPAA privacy standard was amended by the Health Information Technology for Economic and Clinical Health Act (HITECH), enacted as part of the American Recovery and Reinvestment Act of 2009. Although we are not a “covered entity” under HIPAA, we are considered a “business associate” of certain covered entities. As a business associate which has access to patient health information provided by hospitals and healthcare providers, we are directly subject to HIPAA, including its enforcement scheme and inspection requirements, and are required to implement policies, procedures and reasonable and

[Table of Contents](#)

appropriate physical, technical and administrative security measures to protect individually identifiable health information we receive from covered entities.

We also are obligated to enter into, and have entered into, agreements with certain covered entities under which we are considered to be a “business associate” under HIPAA. In addition, as a result of rules enacted by HHS which became effective in March 2013, we are required, beginning September 2013, to enter into HIPAA-compliant business associate contracts with any subcontractors to which we delegate any function, activity or service that we agreed to perform for a covered entity, where such function, activity or service involves creating, receiving, maintaining or transmitting any protected health information. Under these rules, we also will be liable for violations of the HIPAA rules by any subcontractor if that subcontractor is our agent and is acting within the scope of its arrangement with us.

Our failure to protect health information received from customers in compliance with HIPAA or other laws could subject us to civil and criminal liability to the government and civil liability to the covered entity, could result in adverse publicity, and could harm our business and impair our ability to attract new customers.

Moreover, we manufacture and sell products that allow our customers to store confidential information about their patients. While we have implemented security measures to protect our products from unauthorized access, these measures do not secure our customers’ equipment or any information stored in our customers’ systems or at their locations. A breach of network security and systems or other events that cause the loss or public disclosure of, or access by third parties to, our customers’ stored information could have serious negative consequences for our business, including possible fines, penalties and damages, reduced demand for our solutions, an unwillingness of our customers to use our solutions, harm to our reputation and brand, and time-consuming and expensive litigation, any of which could have an adverse effect on our financial results.

Certain governmental agencies, such as HHS and the Federal Trade Commission, have the authority to protect against the misuse of consumer information by targeting companies that collect, disseminate or maintain personal information in an unfair or deceptive manner. We are also subject to the laws of those foreign jurisdictions in which we sell the CyberKnife and TomoTherapy Systems, some of which currently have more protective privacy laws. If we fail to comply with applicable regulations in this area, our business and prospects could be harmed.

Healthcare reform legislation could adversely affect demand for our products, our revenue and our financial condition.

Healthcare costs have risen significantly over the past decade. There have been and continue to be proposals by legislators, regulators, and third-party payors to keep these costs down. For example, under the sequestration required by the Budget Control Act of 2011, as amended by the American Taxpayer Relief Act of 2012, Medicare payments for all items and services under Parts A and B incurred on or after April 1, 2013 have been reduced by up to 2%. In addition, certain proposals, if passed, may impose limitations on the coverage or amounts of reimbursement available for our products from governmental agencies or third-party payors. These limitations could have a negative impact on the demand for our products and services, and therefore on our financial position and results of operations and a material adverse effect on our financial position and results of operations.

In March 2010, the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 were signed into law. Together, the two measures made the most sweeping and fundamental changes to the U.S. health care system since the creation of Medicare and Medicaid. The Health Care Reform laws include a large number of health related provisions, some of which have already taken effect and others of which will take effect by 2014, including expanding Medicaid eligibility, requiring most individuals to have health insurance, establishing new regulations on health plans, establishing health insurance exchanges, requiring manufacturers to report payments or other transfers of value made to physicians and teaching hospitals, modifying certain payment systems to encourage more cost-effective care and a reduction of inefficiencies and waste and including new tools to address fraud and abuse. The laws include a decrease in the annual rate of inflation for Medicare payments to hospitals and the establishment of an independent payment advisory board to suggest methods of reducing the rate of growth in Medicare spending. There continue to be many programs and requirements for which the details have not yet been fully established or consequences not fully understood, and it is unclear what the full impact of the legislation will be. Effective in 2013, there is a 2.3% excise tax on U.S. sales of medical devices, including our products. U.S. net sales represented 46% of our worldwide consolidated net sales in 2012, and therefore, this tax burden may have a material, negative impact on our business, results of operations and cash flow.

In addition, various healthcare reform proposals have also emerged at the state level. We cannot predict the exact effect recently enacted laws or any future legislation or regulation will have on us. However, the implementation of new legislation and regulation may materially lower reimbursements for our products, materially reduce medical procedure volumes and significantly and adversely affect our business.

Our liquidity could be adversely impacted by adverse conditions in the financial markets.

At March 31, 2013, we had \$181.5 million in cash and cash equivalents. The available cash and cash equivalents are held in accounts managed by third-party financial institutions and consist of invested cash and cash in our operating accounts. The invested cash is invested in interest bearing funds managed by third-party financial institutions, consisting of money market funds and certificates of deposit. To date, we have experienced no loss or lack of access to our invested cash or cash equivalents; however, we can provide no assurances that access to our invested cash and cash equivalents will not be impacted by adverse conditions in the financial markets.

[Table of Contents](#)

At any point in time, we also have funds in our operating accounts that are with third-party financial institutions that exceed the Federal Deposit Insurance Corporation, or FDIC, insurance limits. While we monitor daily the cash balances in our operating accounts and adjust the cash balances as

appropriate, these cash balances could be impacted if the underlying financial institutions fail or become subject to other adverse conditions in the financial markets. To date, we have experienced no loss or lack of access to cash in our operating accounts.

Future issuances of shares of our common stock or substantial sales of our common stock by our stockholders, including sales pursuant to 10b5-1 plans, could depress our stock price regardless of our operating results.

Any issuance of equity securities could dilute the interests of our stockholders and could substantially decrease the trading price of our common stock. We may issue equity securities in the future for a number of reasons, including to finance our operations and business strategy (including in connection with acquisitions, strategic collaborations or other transactions), to adjust our ratio of debt to equity, to satisfy our obligations upon the exercise of outstanding warrants or options or for other reasons.

On August 1, 2011, we issued \$100 million aggregate principal amount of our 3.75% Convertible Senior Notes due 2016 (which we refer to as the 3.75% Convertible Notes) and in February 2013, we issued \$115 million aggregate principal amount of our 3.50% Convertible Senior Notes due 2018 (which we refer to as the 3.50% Convertible Notes, and together with the 3.75% Notes, we refer to them as the Convertible Notes). The price of our common stock could also be affected by possible sales of our common stock by investors who view the Convertible Notes as a more attractive means of equity participation in our company or by any hedging or arbitrage trading activity that involves our common stock. To the extent we issue common stock upon conversion of the Convertible Notes, that conversion would dilute the ownership interests of our stockholders.

Moreover, if our existing stockholders sell a large number of shares of our common stock or the public market perceives that existing stockholders might sell shares of common stock, including sales pursuant to 10b5-1 plans, the market price of our common stock could decline significantly. These sales might also make it more difficult for us to sell equity securities at a time and price that we deem appropriate.

Increased leverage as a result of our 3.50% Convertible Notes offering may harm our financial condition and operating results.

As of March 31, 2013, we had total consolidated long-term liabilities of approximately \$211.1 million, including the liability component of the 3.75% Convertible Notes in the amount of \$82.7 million and the 3.50% Convertible Notes in the amount of \$115.0 million.

Our level of indebtedness could have important consequences to stockholders and note holders, because:

- it could affect our ability to satisfy our obligations under the Convertible Notes;
- a substantial portion of our cash flows from operations will have to be dedicated to interest and principal payments and may not be available for operations, working capital, capital expenditures, expansion, acquisitions or general corporate or other purposes;
- it may impair our ability to obtain additional financing in the future;
- it may limit our flexibility in planning for, or reacting to, changes in our business and industry; and
- it may make us more vulnerable to downturns in our business, our industry or the economy in general.

The conditional conversion features of the 3.75% Convertible Notes, if triggered, may adversely affect our financial condition and operating results.

In the event the conditional conversion features of the 3.75% Convertible Notes are triggered, holders of the 3.75% Convertible Notes will be entitled to convert such notes at any time during specified periods at their option. If one or more holders elect to convert their 3.75% Convertible Notes, unless we elect to satisfy our conversion obligation by delivering solely shares of our common stock (other than paying solely cash in lieu of any fractional share), including if we have irrevocably elected full physical settlement upon conversion, we would be required to make cash payments to satisfy all or a portion of our conversion obligation based on the applicable conversion rate, which could adversely affect our liquidity. In addition, even if holders do not elect to convert their 3.75% Convertible Notes, if we have irrevocably elected net share settlement upon conversion we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the 3.75% Convertible Notes as a current rather than long-term liability, which could result in a material reduction of our net working capital.

The 3.50% Convertible Notes do not provide for such a conditional conversion feature.

[Table of Contents](#)

Provisions in the respective indentures for the Convertible Notes, our certificate of incorporation and our bylaws could discourage or prevent a takeover, even if an acquisition would be beneficial in the opinion of our stockholders.

Provisions of our certificate of incorporation and bylaws could make it more difficult for a third party to acquire us, even if doing so would be beneficial in the opinion of our stockholders. These provisions include:

- Authorizing the issuance of “blank check” preferred stock that could be issued by our board of directors to increase the number of outstanding shares and thwart a takeover attempt;
- Establishing a classified board of directors, which could discourage a takeover attempt;
- Prohibiting cumulative voting in the election of directors, which would limit the ability of less than a majority of stockholders to elect director candidates;
- Limiting the ability of stockholders to call special meetings of stockholders;
- Prohibiting stockholder action by written consent and requiring that all stockholder actions be taken at a meeting of our stockholders; and

- Establishing advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted upon by stockholders at stockholder meetings.

In addition, Section 203 of the Delaware General Corporation Law may discourage, delay or prevent a change of control of our company. Generally, Section 203 prohibits stockholders who, alone or together with their affiliates and associates, own more than 15% of the subject company from engaging in certain business combinations for a period of three years following the date that the stockholder became an interested stockholder of such subject company without approval of the board or 66²/₃% of the independent stockholders. The existence of these provisions could adversely affect the voting power of holders of common stock and limit the price that investors might be willing to pay in the future for shares of our common stock.

Furthermore, if a “fundamental change” (as such terms are defined in each the indentures of the Convertible Notes) occurs, holders of the Convertible Notes will have the right, at their option, to require us to repurchase all or a portion of their Convertible Notes. A “fundamental change” generally occurs when there is a change in control of Accuray (acquisition of 50% or more of our voting stock, liquidation or sale of Accuray not for stock) or trading of our stock is terminated. In the event of a “make-whole fundamental change” (as such term is defined in each of the indentures for the Convertible Notes), we may also be required to increase the conversion rate applicable to the Convertible Notes surrendered for conversion in connection with such make-whole fundamental change. A “make-whole fundamental change” is generally a sale of Accuray not for stock in another publicly traded company. In addition, each of the indentures for the Convertible Notes prohibits us from engaging in certain mergers or acquisitions unless, among other things, the surviving entity assumes our obligations under the Convertible Notes.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

(a) *Sales of Unregistered Securities*

None.

(b) *Use of Proceeds from Public Offering of Common Stock*

None.

(c) *Purchases of Equity Securities by the Issuer and Affiliated Purchasers*

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

None.

Item 6. Exhibits

[Table of Contents](#)

Exhibit Number	Description
4.1	Indenture by and between the Registrant and The Bank of New York Mellon Trust Company, N.A., dated as of February 13, 2013.
10.1	Renewal Executive Employment Agreement by and between the Registrant and Derek Bertocci, dated January 1, 2013.
10.2	Renewal Executive Employment Agreement by and between the Registrant and Theresa Dadone, dated January 1, 2013.
10.3	Renewal Executive Employment Agreement by and between the Registrant and Kelly Londy, dated January 1, 2013.
10.4	Renewal Executive Employment Agreement by and between the Registrant and Darren Milliken, dated January 1, 2013.
10.5	Renewal Executive Employment Agreement by and between the Registrant and Robert Ragusa, dated January 1, 2013.
31.1	Certification of Chief Executive Officer Pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended.
31.2	Certification of Chief Financial Officer Pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended.
32.1	Certification of Chief Executive Officer and Chief Financial Officer Pursuant to Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, and 18 U.S.C. 1350
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

** XBRL (eXtensible Business Reporting Language) information is furnished and not filed or a part of a registration statement or prospectus for purposes of sections 11 or 12 of the Securities Act of 1933, is deemed not filed for purposes of section 18 of the Securities Exchange Act of 1934, and otherwise is not subject to liability under these sections.

[Table of Contents](#)

SIGNATURES

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

ACCURAY INCORPORATED

By: /s/ Joshua H. Levine
Joshua H. Levine
President and Chief Executive Officer

By: /s/ Derek Bertocci
Derek Bertocci
Senior Vice President and Chief Financial Officer

Date: May 9, 2013

ACCURAY INCORPORATED

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.

as Trustee

INDENTURE

Dated as of February 13, 2013

3.50% CONVERTIBLE SENIOR NOTES DUE 2018

TABLE OF CONTENTS

	<u>Page</u>
I. DEFINITIONS AND INCORPORATION BY REFERENCE	1
1.01 Definitions	1
1.02 Other Definitions	7
1.03 Incorporation by Reference of Trust Indenture Act	8
1.04 Rules of Construction	8
II. THE SECURITIES	9
2.01 Form and Dating	9
2.02 Execution and Authentication	10
2.03 Registrar, Paying Agent and Conversion Agent	11
2.04 Paying Agent to Hold Money in Trust	11
2.05 Holder Lists	12
2.06 Transfer and Exchange	12
2.07 Replacement Securities	12
2.08 Outstanding Securities	13
2.09 Securities Held by the Company or an Affiliate	13
2.10 Temporary Securities	14
2.11 Cancellation	14
2.12 Defaulted Interest	14
2.13 CUSIP Numbers	15
2.14 Deposit of Moneys	15
2.15 Book-Entry Provisions for Global Securities	15
2.16 Special Transfer Provisions	16
2.17 Restrictive Legends	18
2.18 Ranking	18
III. NO REDEMPTION; REPURCHASE	19
3.01 No Redemption	19
3.02 Repurchase at Option of Holder Upon a Fundamental Change	19
IV. COVENANTS	24
4.01 Payment of Securities	24
4.02 Maintenance of Office or Agency	24
4.03 Rule 144A Information and Annual Reports	25
4.04 Compliance Certificate	26
4.05 Stay, Extension and Usury Laws	26
4.06 Corporate Existence	26
4.07 Notice of Default	26
4.08 Further Instruments and Acts	27

4.09 Additional Interest	27
V. SUCCESSORS	28
5.01 When Company May Merge, etc.	28
5.02 Successor Substituted	28
VI. DEFAULTS AND REMEDIES	29
6.01 Events of Default	29
6.02 Acceleration	31
6.03 Other Remedies	32
6.04 Waiver of Past Defaults	32
6.05 Control by Majority	33
6.06 Limitation on Suits	33
6.07 Rights of Holders to Receive Payment and to Convert Securities	34
6.08 Collection Suit by Trustee	34
6.09 Trustee May File Proofs of Claim	34
6.10 Priorities	34
6.11 Undertaking for Costs	35
VII. TRUSTEE	35
7.01 Duties of Trustee	35
7.02 Rights of Trustee	36
7.03 Individual Rights of Trustee	38
7.04 Trustee's Disclaimer	38
7.05 Notice of Defaults	38
7.06 Reports by Trustee to Holders	38
7.07 Compensation and Indemnity	39
7.08 Replacement of Trustee	39
7.09 Successor Trustee by Merger, etc.	40
7.10 Eligibility; Disqualification	40
7.11 Preferential Collection of Claims Against Company	41
VIII. DISCHARGE OF INDENTURE	41
8.01 Termination of the Obligations of the Company	41
8.02 Application of Trust Money	41
8.03 Repayment to Company	41
8.04 Reinstatement	42
IX. AMENDMENTS	42
9.01 Without Consent of Holders	42
9.02 With Consent of Holders	43
9.03 Revocation and Effect of Consents	45
9.04 Notation on or Exchange of Securities	45

9.05 Trustee Protected	45
9.06 Effect of Supplemental Indentures	45
X. CONVERSION	46
10.01 Conversion Privilege	46
10.02 Conversion Procedure and Payment Upon Conversion	46
10.03 Cash in lieu of Fractional Shares	48
10.04 Taxes on Conversion	48
10.05 Company to Provide Common Stock	48
10.06 Adjustment of Conversion Rate	48
10.07 No Adjustment	56
10.08 Other Adjustments	57
10.09 Adjustments for Tax Purposes	57
10.10 Notice of Adjustment	57
10.11 Notice of Certain Transactions	58
10.12 Effect of Reclassifications, Consolidations, Mergers, Binding Share Exchanges or Sales on Conversion Privilege	58
10.13 Conversion Agent and Trustee's Disclaimer	59
10.14 Rights Distributions Pursuant to Stockholders' Rights Plans	60

XI.	CONCERNING THE HOLDERS	63
	11.01 Action by Holders	63
	11.02 Proof of Execution by Holders	63
	11.03 Persons Deemed Absolute Owners	63
XII.	HOLDERS' MEETINGS	64
	12.01 Purpose of Meetings	64
	12.02 Call of Meetings by Trustee	65
	12.03 Call of Meetings by Company or Holders	65
	12.04 Qualifications for Voting	65
	12.05 Regulations	65
	12.06 Voting	66
	12.07 No Delay of Rights by Meeting	66
XIII.	MISCELLANEOUS	67
	13.01 Notices	67
	13.02 Certificate and Opinion as to Conditions Precedent	68
	13.03 Statements Required in Certificate or Opinion	68
	13.04 Communication by Holders with Other Holders	69
	13.05 Rules by Trustee and Agents	69
	13.06 Legal Holidays	69
	13.07 Duplicate Originals	69

	13.08 Governing Law	69
	13.09 No Adverse Interpretation of Other Agreements	70
	13.10 Successors	70
	13.11 Separability	70
	13.12 Table of Contents, Headings, etc.	70
	13.13 Calculations in Respect of the Securities; Adjustment of Prices	70
	13.14 No Personal Liability of Directors, Officers, Employees or Stockholders	71
	13.15 Force Majeure	71
Exhibit A	- Form of Global Security	
Exhibit B-1A	- Form of Private Placement Legend (Securities)	
Exhibit B-1B	- Form of Private Placement Legend (Common Stock)	
Exhibit B-2	- Form of Legend for Global Security	
Exhibit C	- Form of Notice of Transfer Pursuant to Registration Statement	

INDENTURE, dated as of February 13, 2013, between Accuray Incorporated, a Delaware corporation (the “**Company**”), and The Bank of New York Mellon Trust Company, N.A., a national banking association organized under the laws of the United States, as trustee (the “**Trustee**”).

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders of the Company’s 3.50% Convertible Senior Notes due 2018 (the “**Securities**”).

I. DEFINITIONS AND INCORPORATION BY REFERENCE

1.01 DEFINITIONS.

“**Additional Interest**” means all amounts, if any, payable pursuant to **Sections 4.09(A), 4.09(B) and 6.02(B)**, as applicable.

“**Affiliate**” means, with respect to a specified Person, any Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For this purpose, “control” shall mean the power to direct the management and policies of a Person through the ownership of securities, by contract or otherwise.

“**Asset Sale Make-Whole Fundamental Change**” means a sale, transfer, lease, conveyance or other disposition of all or substantially all of the consolidated property or assets of the Company to any “person” or “group” (as those terms are used in Sections 13(d) and 14(d) of the Exchange Act), including any group acting for the purpose of acquiring, holding, voting or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act (but excluding any of the Company’s Subsidiaries), other than a sale, transfer, lease, conveyance or other disposition that constitutes a Listed Stock Business Combination.

“**Board of Directors**” means the board of directors of the Company or any committee thereof duly authorized to act for it hereunder.

“**Board Resolution**” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

“**Capital Stock**” of any Person means any and all shares, interests, participations or other equivalents (however designated) of capital stock of such Person and all warrants or options to acquire such capital stock.

“**Change in Control**” shall be deemed to have occurred at such time as:

(a) any “person” or “group” (as those terms are used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the “beneficial owner” (as that term is used in Rule 13d-3 under the Exchange Act), directly or indirectly, of fifty percent (50%) or more of the Company’s Voting Stock;

1

(b) (i) the Company consolidates with, or merges with or into, another Person or any Person consolidates with, or merges with or into, the Company or (ii) there occurs a sale, transfer, lease, conveyance or other disposition of all or substantially all of the consolidated property or assets of the Company to any “person” or “group” (as those terms are used in Sections 13(d) and 14(d) of the Exchange Act), including any group acting for the purpose of acquiring, holding, voting or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act (but excluding any of the Company’s Subsidiaries), unless:

(1) in the case of a transaction described in **subclause (i) or subclause (ii) in clause (b)** above, both of the following conditions are satisfied: (x) at least ninety percent (90%) of the consideration (other than cash payments for fractional shares or pursuant to statutory appraisal rights) in such consolidation, merger, sale, transfer, lease, conveyance or other disposition consists of common stock and any associated rights listed and traded on The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors) (or which will be so listed and traded when issued or exchanged in connection with such consolidation, merger, sale, transfer, lease, conveyance or other disposition); and (y) as a result of such consolidation, merger, sale, transfer, lease, conveyance or other disposition, the Securities become convertible into solely such consideration (such a consolidation, merger, sale, transfer, lease, conveyance or other disposition that satisfies the conditions set forth in this **clause (b)(1)**, a “**Listed Stock Business Combination**”); or

(2) in the case of a transaction described in **subclause (i) in clause (b)** above, the Persons that “beneficially owned” (as that term is used in Rule 13d-3 under the Exchange Act), directly or indirectly, the shares of the Company’s Voting Stock immediately prior to such consolidation or merger, “beneficially own,” directly or indirectly, immediately after such consolidation or merger, shares of the surviving or continuing corporation’s Voting Stock representing at least a majority of the total outstanding voting power of all outstanding classes of Voting Stock of the surviving or continuing corporation in substantially the same proportion as such ownership immediately prior to such consolidation or merger; or

(c) the Company is liquidated or dissolved or holders of the Company’s Capital Stock approve any plan or proposal for the liquidation or dissolution of the Company.

“**close of business**” means 5:00 p.m., New York City time.

2

“**Closing Sale Price**” on any date means the per share price of the Common Stock on such date, determined (i) on the basis of the closing per share sale price (or if no closing per share sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on such date on the principal U.S. national or regional securities exchange on which shares of Common Stock are listed; or (ii) if shares of Common Stock are not listed on a U.S. national or regional securities exchange, as reported by OTC Markets Group Inc. or a similar organization; *provided, however*, that in the absence of any such report or quotation, the “**Closing Sale Price**” shall be the price determined by a nationally recognized independent investment banking firm retained by the Company (which may be one of the Initial Purchasers or an affiliate thereof) for such purpose as most accurately reflecting the per share price that a fully informed buyer, acting on his own accord, would pay to a fully informed seller, acting on his own accord, in an arms-length transaction, for a share of Common Stock.

“**Common Stock**” means the common stock, par value \$0.001 per share, of the Company at the date of this Indenture, subject to **Section 10.12**.

“**Common Stock Change Make-Whole Fundamental Change**” means any transaction or series of related transactions (other than a consolidation or merger that constitutes a Listed Stock Business Combination), in connection with which (whether by means of an exchange offer, liquidation, tender offer, consolidation, merger, combination, reclassification, recapitalization, asset sale, lease of assets or otherwise) the Common Stock is exchanged for, converted into, acquired for or constitutes solely the right to receive other securities, other property, assets or cash.

“**Company**” means the party named as such in the recitals above until a successor replaces it pursuant to the applicable provision hereof and thereafter means the successor. The foregoing sentence shall likewise apply to any such successor or subsequent successor.

“**Company Order**” means a written request or order signed on behalf of the Company by its Chairman of the Board, its Chief Executive Officer, its President, its Chief Operating Officer, its Chief Financial Officer or any Vice President and its Treasurer or an Assistant Treasurer or its Secretary or an Assistant Secretary, and delivered to the Trustee.

“**Conversion Date**” with respect to a Security means the date on which a Holder satisfies all the requirements for such conversion specified in the first paragraph of **Section 10.02(A)**.

“**Conversion Notice**” means a “Conversion Notice” in the form attached as Attachment 2 to the form of Security attached hereto as Exhibit A.

“**Conversion Price**” means, as of any date of determination, the dollar amount derived by dividing one thousand dollars (\$1,000) by the Conversion Rate in effect on such date.

“**Conversion Rate**” shall initially be 187.6877 shares of Common Stock per \$1,000 principal amount of Securities, subject to adjustment as provided in **Article X**.

3

“**Corporate Trust Office of the Trustee**” means the principal office of the Trustee at which at any time its corporate trust business shall be administered, which office as of the date hereof is located at 400 South Hope Street, Suite 400, Los Angeles, CA 90071, Attention: Corporate Unit, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Company).

“**Default**” means any event which is, or after notice or passage of time or both would be, an Event of Default.

“**Depository**” means The Depository Trust Company, its nominees and successors.

“**Effective Date**” means the first date on which the shares of the Common Stock trade on the applicable exchange or in the applicable market, respectively, reflecting the transaction.

“**Ex-Date**” means the first date on which the Common Stock trades on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question from the Company or, if applicable, from the seller of the Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“**Fundamental Change**” shall be deemed to occur upon the occurrence of either a Change in Control or a Termination of Trading.

“**Holder**” means a Person in whose name a Security is registered on the Registrar’s books.

“**Indenture**” means this Indenture as amended or supplemented from time to time.

“**Initial Purchasers**” means J.P. Morgan Securities LLC and Goldman, Sachs & Co.

“**Interest Payment Date**” means February 1 and August 1 of each year, beginning on August 1, 2013.

“**Issue Date**” means February 13, 2013.

“**Make-Whole Fundamental Change**” means an Asset Sale Make-Whole Fundamental Change or a Common Stock Change Make-Whole Fundamental Change.

“**Market Disruption Event**” means (i) a failure by the primary United States national or regional securities exchange or market on which shares of Common Stock or the relevant securities are listed or admitted to trading to open for trading during its regular trading session or (ii) the occurrence or existence prior to 1:00 p.m., New York City time, on any Scheduled

4

Trading Day for shares of Common Stock or the relevant securities for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in shares of Common Stock (or the relevant securities) or in any options contracts or future contracts relating to shares of Common Stock (or the relevant securities).

“**Maturity Date**” means February 1, 2018.

“**Offering Memorandum**” means the preliminary offering memorandum of the Company relating to the offering and sale of the Securities, dated February 6, 2013, relating to the Securities.

“**Officer**” means the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, any Executive Vice President, and Senior Vice President, the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Company.

“**Officer’s Certificate**” means a certificate signed by one Officer of the Company.

“**Opinion of Counsel**” means a written opinion from legal counsel who may be an employee of or counsel for the Company, or other counsel reasonably acceptable to the Trustee.

“**open of business**” means 9:00 a.m., New York City time.

“**Option**” means the Initial Purchasers’ option to acquire up to \$15,000,000 aggregate principal amount of additional Securities (“**Option Securities**”) as provided for in the Purchase Agreement.

“**Person**” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or other agency or political subdivision thereof.

“**Purchase Agreement**” means the Purchase Agreement dated February 7, 2013 between the Company and the Initial Purchasers.

“**Purchase Notice**” means a “Purchase Notice” in the form attached as Attachment 3 to the form of Security attached hereto as Exhibit A.

“**record date**” means, unless the context requires otherwise, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock (or other applicable security) have the right to receive any cash, securities or other property or in which Common Stock (or such other security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of Common Stock (or such other security) entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

5

“**Record Date**” for interest payable in respect of any Security on any Interest Payment Date means the January 15 or July 15 (whether or not a Business Day), as the case may be, immediately preceding such Interest Payment Date.

“**Responsible Officer**” means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such Person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“**Restricted Security**” means a Security that constitutes a “restricted security” within the meaning of Rule 144(a)(3) under the Securities Act; *provided, however*, that the Trustee shall be entitled to request, and conclusively rely on, an Opinion of Counsel with respect to whether any Security constitutes a Restricted Security.

“**Rule 144A**” means Rule 144A under the Securities Act.

“**Scheduled Trading Day**” means, with respect to shares of Common Stock or any other security, a day that is scheduled to be a Trading Day on the primary United States national securities exchange or market on which shares of Common Stock or the relevant securities are listed or admitted for trading. If shares of Common Stock or the relevant securities are not so listed or admitted for trading, “**Scheduled Trading Day**” means any Business Day.

“**SEC**” means the Securities and Exchange Commission.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

“**Securities Agent**” means any Registrar, Paying Agent, Conversion Agent or co-registrar or co-agent.

“**Significant Subsidiary**” with respect to any Person means any “subsidiary” (as defined in Rule 1-02(x) of Regulation S-X under the Exchange Act) of such Person that constitutes a “significant subsidiary” within the meaning of Rule 1-02(w) of Regulation S-X under the Exchange Act.

“**Subsidiary**” means (i) a corporation a majority of whose Capital Stock with voting power, under ordinary circumstances, to elect directors is at the time, directly or indirectly, owned by the Company, by one or more subsidiaries of the Company or by the Company and one or more of its subsidiaries or (ii) any other Person (other than a corporation) in which the Company, one or more of its subsidiaries, or the Company and one or more of its subsidiaries, directly or indirectly, at the date of determination thereof, own at least a majority ownership interest.

6

“**Termination of Trading**” shall be deemed to occur if shares of Common Stock (or other common stock into which the Securities are then convertible) are not listed for trading on The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors).

“**TIA**” means the Trust Indenture Act of 1939 (15 U.S. Code §§ 77aaa-77bbb) as amended and in effect from time to time.

“**Trading Day**” means, with respect to shares of Common Stock or any other security, a day during which (i) trading in shares of Common Stock or such other security generally occurs, and (ii) a Market Disruption Event has not occurred; *provided* that if shares of Common Stock or such other security is not listed for trading or quotation on or by any exchange, bureau or other organization, “**Trading Day**” shall mean any Business Day.

“**Trustee**” means the party named as such in this Indenture until a successor replaces it in accordance with the provisions hereof and thereafter means the successor. The foregoing sentence shall likewise apply to any such successor or subsequent trustee.

“**Voting Stock**” of any Person means the total outstanding voting power of all classes of Capital Stock of such Person entitled to vote generally in the election of directors of such Person.

1.02 OTHER DEFINITIONS.

Term	Defined in Section
“Additional Interest Notice”	4.09(D)
“Additional Securities”	2.02

“Applicable Price”	10.15(D)
“Bankruptcy Law”	6.01
“Business Day”	13.06
“Clause A Distribution”	10.06(c)
“Clause B Distribution”	10.06(c)
“Clause C Distribution”	10.06(c)
“Common Stock Private Placement Legend”	2.17
“Conversion Agent”	2.03
“Custodian”	6.01
“Distributed Property”	10.06(c)
“Event of Default”	6.01
“Fundamental Change Notice”	3.02(B)
“Fundamental Change Repurchase Date”	3.02(A)
“Fundamental Change Repurchase Price”	3.02(A)
“Fundamental Change Repurchase Right”	3.02(A)
“Global Security”	2.01
“Legal Holiday”	13.06
“Listed Stock Business Combination”	1.01
“Make-Whole Applicable Increase”	10.15(B)

“Make-Whole Conversion Period”	10.15(A)
“Maximum Conversion Rate”	10.15(B)
“Merger Event”	10.12
“Option Securities”	1.01
“Participants”	2.15(A)
“Paying Agent”	2.03
“Physical Securities”	2.01
“Reference Property”	10.12
“Registrar”	2.03
“Repurchase Upon Fundamental Change”	3.02(A)
“Resale Restriction Termination Date”	2.17
“Securities”	Preamble
“Security Private Placement Legend”	2.17
“Spin-Off”	10.06(c)
“Trigger Event”	10.06(c)

1.03 INCORPORATION BY REFERENCE OF TRUST INDENTURE ACT

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture.

The following TIA terms used in this Indenture have the following meanings:

- “**Commission**” means the SEC;
- “**indenture securities**” means the Securities;
- “**indenture security holder**” means a Holder;
- “**indenture to be qualified**” means this Indenture;
- “**indenture trustee**” or “**institutional trustee**” means the Trustee; and
- “**obligor**” on the indenture securities means the Company or any successor.

All other terms used in this Indenture that are defined by the TIA, defined by the TIA by reference to another statute or defined by SEC rule under the TIA and not otherwise defined herein have the meanings so assigned to them.

1.04 RULES OF CONSTRUCTION.

Unless the context otherwise requires:

- (i) a term has the meaning assigned to it;
- (ii) an accounting term not otherwise defined has the meaning assigned to it in accordance with U.S. generally accepted accounting principles in effect from time to time;
- (iii) “or” is not exclusive;

- (iv) “including” means “including without limitation”;
- (v) words in the singular include the plural and in the plural include the singular;
- (vi) provisions apply to successive events and transactions;

(vii) the term “**interest**” means any interest payable under the terms of the Securities, including Additional Interest, if any, payable pursuant to **Sections 4.09(A), 4.09(B)** and **6.02(B)**, unless the context otherwise requires;

(viii) the term “**principal**” means the principal of any Security payable under the terms of such Securities, unless the context otherwise requires;

(ix) “herein,” “hereof” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision of this Indenture; and

(x) references to currency shall mean the lawful currency of the United States of America, unless the context requires otherwise.

II. THE SECURITIES

2.01 FORM AND DATING.

The Securities and the Trustee’s certificate of authentication shall be substantially in the form set forth in **Exhibit A**, which is incorporated in and forms a part of this Indenture. The Securities may have notations, legends or endorsements required by law, stock exchange rule or usage; *provided* that such notations, legends or endorsements are in a form reasonably acceptable to the Company. Each Security shall be dated the date of its authentication.

Securities offered and sold in reliance on Rule 144A shall be issued initially in the form of one or more Global Securities, substantially in the form set forth in **Exhibit A** (each, a “**Global Security**”), deposited with the Trustee, as custodian for the Depository, registered in the name of the Depository or a nominee thereof, duly executed by the Company and authenticated by the Trustee as hereinafter provided and bearing the legends set forth in **Exhibits B-1A** and **B-2**. The aggregate principal amount of each Global Security may from time to time be increased or decreased by adjustments made on the records of the Trustee, upon the occurrence of which the Trustee shall make a corresponding adjustment on the “Schedule of Exchanges of Interests in the Global Security” attached thereto, as hereinafter provided.

Securities issued in exchange for interests in a Global Security pursuant to **Section 2.15** may be issued in the form of permanent certificated Securities in registered form in substantially the form set forth in **Exhibit A** (the “**Physical Securities**”) and, if applicable, bearing any legends required by **Section 2.17**.

9

2.02 EXECUTION AND AUTHENTICATION.

One duly authorized Officer shall sign the Securities for the Company by manual or facsimile signature.

A Security’s validity shall not be affected by the failure of an Officer whose signature is on such Security to hold, at the time the Security is authenticated, the same office at the Company.

A Security shall not be valid until duly authenticated by the manual signature of the Trustee. The signature shall be conclusive evidence that the Security has been authenticated under this Indenture.

Upon a written order of the Company signed by one Officer of the Company, the Trustee shall authenticate Securities for original issue in the aggregate principal amount of \$100,000,000 and such additional principal amount, if any, as shall be determined pursuant to the next sentence of this **Section 2.02**. Upon receipt by the Trustee of an Officer’s Certificate stating that the Initial Purchasers have elected to purchase from the Company a specified principal amount of Option Securities, not to exceed \$15,000,000, pursuant to the Option, the Trustee shall authenticate and deliver such specified principal amount of Option Securities to or upon the written order of the Company signed as provided in the immediately preceding sentence. Such Officer’s Certificate must be received by the Trustee not later than the proposed date for delivering such Option Securities. The aggregate principal amount of Securities outstanding at any time may not exceed \$115,000,000, subject to the immediately succeeding paragraph and except for Securities authenticated and delivered in lieu of mutilated, lost, destroyed or stolen Securities pursuant to **Section 2.07**.

The Company may, without the consent of Holders of the Securities, increase the aggregate principal amount of Securities by issuing additional Securities (“**Additional Securities**”) in an unlimited aggregate principal amount in the future on the same terms and conditions, except for any difference in the issue price and interest accrued prior to the issue date of the Additional Securities, and with the same CUSIP number as the Securities issued hereunder; *provided* that if such Additional Securities are not fungible with the Securities issued hereunder for U.S. federal income tax purposes, such Additional Securities will have a separate CUSIP number. The Securities initially issued hereunder and any such Additional Securities shall rank equally and ratably and shall be treated as a single series of debt securities for all purposes under this Indenture.

Upon (1) a written order of the Company signed by two (2) Officers or by an Officer and an Assistant Treasurer of the Company, (2) Officer’s Certificate and (3) Opinion of Counsel, the Trustee shall authenticate Securities not bearing the Security Private Placement Legend to be issued to the transferees when sold pursuant to an effective registration statement under the Securities Act as set forth in **Section 2.16(B)**.

The Trustee shall act as the initial authenticating agent. Thereafter, the Trustee may appoint an authenticating agent acceptable to the Company to authenticate Securities. An

10

authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such authenticating agent. An authenticating agent so appointed has the same rights as a Securities Agent to deal with the Company and its Affiliates.

The Securities shall be issuable only in registered form without interest coupons and only in denominations of \$1,000 principal amount and any integral multiple thereof.

2.03 REGISTRAR, PAYING AGENT AND CONVERSION AGENT.

The Company shall maintain, or shall cause to be maintained, (i) an office or agency located in the United States, where Securities may be presented for registration of transfer or for exchange (“**Registrar**”), (ii) an office or agency located in the United States, where Securities may be presented for payment (“**Paying Agent**”) and (iii) an office or agency located in the United States, where Securities may be presented for conversion (“**Conversion Agent**”). The Registrar shall keep a register of the Securities and of their transfer and exchange. The Company may appoint or change one or more co-registrars, one or more additional paying agents and one or more additional conversion agents without notice and may act in any such capacity on its own behalf. The Company may vary or terminate the appointment of the Paying Agent, Registrar, Conversion Agent or Custodian, and may approve any change in the office through which any Registrar or any Paying Agent or Conversion Agent acts, so long as such office is located in the United States. The term “**Registrar**” includes any co-registrar; the term “**Paying Agent**” includes any additional paying agent; and the term “**Conversion Agent**” includes any additional conversion agent.

The Company shall enter into an appropriate agency agreement with any Securities Agent not a party to this Indenture. Such agency agreement shall implement the provisions of this Indenture that relate to such Securities Agent. The Company shall notify the Trustee of the name and address of any Securities Agent not a party to this Indenture. If the Company fails to maintain a Registrar, Paying Agent or Conversion Agent, the Trustee shall act as such.

The Company initially appoints the Trustee as Paying Agent, Registrar, Conversion Agent and Custodian.

2.04 PAYING AGENT TO HOLD MONEY IN TRUST.

Each Paying Agent shall hold in trust for the benefit of the Holders or the Trustee all moneys held by the Paying Agent for the payment of the Securities, and shall notify the Trustee of any Default by the Company in making any such payment. While any such Default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee and account for any funds so paid by it. Upon payment over to the Trustee, the Paying Agent shall have no further liability for such money. If the Company acts as Paying Agent, it shall segregate and hold as a separate trust fund all money held by it as Paying Agent.

11

2.05 HOLDER LISTS.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. If the Trustee is not the Registrar, the Company shall furnish, or shall cause to be furnished, to the Trustee before each Interest Payment Date and at such other times as the Trustee may request in writing a list, in such form and as of such date as the Trustee may reasonably require, of the names and addresses of Holders appearing in the security register of the Registrar.

2.06 TRANSFER AND EXCHANGE.

Subject to **Sections 2.15 and 2.16**, where Securities are presented to the Registrar with a request to register their transfer or to exchange them for an equal principal amount of Securities of other authorized denominations, the Registrar shall register the transfer or make the exchange if its requirements for such transaction are met. To permit registrations of transfer and exchanges, the Trustee shall authenticate Securities at the Registrar’s request or upon the Trustee’s receipt of a Company Order therefor. The Company, the Registrar or the Trustee, as the case may be, shall not be required to register the transfer of or exchange any Security for which the Holder has delivered, and not validly withdrawn, a Purchase Notice in accordance with this Indenture, except (i) if the Company defaults in the payment of the Fundamental Change Repurchase Price or (ii) with respect to the portion of Securities not being repurchased.

No service charge shall be made for any transfer, exchange or conversion of Securities, but the Company may require payment of a sum sufficient to cover any transfer tax or other similar governmental charge that may be imposed in connection with any transfer, exchange or conversion of Securities, other than exchanges pursuant to **Sections 2.07, 2.10, 3.02, 9.04 or 10.02**, not involving any transfer.

2.07 REPLACEMENT SECURITIES.

If the Holder of a Security claims that the Security has been mutilated, lost, destroyed or stolen, the Company shall issue and the Trustee shall authenticate, at the Holder’s expense, a replacement Security upon surrender to the Trustee of the mutilated Security, or upon delivery to the Trustee of evidence of the mutilation, loss, destruction or theft of the Security satisfactory to the Trustee and the Company. In the case of a mutilated, lost, destroyed or stolen Security, if required by the Trustee or the Company, indemnity (including in the form of a bond) must be provided by the Holder that is reasonably satisfactory to the Trustee and the Company to indemnify and hold harmless the Company, the Trustee or any Securities Agent from any loss that any of them may suffer if such Security is replaced.

In case any such mutilated, lost, destroyed or stolen Security has become due and payable, the Company in its discretion may, instead of issuing a new Security, pay the amounts due in respect of such Security as provided hereunder.

Every replacement Security is an additional obligation of the Company only as provided in **Section 2.08**.

12

2.08 OUTSTANDING SECURITIES.

Securities outstanding at any time are all the Securities authenticated by the Trustee except for those converted, those cancelled by it, those delivered to it for cancellation and those described in this **Section 2.08** as not outstanding. Except to the extent provided in **Section 2.09**, a Security does not cease to be outstanding because the Company or one of its Subsidiaries or Affiliates holds the Security.

If a Security is replaced pursuant to **Section 2.07**, it ceases to be outstanding unless the Trustee receives proof satisfactory to it, or a court holds, that the replaced Security is held by a protected purchaser.

If the Paying Agent (in the case of a Paying Agent other than the Company) holds on a Fundamental Change Repurchase Date or Maturity Date money sufficient to pay the aggregate Fundamental Change Repurchase Price or principal amount (plus accrued and unpaid interest, if any) as the case may be, with respect to all Securities to be repurchased or paid on such Fundamental Change Repurchase Date or Maturity Date, as the case may be, in each case, payable as herein provided on such Fundamental Change Repurchase Date or Maturity Date, then (unless there shall be a Default in the payment of such aggregate Fundamental Change Repurchase Price or principal amount, or of such accrued and unpaid interest), except as otherwise provided herein, then on and after such date such Securities shall be deemed to be no longer outstanding, interest on such Securities shall cease to accrue, and such Securities shall be deemed to be paid whether or not such Securities are delivered to the Paying Agent. Thereafter, all rights of the Holders of such Securities shall terminate with respect to such Securities, other than the right to receive the Fundamental Change Repurchase Price or principal amount, as the case may be, plus, if applicable, such accrued and unpaid interest, in accordance with this Indenture.

If a Security is converted in accordance with **Article X** then, from and after the time of such conversion on the Conversion Date, such Security shall cease to be outstanding, and interest, if any, shall cease to accrue on such Security unless there shall be a Default in the payment or delivery of the consideration payable and/or deliverable hereunder upon such conversion (except that any such Security will remain outstanding for the purpose of receiving any interest or other amounts due following such conversion as set forth in this Indenture).

2.09 SECURITIES HELD BY THE COMPANY OR AN AFFILIATE.

In determining whether the Holders of the required aggregate principal amount of Securities have concurred in any direction, waiver or consent, Securities owned by the Company or any of its Subsidiaries or Affiliates shall be considered as though not outstanding, except that, for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities that a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be considered to be outstanding for purposes of this **Section 2.09** if the pledgee establishes, to the satisfaction of the Trustee, the pledgee's right so to concur with respect to such Securities and that the pledgee is not, and is not acting at the direction or on behalf of, the

Company, any other obligor on the Securities, an Affiliate of the Company or an Affiliate of any such other obligor. In case of a dispute as to whether the pledgee has established the foregoing, any decision by the Trustee taken upon the advice of counsel shall provide full protection to the Trustee. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officer's Certificate listing and identifying all Securities, if any, known by the Company to be owned or held by or for the account of any of the above described Persons; and, subject to **Section 7.01** and **Section 7.02**, the Trustee shall be entitled to accept such Officer's Certificate as conclusive evidence of the facts therein set forth and of the fact that all Securities not listed therein are outstanding for the purpose of any such determination.

2.10 TEMPORARY SECURITIES.

Until definitive Securities are ready for delivery, the Company may prepare and the Trustee shall, upon receipt of a Company Order therefor, authenticate temporary Securities. Temporary Securities shall be substantially in the form of definitive Securities but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and the Trustee, upon receipt of a Company Order therefor, shall authenticate definitive Securities in exchange for temporary Securities. Until so exchanged, each temporary Security shall in all respects be entitled to the same benefits under this Indenture as definitive Securities, and such temporary Security shall be exchangeable for definitive Securities in accordance with the terms of this Indenture.

2.11 CANCELLATION.

The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar, Paying Agent and Conversion Agent (if other than the Trustee) shall forward to the Trustee any Securities surrendered to them by Holders for transfer, exchange, payment or conversion. Such Securities surrendered to the Trustee for cancellation may not be reissued or resold, and the Trustee shall promptly cancel all Securities surrendered for transfer, exchange, payment, conversion or cancellation in accordance with its customary procedures. The Company may not issue new Securities to replace Securities that it has paid or delivered to the Trustee for cancellation or that any Holder has converted pursuant to **Article X**. All cancelled Securities held by the Trustee shall be disposed of in accordance with its customary procedure for the disposal of cancelled securities, and certification of such disposal shall be delivered by the Trustee to the Company, upon the Company's written request, unless the Company shall, by a Company Order, direct that cancelled Securities be returned to it.

2.12 DEFAULTED INTEREST.

If and to the extent the Company defaults in a payment of interest on the Securities, the Company shall pay in cash the defaulted interest in any lawful manner plus, to the extent not prohibited by applicable statute or case law, interest on such defaulted interest at the rate provided in the Securities. The Company may pay the defaulted interest (plus interest on such defaulted interest) to the Persons who are Holders on a subsequent special record date. The Company shall fix such special record date and payment date. At least fifteen (15) calendar days before the special record date, the Company shall mail to Holders and to the Trustee, in the form

of an Officer's Certificate, a notice that states the special record date, payment date and amount of interest to be paid. Upon the due payment in full, interest shall no longer accrue on such defaulted interest pursuant to this **Section 2.12**.

2.13 CUSIP NUMBERS.

The Company in issuing the Securities may use one or more “CUSIP” numbers, and, if so, the Trustee shall use the CUSIP numbers in notices as a convenience to Holders; *provided, however*, that no representation is hereby deemed to be made by the Trustee as to the correctness or accuracy of the CUSIP numbers printed on the notice or on the Securities; and *provided further* that reliance may be placed only on the other identification numbers printed on the Securities, and the effectiveness of any such notice shall not be affected by any defect in, or omission of, such CUSIP numbers. The Company shall promptly notify the Trustee of any change in the CUSIP numbers.

2.14 DEPOSIT OF MONEYS.

Prior to 11:00 A.M., New York City time, on each Interest Payment Date, the Maturity Date or any Fundamental Change Repurchase Date, the Company shall deposit with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust in accordance with **Section 2.04**) money, in funds immediately available on such date, sufficient to make cash payments, if any, due on such Interest Payment Date, the Maturity Date or such Fundamental Change Repurchase Date, as the case may be, in a timely manner which permits the Paying Agent to remit payment to the Holders on such Interest Payment Date, the Maturity Date or such Fundamental Change Repurchase Date, as the case may be.

If any Interest Payment Date, the Maturity Date or any Fundamental Change Repurchase Date falls on a date that is not a Business Day, the payment due on such Interest Payment Date, the Maturity Date or such Fundamental Change Repurchase Date, as the case may be, shall be postponed until the next succeeding Business Day, and no interest or other amount shall accrue as a result of such postponement.

2.15 BOOK-ENTRY PROVISIONS FOR GLOBAL SECURITIES.

(A) The Global Securities initially shall (i) be registered in the name of the Depository or the nominee of the Depository, (ii) be delivered to the Trustee as custodian for the Depository and (iii) bear legends as set forth in **Section 2.17**.

Members of, or participants in, the Depository (“**Participants**”) shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depository, or the Trustee as its custodian, or under the Global Security, and the Depository may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of the Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the

15

Depository or impair, as between the Depository and Participants, the operation of customary practices governing the exercise of the rights of a Holder of any Security.

(B) Transfers of Global Securities shall be limited to transfers in whole, but not in part, to the Depository, its successors or their respective nominees. In addition, one or more Physical Securities shall be transferred to beneficial owners, as identified by the Depository, in exchange for their beneficial interests in Global Securities only if (i) the Depository notifies the Company that the Depository is unwilling or unable to continue as depository for any Global Security, or the Depository ceases to be a “clearing agency” registered under Section 17A of the Exchange Act, and, in either case, a successor Depository is not appointed by the Company within ninety (90) days of such notice or cessation or (ii) an Event of Default has occurred and is continuing and the Registrar has received a written request from the beneficial owner of the relevant Securities to issue Physical Securities.

(C) In connection with the transfer of a Global Security in its entirety to beneficial owners pursuant to **Section 2.15(B)**, such Global Security shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and the Trustee shall upon written instructions from the Company authenticate and deliver, to each beneficial owner identified by the Depository in exchange for its beneficial interest in such Global Security, an equal aggregate principal amount of Physical Securities of authorized denominations.

(D) Any Physical Security delivered in exchange for an interest in a Global Security that bears the Security Private Placement Legend pursuant to **Section 2.15(B)** shall, except as otherwise provided by **Section 2.16**, bear the Security Private Placement Legend.

(E) The Holder of any Global Security may grant proxies and otherwise authorize any Person, including Participants and Persons that may hold interests through Participants, to take any action which a Holder is entitled to take under this Indenture or the Securities.

(F) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on the transfer of any interest in any Securities imposed under this Indenture or under applicable law (including any transfers between or among Participants or beneficial owners of interests in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(G) None of the Trustee, any Securities Agent or any Initial Purchaser shall have any responsibility for any actions taken or not taken by the Depository.

2.16 SPECIAL TRANSFER PROVISIONS.

(A) Notwithstanding any other provisions of this Indenture, but except as provided in **Section 2.15(B)**, a Global Security may not be transferred except as a whole by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another

16

nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository.

(B) Upon the transfer, exchange or replacement of Securities not bearing the Security Private Placement Legend, the Registrar or co-registrar shall deliver Securities that do not bear the Security Private Placement Legend. Upon the transfer, exchange or replacement of Securities bearing the Security

Private Placement Legend, the Registrar or co-registrar shall deliver only Securities that bear the Security Private Placement Legend unless (i) the requested transfer is after the Resale Restriction Termination Date, (ii) there is delivered to the Trustee and the Company an opinion of counsel reasonably satisfactory to the Company and addressed to the Company to the effect that neither such legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the Securities Act or (iii) such Security has been sold pursuant to an effective registration statement under the Securities Act and the Holder selling such Securities has delivered to the Registrar or co-registrar a notice in the form of **Exhibit C** hereto. Upon any sale or transfer of a beneficial interest in the Securities in connection with which the Security Private Placement Legend will be removed in accordance with this Indenture, the Trustee shall increase the principal amount of the Global Security that does not constitute a Restricted Security by the principal amount of such sale or transfer and likewise reduce the principal amount of the Global Security that does constitute a Restricted Security.

(C) By its acceptance of any Security or share of Common Stock bearing the Security Private Placement Legend or the Common Stock Private Placement Legend, as the case may be, each holder thereof acknowledges the restrictions on transfer of such security set forth in this Indenture and in the Security Private Placement Legend or Common Stock Private Placement Legend, as applicable, and agrees that it shall transfer such security only as provided in this Indenture and as permitted by applicable law.

The Registrar shall retain copies of all letters, notices and other written communications received pursuant to **Section 2.15** or this **Section 2.16**. The Company shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable written notice to the Registrar.

(D) Any Securities or shares of Common Stock issued upon the conversion of Securities that are purchased or owned by the Company or any Affiliate thereof may not be resold by the Company or such Affiliate unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction that results in such Securities or shares of Common Stock, as the case may be, no longer being Restricted Securities.

(E) The Company may, to the extent permitted by law, repurchase the Securities in the open market or by tender offer at any price or by private agreement without giving prior notice to Holders. Securities surrendered to the Trustee for cancellation may not be reissued or resold and shall be promptly cancelled pursuant to **Section 2.11**.

17

2.17 RESTRICTIVE LEGENDS.

(A) Each Global Security and Physical Security that constitutes a Restricted Security shall bear the legend (the “**Security Private Placement Legend**”) as set forth in **Exhibit B-1A** on the face thereof until the later of (i) the date that is one year after the last date of original issuance of such Securities, or such shorter period of time as permitted by Rule 144 under the Securities Act or any successor provision thereto, and (ii) such later date, if any, as may be required by applicable law (such date, the “**Resale Restriction Termination Date**”). Each certificate representing shares of Common Stock issued upon conversion of any Security, shall, if such shares constitute Restricted Securities, shall bear the legend (the “**Common Stock Private Placement Legend**”) as set forth in **Exhibit B-1B** on the face thereof until the Resale Restriction Termination Date. In no event shall the Trustee or any Securities Agent (if other than the Company) be responsible for determining or charged with knowledge of the Resale Restriction Termination Date. Upon request to remove any Security Private Placement Legend, the Trustee and Registrar shall receive and conclusively rely upon an Opinion of Counsel from the Company. The Company shall notify DTC of any such Resale Restriction Termination Date.

(B) Each Global Security shall also bear the legend as set forth in **Exhibit B-2**.

(C) So long as and to the extent that any Securities are represented by one or more Global Securities held by or on behalf of the Depository only, the Company may cause the removal of the Security Private Placement Legend from such Securities at any time on or after the Resale Restriction Termination Date by:

- (i) providing to the Trustee written notice stating that the Resale Restriction Termination Date has occurred and instructing the Trustee to remove the Security Private Placement Legend from such Securities;
- (ii) providing to the Holders of such Securities written notice that the Security Private Placement Legends have been removed or deemed removed;
- (iii) providing to the Trustee and the Depository written notice to change the CUSIP number for the Securities to the applicable unrestricted CUSIP number; and
- (iv) complying with any applicable procedures for delegending in accordance with Rule 144 under the Securities Act and applicable policies of the SEC;

whereupon the Security Private Placement Legends shall be removed from any Global Securities without any further action on the part of the Holders.

2.18 RANKING.

The indebtedness of the Company arising under or in connection with this Indenture and every outstanding Security issued under this Indenture from time to time constitutes and shall constitute a senior unsecured obligation of the Company, ranking equally with other existing and

18

future senior unsecured indebtedness of the Company and ranking senior to any existing or future indebtedness of the Company that is expressly subordinated to the Securities.

3.01 **NO REDEMPTION.**

The Securities shall not be redeemable by the Company prior to the Maturity Date, and no sinking fund is provided for the Securities.

3.02 **REPURCHASE AT OPTION OF HOLDER UPON A FUNDAMENTAL CHANGE.**

(A) If a Fundamental Change occurs, each Holder of Securities shall have the right (the “**Fundamental Change Repurchase Right**”), at such Holder’s option, to require the Company to repurchase (a “**Repurchase Upon Fundamental Change**”) all of such Holder’s Securities (or any portion thereof in integral multiples of \$1,000 in principal amount), on a date selected by the Company (the “**Fundamental Change Repurchase Date**”), which shall be no later than thirty five (35) days, nor earlier than twenty (20) days, after the date the Fundamental Change Notice is mailed (or otherwise delivered) in accordance with **Section 3.02(B)**, at a price, payable in cash, equal to one hundred percent (100%) of the principal amount of the Securities (or portions thereof) to be so repurchased, plus accrued and unpaid interest, if any, to, but excluding, the Fundamental Change Repurchase Date (the “**Fundamental Change Repurchase Price**”), upon:

(i) delivery to the Company (if it is acting as its own Paying Agent), or to a Paying Agent designated by the Company for such purpose in the Fundamental Change Notice, no later than the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date, of a Purchase Notice, in the form set forth in the Securities or any other form of written notice substantially similar thereto, in each case, duly completed and signed, with appropriate signature guarantee, stating:

(a) the certificate numbers of the Securities that the Holder shall deliver to be repurchased, if such Securities are Physical Securities;

(b) the principal amount of Securities to be repurchased, which must be \$1,000 or an integral multiple thereof; and

(c) that such principal amount of Securities are to be repurchased pursuant to the terms and conditions specified in this **Section 3.02**; and

(ii) delivery to the Company (if it is acting as its own Paying Agent), or to a Paying Agent designated by the Company for such purpose in the Fundamental Change Notice, at any time after the delivery of such Purchase Notice, of such

19

Securities (together with all necessary endorsements) with respect to which the Fundamental Change Repurchase Right is being exercised; *provided, however*, that if such Fundamental Change Repurchase Date is after a Record Date for the payment of an installment of interest and on or before the related Interest Payment Date, then the full amount of interest due on that Interest Payment Date shall be payable on that Interest Payment Date to the Holder of record of such Securities at the close of business on such Record Date (without any surrender of such Securities by such Holder), and the Fundamental Change Repurchase Price shall not include any accrued but unpaid interest.

If such Securities are in the form of Global Securities, the delivery of any Securities, Purchase Notice, Fundamental Change Notice or notice of withdrawal pursuant to the second immediately succeeding paragraph shall comply with applicable procedures of the Depository.

Upon delivery of any Physical Securities to the Company (if it is acting as its own Paying Agent) or such Paying Agent, such Holder shall be entitled to receive, upon request, from the Company or such Paying Agent, as the case may be, a nontransferable receipt of deposit evidencing such delivery.

Notwithstanding anything herein to the contrary, any Holder that has delivered the Purchase Notice contemplated by this **Section 3.02(A)** to the Company (if it is acting as its own Paying Agent) or to a Paying Agent designated by the Company for such purpose in the Fundamental Change Notice shall have the right to withdraw such Purchase Notice by delivery, at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date (or, if there shall be a Default in the payment of the Fundamental Change Repurchase, at any time during which such Default is continuing), of a written notice of withdrawal to the Company (if acting as its own Paying Agent) or the Paying Agent, which notice shall contain the information specified in **Section 3.02(B)(x)**.

The Paying Agent shall promptly notify the Company of the receipt by it of any Purchase Notice or written notice of withdrawal thereof.

(B) Within ten (10) days after the occurrence of a Fundamental Change, the Company shall mail, or cause to be mailed, to all Holders of the Securities at their addresses shown in the register of the Registrar, and to beneficial owners as required by applicable law, a notice (the “**Fundamental Change Notice**”) of the occurrence of such Fundamental Change and the Fundamental Change Repurchase Right arising as a result thereof. The Company shall deliver a copy of the Fundamental Change Notice to the Trustee and shall publicly release, through a reputable national newswire service, such Fundamental Change Notice. Each Fundamental Change Notice shall state:

(i) the events causing the Fundamental Change;

(ii) the date of the Fundamental Change;

(iii) the Fundamental Change Repurchase Date;

20

(iv) the last date on which a Holder may exercise the Fundamental Change Repurchase Right, which shall be the Business Day immediately preceding the Fundamental Change Repurchase Date;

- (v) the Fundamental Change Repurchase Price;
- (vi) the names and addresses of the Paying Agent and the Conversion Agent;
- (vii) the procedures that a Holder must follow to exercise the Fundamental Change Repurchase Right;

(viii) that the Fundamental Change Repurchase Price for any Security as to which a Purchase Notice has been given and not withdrawn shall be paid as promptly as practicable, but in no event after the later of such Fundamental Change Repurchase Date and the time of book-entry transfer or delivery of the Security (together with all necessary endorsements); *provided, however*, that if such Fundamental Change Repurchase Date is after a Record Date for the payment of an installment of interest and on or before the related Interest Payment Date, then the accrued and unpaid interest, if any, to, but excluding, such Interest Payment Date shall be paid on such Interest Payment Date to the Holder of record of such Security at the close of business on such Record Date (without any surrender of such Securities by such Holder) and the Fundamental Change Repurchase Price shall not include any accrued and unpaid interest;

(ix) that, except as otherwise provided herein with respect to a Fundamental Change Repurchase Date that is after a Record Date for the payment of an installment of interest and on or before the related Interest Payment Date, on and after such Fundamental Change Repurchase Date (unless there shall be a Default in the payment of the Fundamental Change Repurchase Price), interest on Securities subject to Repurchase Upon Fundamental Change shall cease to accrue, and all rights of the Holders of such Securities shall terminate, other than the right to receive, in accordance herewith, the Fundamental Change Repurchase Price;

(x) that a Holder shall be entitled to withdraw its election in the Purchase Notice prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date, by means of a letter or telegram, telex or facsimile transmission (receipt of which is confirmed and promptly followed by a letter) setting forth (I) the name of such Holder, (II) a statement that such Holder is withdrawing its election to have Securities purchased by the Company on such Fundamental Change Repurchase Date pursuant to a Repurchase Upon Fundamental Change, (III) the certificate numbers of such Securities to be so withdrawn, if such Securities are Physical Securities, (IV) the principal amount of the Securities of such Holder to be so withdrawn, which amount must be \$1,000 or an integral multiple thereof and (V) the principal amount, if any, of the Securities of such Holder that remain subject to the Purchase Notice delivered by such Holder in accordance with this

21

Section 3.02, which amount must be \$1,000 or an integral multiple thereof; *provided, however*, that if there shall be a Default in the payment of the Fundamental Change Repurchase Price, a Holder shall be entitled to withdraw its election in the Purchase Notice at any time during which such Default is continuing;

- (xi) the Conversion Rate and any adjustments to the Conversion Rate that will result from such Fundamental Change;
- (xii) that Securities with respect to which a Purchase Notice is given by a Holder may be converted pursuant to **Article X**, if otherwise convertible, only if such Purchase Notice has been withdrawn in accordance with this **Section 3.02**; and
- (xiii) the CUSIP number or numbers, as the case may be, of the Securities.

At the Company's request, upon prior notice reasonably acceptable to the Trustee, the Trustee shall mail such Fundamental Change Notice in the Company's name and at the Company's expense; *provided, however*, that the form and content of such Fundamental Change Notice shall be prepared by the Company.

No failure of the Company to give a Fundamental Change Notice shall limit any Holder's right pursuant hereto to exercise a Fundamental Change Repurchase Right.

(C) Subject to the provisions of this **Section 3.02**, the Company shall pay, or cause to be paid, the Fundamental Change Repurchase Price with respect to each Security as to which the Fundamental Change Repurchase Right shall have been exercised to the Holder thereof as promptly as practicable, but in no event later than the later of the Fundamental Change Repurchase Date and the time of book-entry transfer or when such Security is surrendered to the Paying Agent (together with all necessary endorsements); *provided, however*, that if such Fundamental Change Repurchase Date is after a Record Date for the payment of an installment of interest and on or before the related Interest Payment Date, then the accrued and unpaid interest, if any, to, but excluding, such Interest Payment Date shall be paid on such Interest Payment Date to the Holder of record of such Security at the close of business on such Record Date and the Fundamental Change Repurchase Price shall not include any accrued and unpaid interest.

(D) The Company shall, in accordance with **Section 2.14**, deposit with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust in accordance with **Section 2.04**) money, in funds immediately available on the Fundamental Change Repurchase Date, sufficient to pay the Fundamental Change Repurchase Price upon Repurchase Upon Fundamental Change for all of the Securities that are to be repurchased by the Company on such Fundamental Change Repurchase Date pursuant to a Repurchase Upon Fundamental Change. The Paying Agent shall return to the Company, as soon as practicable, any money not required for that purpose.

(E) Once the Fundamental Change Notice and the Purchase Notice have been duly given in accordance with this **Section 3.02**, the Securities to be repurchased pursuant to a

22

Repurchase Upon Fundamental Change shall, on the Fundamental Change Repurchase Date, become due and payable in accordance herewith, and, on and after such date (unless there shall be a Default in the payment of the Fundamental Change Repurchase Price), except as otherwise provided herein with respect to a Fundamental Change Repurchase Date that is after a Record Date for the payment of an installment of interest and on or before the related Interest Payment Date, such Securities shall cease to bear interest (whether or not book-entry transfer of the Securities has been made or the Securities have

been delivered to the Paying Agent), and all rights of the relevant Holders of such Securities shall terminate, other than the right to receive, in accordance herewith, such consideration and any other applicable rights under those sections set forth in the proviso in **Section 8.01**.

(F) Securities with respect to which a Purchase Notice has been duly delivered in accordance with this **Section 3.02** may be converted pursuant to **Article X**, if otherwise convertible, only if such Purchase Notice has been withdrawn in accordance with this **Section 3.02**.

(G) If any Security shall not be paid upon book-entry transfer or surrender thereof for Repurchase Upon Fundamental Change, the principal of, and accrued and unpaid interest on, such Security shall, until paid, bear interest, payable in cash, at the rate borne by such Security on the principal amount of such Security, and such Security shall be convertible pursuant to **Article X** if any Purchase Notice with respect to such Security is withdrawn pursuant to this **Section 3.02**.

(H) Any Security that is to be submitted for Repurchase Upon Fundamental Change only in part shall be delivered pursuant to this **Section 3.02** (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or its attorney duly authorized in writing, with a medallion guarantee), and the Company shall promptly execute, and the Trustee shall promptly authenticate and make available for delivery to the Holder of such Security without service charge, a new Security or Securities, of any authorized denomination as requested by such Holder, of the same tenor and in aggregate principal amount equal to the portion of such Security not duly submitted for Repurchase Upon Fundamental Change.

(I) Notwithstanding anything herein to the contrary, except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Repurchase Price, there shall be no purchase of any Securities pursuant to this **Section 3.02** on any date if, on such date, the principal amount of the Securities shall have been accelerated in accordance with this Indenture and such acceleration shall not have been rescinded on or prior to such date in accordance with this Indenture. The Paying Agent shall promptly return to the respective Holders thereof any Securities held by it during the continuance of such an acceleration.

(J) In connection with any Repurchase Upon Fundamental Change, the Company shall, to the extent applicable (i) comply with the provisions of Rule 13e-4 and Regulation 14E under the Exchange Act and all other applicable laws; (ii) file a Schedule TO or any other schedules required under the Exchange Act or any other applicable laws; and (iii) otherwise

23

comply with all applicable United States federal and state securities laws in connection with any offer by the Company to purchase the Securities.

(K) To the extent the Securities are held through the Depository, notices to Holders may be transmitted electronically in order to comply with the Depository's procedures and need not be mailed.

(L) Notwithstanding the foregoing provisions of this Section 3.02, the Company shall not be required to issue a Fundamental Change Notice upon a Fundamental Change (i) if another Person issues a Fundamental Change Notice in the manner, at the times and otherwise in compliance with the requirements set forth in Section 3.02(B) applicable to a Fundamental Change Notice made by the Company and otherwise complies with the provisions of this Section 3.02 as if it were the Company, and (ii) purchases and pays for all Securities validly tendered and not withdrawn pursuant to such Fundamental Change Notice.

IV. COVENANTS

4.01 PAYMENT OF SECURITIES.

The Company shall pay all amounts due with respect to the Securities on the dates and in the manner provided in the Securities and this Indenture. All such amounts shall be considered paid on the date due if the Paying Agent holds (or, if the Company is acting as Paying Agent, the Company has segregated and holds in trust in accordance with **Section 2.04**) on that date money sufficient to pay the amount then due with respect to the Securities (unless there shall be a Default in the payment of such amounts to the respective Holder(s)). The Company shall pay, in money of the United States that at the time of payment is legal tender for payment of public and private debts, all amounts due in cash with respect to the Securities, which amounts shall be paid (A) in the case of a Global Security, by wire transfer of immediately available funds to the account designated by the Depository or its nominee; (B) in the case of a Physical Security by a Holder of more than five million dollars (\$5,000,000) in aggregate principal amount of Securities, by wire transfer of immediately available funds to the account specified by such Holder or, if such Holder does not specify an account, by mailing a check to the address of such Holder set forth in the register of the Registrar; and (C) in the case of a Physical Security that is held by a Holder of five million dollars (\$5,000,000) or less in aggregate principal amount of Securities, by mailing a check to the address of such Holder set forth in the register of the Registrar.

The Company shall pay, in cash, interest on any overdue amount (including the Fundamental Change Repurchase Price, principal and, to the extent permitted by applicable law, overdue interest) at the rate borne by the Securities.

4.02 MAINTENANCE OF OFFICE OR AGENCY.

The Company shall maintain, or cause to be maintained, an office or agency located in the United States (which may be an office of the Trustee or an Affiliate of the Trustee, Registrar

24

or co-registrar) where Securities may be surrendered for registration of transfer or exchange, payment or conversion. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain, or fail to cause to maintain, any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations and surrenders may be made or served at the Corporate Trust Office of the Trustee. The Company shall maintain, or cause to be maintained, in the United States, an office or agency where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served, *provided* that, unless otherwise designated by written notice to the Trustee, such office or agency shall be at the principal office of the Company located in the United States.

The Company may also from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided, however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the United States, for such purposes. The Company shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Company hereby designates the Corporate Trust Office of the Trustee as an agency of the Company in accordance with **Section 2.03**.

4.03 **RULE 144A INFORMATION AND ANNUAL REPORTS.**

(A) At any time when the Company is not subject to the reporting requirements of the Exchange Act, the Company shall promptly provide to the Trustee and shall, upon request, provide to any Holder, beneficial owner or prospective purchaser of Securities or any shares of Common Stock issued upon conversion of any Securities, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Securities or shares of Common Stock pursuant to Rule 144A. The Company shall take such further action as any Holder or beneficial holder of such Securities or shares of Common Stock may reasonably request in writing to the extent required from time to time to enable such Holder or beneficial holder to sell its Securities or shares of Common Stock in accordance with Rule 144A, as such rule may be amended from time to time.

(B) The Company shall deliver to the Trustee, no later than the time such report is required to be filed with the SEC pursuant to the Exchange Act, a copy of each report the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act (after giving effect to any grace period provided by Rule 12b-25 under the Exchange Act); *provided, however*, that each such report shall be deemed to be so delivered to the Trustee if the Company files such report with the SEC through the SEC's EDGAR database no later than the time such report is required to be filed with the SEC pursuant to the Exchange Act (taking into account any applicable grace periods provided thereunder).

25

(C) The Company shall promptly furnish to the Trustee copies of its annual report to stockholders, containing audited financial statements, and any other financial reports that it furnishes to its stockholders.

(D) Delivery of such reports, information and documents to the Trustee pursuant to this **Section 4.03** is for informational purposes only, and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on an Officer's Certificates).

4.04 **COMPLIANCE CERTIFICATE.**

The Company shall deliver to the Trustee, within one hundred twenty (120) calendar days after the end of each fiscal year of the Company, a certificate of two (2) or more Officers stating whether or not the signatories to such Officer's Certificate have actual knowledge of any Default or Event of Default by the Company in performing any of its obligations under this Indenture or the Securities. If such signatories do know of any such Default or Event of Default, then such certificate shall describe the Default or Event of Default and its status.

4.05 **STAY, EXTENSION AND USURY LAWS.**

The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture or the Securities; and the Company (in each case, to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

4.06 **CORPORATE EXISTENCE.**

Subject to **Article V**, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, in accordance with its organizational documents, and the rights (charter and statutory) of the Company; *provided, however*, that the Company shall not be required to preserve any such right if in the good faith judgment of the Board of Directors such preservation or existence is no longer necessary for the conduct of business of the Company.

4.07 **NOTICE OF DEFAULT.**

Upon the Company becoming aware of the occurrence of any Default or Event of Default, the Company shall give prompt written notice of such Default or Event of Default, and any remedial action proposed to be taken, to the Trustee.

26

4.08 **FURTHER INSTRUMENTS AND ACTS.**

Upon request of the Trustee, the Company shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

4.09 **ADDITIONAL INTEREST.**

(A) If, at any time during the six-month period beginning on, and including, the date that is six months after the last date of original issuance of the Securities, the Company fails to timely file any document or report that the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (after giving effect to all applicable grace periods thereunder and other than current reports on Form 8-K), or the Securities are not otherwise freely tradable by Holders, other than the Company's Affiliates (as a result of restrictions pursuant to U.S. securities law or the terms of this

Indenture or the Securities), the Company shall pay Additional Interest on the Securities at a rate of 0.50% per annum of the principal amount of Securities outstanding for each day during such period for which the Company's failure to file has occurred and is continuing or the Securities are not otherwise freely tradable by Holders, other than the Company's Affiliates.

(B) If, and for so long as, the Security Private Placement Legend has not been removed from the Securities in accordance with **Section 2.16(B)** or **Section 2.17**, the Securities are assigned a restricted CUSIP number or the Securities are not otherwise freely tradable by Holders other than the Company's Affiliates (without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Securities), as of the 365th day after the last date of original issuance of the Securities, the Company shall pay Additional Interest on the Securities at a rate of 0.50% per annum of the principal amount of Securities outstanding for each day after the 365th day after the last date of original issuance of the Securities until (i) the Security Private Placement Legend has been removed in accordance with **Section 2.16(B)** or **Section 2.17**, (ii) the Securities are assigned an unrestricted CUSIP number and (iii) the Securities are otherwise freely tradable by Holders other than the Company's Affiliates (without restrictions pursuant to U.S. securities law or the terms of this Indenture or the Securities).

(C) Additional Interest payable in accordance with **Sections 4.09(A)** and **4.09(B)** shall be payable in arrears on each Interest Payment Date for the Securities following accrual in the same manner as regular interest on the Securities and shall be in addition to, not in lieu of, any Additional Interest that may accrue under **Section 6.02(B)** as the sole remedy relating to the Company's failure to comply with **Section 4.03(B)**.

(D) In the event that the Company is required to pay Additional Interest to Holders of Securities (whether pursuant to this **Section 4.09** or **Section 6.02(B)**), the Company shall provide written notice ("**Additional Interest Notice**") to the Trustee of its obligation to pay Additional Interest no later than fifteen (15) calendar days (or such shorter period as may be acceptable to the Trustee) prior to the proposed payment date for the Additional Interest. Each Additional Interest Notice shall set forth the amount of Additional Interest to be paid by the Company on such payment date. The Trustee shall not at any time be under any duty or responsibility to any

27

Holder to determine the amount of Additional Interest, or with respect to the nature, extent or calculation of the amount of Additional Interest owed, or with respect to the method employed in such calculation of the Additional Interest.

V. SUCCESSORS

5.01 WHEN COMPANY MAY MERGE, ETC.

The Company shall not consolidate with, or merge with or into, or sell, transfer, lease, convey or otherwise dispose of all or substantially all of the consolidated property or assets of the Company to another Person, whether in a single transaction or series of related transactions, unless (i) the Company is the continuing corporation or the resulting, surviving or transferee Person (if not the Company) is a corporation organized and existing under the laws of the United States of America, any state of the United States of America or the District of Columbia, and such Person (if not the Company) assumes by supplemental indenture all of the obligations of the Company under the Securities and this Indenture and (ii) immediately after giving effect to such transaction or series of transactions, no Default or Event of Default shall exist.

For purposes of this **Section 5.01**, the sale, transfer, lease, conveyance or other disposition of all or substantially all of the properties or assets of one or more Subsidiaries of the Company to another Person, which properties or assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all of the properties or assets of the Company on a consolidated basis, shall be deemed to be the sale, transfer, lease, conveyance or other disposition of all or substantially all of the consolidated properties or assets of the Company to another Person.

The Company shall deliver to the Trustee prior to the consummation of the proposed transaction an Officer's Certificate to the foregoing effect and an Opinion of Counsel (which may rely upon such Officer's Certificate as to the absence of Defaults and Events of Default) stating that the proposed transaction and such supplemental indenture shall, upon consummation of the proposed transaction, comply with this Indenture.

5.02 SUCCESSOR SUBSTITUTED.

In case of any such consolidation, merger or any sale, transfer, conveyance or other disposition (but not any lease) of all or substantially all of the consolidated property or assets of the Company and upon the assumption by the successor Person, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of and accrued and unpaid interest on all of the Securities, the due and punctual payment of the Fundamental Change Repurchase Price with respect to all Securities repurchased on each Fundamental Change Repurchase Date, the due and punctual delivery or payment, as the case may be, of any consideration due upon conversion of the Securities and the due and punctual performance of all of the covenants and conditions of this Indenture and the Securities to be performed by the Company, such successor Person shall succeed to and be substituted for the Company, with the same effect as if it had been named

28

herein as the party of the first part. Such successor Person thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Securities issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor Person instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Securities that previously shall have been signed and delivered by the Officers of the Company to the Trustee for authentication, and any Securities that such successor Person thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Securities had been issued at the date of the execution hereof. In the event of any such consolidation, merger or any sale, transfer, conveyance or other disposition (but not in the case of a lease), upon compliance with this **Article V** the Person named as the "Company" in the first paragraph of this Indenture or any successor that shall thereafter have become such in the manner prescribed in this **Article V** may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Securities and its obligations under this Indenture shall terminate.

In case of any such consolidation, merger or any sale, transfer, lease, conveyance or other disposition, such changes in phraseology and form (but not in substance) may be made in the Securities thereafter to be issued as may be appropriate.

VI. DEFAULTS AND REMEDIES

6.01 EVENTS OF DEFAULT.

An “**Event of Default**” occurs if:

(i) the Company fails to pay the principal or the Fundamental Change Repurchase Price of any Security when the same becomes due and payable, whether on the Maturity Date, on a Fundamental Change Repurchase Date with respect to a Fundamental Change, upon acceleration or otherwise;

(ii) the Company fails to pay an installment of interest on any Security when due, if such failure continues for thirty (30) days after the date when due;

(iii) the Company fails to comply with its conversion obligations to deliver the Common Stock due upon exercise of a Holder’s conversion right pursuant hereto;

(iv) the Company fails to timely provide notice pursuant to, and in accordance with, **Section 3.02(B)** or **Section 10.15(E)**;

(v) the Company fails to comply with its obligations under **Article V**;

29

(vi) the Company fails to comply with any other term, covenant or agreement contained in the Securities or this Indenture and such failure continues for the period, and after the notice, specified in the last paragraph of this **Section 6.01**;

(vii) the Company or any of its Subsidiaries defaults in the payment in an aggregate amount of ten million dollars (\$10,000,000) or more when due, after the expiration of any applicable grace period, of principal of, or premium, if any, or interest on, indebtedness for money borrowed, or acceleration of the indebtedness of the Company or any of its Subsidiaries for money borrowed in an aggregate principal amount of ten million dollars (\$10,000,000) or more so that it becomes due and payable before the date on which it would otherwise become due and payable and such default is not cured or waived, or such acceleration is not rescinded for the period, and after the notice, specified in the last paragraph of this **Section 6.01**;

(viii) the Company or any of its Subsidiaries fails, within thirty (30) days, to pay, bond or otherwise discharge any final, non-appealable judgments or orders for the payment of money the total uninsured amount of which for the Company or any of its Subsidiaries exceeds ten million dollars (\$10,000,000), which are not stayed on appeal;

(ix) the Company or any of its Significant Subsidiaries or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company, pursuant to, or within the meaning of, any Bankruptcy Law, insolvency law, or other similar law now or hereafter in effect or otherwise, either:

(A) commences a voluntary case,

(B) consents to the entry of an order for relief against it in an involuntary case,

(C) consents to the appointment of a Custodian of it or for all or substantially all of its property, or

(D) makes a general assignment for the benefit of its creditors; or

(x) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Company or any of its Significant Subsidiaries or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company in an involuntary case or proceeding, or adjudicates the Company or any of its Significant Subsidiaries or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company insolvent or bankrupt,

(B) appoints a Custodian of the Company or any of its Significant Subsidiaries or any group of Subsidiaries that in the aggregate would constitute a

30

Significant Subsidiary of the Company for all or substantially all of the consolidated property of the Company or any such Significant Subsidiary or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company, as the case may be, or

(C) orders the winding up or liquidation of the Company or any of its Significant Subsidiaries or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company,

and, in the case of each of the foregoing **clauses (A), (B) and (C)** of this **Section 6.01(x)**, the order or decree remains unstayed and in effect for at least sixty (60) consecutive days.

The term “**Bankruptcy Law**” means Title 11, U.S. Code or any similar U.S. Federal or State law for the relief of debtors, or any analogous foreign law applicable to the Company or its Subsidiaries, as the case may be. The term “**Custodian**” means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

A Default under **clause (vi)** or **(vii)** above shall not be an Event of Default until (I) the Trustee notifies the Company, or the Holders of at least twenty five percent (25%) in aggregate principal amount of the Securities then outstanding notify the Company and the Trustee in writing, of the Default and (II) the Default is not cured within sixty (60) days in the case of **clause (vi)**, or within thirty (30) days in the case of **clause (vii)**, after receipt of such notice. Such notice must specify the Default, demand that it be remedied and state that the notice is a “**Notice of Default.**” If the Holders of at least twenty five percent (25%) in aggregate principal amount of the outstanding Securities request the Trustee to give such notice on their behalf, the Trustee shall do so. When a Default is cured, it ceases to exist for all purposes under this Indenture.

6.02 ACCELERATION.

(A) If an Event of Default (excluding an Event of Default specified in **Section 6.01(ix)** or **6.01(x)** with respect to the Company, but including an Event of Default specified in **Section 6.01(ix)** or **6.01(x)** solely with respect to a Significant Subsidiary of the Company or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company) has occurred and is continuing, either the Trustee by notice to the Company, or the Holders of at least twenty five percent (25%) in aggregate principal amount of the Securities then outstanding by notice to the Company and the Trustee, may declare the Securities to be immediately due and payable in full. Upon such declaration, the principal of, and any accrued and unpaid interest on, all Securities shall be due and payable immediately. If an Event of Default specified in **Section 6.01(ix)** or **6.01(x)** with respect to the Company (excluding, for purposes of this sentence, an Event of Default specified in **Section 6.01(ix)** or **6.01(x)** solely with respect to a Significant Subsidiary of the Company or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company) occurs, the principal of, and accrued and unpaid interest on, all the Securities shall automatically become and be immediately due and payable without any declaration or other act on the part of the Trustee or

31

any Holder. The Holders of a majority in aggregate principal amount of the Securities then outstanding by written notice to the Trustee may rescind or annul an acceleration and its consequences if (A) the rescission would not conflict with any order or decree, (B) all existing Events of Default, except the non-payment of principal or interest that has become due solely because of the acceleration, have been cured or waived and (C) all amounts due to the Trustee under **Section 7.07** have been paid.

(B) Notwithstanding the foregoing, the sole remedy for an Event of Default relating to failure to comply with **Section 4.03(B)** shall, for the first 180 days immediately following the occurrence of such an Event of Default, consist exclusively of the right to receive Additional Interest on the Securities at a rate per year equal to (i) 0.25% of the outstanding principal amount of Securities for each day during the ninety (90) day period following, and including, the occurrence of such Event of Default during which such Event of Default continues and (ii) 0.50% of the outstanding principal amount of Securities for each day during the ninety (90) day period beginning on, and including, the ninety-first (91st) day following the occurrence of such Event of Default during which such Event of Default continues, in each case, payable in the same manner and at the same time as the stated interest payable on the Securities. Such Additional Interest shall accrue on all outstanding Securities from, and including, the date on which such Event of Default first occurs to, and including, the 180th day thereafter (or such earlier date on which such Event of Default shall have been cured or waived). Additional Interest payable pursuant to this **Section 6.02(B)** shall be in addition to, not in lieu of, any Additional Interest payable pursuant to **Section 4.09(A)** and **Section 4.09(B)**. In addition to the accrual of Additional Interest pursuant to this **Section 6.02(B)**, on and after the 181st day immediately following an Event of Default relating to a failure to comply with **Section 4.03(B)**, such Additional Interest shall cease to accrue and, if such Event of Default has not been cured or waived prior to such 181st day, the Securities shall be subject to acceleration as provided above. The provisions of this **Section 6.02(B)** shall not affect the rights of Holders in the event of the occurrence of any other Event of Default.

6.03 OTHER REMEDIES.

Notwithstanding any other provision of this Indenture, if an Event of Default occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of amounts due with respect to the Securities or to enforce the performance of any provision of the Securities or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative.

6.04 WAIVER OF PAST DEFAULTS.

Subject to **Sections 6.07** and **9.02**, the Holders of a majority in aggregate principal amount of the Securities then outstanding may, by notice to the Trustee, waive any past Default

32

or Event of Default and its consequences, other than a Default or Event of Default (A) in the payment of the principal of, or interest on, any Security, or in the payment of the Fundamental Change Repurchase Price, (B) arising from a failure by the Company to convert any Securities in accordance with this Indenture or (C) in respect of any provision of this Indenture or the Securities which, under **Section 9.02**, cannot be modified or amended without the consent of the Holder of each outstanding Security affected. When a Default or an Event of Default is waived, it is cured and ceases to exist for all purposes under this Indenture.

6.05 CONTROL BY MAJORITY.

The Holders of a majority in aggregate principal amount of the Securities then outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction

that conflicts with law or this Indenture, is unduly prejudicial to the rights of other Holders or would involve the Trustee in personal liability unless the Trustee is offered indemnity reasonably satisfactory to it; *provided* that the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction.

6.06 **LIMITATION ON SUITS.**

Except with respect to any proceeding instituted in accordance with **Section 6.07**, a Holder shall not have any right to institute any proceeding under this Indenture, or for the appointment of a receiver or a trustee, or for any other remedy under this Indenture unless:

- (i) the Holder gives to the Trustee written notice of a continuing Event of Default;
- (ii) the Holders of at least twenty five percent (25%) in aggregate principal amount of the Securities then outstanding make a written request to the Trustee to pursue the remedy;
- (iii) the Holder or Holders offer and, if requested, provide the Trustee indemnity reasonably satisfactory to the Trustee against any loss, liability or expense to or of the Trustee in connection with pursuing such remedy; and
- (iv) the Trustee fails to comply with the request within sixty (60) days after receipt of such notice, request and offer of indemnity, and during such sixty (60) day period, the Holders of a majority in aggregate principal amount of the Securities then outstanding do not give the Trustee a direction that is inconsistent with the request.

A Holder may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder.

33

6.07 **RIGHTS OF HOLDERS TO RECEIVE PAYMENT AND TO CONVERT SECURITIES.**

Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of all amounts (including any principal, interest or the Fundamental Change Repurchase Price) due with respect to the Securities, on or after the respective due dates as provided herein, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of the Holder.

In addition, notwithstanding any other provision of this Indenture, the right of any Holder to convert the Security in accordance with this Indenture and to receive the consideration due upon conversion, or to bring suit for the enforcement of such rights, shall not be impaired or affected without the consent of the Holder.

6.08 **COLLECTION SUIT BY TRUSTEE.**

If an Event of Default specified in **Section 6.01(i)** or **6.01(ii)** has occurred and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount due with respect to the Securities, including any unpaid and accrued interest.

6.09 **TRUSTEE MAY FILE PROOFS OF CLAIM.**

The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee, any predecessor Trustee and the Holders allowed in any judicial proceedings relative to the Company or its creditors or properties.

The Trustee may collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same, and any custodian, receiver, assignee, trustee, liquidator, sequestrator or similar official in any judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under **Section 7.07**.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

6.10 **PRIORITIES.**

If the Trustee collects any money pursuant to this **Article VI**, it shall pay out the money in the following order:

First: to the Trustee for amounts due under **Section 7.07**;

34

Second: to Holders for all amounts due and unpaid on the Securities, without preference or priority of any kind, according to the amounts due and payable on the Securities; and

Third: the balance, if any, to the Company.

The Trustee, upon prior written notice to the Company, may fix a record date and payment date for any payment by it to Holders pursuant to this **Section 6.10**. At least fifteen (15) days before each such record date, the Trustee shall mail to each Holder and the Company a written notice that states such record date and payment date and the amount of such payment.

6.11 UNDERTAKING FOR COSTS.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit other than the Trustee of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This **Section 6.11** does not apply to a suit by the Trustee, a suit by a Holder pursuant to **Section 6.07** or a suit by Holders of more than ten percent (10%) in aggregate principal amount of the outstanding Securities.

VII. TRUSTEE

7.01 DUTIES OF TRUSTEE.

(A) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent Person would exercise or use under the circumstances in the conduct of his or her own affairs.

(B) Except during the continuance of an Event of Default:

(i) the Trustee need perform only those duties that are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith, willful misconduct or negligence on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need

35

not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(C) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts;

(ii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to **Section 6.05**; and

(iii) this subsection (C) shall not be construed to limit the effect of subsection (B) of this **Section 7.01**.

(D) Every provision of this Indenture that in any way relates to the Trustee is subject to the provisions of this **Section 7.01**.

(E) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee shall be segregated from other funds as directed in writing by the Company or as required by law and shall be invested by the Trustee pursuant to the written instructions of the Company reasonably satisfactory to the Trustee.

(F) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(G) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this **Section 7.01**.

7.02 RIGHTS OF TRUSTEE.

(A) Subject to **Section 7.01**, the Trustee may conclusively rely on any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document; if, however, the Trustee shall determine to make such further inquiry or investigation, it shall be entitled during normal business hours to examine the relevant books, records and premises of the Company, personally or by agent or attorney upon reasonable prior notice, at the sole cost of the Company, and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

36

(B) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate and/or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel.

(C) Any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Order, and any resolution of the Board of Directors shall be sufficiently evidenced by a Board Resolution.

(D) The Trustee may consult with counsel of its own selection, and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(E) The Trustee may act through agents or attorneys and shall not be responsible for the misconduct or negligence of any agent or attorney appointed with due care.

(F) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its discretion, rights or powers conferred upon it by this Indenture.

(G) The Trustee shall have no duty to inquire as to the performance of the Company with respect to the covenants contained in **Article IV**. In addition, the Trustee shall not be deemed to have knowledge of an Event of Default except any Default or Event of Default of which a Responsible Officer of the Trustee shall have (i) received at its Corporate Trust Office written notification of a default that is in fact a Default, and such notice references the Securities and this Indenture, or (ii) obtained actual knowledge. Delivery of reports, information and documents to the Trustee under **Article IV** (other than **Sections 4.04** and **4.07**) is for informational purposes only and the Trustee's receipt of the foregoing shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely on Officer's Certificates).

(H) The Trustee shall be under no obligation to exercise any of the rights or powers vested by this Indenture at the request or demand of any of the Holders pursuant to this Indenture unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or demand.

(I) The rights, privileges, protections, immunities and benefits given to the Trustee, including without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(J) The Trustee may request that the Company deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officer's Certificate may be signed by any Person

37

authorized to sign an Officer's Certificate, including any Person specified as so authorized in any such certificate previously delivered and not superseded.

(K) In no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit), irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

7.03 INDIVIDUAL RIGHTS OF TRUSTEE.

The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or any of its Affiliates with the same rights the Trustee would have if it were not Trustee. Any Securities Agent may do the same with like rights. The Trustee, however, must comply with **Sections 7.10** and **7.11**.

7.04 TRUSTEE'S DISCLAIMER.

The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities; the Trustee shall not be accountable for the Company's use of the proceeds from the Securities; and the Trustee shall not be responsible for any statement in the Securities other than its certificate of authentication.

7.05 NOTICE OF DEFAULTS.

If a Default or Event of Default occurs and is continuing as to which the Trustee has received notice pursuant to the provisions of this Indenture, or as to which a Responsible Officer of the Trustee shall have actual knowledge, then the Trustee shall mail to each Holder a notice of the Default or Event of Default within thirty (30) days after receipt of such notice or after acquiring such knowledge, as applicable, unless such Default or Event of Default has been cured or waived; *provided, however*, that, except in the case of a Default or Event of Default in payment or delivery of any amounts due (including principal, interest, the Fundamental Change Repurchase Price or the consideration due upon conversion) with respect to any Security, the Trustee may withhold such notice if, and so long as it in good faith determines that, withholding such notice is in the best interests of the Holders.

7.06 REPORTS BY TRUSTEE TO HOLDERS

Within sixty (60) days after each November 1, beginning with November 1, 2013, the Trustee shall mail to each Holder if required by TIA § 313(a) a brief report dated as of such November 1 that complies with TIA § 313(a). In such event, the Trustee also shall comply with TIA § 313(b).

A copy of each report at the time of its mailing to Holders shall be mailed by first class mail to the Company and filed by the Trustee with the SEC and each stock exchange, if any, on

38

which the Securities are listed. The Company shall promptly notify the Trustee of the listing or delisting of the Securities on or from any stock exchange.

7.07 COMPENSATION AND INDEMNITY.

The Company shall pay to the Trustee from time to time such compensation for its services as shall be agreed upon in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee upon request for all reasonable out-of-pocket expenses incurred by it pursuant to, and in accordance with, any provision hereof. Such expenses shall include the reasonable compensation and out-of-pocket expenses of the Trustee's agents and counsel.

The Company shall indemnify each of the Trustee, each predecessor Trustee and their respective agents for, and hold each of them harmless against, any and all loss, liability, damage, claim or expense (including the reasonable fees and expenses of counsel and taxes other than those based upon the income of the Trustee) incurred by it in connection with the acceptance or administration of this trust and the performance of its duties hereunder or in connection with enforcing the provisions of this **Section 7.07**, including the reasonable costs and expenses of defending itself against any claim (whether asserted by the Company, any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers and duties hereunder. The Company need not pay for any settlement made without its consent. The Trustee shall notify the Company promptly of any claim for which it may seek indemnification. The Company need not reimburse any expense or indemnify against any loss or liability that shall be determined to have been caused by the Trustee through the Trustee's own negligence, bad faith or willful misconduct.

To secure the Company's payment obligations in this **Section 7.07**, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, except that held in trust to pay amounts due on particular Securities.

The indemnity obligations of the Company with respect to the Trustee provided for in this **Section 7.07**, shall survive any resignation or removal of the Trustee and termination of this Indenture.

When the Trustee incurs expenses or renders services after an Event of Default specified in **Section 6.01(ix)** or **(x)** occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law.

7.08 **REPLACEMENT OF TRUSTEE.**

A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this **Section 7.08**.

The Trustee may resign by so notifying the Company in writing thirty (30) days prior to such resignation. The Holders of a majority in aggregate principal amount of the Securities then

outstanding may remove the Trustee by so notifying the Trustee and the Company in writing and may appoint a successor Trustee with the Company's consent. The Company may remove the Trustee if:

- (i) the Trustee fails to comply with **Section 7.10**;
- (ii) the Trustee is adjudged a bankrupt or an insolvent;
- (iii) a receiver or other public officer takes charge of the Trustee or its property; or
- (iv) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint a successor Trustee.

If a successor Trustee does not take office within thirty (30) days after the retiring Trustee resigns or is removed, the retiring Trustee (at the Company's expense), the Company or the Holders of at least ten percent (10%) in aggregate principal amount of the outstanding Securities may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee fails to comply with **Section 7.10**, the Company or any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in **Section 7.07**.

7.09 **SUCCESSOR TRUSTEE BY MERGER, ETC.**

If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee, if such successor corporation is otherwise eligible (i) hereunder and (ii) under the TIA.

7.10 **ELIGIBILITY; DISQUALIFICATION.**

There shall at all times be a Trustee hereunder that (A) is an entity organized and doing business under the laws of the United States of America or of any state thereof or the District of Columbia, (B) is authorized under such laws to exercise corporate trustee power, (C) is subject to supervision or examination by federal or state authorities and (D) has a combined capital and surplus of at least \$50 million as set forth in its most recent published annual report of condition.

The Trustee shall comply with TIA § 310(b). Nothing in this Indenture shall prevent the Trustee from filing with the SEC the application referred to in the penultimate paragraph of TIA § 310(b).

7.11 PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY.

The Trustee shall comply with TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated.

VIII. DISCHARGE OF INDENTURE

8.01 TERMINATION OF THE OBLIGATIONS OF THE COMPANY.

This Indenture shall cease to be of further effect, and the Trustee shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, if (a) either (i) all outstanding Securities (other than Securities replaced pursuant to **Section 2.07**) have been delivered to the Trustee for cancellation or (ii) all outstanding Securities have become due and payable on the Maturity Date, upon conversion or upon Repurchase Upon Fundamental Change, and in either case the Company irrevocably deposits, prior to the applicable due date, with the Trustee or the Paying Agent (if the Paying Agent is not the Company or any of its Affiliates) cash or, in the case of conversion, shares of Common Stock sufficient to pay all amounts due on all outstanding Securities (other than Securities replaced pursuant to **Section 2.07**) on the Maturity Date, the relevant settlement date of any conversion or the Fundamental Change Repurchase Date, as the case may be; (b) the Company pays to the Trustee all other sums payable hereunder by the Company; (c) no Default or Event of Default with respect to the Securities shall exist on the date of such deposit under **clause (a)(ii)** above; (d) such deposit under **clause (a)(ii)** above shall not result in a breach or violation of, or constitute a Default or Event of Default under, this Indenture; and (e) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for herein relating to the satisfaction and discharge of this Indenture have been complied with; *provided, however*, that **Sections 2.02, 2.03, 2.04, 2.05, 2.06, 2.07, 2.08, 2.09, 2.15, 2.16, 2.17, 3.02, 4.01, 4.02, 4.05, 4.09, 7.07, 7.08, 7.09, 7.10, 7.11, 13.01, 13.08 and 13.13 and Articles VIII, X, XI and XII** shall survive any discharge of this Indenture until such time as the Securities have been paid in full and there are no Securities outstanding.

8.02 APPLICATION OF TRUST MONEY.

The Trustee shall hold in trust all money deposited with it pursuant to **Section 8.01** and shall apply such deposited money through the Paying Agent and in accordance with this Indenture to the payment of amounts due on the Securities.

8.03 REPAYMENT TO COMPANY.

The Trustee and the Paying Agent shall promptly notify the Company of, and pay to the Company upon the request of the Company, any excess money held by them at any time. The

41

Trustee or the Paying Agent, as the case may be, shall provide written notice to the Company of any money that has been held by it and has, for a period of two (2) years, remained unclaimed for the payment of the principal of, or any accrued and unpaid interest on, the Securities. The Trustee and the Paying Agent shall pay to the Company upon the written request of the Company any money held by them for the payment of the principal of, or any accrued and unpaid interest on, the Securities that remains unclaimed for two (2) years; *provided, however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may, at the expense of the Company, cause to be published (in no event later than five (5) days after the Company requests repayment) once in a newspaper of general circulation in the City of New York or cause to be mailed to each Holder, notice stating that such money remains unclaimed and that, after a date specified therein, which shall not be less than thirty (30) days from the date of such publication or mailing, any unclaimed balance of such money then remaining shall be repaid to the Company. After payment to the Company, Holders entitled to the money must look to the Company for payment as general creditors, subject to applicable law, and all liability of the Trustee and the Paying Agent with respect to such money and payment shall, subject to applicable law, cease.

8.04 REINSTATEMENT.

If the Trustee or Paying Agent is unable to apply any money in accordance with **Sections 8.01 and 8.02** by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the obligations of the Company under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to **Sections 8.01 and 8.02** until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with **Sections 8.01 and 8.02**; *provided, however*, that if the Company has made any payment of amounts due with respect to any Securities because of the reinstatement of its obligations, then the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money held by the Trustee or Paying Agent.

IX. AMENDMENTS

9.01 WITHOUT CONSENT OF HOLDERS.

The Company and the Trustee may amend or supplement this Indenture or the Securities without notice to or the consent of any Holder:

- (i) to comply with **Section 5.01** or **Section 10.12**;
- (ii) to secure or guarantee the obligations of the Company in respect of the Securities;
- (iii) to provide for uncertificated Securities in addition to or in place of Physical Securities in accordance with **Section 2.15(B)**;

42

- (iv) to comply with any requirement of the SEC in connection with qualification of the Indenture under the TIA;
- (v) to make any change that does not adversely affect the rights of any Holder;
- (vi) to evidence and provide for the appointment of a successor Trustee in accordance with **Section 7.08**;
- (vii) to add to the covenants of the Company described in this Indenture for the benefit of Holders or to surrender any right or power conferred upon the Company;
- (viii) to make provision with respect to adjustments to the Conversion Rate as required by this Indenture or to increase the Conversion Rate in accordance with this Indenture; or
- (ix) to issue Additional Securities.

In addition, the Company and the Trustee may enter into a supplemental indenture without the consent of Holders of the Securities to (i) cure any ambiguity, defect, omission or inconsistency in this Indenture in a manner that does not, individually or in the aggregate with all other changes, adversely affect the rights of any Holder in any material respect or (ii) to conform this Indenture or the Securities to the description thereof contained in the Offering Memorandum under the heading "Description of notes," as supplemented by the related pricing term sheet dated February 7, 2013.

9.02 WITH CONSENT OF HOLDERS.

The Company and the Trustee may amend or supplement this Indenture or the Securities with the written consent of the Holders of at least a majority in aggregate principal amount of the outstanding Securities (including, without limitation, consents obtained from Holders in connection with a purchase of, or tender or exchange offer for, Securities). Subject to **Sections 6.04** and **6.07**, the Holders of a majority in aggregate principal amount of the outstanding Securities may, by notice to the Trustee, waive by consent (including, without limitation, consents obtained from Holders in connection with a purchase of, or tender or exchange offer for, Securities) compliance by the Company with any provision of this Indenture or the Securities without notice to any other Holder. Notwithstanding the foregoing or anything herein to the contrary, without the consent of the Holder of each outstanding Security affected, an amendment, supplement or waiver, including a waiver pursuant to **Section 6.04**, may not:

- (i) change the stated maturity of the principal of, or the payment date of any installment of interest on, any Security;
- (ii) reduce the principal amount of, or interest on, any Security;

43

- (iii) reduce the amount of principal payable upon acceleration of the maturity of any Security;
- (iv) change the place, manner or currency of payment of principal of, or any interest on, any Security;
- (v) impair the right to institute suit for the enforcement of any delivery or payment on, or with respect to, or due upon the conversion of, any Security;
- (vi) modify, in a manner adverse to Holders, the provisions with respect to the right of Holders to require the Company to repurchase Securities upon the occurrence of a Fundamental Change pursuant to **Section 3.02**;
- (vii) modify the provisions of **Section 2.18** in a manner adverse to Holders;
- (viii) adversely affect the right of Holders to convert their Securities in accordance with **Article X**;
- (ix) reduce the percentage in aggregate principal amount of outstanding Securities whose Holders must consent to a modification to or amendment of any provision of this Indenture or the Securities;
- (x) reduce the percentage in aggregate principal amount of outstanding Securities whose Holders must consent to a waiver of compliance with any provision of this Indenture or the Securities or a waiver of any Default or Event of Default;
- (xi) waive a continuing Default or Event of Default in the payment of the principal of or interest on any Security;
- (xii) modify the provisions of this Indenture with respect to modification and waiver (including waiver of a Default or an Event of Default), except to increase the percentage required for modification or waiver or to provide for the consent of each affected Holder.

Promptly after an amendment, supplement or waiver under **Section 9.01** or this **Section 9.02** becomes effective, the Company shall mail, or cause to be mailed, to Holders a notice briefly describing such amendment, supplement or waiver. Any failure of the Company to mail such notice shall not in any way impair or affect the validity of such amendment, supplement or waiver.

It shall not be necessary for the consent of the Holders under this **Section 9.02** to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof.

44

9.03 REVOCATION AND EFFECT OF CONSENTS.

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder is a continuing consent by the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security. However, any such Holder or subsequent Holder may revoke the consent as to its Security or portion of a Security if the Trustee receives the notice of revocation before the date the amendment, supplement or waiver becomes effective.

After an amendment, supplement or waiver becomes effective with respect to the Securities, it shall bind every Holder unless such amendment, supplement or waiver makes a change that requires, pursuant to **Section 9.02**, the consent of each Holder affected. In that case, the amendment, supplement or waiver shall bind each Holder of a Security who has consented to it and, provided that notice of such amendment, supplement or waiver is reflected on a Security that evidences the same debt as the consenting Holder's Security, every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security.

Nothing in this **Section 9.03** shall impair the Company's rights pursuant to **Section 9.01** to amend this Indenture or the Securities without the consent of any Holder in the manner set forth in, and permitted by, such **Section 9.01**.

9.04 NOTATION ON OR EXCHANGE OF SECURITIES.

If an amendment, supplement or waiver changes the terms of a Security, the Trustee may require the Holder of the Security to deliver it to the Trustee. The Trustee may place an appropriate notation on the Security as directed and prepared by the Company about the changed terms and return it to the Holder. Alternatively, if the Company so determines, the Company in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms.

9.05 TRUSTEE PROTECTED.

The Trustee shall sign any amendment, supplemental indenture or waiver authorized pursuant to this **Article IX**; *provided, however*, that the Trustee need not sign any amendment, supplement or waiver authorized pursuant to this **Article IX** that adversely affects the Trustee's rights, duties, liabilities or immunities. The Trustee shall receive and conclusively rely upon an Opinion of Counsel as to legal matters and an Officer's Certificate as to factual matters that any supplemental indenture, amendment or waiver is permitted or authorized pursuant to this Indenture.

9.06 EFFECT OF SUPPLEMENTAL INDENTURES.

Upon the due execution and delivery of any supplemental indenture in accordance with this **Article IX**, this Indenture shall be modified in accordance therewith, and such supplemental

45

indenture shall form a part of this Indenture for all purposes, and, except as set forth in **Sections 9.02** and **9.03**, every Holder of Securities shall be bound thereby.

X. CONVERSION

10.01 CONVERSION PRIVILEGE.

(A) Subject to the provisions of Section 3.01, Section 3.02 and Section 10.02, the Securities shall be convertible at any time prior to the close of business on the Business Day immediately preceding the Maturity Date into shares of Common Stock, as described in Section 10.02, in accordance with this Article X.

(B) A Holder may convert a portion of the principal amount of a Security if such portion is \$1,000 principal amount or an integral multiple of \$1,000 principal amount. Provisions of this Indenture that apply to conversion of all of a Security also apply to conversion of a portion of such Security.

10.02 CONVERSION PROCEDURE AND PAYMENT UPON CONVERSION.

(A) To convert a Security, a Holder of a Physical Security must (1) complete and manually sign the Conversion Notice, with appropriate signature guarantee, or facsimile of the Conversion Notice and deliver the completed Conversion Notice to the Conversion Agent, (2) surrender the Security to the Conversion Agent, (3) furnish appropriate endorsements and transfer documents if required by the Registrar or Conversion Agent, (4) pay any tax or duty if required pursuant to **Section 10.04** and (5) pay the amount of interest, if any, required by **Section 10.02(C)**. If a Holder holds a beneficial interest in a Global Security, to convert such Security, the Holder must comply with clauses (4) and (5) above and the Depository's procedures for converting a beneficial interest in a Global Security.

Upon conversion of a Holder's Security, the Company shall deliver through the Company's stock transfer agent shares of Common Stock (together with cash in lieu of any fractional share) on the third Business Day immediately following the relevant Conversion Date.

The number of shares of Common Stock due upon conversion of Securities shall be determined as follows:

(1) the Company shall deliver to each converting Holder a number of shares of Common Stock equal to (i) (A) the aggregate principal amount of Securities converted, *divided by* (B) \$1,000, *multiplied by* (ii) the Conversion Rate in effect on the relevant Conversion Date (*provided* that the Company shall pay cash in lieu of any fractional share as described in **Section 10.03**);

(B) A Holder receiving any shares of Common Stock upon conversion shall not be entitled to any rights as a holder of Common Stock, including, among other things, the right to vote and receive dividends and notices of stockholder meetings, until the close of business on the

46

Conversion Date. On and after the Conversion Date with respect to a conversion of a Security pursuant hereto, all rights of the Holder of such Security shall terminate, other than the right to receive the consideration deliverable upon conversion of such Security as provided herein.

(C) Except as provided in the Securities or in this **Article X**, no payment or adjustment (to the Conversion Rate or otherwise) shall be made for accrued interest on a converted Security, and accrued interest, if any, shall be deemed to be paid by the consideration paid to the Holder upon conversion. Such accrued interest, if any, shall be deemed to be paid in full rather than cancelled, extinguished or forfeited. If any Holder surrenders a Security for conversion after the close of business on the Record Date for the payment of an installment of interest but prior to the open of business on the next Interest Payment Date, then, notwithstanding such conversion, the full amount of interest payable with respect to such Security on such Interest Payment Date shall be paid on such Interest Payment Date to the Holder of record of such Security at the close of business on such Record Date; *provided, however*, that such Security, when surrendered for conversion, must be accompanied by payment to the Conversion Agent on behalf of the Company of an amount equal to the full amount of interest payable on such Interest Payment Date on the Security so converted; *provided further, however*, that such payment to the Conversion Agent described in the immediately preceding proviso in respect of a Security surrendered for conversion shall not be required (i) with respect to a Security that is surrendered for conversion after the close of business on the Record Date immediately preceding the Maturity Date; or (ii) with respect to any Security surrendered for conversion after the close of business on a Record Date for the payment of an installment of interest and on or before the open of business on the related Interest Payment Date where the Company has specified a Fundamental Change Repurchase Date pursuant to **Section 3.02** that is after such Record Date but on or prior to such Interest Payment Date; *provided further* that, if the Company shall have, prior to the Conversion Date with respect to a Security, defaulted in a payment of interest on such Security, then in no event shall the Holder of such Security who surrenders such Security for conversion be required to pay such defaulted interest or the interest that shall have accrued on such defaulted interest pursuant to **Section 2.12** or otherwise (it being understood that nothing in this **Section 10.02(C)** shall affect the Company's obligations under **Section 2.12**).

(D) If a Holder converts more than one Security at the same time, the full number of shares of Common Stock issuable upon such conversion shall be based on the total principal amount of all Securities converted.

(E) Upon surrender of a Security that is converted in part, the Trustee shall authenticate for the Holder a new Security equal in principal amount to the unconverted portion of the Security surrendered.

(F) If the last day on which a Security may be converted is a Legal Holiday in a place where a Conversion Agent is located, the Security may be surrendered to that Conversion Agent on the next succeeding day that is not a Legal Holiday.

47

10.03 CASH IN LIEU OF FRACTIONAL SHARES.

The Company shall not issue fractional shares of Common Stock upon conversion of Securities. Instead, the Company shall pay cash in lieu of any fractional share based on the Closing Sale Price of Common Stock on the Conversion Date.

10.04 TAXES ON CONVERSION.

If a Holder converts its Security, the Company shall pay any documentary, stamp or similar issue or transfer tax or duty due on the issue of Common Stock upon the conversion. However, such Holder shall pay any such tax or duty that is due because such shares are issued in a name other than such Holder's name. The Conversion Agent may refuse to deliver a certificate representing the Common Stock to be issued in a name other than such Holder's name until the Conversion Agent receives a sum sufficient to pay any tax or duty which shall be due because such shares are to be issued in a name other than such Holder's name.

10.05 COMPANY TO PROVIDE COMMON STOCK.

The Company shall at all times reserve out of its authorized but unissued Common Stock or Common Stock held in its treasury enough shares of Common Stock to permit the conversion, in accordance herewith, of all of the Securities. The shares of Common Stock due upon conversion of a Global Security shall be delivered by the Company through its stock transfer agent and in accordance with the Depository's customary practices.

All shares of Common Stock that may be issued upon conversion of the Securities shall be validly issued, fully paid and non-assessable and shall be free of preemptive or similar rights and free of any lien or adverse claim.

The Company shall comply with all securities laws regulating the offer and delivery of shares of Common Stock upon conversion of Securities and shall list such shares on each national securities exchange or automated quotation system on which the shares of Common Stock are listed.

10.06 ADJUSTMENT OF CONVERSION RATE.

The Conversion Rate shall be subject to adjustment from time to time, without duplication, upon the occurrence of any of the following events:

(a) If the Company issues shares of Common Stock as a dividend or distribution on the shares of Common Stock, or if the Company effects a share split or share combination, the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{OS'}{OS_0}$$

48

- CR₀ = the Conversion Rate in effect immediately prior to the close of business on the record date for such dividend or distribution, or the open of business on the Effective Date of such share split or share combination, as the case may be;
- CR' = the Conversion Rate in effect immediately after the close of business on the record date for such dividend or distribution, or immediately after the open of business on the Effective Date of such share split or share combination, as the case may be;
- OS₀ = the number of shares of Common Stock outstanding immediately prior to the close of business on the record date for such dividend or distribution, or immediately prior to the open of business on the Effective Date of such share split or share combination, as the case may be; and
- OS' = the number of shares of Common Stock outstanding immediately after such dividend or distribution, or such share split or share combination, as the case may be.

Any adjustment made under this **Section 10.06(a)** shall become effective immediately after the close of business on the record date for such dividend or distribution, or immediately after the open of business on the Effective Date for such share split or share combination, as the case may be. If any dividend or distribution of the type described in this **Section 10.06(a)** is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) If the Company distributes to all or substantially all holders of the Common Stock any rights, options or warrants entitling them, for a period expiring not more than sixty (60) days immediately following the record date of such distribution, to purchase or subscribe for shares of Common Stock, at a price per share less than the average of the Closing Sale Prices of the Common Stock over the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the announcement date for such distribution, the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where

- CR₀ = the Conversion Rate in effect immediately prior to the close of business on the record date for such distribution;

49

- CR' = the Conversion Rate in effect immediately after the close of business on the record date for such distribution;
- OS₀ = the number of shares of Common Stock outstanding immediately prior to the close of business on the record date for such distribution;
- X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and
- Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants, *divided by the average of the Closing Sale Prices of the Common Stock over the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the announcement date for such distribution.*

Any increase made under this **Section 10.06(b)** shall be made successively whenever any such rights, options or warrants are distributed and shall become effective immediately after the close of business on the record date for such distribution. In no event shall the Conversion Rate be decreased pursuant to the formula set forth above. The Company shall not issue any such rights, options, or warrants in respect of Common Stock held in treasury by the Company. To the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the increase with respect to the distribution of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so distributed, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if the record date for such distribution had not occurred.

For purposes of this **Section 10.06(b)**, in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such average of the Closing Sale Prices for the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the announcement date for such distribution, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) If the Company distributes shares of its Capital Stock, evidences of its indebtedness or other of its assets, securities or property or rights, options or warrants to acquire its Capital Stock or other securities, but excluding (i) dividends or distributions covered by **Sections 10.06(a), 10.06(b) or 10.06(e)**, (ii) dividends or distributions paid exclusively in cash covered by **Section 10.06(d)**, (iii) dividends or distributions that consist solely of Reference Property following a transaction described in **Section 10.12**, and (iv) Spin-Offs to which the provisions set forth in the latter portion of this **Section 10.06(c)**

50

shall apply (any of such shares of the Company's Capital Stock, indebtedness or other assets, securities or property or rights, options or warrants to acquire Capital Stock or other securities, the "**Distributed Property**"), to all or substantially all holders of Common Stock, then, in each such case

the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where

- CR₀ = the Conversion Rate in effect immediately prior to the close of business on the record date for such distribution;
- CR' = the Conversion Rate in effect immediately after the close of business on the record date for such distribution;
- SP₀ = the average of the Closing Sale Prices of the Common Stock over the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Date for such distribution; and
- FMV = the fair market value (as determined by the Board of Directors) of the Distributed Property distributable with respect to each outstanding share of Common Stock as of the Ex-Date for such distribution.

Any increase made under the portion of this **Section 10.06(c)** above shall become effective immediately after the close of business on the record date for such distribution. In no event shall the Conversion Rate be decreased pursuant to the formula set forth above. If such distribution is not so paid or made, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

Notwithstanding the foregoing, if “FMV” (as defined above) is equal to or greater than the “SP₀” (as defined above), in lieu of the foregoing increase, each Holder of a Security shall receive, for each \$1,000 principal amount of Securities, at the same time and upon the same terms as the holders of the Common Stock, the amount and kind of Distributed Property that such Holder would have received as if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect immediately prior to the close of business on the record date for such distribution.

With respect to an adjustment pursuant to this **Section 10.06(c)** where there has been a payment of a dividend or other distribution on the Common Stock of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company, where such Capital Stock or similar equity interest is listed or quoted (or will be listed or quoted upon consummation of the Spin-Off) on a U.S. national securities exchange (a “**Spin-Off**”), the Conversion Rate in effect

51

immediately before the close of business on the tenth (10th) Trading Day immediately following, and including, the Ex-Date for the Spin-Off shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where

- CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Ex-Date for the Spin-Off;
- CR' = the Conversion Rate in effect immediately after the open of business on the Ex-Date for the Spin-Off;
- FMV₀ = the average of the Closing Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of Common Stock (determined by reference to the definition of Closing Sale Price as if references therein to Common Stock were to such Capital Stock or similar equity interest) over the first ten (10) consecutive Trading Day period immediately following, and including, the Ex-Date for the Spin-Off (the “**Valuation Period**”); and
- MP₀ = the average of the Closing Sale Prices of the Common Stock over the Valuation Period.

The increase to the Conversion Rate under the preceding paragraph shall be determined at the close of business on the last Trading Day of the Valuation Period but will be given effect immediately after the open of business on the Ex-Date for the Spin-Off; *provided* that, for purposes of determining the Conversion Rate, in respect of any conversion during the Valuation Period, references in the portion of this **Section 10.06(c)** related to Spin-Offs to the tenth (10th) Trading Day or ten (10) consecutive Trading Days shall be deemed to be replaced with such lesser number of Trading Days as have elapsed between the Ex-Date of such Spin-Off and the relevant Conversion Date. In no event shall the Conversion Rate be decreased pursuant to the formula set forth above.

Subject in all respects to **Section 10.14**, rights, options or warrants distributed by the Company to all holders of its Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company’s Capital Stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events (“**Trigger Event**”): (i) are deemed to be transferred with such Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Common Stock, shall be deemed not to have been distributed for purposes of this **Section 10.06(c)** (and no adjustment to the Conversion Rate under this **Section 10.06(c)** shall be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been

52

distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this **Section 10.06(c)**. If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and record date with respect to new rights, options or warrants with such rights (and a termination or expiration of the existing rights, options or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this **Section 10.06(c)** was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued.

For purposes of **Section 10.06(a)**, **Section 10.06(b)** and this **Section 10.06(c)**, any dividend or distribution to which this **Section 10.06(c)** is applicable that also includes one or both of:

- (A) a dividend or distribution of shares of Common Stock to which **Section 10.06(a)** is applicable (the “**Clause A Distribution**”); or
- (B) a dividend or distribution of rights, options or warrants to which **Section 10.06(b)** is applicable (the “**Clause B Distribution**”),

then (1) such dividend or distribution, other than the Clause A Distribution and Clause B Distribution, shall be deemed to be a dividend or distribution to which this **Section 10.06(c)** is applicable (the “**Clause C Distribution**”) and any Conversion Rate adjustment required by this **Section 10.06(c)** with respect to such Clause C Distribution shall then be made and (2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Conversion Rate adjustment required by **Section 10.06(a)** and **Section 10.06(b)** with respect thereto shall then be made, except that, if determined by the Board of Directors (I) the record date of the Clause A Distribution and the Clause B Distribution shall be deemed to be the record date of the Clause C Distribution and (II) any shares of Common Stock included in the Clause A Distribution or Clause B Distribution shall be deemed not to be “outstanding

53

immediately prior to the close of business on the record date for such dividend or distribution, or the open of business on the Effective Date of such share split or share combination, as the case may be” within the meaning of **Section 10.06(a)** or “outstanding immediately prior to the close of business on the record date for such distribution” within the meaning of **Section 10.06(b)**.

(d) If any cash dividend or distribution is made to all or substantially all holders of the Common Stock, the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where

- CR₀ = the Conversion Rate in effect immediately prior to the close of business on the record date for such dividend or distribution;
- CR' = the Conversion Rate in effect immediately after the close of business on the record date for such dividend or distribution;
- SP₀ = the average of the Closing Sale Prices of the Common Stock over the ten (10) consecutive Trading Day period immediately preceding the Ex-Date for such dividend or distribution; and
- C = the amount in cash per share of Common Stock the Company distributes to holders of its Common Stock.

Such increase shall become effective immediately after the close of business on the record date for such dividend or distribution. In no event shall the Conversion Rate be decreased pursuant to the formula set forth above. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

Notwithstanding the foregoing, if “C” (as defined above) is equal to or greater than “SP₀” (as defined above), in lieu of the foregoing increase, each Holder of a Security shall receive, for each \$1,000 principal amount of Securities, at the same time and upon the same terms as holders of the Common Stock, the amount of cash such Holder would have received as if such Holder owned a number of shares of Common Stock equal to the Conversion Rate immediately prior to the close of business on the record date for such cash dividend or distribution.

(e) If the Company or any of its Subsidiaries makes a payment in respect of a tender or exchange offer for the Common Stock, to the extent that the cash and value of any other consideration included in the payment per share of Common Stock exceeds the average of the Closing Sale Prices of the Common Stock over the ten (10) consecutive

54

Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{AC + (SP' \times OS')}{OS_0 \times SP'}$$

where

- CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Trading Day next succeeding the expiration date for such tender or exchange offer;
- CR' = the Conversion Rate in effect immediately after the open of business on the Trading Day next succeeding the expiration date for such tender or exchange offer;
- AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for shares of Common Stock purchased in such tender or exchange offer;
- OS₀ = the number of shares of Common Stock outstanding immediately prior to the expiration date for such tender or exchange offer (prior to giving effect to such tender or exchange offer);
- OS' = the number of shares of Common Stock outstanding immediately after the expiration date for such tender or exchange offer (after giving effect to such tender or exchange offer); and
- SP' = the average of the Closing Sale Prices of the Common Stock over the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the expiration date for such tender or exchange offer.

The increase to the Conversion Rate under this **Section 10.06(e)** shall be determined at the close of business on the tenth (10th) Trading Day immediately following, but excluding, the expiration date for such tender or exchange offer but will be given effect immediately prior to the open of business on the Trading Day immediately following the expiration date for such tender or exchange offer; *provided* that, for purposes of determining the Conversion Rate, in respect of any conversion during the ten (10) Trading Days immediately following, but excluding, the expiration date for any such tender or exchange offer, references in this **Section 10.06(e)** to the tenth (10th) Trading Day or ten (10) Trading Days shall be deemed to be replaced with such lesser number of Trading Days as have elapsed between the expiration date for such tender or exchange offer and the relevant Conversion Date.

55

(f) In addition to the foregoing adjustments in **subsections (a), (b), (c), (d) and (e)** above, the Company may, from time to time and to the extent permitted by law and the continued listing requirements of The NASDAQ Global Select Market, increase the Conversion Rate by any amount for a period of at least twenty (20) Business Days or any longer period as may be permitted or required by law, if the Board of Directors has made a determination, which determination shall be conclusive, that such increase would be in the best interests of the Company. Such Conversion Rate increase shall be irrevocable during such period. The Company shall give notice to the Trustee and cause notice of such increase to be mailed to each Holder of Securities at such Holder's address as the same appears on the registry books of the Registrar, at least fifteen (15) days prior to the date on which such increase commences.

(g) All calculations under this **Article X** shall be made to the nearest cent or to the nearest one-millionth of a share, as the case may be. Adjustments to the Conversion Rate shall be calculated to the nearest 1/10,000th.

10.07 NO ADJUSTMENT.

Notwithstanding anything herein or in the Securities to the contrary, in no event shall the Conversion Rate be adjusted:

- (i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities;
- (ii) upon the issuance of any shares of Common Stock or restricted stock, restricted stock units, non-qualified stock options, incentive stock options or any other options or rights (including stock appreciation rights) to purchase shares of Common Stock pursuant to any present or future employee, director or consultant benefit plan or program of, or assumed by, the Company or any of its Subsidiaries;
- (iii) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) above and outstanding as of the date the Securities were first issued;
- (iv) for accrued and unpaid interest, if any;
- (v) upon the repurchase of any shares of Common Stock pursuant to an open-market share repurchase program or other buy-back transaction that is not a tender or exchange offer of the nature described in **Section 10.06**; or
- (vi) solely for a change in the par value of shares of Common Stock.

No adjustment in the Conversion Rate pursuant to **Section 10.06** shall be required until cumulative adjustments amount to one percent (1%) or more of the Conversion Rate as last

56

adjusted (or, if never adjusted, the initial Conversion Rate); *provided, however*, that any adjustments to the Conversion Rate which by reason of this paragraph are not required to be made shall be carried forward and taken into account in any subsequent adjustment to the Conversion Rate; *provided further*, that (i) on December 31 of each year and (ii) if the Securities have been converted pursuant to **Section 10.01**, then, in each case, any adjustments to the Conversion Rate that have been, and at such time remain, deferred pursuant to this **Section 10.07** shall be given effect, and such adjustments, if any, shall no longer be carried forward and taken into account in any subsequent adjustment to the Conversion Rate.

No adjustment to the Conversion Rate need be made pursuant to **Section 10.06** for a transaction (other than for share splits or share combinations pursuant to **Section 10.06(a)**) if the Company makes provision for each Holder to participate in the transaction, at the same time and upon the same terms that holders of Common Stock participate in such transaction, without conversion, as if such Holder held a number of shares of Common Stock equal to the Conversion Rate in effect on the Ex-Date or Effective Date, as applicable, of the transaction (without giving effect to any adjustment pursuant to **Section 10.06** on account of such transaction), *multiplied by* the principal amount (expressed in thousands) of Securities held by such Holder.

10.08 OTHER ADJUSTMENTS.

In the event that, as a result of an adjustment made pursuant to **Section 10.06** hereof, the Holder of any Security thereafter surrendered for conversion shall become entitled to receive any shares of Capital Stock other than Common Stock, thereafter the Conversion Rate of such other shares so receivable upon conversion of any Security shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to Common Stock contained in this **Article X**.

10.09 ADJUSTMENTS FOR TAX PURPOSES.

Except as prohibited by law, and subject to the continued listing requirements of The NASDAQ Global Select Market, the Company may (but is not obligated to) increase the Conversion Rate, in addition to those required by **Section 10.06** hereof, as it determines to be advisable in order that any stock dividend, subdivision of shares, distribution of rights to purchase stock or securities or distribution of securities convertible into or exchangeable for stock made by the Company or to its stockholders shall not be taxable to the recipients thereof or in order to avoid or diminish any such taxation.

10.10 NOTICE OF ADJUSTMENT.

Whenever the Conversion Rate is adjusted, the Company shall promptly mail to Holders at the addresses appearing on the Registrar's books a notice of the adjustment and file with the Trustee an Officer's Certificate briefly stating the facts requiring the adjustment and the manner of computing it. The certificate shall be conclusive evidence of the correctness of such adjustment.

57

10.11 NOTICE OF CERTAIN TRANSACTIONS.

In the event that:

- (1) the Company takes any action, or becomes aware of any event, which would require an adjustment in the Conversion Rate,
- (2) the Company takes any action that would require a supplemental indenture pursuant to **Section 10.12**, or
- (3) there is a dissolution or liquidation of the Company,

the Company shall mail to Holders at the addresses appearing on the Registrar's books and the Trustee a written notice stating the proposed record, effective or expiration date, as the case may be, of any transaction referred to in **clause (1), (2) or (3)** of this **Section 10.11**. The Company shall mail such notice at least ten (10) calendar days before such date; however, failure to mail such notice or any defect therein shall not affect the validity of any transaction referred to in **clause (1), (2) or (3)** of this **Section 10.11**.

10.12 EFFECT OF RECLASSIFICATIONS, CONSOLIDATIONS, MERGERS, BINDING SHARE EXCHANGES OR SALES ON CONVERSION PRIVILEGE.

If the Company:

- (i) reclassifies the Common Stock (other than a change only in par value or a change as a result of a subdivision or combination of Common Stock to which **Section 10.06** applies);
- (ii) is party to a consolidation, merger or binding share exchange; or
- (iii) sells, transfers, leases, conveys or otherwise disposes of all or substantially all of the consolidated property or assets of the Company,

in each case, pursuant to which the Common Stock would be converted into or exchanged for, or would constitute solely the right to receive, cash, securities or other property (any such event, a "**Merger Event**") then, if a Holder converts its Securities on or after the effective date of any such transaction, the Securities shall be convertible into the same type (in the same proportions) of consideration received by holders of Common Stock in such Merger Event ("**Reference Property**") and, prior to or at the effective time of such Merger Event, the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture permitted under **Section 9.01(i)** providing for such change in the right to convert the Securities.

If the Merger Event causes the Common Stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), then (i) the Reference Property into which the Securities shall be convertible shall be deemed to be the weighted average of the types and amounts of

58

consideration received by the holders of Common Stock that affirmatively make such an election and (ii) the unit of Reference Property for purposes of the immediately preceding paragraph shall refer to the consideration referred to in clause (i) attributable to one share of Common Stock. The Company shall notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) of such weighted average as soon as practicable after such determination is made.

If the Reference Property in respect of any Merger Event is composed, in whole or in part, of shares of common stock, the supplemental indenture referred to in the first sentence of this **Section 10.12** shall provide for adjustments of the Conversion Rate that shall be as nearly equivalent as may be practicable to the adjustments of the Conversion Rate provided for in this **Article X** (other than, in the case of any such Merger Event following the occurrence of a Make-Whole Fundamental Change in connection with which Holders were entitled to convert their Securities and receive a Make-Whole Applicable Increase pursuant to **Section 10.15**, an adjustment to the Conversion Rate of the kind set forth in **Section 10.12** upon conversion in connection with any subsequent Make-Whole Fundamental Change). If, in the case of any Merger Event, the Reference Property receivable thereupon by a holder of Common Stock includes shares of stock or other securities and property of a Person other than the successor or purchasing Person, as the case may be, in such Merger Event, then such supplemental indenture shall also be executed by such other Person and shall contain such additional provisions to protect the interests of the Holders of the Securities as the Board of Directors in good faith shall reasonably determine necessary by reason of the foregoing (which determination shall be described in a Board Resolution). The provisions of this **Section 10.12** shall similarly apply to successive Merger Events.

The Company shall not become a party to any Merger Event unless its terms are consistent with this **Section 10.12**.

None of the foregoing provisions shall affect the right of a Holder to convert its Securities into shares of Common Stock as set forth in **Section 10.01** and **Section 10.02** prior to the effective date of such Merger Event.

In the event the Company shall execute a supplemental indenture pursuant to this **Section 10.12**, the Company shall promptly file with the Trustee an Officer's Certificate briefly stating the reasons therefor, the kind or amount of Reference Property receivable by Holders of the Securities upon the conversion of their Securities after any such Merger Event and any adjustment to be made with respect thereto.

10.13 CONVERSION AGENT AND TRUSTEE'S DISCLAIMER.

The Conversion Agent and Trustee have no duty to determine when an adjustment under this **Article X** should be made, how it should be made or what such adjustment should be, but may accept as conclusive evidence of the correctness of any such adjustment, and shall be protected in relying upon, the Officer's Certificate with respect thereto which the Company is obligated to file with the Trustee pursuant to **Section 10.10** hereof. The Conversion Agent and Trustee make no representation as to the validity or value of any securities or assets issued upon

59

conversion of Securities, and the Conversion Agent and Trustee shall not be responsible for the failure by the Company to comply with any provisions of this **Article X**.

The Conversion Agent and Trustee shall not be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture executed pursuant to **Section 10.12**, but may accept as conclusive evidence of the correctness thereof, and shall be protected in relying upon, the Officer's Certificate with respect thereto which the Company is obligated to file with the Trustee pursuant to **Section 10.12** hereof.

10.14 RIGHTS DISTRIBUTIONS PURSUANT TO STOCKHOLDERS' RIGHTS PLANS.

Upon conversion of any Security or a portion thereof, the Company shall make provision such that the Holder thereof shall, to the extent such Holder is to receive shares of Common Stock upon such conversion, receive, in addition to, and concurrently with the delivery of, such shares of Common Stock upon conversion, the rights described in any stockholders' rights plan(s) of the Company then in effect, unless the rights have separated from the Common Stock prior to the time of conversion, in which case the Conversion Rate shall be adjusted at the time of separation as if the Company distributed to all holders of Common Stock, Distributed Property as described in **Section 10.06(c)**, subject to readjustment in the event of the expiration, termination or redemption of such rights.

10.15 INCREASED CONVERSION RATE APPLICABLE TO CERTAIN SECURITIES SURRENDERED IN CONNECTION WITH MAKE-WHOLE FUNDAMENTAL CHANGES.

(A) Notwithstanding anything herein to the contrary, the Conversion Rate applicable to each Security that is surrendered for conversion, in accordance with this **Article X**, at any time during the period (any such period occurring before the Maturity Date, a "**Make-Whole Conversion Period**") from, and including, the effective date of a Make-Whole Fundamental Change (which effective date the Company shall disclose in the written notice and public announcement referred to in **Section 10.15(E)**) to, and including, the thirtieth (30th) Business Days immediately following such effective date (or, if such Make-Whole Fundamental Change also constitutes a Fundamental Change, the Fundamental Change Repurchase Date corresponding to such Fundamental Change) shall be increased to an amount equal to the Conversion Rate that would, but for this **Section 10.15**, otherwise apply to such Security pursuant to this **Article X**, plus an amount equal to the Make-Whole Applicable Increase.

(B) As used herein, "**Make-Whole Applicable Increase**" shall mean, with respect to a Make-Whole Fundamental Change, the amount, set forth in the following table, which corresponds to the effective date and the Applicable Price of such Make-Whole Fundamental Change:

Effective Date	Applicable Price										
	\$4.44	\$5.00	\$5.50	\$6.00	\$6.50	\$8.00	\$10.00	\$12.00	\$15.00	\$20.00	\$25.00
February 13, 2013	37.5375	32.8377	27.4390	23.3111	20.0840	13.7091	9.1255	6.5025	4.1812	2.1480	1.0993

60

Effective Date	\$4.44	\$5.00	\$5.50	\$6.00	\$6.50	\$8.00	\$10.00	\$12.00	\$15.00	\$20.00	\$25.00
February 1, 2014	37.5375	32.2283	26.4365	22.0966	18.7746	12.4472	8.1443	5.7830	3.7380	1.9514	1.0192
February 1, 2015	37.5375	30.7611	24.5023	19.9435	16.5554	10.4473	6.6440	4.6910	3.0491	1.6098	0.8415
February 1, 2016	37.5375	28.2205	21.3812	16.6108	13.2321	7.6759	4.7053	3.3315	2.2058	1.1899	0.6233
February 1, 2017	37.5375	23.8473	16.1383	11.2205	8.0938	3.9458	2.3863	1.7564	1.2077	0.6724	0.3563
February 1, 2018	37.5375	12.3123	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

provided, however, that:

(i) if the actual Applicable Price of such Make-Whole Fundamental Change is between two (2) Applicable Prices listed in the table above under the row titled “Applicable Price,” or if the actual effective date of such Make-Whole Fundamental Change is between two effective dates listed in the table above in the column immediately below the title “Effective Date,” then the Make-Whole Applicable Increase for such Make-Whole Fundamental Change shall be determined by linear interpolation between the Make-Whole Applicable Increases set forth for such higher and lower Applicable Prices, or for such earlier and later Effective Dates based on a three hundred and sixty five (365) day year, as applicable;

(ii) if the actual Applicable Price of such Make-Whole Fundamental Change is greater than \$25.00 per share (subject to adjustment in the same manner as the Applicable Prices pursuant to **Section 10.15(B)(iii)**), or if the actual Applicable Price of such Make-Whole Fundamental Change is less than \$4.44 per share (subject to adjustment in the same manner as the Applicable Prices pursuant to **Section 10.15(B)(iii)**), then the Make-Whole Applicable Increase shall be equal to zero (0);

(iii) if an event occurs that requires, pursuant to **Section 10.06**, an adjustment to the Conversion Rate, then, on the date and at the time such adjustment is so required to be made, each Applicable Price set forth in the table above under the row titled “Applicable Price” shall be deemed to be adjusted so that such Applicable Price, at and after such time, shall be equal to the product of (1) such Applicable Price as in effect immediately before such adjustment to such Applicable Price and (2) a fraction whose numerator is the Conversion Rate in effect immediately before such adjustment to the Conversion Rate and whose denominator is the Conversion Rate to be in effect, in accordance with this **Article X**, immediately after such adjustment to the Conversion Rate;

(iv) each Make-Whole Applicable Increase amount set forth in the table above shall be adjusted in the same manner, for the same events and at the same time as the Conversion Rate is to be adjusted pursuant to **Section 10.06**; and

61

(v) in no event shall the Conversion Rate applicable to any Security be increased pursuant to this **Section 10.15** to the extent, but only to the extent, such increase shall cause the Conversion Rate applicable to such Security to exceed 225.2252 shares per \$1,000 principal amount (the “**Maximum Conversion Rate**”); *provided, however,* that the Maximum Conversion Rate shall be adjusted at the same time and in the same manner in which, and for the same events for which, the Conversion Rate is to be adjusted pursuant to **Section 10.06**.

(C) Upon surrender of Securities for conversion in connection with a Make-Whole Fundamental Change pursuant to this **Article X**, the Company shall deliver shares of Common Stock (together with cash in lieu of any fractional share) in accordance with **Section 10.02** and as subject to further adjustment as set forth in **Section 10.12**; *provided, however,* that if at the effective time of a Common Stock Change Make-Whole Fundamental Change the consideration for the Common Stock is comprised entirely of cash, for any conversion of Securities following the effective date of such Common Stock Change Make-Whole Fundamental Change, the conversion obligation shall be calculated based solely on the Applicable Price for the transaction and shall be deemed to be an amount of cash equal to, per \$1,000 principal amount of converted Securities, the applicable Conversion Rate (including any Make-Whole Applicable Increase), *multiplied by* such Applicable Price. In such event, the cash due upon conversion shall be determined and paid to Holders in cash on the third (3rd) Business Day immediately following the Conversion Date.

(D) As used herein, “**Applicable Price**” shall have the following meaning with respect to a Make-Whole Fundamental Change: (a) if such Make-Whole Fundamental Change constitutes a Common Stock Change Make-Whole Fundamental Change and the consideration (excluding cash payments for fractional shares or pursuant to statutory appraisal rights) for the Common Stock in such Common Stock Change Make-Whole Fundamental Change consists solely of cash, then the “Applicable Price” with respect to such Common Stock Change Make-Whole Fundamental Change shall be equal to the cash amount paid per share of Common Stock in such Common Stock Change Make-Whole Fundamental Change and (b) in all other circumstances, the “Applicable Price” with respect to such Make-Whole Fundamental Change shall be equal to the average of the Closing Sale Prices per share of Common Stock for the five (5) consecutive Trading Days immediately preceding, but excluding, the effective date of such Make-Whole Fundamental Change, which average shall be appropriately adjusted by the Board of Directors, in its good faith determination, to account for any adjustment, pursuant hereto, to the Conversion Rate that shall become effective, or any event requiring, pursuant hereto, an adjustment to the Conversion Rate where the record date of such event occurs, at any time during such five (5) consecutive Trading Days.

(E) At least thirty (30) Business Days before the anticipated effective date of each proposed Make-Whole Fundamental Change, the Company shall mail to each Holder, in accordance with **Section 13.01**, written notice of, and shall publicly announce, through a reputable national newswire service, the anticipated effective date of such proposed Make-Whole Fundamental Change. Each such notice and announcement shall also state that, in connection with such Make-Whole Fundamental Change, the Company shall increase, in accordance

62

herewith, the Conversion Rate applicable to Securities entitled as provided herein to such increase (along with a description of how such increase shall be calculated and the time periods during which Securities must be surrendered in order to be entitled to such increase). No later than the third (3rd) Business Day immediately following the effective date of each Make-Whole Fundamental Change, the Company shall mail, in accordance with **Section 13.01**, written notice of, and shall publicly announce, through a reputable national newswire service, such effective date and the Make-Whole Applicable Increase applicable to such Make-Whole Fundamental Change.

(F) For avoidance of doubt, the provisions of this **Section 10.15** shall not affect or diminish the Company's obligations, if any, pursuant to **Article III** with respect to a Make-Whole Fundamental Change that also constitutes a Fundamental Change.

(G) Nothing in this **Section 10.15** shall prevent an adjustment to the Conversion Rate pursuant to **Section 10.06** in respect of a Make-Whole Fundamental Change.

(H) The Company shall not take any action that would result in adjustment of the Conversion Rate, pursuant to this **Section 10.15**, in such a manner as to result in the reduction of the Conversion Price to less than the par value per share of the Common Stock.

XI. CONCERNING THE HOLDERS

11.01 ACTION BY HOLDERS.

Whenever in this Indenture it is provided that the Holders of a specified percentage in aggregate principal amount of the Securities may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the Holders of such specified percentage have joined therein may be evidenced (i) by any instrument or any number of instruments of similar tenor executed by Holders in person or by agent or proxy appointed in writing, (ii) by the record of the Holders voting in favor thereof at any meeting of Holders duly called and held in accordance with the provisions of **Article XII** or (iii) by a combination of such instrument or instruments and any such record of such a meeting of Holders. Whenever the Company or the Trustee solicits the taking of any action by the Holders of the Securities, the Company or the Trustee may fix, but shall not be required to, in advance of such solicitation, a date as the record date for determining Holders entitled to take such action. The record date if one is selected shall be not more than fifteen (15) days prior to the date of commencement of solicitation of such action.

11.02 PROOF OF EXECUTION BY HOLDERS.

Subject to the provisions of **Section 7.01**, **Section 7.02** and **Section 12.05**, proof of the execution of any instrument by a Holder or its agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Securities shall be proved by

63

the security register of the Registrar or by a certificate of the Registrar. The record of any Holders' meeting shall be proved in the manner provided in **Section 12.06**.

11.03 PERSONS DEEMED ABSOLUTE OWNERS.

The Company, the Trustee, any authenticating agent, any Paying Agent, any Conversion Agent and any Registrar may deem the Person in whose name a Security shall be registered upon the security register of the Registrar to be, and may treat it as, the absolute owner of such Security (whether or not such Security shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Company or any Registrar) for the purpose of receiving payment of or on account of the principal of and (subject to **Section 2.12** and **Section 4.01**) accrued and unpaid interest on such Security, for conversion of such Security and for all other purposes; and neither the Company nor the Trustee nor any authenticating agent nor any Paying Agent nor any Conversion Agent nor any Registrar shall be affected by any notice to the contrary. All such payments so made to any Holder for the time being, or upon its order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for monies payable upon any such Security. Notwithstanding anything to the contrary in this Indenture or the Securities following an Event of Default, any Holder of a beneficial interest in a Global Security may directly enforce against the Company, without the consent, solicitation, proxy, authorization or any other action of the Depository or any other Person, such Holder's right to exchange such beneficial interest for a Physical Security in accordance with the provisions of this Indenture.

XII. HOLDERS' MEETINGS.

12.01 PURPOSE OF MEETINGS.

A meeting of Holders may be called at any time and from time to time pursuant to the provisions of this **Article XII** for any of the following purposes:

(A) to give any notice to the Company or to the Trustee or to give any directions to the Trustee permitted under this Indenture, or to consent to the waiving of any Default or Event of Default hereunder and its consequences, or to take any other action authorized to be taken by Holders pursuant to any of the provisions of **Article VI**;

(B) to remove the Trustee and nominate a successor trustee pursuant to the provisions of **Article VII**;

(C) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of **Section 9.02**; or

(D) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Securities under any other provision of this Indenture or under applicable law.

64

12.02 CALL OF MEETINGS BY TRUSTEE.

The Trustee may at any time call a meeting of Holders to take any action specified in **Section 12.01**, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of the Holders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting and the establishment of any record date pursuant to **Section 11.01**, shall be mailed to Holders of such Securities at their addresses

as they shall appear on the security register of the Registrar. Such notice shall also be mailed to the Company. Such notices shall be mailed not less than twenty (20) nor more than ninety (90) days prior to the date fixed for the meeting.

Any meeting of Holders shall be valid without notice if the Holders of all Securities then outstanding are present in person or by proxy or if notice is waived before or after the meeting by the Holders of all Securities outstanding, and if the Company and the Trustee are either present by duly authorized representatives or have, before or after the meeting, waived notice.

12.03 CALL OF MEETINGS BY COMPANY OR HOLDERS.

In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% in aggregate principal amount of the Securities then outstanding, shall have requested the Trustee to call a meeting of Holders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed the notice of such meeting within twenty (20) days after receipt of such request, then the Company or such Holders may determine the time and the place for such meeting and may call such meeting to take any action authorized in **Section 12.01**, by mailing notice thereof as provided in **Section 12.02**.

12.04 QUALIFICATIONS FOR VOTING.

To be entitled to vote at any meeting of Holders a Person shall (a) be a Holder of one or more Securities on the record date pertaining to such meeting or (b) be a Person appointed by an instrument in writing as proxy by a Holder of one or more Securities on the record date pertaining to such meeting. The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

12.05 REGULATIONS.

Notwithstanding any other provision of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders, in regard to proof of the holding of Securities and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

65

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders as provided in **Section 12.03**, in which case the Company or the Holders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Holders of a majority in principal amount of the Securities represented at the meeting and entitled to vote at the meeting.

Subject to the provisions of **Section 2.09**, at any meeting of Holders each Holder or proxyholder shall be entitled to one vote for each \$1,000 principal amount of Securities held or represented by such Holder or proxyholder, as the case may be; *provided, however*, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Securities held by it or instruments in writing as aforesaid duly designating it as the proxy to vote on behalf of other Holders. Any meeting of Holders duly called pursuant to the provisions of **Section 12.02** or **Section 12.03** may be adjourned from time to time by the Holders of a majority of the aggregate principal amount of Securities represented at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

12.06 VOTING.

The vote upon any resolution submitted to any meeting of Holders shall be by written ballot on which shall be subscribed the signatures of the Holders or of their representatives by proxy and the outstanding principal amount of the Securities held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in **Section 12.02**. The record shall show the principal amount of the Securities voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

12.07 NO DELAY OF RIGHTS BY MEETING.

Nothing contained in this **Article XII** shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Holders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or

66

rights conferred upon or reserved to the Trustee or to the Holders under any of the provisions of this Indenture or of the Securities.

XIII. MISCELLANEOUS

13.01 NOTICES.

Any notice or communication by the Company or the Trustee to the other shall be deemed to be duly given if made in writing and delivered:

- (A) by hand (in which case such notice shall be effective upon delivery);
- (B) by facsimile (in which case such notice shall be effective upon receipt of confirmation of good transmission thereof); or
- (C) by overnight delivery by a nationally recognized courier service (in which case such notice shall be effective on the Business Day immediately after being deposited with such courier service),

in each case to the recipient party's address or facsimile number, as applicable, set forth in this **Section 13.01**. The Company or the Trustee by notice to the other may designate additional or different addresses or facsimile numbers for subsequent notices or communications.

The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, pdf, facsimile transmission or other similar unsecured electronic methods; *provided, however*, that the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the Company elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding if such instructions conflict or are inconsistent with a subsequent written instruction. The Company agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including, without limitation, the risk of the Trustee acting on unauthorized instructions and the risk of interception and misuse by third parties.

Any notice or communication to a Holder shall be mailed to its address shown on the register kept by the Registrar. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

If the Company mails a notice or communication to Holders, it shall mail a copy to the Trustee and each Securities Agent at the same time. If the Trustee or the Securities Agent is required, pursuant to the express terms of this Indenture or the Securities, to mail a notice or communication to Holders, the Trustee or the Securities Agent, as the case may be, shall also mail a copy of such notice or communication to the Company.

All notices or communications shall be in writing.

The Company's address is:

Accuray Incorporated
1310 Chesapeake Terrace
Sunnyvale, CA 94089
Attention: General Counsel
Facsimile: (408) 716-3341

The Trustee's address is:

The Bank of New York Mellon Trust Company, N.A.
400 South Hope Street, Suite 400
Los Angeles, CA 90071
Attention: Corporate Unit
Facsimile: (213) 630-6298

13.02 CERTIFICATE AND OPINION AS TO CONDITIONS PRECEDENT.

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

- (i) an Officer's Certificate stating that, in the opinion of the signatories to such Officer's Certificate, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and
- (ii) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Each signatory to an Officer's Certificate or an Opinion of Counsel may (if so stated) rely, effectively, upon an Opinion of Counsel as to legal matters and an Officer's Certificate or certificates of public officials as to factual matters if such signatory reasonably and in good faith believes in the accuracy of the document relied upon.

13.03 STATEMENTS REQUIRED IN CERTIFICATE OR OPINION.

Each Officer's Certificate or Opinion of Counsel with respect to compliance with a condition or covenant provided for in this Indenture shall include:

- (i) a statement that the Person making such certificate or opinion has read such covenant or condition;

(ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(iii) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(iv) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with.

13.04 COMMUNICATION BY HOLDERS WITH OTHER HOLDERS.

Holders may communicate pursuant to TIA § 312(b) with other Holders with respect to their rights under this Indenture or the Securities. The Company, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

13.05 RULES BY TRUSTEE AND AGENTS.

The Registrar, Paying Agent or Conversion Agent may make reasonable rules and set reasonable requirements for their respective functions.

13.06 LEGAL HOLIDAYS.

A “**Legal Holiday**” is a Saturday, a Sunday or a day on which banking institutions are not required to be open in the City of New York, in the State of New York. If a payment date is a Legal Holiday, payment may be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue on that payment for the intervening period.

A “**Business Day**” is a day other than a Legal Holiday.

13.07 DUPLICATE ORIGINALS.

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. Delivery of an executed counterpart by facsimile shall be effective as delivery of a manually executed counterpart thereof.

13.08 GOVERNING LAW.

THIS INDENTURE AND THE SECURITIES, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE OR THE SECURITIES, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH

THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE CONFLICTS OF LAW PROVISIONS THEREOF OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW). EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE TRANSACTION CONTEMPLATED HEREBY.

13.09 NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS.

This Indenture may not be used to interpret another indenture, loan or debt agreement of the Company or any of its Subsidiaries. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

13.10 SUCCESSORS.

All agreements of the Company in this Indenture and the Securities shall bind its successors and assigns. All agreements of the Trustee in this Indenture shall bind its successors.

13.11 SEPARABILITY.

In case any provision in this Indenture or in the Securities 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 and a Holder shall have no claim therefor against any party hereto.

13.12 TABLE OF CONTENTS, HEADINGS, ETC.

The Table of Contents, Cross-Reference Table and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof and shall in no way modify or restrict any of the terms or provisions hereof.

13.13 CALCULATIONS IN RESPECT OF THE SECURITIES; ADJUSTMENT OF PRICES.

(A) The Company and its agents shall make all calculations under this Indenture and the Securities. These calculations include, but are not limited to, determinations of and adjustments to the Conversion Rate or Conversion Price and determinations of the Closing Sale Price of the Common Stock, the amount of cash and/or the number of shares or amount of Reference Property, if any, payable or issuable upon conversion of the Securities and amounts of interest payable on the Securities. The Company and its agents shall make all of these calculations in good faith, and, absent manifest error, such calculations shall be final and binding on all Holders. None of the Trustee, the Conversion Agent, the Security Registrar or the Paying Agent (in each case, if other than the Company) shall have any responsibility for making such calculations nor for monitoring the trading price of the Company's Common Stock. The Company shall provide a copy of such calculations to each of the Trustee and the Conversion Agent (if other than the Trustee) as required hereunder, and, absent such manifest error, each of

the Trustee and the Conversion Agent (if other than the Trustee) shall be entitled to conclusively rely on the accuracy of any such calculation without independent verification. The Trustee shall forward the Company's or the Company's agent's calculations to any Holder upon the request of that Holder at the Company's sole cost and expense.

(B) Whenever any provision of this Indenture requires the Company to calculate the Closing Sale Prices or the Applicable Price for purposes of a Make-Whole Fundamental Change over a span of multiple days, the Board of Directors will make appropriate adjustments to each to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the effective date, record date or expiration date (in the case of a tender or exchange offer) of the event occurs, at any time during the period when such Closing Sale Prices or Applicable Prices are to be calculated.

13.14 NO PERSONAL LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES OR STOCKHOLDERS.

None of the Company's past, present or future directors, officers, employees or stockholders, as such, shall have any liability for any of the Company's obligations under this Indenture or the Securities or for any claim based on, or in respect or by reason of, such obligations or their creation. By accepting a Security, each holder waives and releases all such liability. This waiver and release is part of the consideration for the issue of the Securities.

13.15 FORCE MAJEURE.

In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

[The Remainder of This Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the date first above written.

ACCURAY INCORPORATED

By: _____
Name: Derek Bertocci
Title: Chief Financial Officer

By: _____
Name: Darren J. Milliken
Title: Senior Vice President, General Counsel

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as
Trustee

By: _____
Name:
Title:

EXHIBIT A

[Face of Security]

ACCURAY INCORPORATED

Certificate No.

[INSERT PRIVATE PLACEMENT LEGEND (SECURITIES) AND GLOBAL SECURITY LEGEND AS REQUIRED]

3.50% Convertible Senior Notes due 2018 (the "Securities")

CUSIP No. 004397 AC9

Accuray Incorporated, a Delaware corporation (the “**Company**,” which term includes any successor corporation or other entity under the Indenture referred to on the reverse hereof), for value received, hereby promises to pay to [_____], or its registered assigns, the principal sum [of [_____] dollars (\$[_____])](1) [as set forth in the “Schedule of Exchanges of Interests in the Global Security” attached hereto, which amount, taken together with the principal amounts of all other outstanding Securities, shall not, unless permitted by the Indenture, exceed one hundred million dollars (\$100,000,000) (or one hundred fifteen million dollars (\$115,000,000) if the Initial Purchasers exercise their option to purchase Option Securities in full as set forth in the Purchase Agreement) in aggregate at any time, in accordance with the rules and procedures of the Depository](2), on February 1, 2018, and to pay interest thereon, as provided on the reverse hereof, until the principal and any unpaid and accrued interest are paid or duly provided for.

Interest Payment Dates: February 1 and August 1, with the first payment to be made on August 1, 2013.

Record Dates: January 15 and July 15.

The provisions on the back of this certificate are incorporated as if set forth on the face hereof.

(1) This is included for Physical Securities.

(2) This is included for Global Securities.

IN WITNESS WHEREOF, Accuray Incorporated has caused this instrument to be duly signed.

ACCURAY INCORPORATED

By: _____

Name:

Title:

Dated: _____

A-2

TRUSTEE’S CERTIFICATE OF AUTHENTICATION

This is one of the Securities referred to in the within-mentioned Indenture.

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

By: _____
Authorized Signatory

Dated: _____

A-3

[REVERSE OF SECURITY]

ACCURAY INCORPORATED

3.50% Convertible Senior Notes due 2018

1. **Interest.** Accuray Incorporated, a Delaware corporation (the “**Company**”), promises to pay interest on the principal amount of this Security at the rate *per annum* shown above. The Company shall pay interest, payable semi-annually in arrears, on February 1 and August 1 of each year, with the first payment to be made on August 1, 2013. Interest on the Securities shall accrue on the principal amount from, and including, the most recent date to which interest has been paid or provided for or, if no interest has been paid, from, and including, February 13, 2013, in each case to, but excluding, the next Interest Payment Date or Maturity Date, as the case may be. Interest shall be computed on the basis of a 360-day year of twelve 30-day months. The Company shall pay, in cash, interest on any overdue amount (including, to the extent permitted by applicable law, overdue interest) at the rate borne by the Securities. In certain circumstances, Additional Interest shall be payable in accordance with **Section 4.09(A)**, **Section 4.09(B)** and **Section 6.02(B)** of the Indenture and any reference to “interest” shall be deemed to include any such Additional Interest.

2. **Maturity.** The Securities shall mature on February 1, 2018.

3. **Method of Payment.** Except as provided in the Indenture (as defined below), the Company shall pay interest on the Securities to the Persons who are Holders of record of Securities at the close of business on the Record Date set forth on the face of this Security immediately preceding the applicable Interest Payment Date. Holders must surrender Securities to a Paying Agent to collect the principal amount plus, if applicable, accrued and unpaid

interest, if any, or the Fundamental Change Repurchase Price, payable as herein provided on the Maturity Date or Fundamental Change Repurchase Date, as applicable.

4. **Paying Agent, Registrar, Conversion Agent and Custodian.** Initially, The Bank of New York Mellon Trust Company, N.A. (the “Trustee”) shall act as Paying Agent, Registrar, Conversion Agent and Custodian. The Company may change any Paying Agent, Registrar or Conversion Agent without prior notice.

5. **Indenture.** The Company issued the Securities under an Indenture dated as of February 13, 2013 (the “Indenture”) between the Company and the Trustee. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 U.S. Code §§ 77aaa-77bbb) (the “TIA”) as amended and in effect from time to time. The Securities are subject to all terms set forth in the Indenture, and Holders are referred to the Indenture for a statement of such terms. The Securities are general unsecured senior obligations of the Company limited to \$100,000,000 aggregate principal amount (or \$115,000,000 if the Initial Purchasers have elected to exercise in full the Option to purchase up to an additional \$15,000,000 aggregate principal amount of the Securities), except as otherwise provided in the Indenture (and except for Securities issued in substitution for destroyed, mutilated, lost or stolen Securities). Terms used herein without definition and which

A-4

are defined in the Indenture have the meanings assigned to them in the Indenture. In the event of any inconsistency between the terms of this Security and the terms of the Indenture, the terms of the Indenture shall control.

6. **No Redemption; No Sinking Fund.** The Securities shall not be redeemable by the Company prior to the Maturity Date; and no sinking fund is provided for the Securities.

7. **Repurchase at Option of Holder Upon a Fundamental Change.** Subject to the terms and conditions of the Indenture, in the event of a Fundamental Change, each Holder of the Securities shall have the right, at the Holder’s option, to require the Company to repurchase for cash such Holder’s Securities including any portion thereof which is \$1,000 in principal amount or any integral multiple thereof on the Fundamental Change Repurchase Date, at a price payable in cash equal to the Fundamental Change Repurchase Price.

8. **Conversion.**

Subject to the provisions of the Indenture, the Securities shall be convertible into shares of Common Stock in accordance with **Article X** of the Indenture. To convert a Security, a Holder must satisfy the requirements of **Section 10.02(A)** of the Indenture. A Holder may convert a portion of a Security if the portion is \$1,000 principal amount or an integral multiple of \$1,000 principal amount.

Upon conversion of a Security, the Holder thereof shall be entitled to receive the shares of Common Stock issuable upon conversion in accordance with **Article X** of the Indenture, at the Conversion Rate specified in the Indenture, as adjusted from time to time as provided in the Indenture.

The Conversion Rate applicable to each Security that is surrendered for conversion, in accordance with the Securities and Article X of the Indenture, at any time during the Make-Whole Conversion Period with respect to a Make-Whole Fundamental Change shall be increased to an amount equal to the Conversion Rate that would, but for **Section 10.15** of the Indenture, otherwise apply to such Security pursuant to **Article X** of the Indenture, plus an amount equal to the Make-Whole Applicable Increase.

9. **Denominations, Transfer, Exchange.** The Securities are in registered form, without interest coupons, in denominations of integral multiples of \$1,000 principal amount. The transfer of Securities may be registered and Securities may be exchanged as provided in the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents. No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any transfer tax or other similar governmental charge that may be imposed in connection with certain transfers or exchanges as required by law or set forth in the Indenture. The Company or the Trustee, as the case may be, shall not be required to register the transfer of or exchange any Security for which the Holder has delivered, and not validly withdrawn, a Purchase Notice in accordance with the Indenture, except (i) if the Company defaults in the payment of the

A-5

Fundamental Change Repurchase Price or (ii) with respect to that portion of the Securities not being repurchased.

10. **Persons Deemed Owners.** The registered Holder of a Security may be treated as the owner of such Security for all purposes.

11. **Amendments, Supplements and Waivers.** The Indenture contains provisions permitting the Company and the Trustee in certain circumstances, without the consent of the Holders of the Securities, and in certain other circumstances, with the consent of the Holders of at least a majority in aggregate principal amount of the outstanding Securities, to amend or supplement the Indenture or the Securities.

12. **Defaults and Remedies.** Subject to certain exceptions, if an Event of Default occurs and is continuing, the Trustee by notice to the Company or the Holders of at least twenty five percent (25%) in principal amount of the Securities then outstanding by notice to the Company and the Trustee may declare the principal of, and any accrued and unpaid interest on, all Securities to be due and payable immediately. If one of certain bankruptcy- and insolvency-related Events of Default occurs and is continuing, the principal of, and accrued and unpaid interest on, all the Securities shall automatically become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder. Subject to certain exceptions, the Holders of a majority in aggregate principal amount of the Securities then outstanding by written notice to the Trustee may rescind or annul an acceleration and its consequences if certain conditions set forth in the Indenture are satisfied.

13. **Trustee Dealings with the Company.** The Trustee under the Indenture, or any banking institution serving as successor Trustee thereunder, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for, the Company or its Affiliates, and may otherwise deal with the Company or its Affiliates, as if it were not Trustee.

14. **Authentication.** This Security shall not be valid until authenticated by the manual or facsimile signature of the Trustee or an authenticating agent in accordance with the Indenture.**Abbreviations.** Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entirety), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (Uniform Gifts to Minors Act).

THE COMPANY SHALL FURNISH TO ANY HOLDER UPON WRITTEN REQUEST AND WITHOUT CHARGE A COPY OF THE INDENTURE. REQUESTS MAY BE MADE TO:

Accuray Incorporated
1310 Chesapeake Terrace
Sunnyvale, California 94089
Attn: General Counsel

A-6

ATTACHMENT 1

FORM OF ASSIGNMENT

I or we assign to

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER

(please print or type name and address)

the within Security and all rights thereunder, and hereby irrevocably constitute and appoint

Attorney to transfer the Security on the books of the Company with full power of substitution in the premises.

Dated: _____

NOTICE: The signature on this assignment must correspond with the name as it appears upon the face of the within Security in every particular without alteration or enlargement or any change whatsoever and be guaranteed by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other guarantee program acceptable to the Registrar.

Signature Guarantee: _____

A-7

In connection with any transfer of this Security occurring prior to the Resale Restriction Termination Date, the undersigned confirms that it is making, and it has not utilized any general solicitation or general advertising in connection with, the transfer:

[Check One]

- (1) to Accuray Incorporated or any Subsidiary thereof; or
- (2) pursuant to a registration statement which has become effective under the Securities Act of 1933, as amended (the “**Securities Act**”) (which is not expected to be available); or
- (3) to a Qualified Institutional Buyer in compliance with Rule 144A under the Securities Act; or
- (4) pursuant to an exemption from registration provided by Rule 144 under the Securities Act (if available) or any other available exemption from the registration requirements of the Securities Act.

Unless one of the items (1) through (4) is checked, the Registrar shall refuse to register any of the Securities evidenced by this certificate in the name of any person other than the registered Holder thereof; *provided, however*, that if item (4) is checked, the Company, the transfer agent or the Registrar may require, prior to registering any such transfer of the Securities, in their sole discretion, such written legal opinions, certifications and other evidence as the Registrar or the Company have reasonably requested to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act. If item (3) is checked, the purchaser must complete the certification below.

If none of the foregoing items are checked, the Trustee or Registrar shall not be obligated to register this Security in the name of any person other than the Holder hereof unless and until the conditions to any such transfer of registration set forth herein and in the Indenture shall have been satisfied.

Dated: _____

Signed: _____
(Sign exactly as name appears on the other side of this Security)

Signature Guarantee: _____

A-8

TO BE COMPLETED BY PURCHASER IF (3) ABOVE IS CHECKED

The undersigned represents and warrants that it is purchasing this Security for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, as amended, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A and acknowledges that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Dated: _____

NOTICE: To be executed by an executive officer

A-9

ATTACHMENT 2

FORM OF CONVERSION NOTICE

To convert this Security in accordance with the Indenture, check the box:

To convert only part of this Security, state the principal amount to be converted (must be in multiples of \$1,000):

\$

If you want the stock certificate representing the Common Stock issuable upon conversion made out in another person's name, fill in the form below:

(Insert other person's soc. sec. or tax I.D. no.)

(Print or type other person's name, address and zip code)

Date: _____ Signature(s): _____

(Sign exactly as your name(s) appear(s) on the other side of this Security)

Signature(s) guaranteed by: _____

(All signatures must be guaranteed by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other guarantee program acceptable to the Trustee.)

A-10

ATTACHMENT 3

FORM OF PURCHASE NOTICE

Certificate No. of Security:

If you want to elect to have this Security purchased by the Company pursuant to **Section 3.02** of the Indenture, check the box:

If you want to elect to have only part of this Security purchased by the Company pursuant to **Section 3.02** of the Indenture, state the principal amount to be so purchased by the Company:

\$ _____
(in an integral multiple of \$1,000)

Date: _____

Signature(s): _____

(Sign exactly as your name(s) appear(s) on the other side of this Security)

Signature(s) guaranteed by: _____

(All signatures must be guaranteed by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other guarantee program acceptable to the Trustee.)

A-11

SCHEDULE A(3)

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL SECURITY

Accuray Incorporated
3.50% Convertible Senior Notes due 2018

The initial principal amount of this Global Security is _____ DOLLARS (\$ _____). The following increases or decreases in this Global Security have been made:

<u>Date of Exchange</u>	<u>Amount of decrease in Principal Amount of this Global Security</u>	<u>Amount of increase in Principal Amount of this Global Security</u>	<u>Principal Amount of this Global Security following such decrease or increase</u>	<u>Signature of authorized signatory of Trustee or Custodian</u>

(3) This is included for Global Securities.

A-1

EXHIBIT B-1A

FORM OF PRIVATE PLACEMENT LEGEND (SECURITIES)

THIS SECURITY AND THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY, THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN OR THEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION.

BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER (1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT AND (2) AGREES FOR THE BENEFIT OF ACCURAY INCORPORATED (THE "COMPANY") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREUNDER, AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT ONLY:

- (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF; OR
- (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT (WHICH IS NOT EXPECTED TO BE AVAILABLE); OR
- (C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT; OR
- (D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE) OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (D) ABOVE, THE COMPANY, THE TRUSTEE AND THE TRANSFER AGENT RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE

B-1A-1

AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

B-1A-2

EXHIBIT B-1B

FORM OF PRIVATE PLACEMENT LEGEND (COMMON STOCK)

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN OR THEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION.

BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER (1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A “QUALIFIED INSTITUTIONAL BUYER”) WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT AND (2) AGREES FOR THE BENEFIT OF ACCURAY INCORPORATED (THE “COMPANY”) THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREUNDER, AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT ONLY:

- (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF; OR
- (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT (WHICH IS NOT EXPECTED TO BE AVAILABLE); OR
- (C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT; OR
- (D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE) OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (D) ABOVE, THE COMPANY, THE TRUSTEE AND THE TRANSFER AGENT RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

B-1B-1

EXHIBIT B-2

FORM OF LEGEND FOR GLOBAL SECURITY

Any Global Security authenticated and delivered hereunder shall bear a legend (which would be in addition to any other legends required in the case of a Restricted Security) in substantially the following form:

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY OR A SUCCESSOR DEPOSITARY. THIS SECURITY IS NOT EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER OF THIS SECURITY AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF CEDE & CO. OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN SECTION 2.16 OF THE INDENTURE.

B-2-1

EXHIBIT C

Form of Notice of Transfer Pursuant to Registration Statement

Accuray Incorporated
1310 Chesapeake Terrace
Sunnyvale, California 94089
Attention: General Counsel

The Bank of New York Mellon Trust Company, N.A.
400 South Hope Street, Suite 400
Los Angeles, CA 90071
Attention: Corporate Unit
Facsimile: (213) 630-6298

Re: Accuray Incorporated (the "**Company**") 3.50% Convertible Senior Notes due 2018 (the "**Securities**")

Ladies and Gentlemen:

Please be advised that _____ has transferred \$ _____ aggregate principal amount of the Securities and _____ shares of Common Stock, par value \$0.001 per share, of the Company issued on conversion of the Securities ("**Common Stock**") pursuant to an effective Shelf Registration Statement on Form S-3 (File No. 333-_____).

We hereby certify that the prospectus delivery requirements, if any, of the Securities Act of 1933 as amended, have been satisfied with respect to the transfer described above and that the above-named beneficial owner of the Securities or Common Stock is named as a "Selling Security Holder" in the Prospectus dated _____, or in amendments or supplements thereto (the "**Prospectus**"), and that the aggregate principal amount of the Securities and the number of shares of Common Stock transferred are [a portion of] the Securities and Common Stock listed in such Prospectus, as amended or supplemented, opposite such owner's name.

Very truly yours,

(Name)

C-1



RENEWAL EXECUTIVE EMPLOYMENT AGREEMENT

This Employment Agreement (“Agreement”) is entered into and effective as of January 1, 2013 (“Effective Date”), by and between Accuray Incorporated, a Delaware corporation (the “Company”) and Derek Bertocci (“Executive”).

RECITALS

A. The Company is in the business of developing, manufacturing and selling radiation oncology, including radio surgery and radiation therapy, technologies and devices (the “Business”).

B. The Company wishes to continue the employment of Executive as Senior Vice President, Chief Financial Officer and Executive desires to serve the Company in such capacity pursuant to the terms and conditions in this Agreement.

C. As of the Effective Date, Executive is a full-time employee of the Company.

NOW, THEREFORE, the parties agree as follows:

1. **Position and Duties.**

(a) During the term of this Agreement, Executive will be employed by the Company to serve as Senior Vice President, Chief Financial Officer of the Company, reporting to the Company’s Chief Executive Officer (“CEO”). Executive will be responsible for performing the duties and responsibilities customarily expected to be performed by such position of a publicly reporting business entity; and (vi) performing such other duties and functions as are reasonably required and/or as may be reasonably prescribed by the Company from time to time.

(b) The location of Executive’s employment will be the Company’s headquarters offices, but Executive from time to time may be required to travel to other geographic locations in connection with the performance of his/her duties.

2. **Standards of Performance.** Executive will at all times faithfully, industriously and to the best of his/her ability, experience and talents perform all of the duties required of and from him pursuant to the terms of this Agreement. Executive will devote his/her full business energies and abilities and all of his/her business time to the performance of his/her duties hereunder and will not, without the Company’s prior written consent, render to others any service of any kind (whether or not for compensation) that, in the Company’s sole but reasonable judgment, would interfere with the full performance of his/her duties hereunder. Notwithstanding the foregoing, Executive is permitted to spend reasonable amounts of time to manage his/her personal financial and legal affairs and, with the Company’s consent which will not be unreasonably withheld, to serve on one civic, charitable, not-for-profit, industry or corporate board or advisory committee, provided that such activities, individually and collectively, do not materially interfere with the performance of Executive’s duties hereunder. In no event will Executive engage in any activities that could reasonably create a conflict of interest or the appearance of a conflict of interest. Executive shall be subject to the Company’s policies, procedures and approval practices, as generally in effect from time to time.

1310 Chesapeake Terrace, Sunnyvale CA 94089 Tel: 408.716.4600 Fax: 408.716.4601 www accuray.com

3. **Term.** Executive will be employed for no specific term and until terminated pursuant to Section 5, below, of this Agreement. The Company and Executive shall each have a right to terminate this Agreement and Executive’s employment as provided in Section 5. This Agreement may not be terminated without a related termination of Executive’s employment.

4. **Compensation and Benefits.**

(a) **Base Salary.** As an annual base salary (“Base Salary”) for all services rendered pursuant to this Agreement, Executive will be paid an initial Base Salary in the gross amount of \$332,600 calculated on an annualized basis, less necessary withholdings and authorized deductions, and payable pursuant to the Company’s regular payroll practices at the time. The Base Salary is first subject to review and adjustment within the first three (3) months after the end of the fiscal year current fiscal year, and, thereafter, subject to periodic review and adjustment not less frequently than annually within the first three (3) months after the end of the next successive fiscal year, in the sole discretion of the Company. Executive’s Base Salary will not be reduced from the level in effect from time to time, except that the Base Salary may be reduced in connection with a salary reduction program of general application to senior executives of the Company.

(b) **Performance Bonus.** During Executive’s employment under this Agreement, Executive will be eligible for a performance bonus, subject to the terms and conditions of the Company’s Performance Bonus Plan, which is applicable to senior executives of the Company. The target amount of Executive’s annual bonus is sixty five percent (65%) of Executive’s annual Base Salary. However, payment of the performance bonus will be conditioned on the Company’s achievement of corporate performance objectives approved by the Company and on the Executive’s achievement of individual performance metrics to be established annually and approved by the Company all as established pursuant to the Company’s Performance Bonus Plan as then in effect, and the bonus may be zero. For the avoidance of doubt, the performance bonus will be payable only if the corporate performance objectives approved by the Company are achieved as determined by the Company, subject to the Company’s right to exercise discretion in determining the amount of the bonus to be awarded, if any. To encourage continued tenure with the Company, Executive must be employed by the Company as of the payment date to be eligible for a performance bonus for the year to which the bonus relates, unless otherwise provided in Section 5. Performance bonuses will be paid out according to the terms of the applicable bonus plan.

(c) Equity Incentive Awards.

(i) Stock Options. The Company may grant to Executive the option to purchase shares of the Company's common stock ("Options") pursuant to the Accuray Incorporated 2007 Incentive Award Plan (the "Incentive Plan"). All Options shall be subject to the terms and conditions of the Incentive Plan and a stock option grant notice and grant agreement in a form prescribed by the Company (the "Option Agreement"), which Executive must sign as a condition to receiving the Options. All equity awards granted to Executive as of the date of this Agreement are listed on Exhibit B.

(ii) Restricted Stock Units. The Company may grant to Executive restricted stock units ("RSUs") pursuant to the Incentive Plan. All RSUs are subject to and conditioned on approval of the grant and its terms by the Board. All RSUs shall be subject to the terms and conditions

RENEWAL EXECUTIVE EMPLOYMENT AGMT STD 12.20.12

ACCURAY CONFIDENTIAL

2

of the Incentive Plan and a RSU grant notice and grant agreement in a form prescribed by the Company ("RSU Agreement"), which Executive must sign as a condition to receiving the RSUs. All equity awards granted to Executive as of the date of this Agreement are listed on Exhibit B.

(iii) Market Stock Units. The Company may grant to Executive performance-based market stock units ("MSUs") pursuant to the Incentive Plan. All MSUs are subject to and conditioned on approval of the grant and its terms by the Board. All granted MSUs shall vest as provided in the applicable MSU Agreement. All MSUs shall be subject to the terms and conditions of the Incentive Plan and a MSU Agreement in a form prescribed by the Company, which Executive must sign as a condition to receiving the MSUs. All equity awards granted to Executive as of the date of this Agreement are listed on Exhibit B.

(d) Paid Time Off and Benefits. Executive will accrue and be allowed to use paid time off for vacation, illness and holidays pursuant to the Company's policies that apply to executive officers of the Company. In addition, Executive is entitled to participate in any plans regarding benefits of employment, including pension, profit sharing, group health, disability insurance and other employee pension and welfare benefit plans now existing or hereafter established to the extent that Executive is eligible under the terms of such plans and if the other executive officers of the Company generally are eligible to participate in such plan. The Company may, in its sole discretion and from time to time, establish additional senior management benefit plans as it deems appropriate. Executive understands that any such plans may be modified or eliminated in the Company's sole discretion in accordance with applicable law, provided that no such modification or elimination shall result in reducing or eliminating any benefits in which Executive's right has vested.

(e) Reimbursement of Business Expenses. The Company will promptly reimburse to Executive his/her reasonable, customary and documented out-of-pocket business expenses in connection with the performance of his/her duties under this Agreement, and in accordance with the policies and procedures established by the Company; provided that each reimbursement shall be requested within two months after being incurred.

(f) Sarbanes-Oxley Act Loan Prohibition and Company Compensation-Related Policies. To the extent that any Company benefit, program, practice, arrangement or this Agreement would or might otherwise result in Executive's receipt of an illegal loan (the "Loan"), the Company shall use commercially reasonable efforts to provide Executive with a substitute for the Loan that is lawful and of at least equal value to Executive. If this cannot be done, or if doing so would be significantly more expensive to the Company than making the Loan, the Company need not make the Loan to Executive or provide him a substitute for it. Further, Executive acknowledges that any bonus or equity award provided for in this Agreement or otherwise awarded to him shall be subject to the Company's Recoupment (Clawback) Policy, as such policy may be amended from time to time, and agrees that he will be subject to, and shall comply with, the Company's stock ownership requirements which are set forth in its Amended and Restated Corporate Governance Guidelines as such requirements may be amended from time to time.

5. Termination of Employment.

(a) By Company Without Cause. The Company may terminate Executive's employment without Cause (as defined below) effective on thirty (30) days' written notice, during

3

which notice period Executive may be relieved of his/her duties and placed on paid terminal leave. In such event and subject to the other provisions of this Agreement, Executive will be entitled to:

(i) continued coverage under the Company's insurance benefit plans through the termination date and such other benefits to which he may be entitled pursuant to the Company's benefit plans, provided, however, that Executive shall not participate in any severance plan of the Company;

(ii) payment of all earned but unpaid compensation (including accrued unpaid vacation) through the effective date of termination, payable on or before the termination date; and

(iii) reimbursement of expenses incurred on or before the termination date in accordance with Section 4(f), above, if a request for reimbursement of the expenses was timely submitted to the Company; plus

(iv) payment of the equivalent of the Base Salary without regard to any reduction that would otherwise constitute Good Reason he/she would have earned over the next six (6) months (the "Severance Period") following the termination date (less necessary withholdings and authorized deductions) at his/her then current Base Salary rate (the "Severance Payment"), payable in a lump sum on the date that is thirty (30) days after the termination date, subject to Section 16, below, the release of claims requirement specified below;

(v) payment of a prorated portion of Executive's target bonus for the fiscal year during which termination occurs, calculated by dividing the number of days from the start of the fiscal year through the termination date by 365 and multiplying the target bonus by this percentage (but

not by more than 100%), and paid at the same time as the Severance Payment; provided, however, that if the termination date is after the seventh month of the fiscal year, Executive will receive 100% of his/her target bonus for that fiscal year;

(vi) reimbursement of insurance premiums payable to retain group health coverage as of the termination date for himself and his eligible dependents pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1986 (“COBRA”) for six (6) months or the maximum period of COBRA coverage, whichever is less; provided that Executive must submit a reimbursement request in accordance with Company policy within 30 days of paying such insurance premiums. The Company will reimburse the executive within 30 days of receiving a properly submitted request. In addition, if Executive accepts other employment within such six (6) months, the Company’s obligation under this Section 5(a)(vi) will be extinguished as of the date Executive becomes covered under the group health plan of Executive’s new employer; and

(vii) payment for executive outplacement assistance services with the Company’s then current outplacement services vendor and in accordance with the Company’s then current policies and practices with respect to outplacement assistance for other executives of the Company for up to twelve (12) months after the termination date.

The payments and benefits set forth in Sections 5(a)(i)-(iii) shall be referred to as the “Accrued Benefits”, and the payments and benefits set forth in Sections 5(a)(iv)-(vii) shall be referred to as the “Severance Benefits”. Executive shall not receive the Severance Benefits (or the “Enhanced Severance Benefits” as provided in Section 5(e)) unless Executive executes the separation agreement and general

4

release attached as Exhibit A, and the same becomes irrevocable pursuant to its terms within the 30-day period following his/her termination of employment.

(b) By Company With Cause. The Company may terminate Executive’s employment at any time and without prior notice, written or otherwise, for Cause. As used in this Agreement, “Cause” shall mean any of the following conduct by Executive: (i) material breach of this Agreement, or of a Company policy or of a law, rule or regulation applicable to the Company or its operations; (ii) demonstrated and material neglect of duties, or failure or refusal to perform the material duties of his/her position, or the failure to follow the reasonable and lawful instructions of the Company; (iii) gross misconduct or dishonesty, self-dealing, fraud or similar conduct that the Company reasonably determines has caused, is causing or reasonably is likely to cause harm to the Company; (iv) conviction of or plea of guilty or *nolo contendere* to any crime other than a traffic offense that is punishable by a sentence of incarceration. Termination pursuant to Section 5(b)(ii) shall be effective only if such failure continues after Executive has been given written notice thereof and fifteen (15) business days thereafter in which to present his/her position to the Company or to cure the same, unless the Company reasonably determines that the reason(s) for termination are not capable of being cured. In the event of termination for Cause, Executive will be entitled only to the Accrued Benefits through the termination date, which will be the date on which the notice is given. The Company will have no further obligation to pay any compensation of any kind (including without limitation any bonus or portion of a bonus that otherwise may have become due and payable to Executive with respect to the year in which such termination date occurs), or severance payment of any kind nor to make any payment in lieu of notice.

(c) Incapacity or Death.

(i) If Executive becomes unable, due to physical or mental illness or injury, to perform the essential duties of his/her position for more than 12 consecutive weeks in any twelve month period during this Agreement with or without reasonable accommodation (“Incapacity”), the Company has the right to terminate Executive’s employment on fifteen (15) days’ written notice. In the event of termination for Incapacity, Executive will be entitled to receive the Accrued Benefits, and the unvested stock options and RSUs previously granted to Executive that would have vested within six (6) months after the date of termination for Incapacity shall become immediately vested; and.

(ii) Executive’s employment pursuant to this Agreement shall be immediately terminated without notice by the Company upon the death of Executive. If Executive dies while actively employed pursuant to this Agreement, the Company will pay to his/her estate or designated beneficiaries within sixty (60) days the Accrued Benefits, and the unvested stock options and RSUs previously granted to Executive that would have vested within six (6) months after the date of termination upon the death of Executive shall become immediately vested.

(d) Resignation for Good Reason. Executive may terminate this Agreement for Good Reason (as defined below) by giving written notice of such termination, which termination will become effective on the thirtieth (30th) day following receipt by the Company. As used in this Agreement, “Good Reason” shall mean any one of the following: (i) a material reduction in Executive’s Base Salary and/or a material breach of this Agreement resulting from the failure to provide the benefits required in Section 4, (ii) any action or inaction that constitutes a material breach by the Company of this Agreement; (iii) a material diminution in Executive’s authority, duties or responsibilities such that they are materially inconsistent with his/her position as Senior Vice President, Chief Financial Officer of the

5

Company; and (iv) relocation of the Company’s headquarters to a location that materially increases Executive’s commute, provided that no termination for Good Reason shall be effective until Executive has given the Company written notice (pursuant to Section 11 below) within sixty (60) days after Executive becomes aware of the initial occurrence of any of the foregoing specifying the event or condition constituting the Good Reason and the specific reasonable cure requested by Executive, and the Company has failed to cure the occurrence within thirty (30) days of receiving written notice from Executive, and Executive resigns within six (6) months after Executive becomes aware of the initial occurrence. In the event of a termination for Good Reason, Executive will be entitled to the Accrued Benefits and the Severance Benefits, on the same conditions, form of payment and timing as set forth in Section 5(a).

(e) Effect of Change in Control. Executive may terminate this Agreement upon a Change in Control (as defined below) if the successor to the Company or to the Company’s business fails (A) to offer Executive the position of Senior Vice President, Chief Financial Officer of the successor company with duties, responsibilities, and overall compensation and benefits materially similar to those enjoyed by Executive immediately preceding the Change in Control, or (B) to assume the obligations of the Company under and to become a party to this Agreement, provided that no termination upon a Change in Control shall be effective until Executive has given the successor to the Company written notice (pursuant to Section 11 below) within sixty (60) days of the initial occurrence of any of the foregoing specifying the event giving rise to the termination upon a Change in Control and the specific reasonable cure requested by Executive, and the successor to the Company or to the Company’s business has failed to cure the occurrence within thirty (30) days of receiving written notice from Executive, and Executive resigns within six (6) months after Executive becomes aware of the initial

occurrence. In the event of a termination upon a Change in Control, Executive will be entitled to the Accrued Benefits, and subject to the same conditions set forth in the final paragraph of Section 5(a), (i) four times the Severance Payment set forth in Section 5(a)(iv), paid in the same form (i.e., a lump sum) and at the same time (i.e., 30 days after the termination date) as the Severance Payments set forth in Section 5(a)(iv), (ii) the reimbursement of two times Executive's insurance premiums for twelve (12) months in the same form and at the same time and under the same conditions as provided in Section 5(a)(vi), (iii) two hundred percent (200%) of Executive's target bonus for the fiscal year during which termination occurs, but no less than the target bonus in effect for the fiscal year immediately prior to the Change in Control if the Change in Control occurs within the first three (3) months of the fiscal year, payable at the same time as the payment under clause (i) of this Section 5(e), (iv) all outstanding unvested stock options and RSUs previously granted to Executive shall become immediately vested (the "Enhanced Severance Benefits"), and (v) payment for executive outplacement assistance services with the Company's then current outplacement services vendor and in accordance with the Company's then current policies and practices with respect to outplacement assistance for other executives of the Company for up to twelve (12) months after the termination date; provided, however, for the sake of clarity, if any payments or benefits are payable under this Section 5(e), no payments or benefits shall be made under any other subsection of this Section 5 including Section 5(a) and Section 5(d).

As used in this Agreement, a "Change in Control" shall mean any of the following events:

(i) the acquisition by any Group or Person (as such terms are defined in Section 13(d) or 14(d) of the Securities Exchange Act of 1934, as amended (the "1934 Act")), other than (A) a trustee or other fiduciary holding securities of the Company under an employee benefit plan of the

6

Company or (B) an entity in which the Company directly or indirectly beneficially owns fifty percent (50%) or more of the voting securities of such entity (an "Affiliate"), of any securities of the Company, immediately after which such Group or Person has beneficial ownership (within the meaning of Rule 13d-3 promulgated under the 1934 Act) of more than fifty percent (50%) of (X) the outstanding shares of Common Stock or (Y) the combined voting power of the Company's then outstanding securities entitled to vote generally in the election of directors;

(ii) the Company (and/or its subsidiaries) is a party to a merger or consolidation with a Person other than an Affiliate, which merger or consolidation results in (a) the holders of voting securities of the Company outstanding immediately before such merger or consolidation failing to continue to represent (either by remaining outstanding or being converted into voting securities of the surviving entity) more than fifty percent (50%) of the combined voting power of the then outstanding voting securities of the corporation or entity resulting from or surviving such merger or consolidation or (b) individuals who are directors of the Company just prior to such merger or consolidation not constituting more than fifty percent (50%) of the members of the Board of Directors of the surviving entity or corporation immediately after the consummation of such merger or consolidation; or

(iii) all or substantially all of the assets of the Company and its subsidiaries are, in any transaction or series of transactions, sold or otherwise disposed of (or consummation of any transaction, or series of related transactions, having similar effect, other than to an Affiliate;

provided, however, that in no event shall a "Change in Control" be deemed to have occurred for purposes of this Agreement solely because the Company engages in an internal reorganization, which may include a transfer of assets to, or a merger or consolidation with, one or more Affiliates. Additionally, with respect to the payment of any "nonqualified deferred compensation" within the meaning of section 409A of the Internal Revenue Code of 1986, as amended (the "Code") that is not exempt from section 409A of the Code, no event shall constitute a Change in Control unless it also constitutes a change in the ownership of the Company (as defined in Treasury Regulation section 1.409A-3(i)(5)(v)), a change in effective control of the Company (as defined in Treasury Regulation section 1.409A-3(i)(5)(vi)), or a change in the ownership of a substantial portion of the assets of the Company (as defined in Treasury Regulation section 1.409A-3(i)(5)(vii)).

(f) Voluntary Resignation without Good Reason. Executive may terminate this Agreement without Good Reason effective on sixty (60) day's written notice, unless the Company in its sole discretion accepts the resignation earlier. In the event that Executive resigns without Good Reason as defined above in Section 5(d), Executive will be entitled only to the Accrued Benefits through the termination date. The Company will have no further obligation to pay any compensation of any kind (including without limitation any bonus or portion of a bonus that otherwise may have become due and payable to Executive with respect to the year in which such termination date occurs unless he remains employed with the Company as of the date bonuses are paid to other senior executives of the Company), or severance payments of any kind.

6. Proprietary Information Obligations.

(a) Proprietary Information and Confidentiality. Both before and during the term of Executive's employment, Executive will have access to and become acquainted with Company

7

confidential and proprietary information (together "Proprietary Information"), including but not limited to information or plans concerning the Company's products and technologies; customer relationships; personnel; sales, marketing and financial operations and methods; trade secrets; formulae and secret developments and inventions; processes; and other compilations of information, records, and specifications. Executive will not disclose any of the Proprietary Information directly or indirectly, or use it in any way, either during his/her employment pursuant to this Agreement or at any time thereafter, except as reasonably required or specifically requested in the course of his/her employment with the Company or as authorized in writing by the Company. Notwithstanding the foregoing, Proprietary Information does not include information that is otherwise publicly known or available, provided it has not become public as a result of a breach of this Agreement or any other agreement Executive has to keep information confidential. It is not a breach of this Agreement for Executive to disclose Proprietary Information pursuant to an order of a court or other governmental or legal body.

(b) Inventions Agreement and Assignment.

(i) Executive hereby agrees to disclose promptly to the Company (or any persons designated by it) all developments, designs, creations, improvements, original works of authorship, formulas, processes, know-how, techniques and/or inventions (collectively, the "Inventions") (A) which are made or conceived or reduced to practice by Executive, either alone or jointly with others, in performing his/her duties during the period of

Executive's employment by the Company, that relate to or are useful in the business of the Company; or (B) which result from tasks assigned to Executive by the Company, or from Executive's use of the premises or other resources owned, leased or contracted by the Company.

(ii) Executive agrees that all such Inventions which the Company in its discretion determines to be related to or useful in its business or its research or development, or which result from work performed by Executive for the Company, will be the sole and exclusive property of the Company and its assigns, and the Company and its assigns will have the right to use and/or to apply for patents, copyrights or other statutory or common law protections for such Inventions in any and all countries. Executive further agrees to assist the Company in every reasonable way (but at the Company's expense) to obtain and from time to time enforce patents, copyrights and other statutory or common law protections for such Inventions in any and all countries. To that end, Executive will execute all documents for use in applying for and obtaining such patents, copyrights and other statutory or common law protections therefor and enforcing the same, as the Company may desire, together with any assignments thereof to the Company or to persons or entities designated by the Company. Should the Company be unable to secure Executive's signature on any document necessary to apply for, prosecute, obtain, or enforce any patent, copyright or other right or protection relating to any Invention, whether due to his/her mental or physical incapacity or any other cause, Executive hereby irrevocably designates and appoints the Company and each of its duly authorized officers and agents as Executive's agent and attorney-in-fact, to act for and in his/her behalf and stead, to execute and file any such document, and to do all other lawfully permitted acts to further the prosecution, issuance, and enforcement of patents, copyrights or other rights or protections with the same force and effect as if executed and delivered by Executive. Executive's obligations under this Section 6(b)(ii) will continue beyond the termination of Executive's employment with the Company, but the Company will compensate Executive at a reasonable rate after such termination for time actually spent by Executive at the Company's request in providing such assistance.

8

(iii) Executive hereby acknowledges that all original works of authorship which are made by Executive (solely or jointly with others) within the scope of Executive's employment which are protectable by copyright are "works for hire," as that term is defined in the United States Copyright Act (17 USCA, Section 101).

(iv) Any provision in this Agreement requiring Executive to assign Executive's rights in any Invention to the Company will not apply to any invention that is exempt under the provisions of California Labor Code section 2870, which provides:

"(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his/her or her rights in an invention to his/her or her employer shall not apply to an invention that the employee developed entirely on his/her or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either: (1) relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or (2) result from any work performed by the employee for the employer. (b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable."

(c) Non-Solicitation of Customers and Other Business Partners. Executive recognizes that by virtue of his/her employment with the Company, he will be introduced to and involved in the solicitation and servicing of existing customers and other business partners of the Company and new customers and business partners obtained by the Company during his/her employment. Executive understands and agrees that all efforts expended in soliciting and servicing such customers and business partners shall be for the benefit of the Company. Executive further agrees that during his/her employment with the Company he will not engage in any conduct which could in any way jeopardize or disturb any of the customer and business partner relationships of the Company. In addition, Executive agrees that, for a period beginning on the Effective Date and ending twelve (12) months after termination of Executive's employment with the Company, regardless of the reason for such termination, Executive shall not use any Proprietary Information to, directly or indirectly, solicit, direct, interfere with, or entice away from the Company any existing customer, licensee, licensor, vendor, contractor or distributor of the Company or for the customer or other business partner to expand its business with a competitor, without the prior written consent of the Company.

(d) Non-Solicitation of Employees. Executive recognizes the substantial expenditure of time and effort which the Company devotes to the recruitment, hiring, orientation, training and retention of its employees. Accordingly, Executive agrees that, for a period beginning on the Effective Date and ending twelve (12) months after termination of Executive's employment with the Company, regardless of the reason for such termination, Executive shall not use any Proprietary Information, directly or indirectly, for himself or on behalf of any other person or entity, solicit, offer employment to, hire or otherwise retain the services of any employee of the Company in a position classified as exempt from overtime pay requirements. For purposes of the foregoing, "employee of the Company" shall

9

include any person who was an employee of the Company at any time within six (6) months prior to the prohibited conduct.

(e) Company Property and Materials.

(i) All files, records, documents, computer-recorded or electronic information, drawings, specifications, equipment, and similar items relating to Company business, whether prepared by Executive or otherwise coming into his/her possession, will remain the Company's exclusive property and will not be removed from Company premises under any circumstances whatsoever without the Company's prior written consent, except when, and only for the period, necessary to carry out Executive's duties hereunder

(ii) In the event of termination of Executive's employment for any reason, Executive will promptly deliver to the Company all Company equipment (including, without limitation, any cellular phones, beeper/pagers, computer hardware and software, fax machines and other tools of the trade) and all originals and copies of all documents, including without limitation, all books, customer lists, forms, documents supplied by customers, records, product lists, writings, manuals, reports, financial documents and other documents or property in Executive's possession or control, which relate to the Company's business in any way whatsoever, and in particular to customers of the Company, or which may be considered to constitute or contain Proprietary Information as defined above, and Executive will neither retain, reproduce, nor distribute copies thereof (other than copies of Executive's electronic or hardcopy address and telephone contact data base or directories).

(f) **Remedies for Breach.** Executive acknowledges that any breach by Executive of this Section 6 would cause the Company irreparable injury and damage for which monetary damages are inadequate. Accordingly, in the event of a breach or a threatened breach of this Section 6, the Company will be entitled to seek an injunction restraining such breach. In addition, in the event of a breach of this Section 6, the Company's obligation to pay any unpaid portion of the Severance Payment or other benefits as set forth in Sections 5(a) and (d) of this Agreement will be extinguished. Nothing contained herein will be construed as prohibiting the Company from pursuing any other remedy available to the Company for such breach or such threatened breach. Executive has carefully read and considered these restrictions and agrees they are fair and reasonable restrictions on Executive and are reasonably required for the protection of the interests of the Company. Executive agrees not to circumvent the spirit of these restrictions by attempting to accomplish indirectly what Executive is otherwise restricted from doing directly. Executive agrees that the restrictions in this Section 6 are reasonable and necessary to protect the Company's Proprietary Information, and they do not prevent Executive from working in the medical device industry. Executive agrees that the covenants and agreements by Executive contained in this Section 6 shall be in addition to any other agreements and covenants Executive may have agreed to in any other employee proprietary information, confidentiality, non-disclosure or other similar agreement and that this Section 6 shall not be deemed to limit such other covenants and agreements, all of which shall continue to survive the termination of this Agreement in accordance with their respective terms. A breach by Executive of the terms of such other agreements and covenants shall be deemed to be a breach by Executive of this Section 6 and of this Agreement. To the extent any of the provisions in this Section 6 are held to be overly broad or otherwise unenforceable at the time enforcement is sought, Executive agrees that the provision shall be reformed and enforced to the greatest extent permissible by law. Executive further agrees that if any portion of this Section 6 is held to be unenforceable, the remaining provisions of this Section 6 shall be enforced as written.

10

7. Interpretation, Governing Law and Exclusive Forum. The validity, interpretation, construction, and performance of this Agreement shall be governed by the laws of the State of California (excluding any that mandate the use of another jurisdiction's laws). Any arbitration (unless otherwise mutually agreed), litigation or similar proceeding with respect to such matters only may be brought within Santa Clara County, California, and all parties to this Agreement consent to California's jurisdiction.

8. Entire Agreement. All oral or written agreements or representations, express or implied, with respect to the subject matter of this Agreement are set forth in this Agreement.

9. Severability. In the event that one or more of the provisions contained in this Agreement are held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such holding shall not impair the validity, legality or enforceability of the remaining provisions herein.

10. Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, Executive and his/her estate, but Executive may not assign or pledge this Agreement or any rights arising under it, except to the extent permitted under the terms of the benefit plans in which he participates. No rights or obligations of the Company under this Agreement may be assigned or transferred except that the Company shall require any successor (whether direct or indirect, by purchase, merger, reorganization, sale, transfer of stock, consideration or otherwise) to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no succession had taken place. As used in this Agreement, "Company" means the Company as hereinbefore defined and any successor to its business and/or assets (by merger, purchase or otherwise as provided in this Section 10) which executes and delivers the agreement provided for in this Section 10 or which otherwise becomes bound by all the terms and provisions of this Agreement by operation of law. In the event that any successor refuses to assume the obligations hereunder, the Company as hereinbefore defined shall remain fully responsible for all obligations hereunder.

11. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be given by hand delivery, electronic mail, facsimile, telecopy, overnight courier service, or by United States certified or registered mail, return receipt requested. Each such notice, request, demand or other communication shall be effective (i) if delivered by hand or by overnight courier service, when delivered at the address specified in this Section 11; (ii) if given by electronic mail, facsimile or telecopy, when such electronic mail, facsimile or telecopy is transmitted to the electronic mail address or facsimile or telecopy number specified in this Section 11 and confirmation is received if during normal business hours on a business day, and otherwise, on the next business day; and (iii) if given by certified or registered mail, three (3) days after the mailing thereof. Notices shall be addressed to the parties as follows (or at such other address, email address or fax number as either party may from time to time specify in writing by giving notice as provided herein):

11

If to the Company: Accuray Incorporated
 1310 Chesapeake Terrace
 Sunnyvale, California 94089
 Attn: General Counsel
 Fax No. (408) 789-4205

If to Executive: Derek Bertocci
 Address: most recent on file with the Company
 Email: most recent on file with the Company

12. Indemnification. As soon as reasonably practicable after the due execution of this Agreement by each of the parties hereto, the Company and Executive will enter into the Company's standard form of indemnification agreement utilized by the Company for its directors and executive officers.

13. Dispute Resolution. The parties agree that all disputes, claims or controversies between them and between Executive and any of the Company's affiliated entities and the successor of all such entities, including any dispute, claim or controversy arising from or otherwise in connection with this Agreement and/or Executive's employment with the Company, will be resolved as follows:

(a) Prior to initiating any other proceeding, the complaining party will provide the other party with a written statement of the claim identifying any supporting witnesses or documents and the requested relief. The responding party shall within forty-five (45) days furnish a statement of the relief, if any, that it is willing to provide, and identify supporting witnesses or documents.

(b) If the matter is not resolved by the exchange of statements of claim and statements of response as provided herein, the parties shall submit the dispute to non-binding mediation, the cost of the mediator to be paid by the Company, before a mediator and/or service to be jointly selected by the parties. Each party will bear his/her or its own attorney's fees and witness fees.

(c) If the parties cannot agree on a mediator and/or if the matter is not otherwise resolved by mediation, any controversy or claim between Executive and the Company and any of its current or former directors, officers and employees, including any arising out of or relating to this Agreement or breach thereof, shall be settled by final and binding arbitration in the county in which Executive last worked, or elsewhere as mutually agreed by the parties, by a single arbitrator pursuant to the Employment Dispute Rules of Judicial Arbitration and Mediation Services, Inc. ("JAMS"), unless the parties to the dispute agree to another arbitration service or independent arbitrator. The parties may conduct discovery to the extent permitted in a court of law; the arbitrator will render an award together with a written opinion indicating the bases for such opinion; and the arbitrator will have full authority to award all remedies that would be available in court. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Each party shall bear its own attorney's fees and costs, unless the claim is based on a statute that provides otherwise. The Company will pay the arbitrator's fees and any administrative charges of the arbitration service, except that if Executive initiates the claim, he will pay a portion of the administrative charges equal to the amount he would have paid to initiate the claim in a court of general jurisdiction.

12

(d) EXECUTIVE AND THE COMPANY AGREE THAT THIS ARBITRATION PROCEDURE WILL BE THE EXCLUSIVE MEANS OF REDRESS FOR ANY DISPUTES RELATING TO OR ARISING FROM EXECUTIVE'S EMPLOYMENT WITH THE COMPANY OR TERMINATION THEREFROM, INCLUDING DISPUTES OVER UNPAID WAGES, BREACH OF CONTRACT OR TORT, VIOLATION OF PUBLIC POLICY, RIGHTS PROVIDED BY FEDERAL, STATE OR LOCAL STATUTES, REGULATIONS, ORDINANCES, AND COMMON LAW, LAWS THAT PROHIBIT DISCRIMINATION BASED ON ANY PROTECTED CLASSIFICATION, AND ANY OTHER STATUTES OR LAWS RELATING TO AN EXECUTIVE'S RELATIONSHIP WITH THE COMPANY. THE FOREGOING NOTWITHSTANDING, CLAIMS FOR WORKERS' COMPENSATION BENEFITS OR UNEMPLOYMENT INSURANCE, OR ANY OTHER CLAIMS WHERE MANDATORY ARBITRATION IS PROHIBITED BY LAW, ARE NOT COVERED BY THIS ARBITRATION PROVISION. THE PARTIES EXPRESSLY WAIVE THE RIGHT TO A JURY TRIAL, AND AGREE THAT THE ARBITRATOR'S AWARD SHALL BE FINAL AND BINDING ON BOTH PARTIES. THIS ARBITRATION PROVISION IS TO BE CONSTRUED AS BROADLY AS IS PERMISSIBLE UNDER APPLICABLE LAW.

14. Representations. Each person executing this Agreement hereby represents and warrants on behalf of himself and of the entity/individual on whose behalf he is executing the Agreement that he is authorized to represent and bind the entity/individual on whose behalf he is executing the Agreement. Executive specifically represents and warrants to the Company that he reasonably believes (a) he is not under any contractual or other obligations that would prevent, limit or impair Executive's performance of his/her obligations under this Agreement and (b) that entering into this Agreement will not result in a breach of any other agreement to which he is a party. Executive acknowledges that Executive has been given the opportunity to consult with legal counsel and seek such advice and consultation as Executive deems appropriate or necessary.

15. Amendments and Waivers. No provisions of this Agreement may be modified, waived, or discharged except by a written document signed by Executive and a duly authorized Company officer. Thus, for example, promotions, commendations, and/or bonuses shall not, by themselves, modify, amend, or extend this Agreement. A waiver of any conditions or provisions of this Agreement in a given instance shall not be deemed a waiver of such conditions or provisions at any other time.

16. Taxes.

(a) Withholdings. The Company may withhold from any compensation and benefits payable under this Agreement all federal, state, city and other taxes or amounts as shall be determined by the Company to be required to be withheld pursuant to applicable laws, or governmental regulations or rulings. Executive shall be solely responsible for the satisfaction of any taxes (including employment taxes imposed on employees and penalty taxes on nonqualified deferred compensation).

(b) Net Proceeds Maximization. Notwithstanding any provision of this Agreement to the contrary, if all or any portion of the payments or benefits received or realized by Executive pursuant to this Agreement either alone or together with other payments or benefits that Executive receives or realizes or is then entitled to receive or realize from the Company or any of its affiliates would constitute an "excess parachute payment" within the meaning of section 280G of the Code and/or any corresponding and applicable state law provision, the payments or benefits provided to Executive under this Agreement will be reduced by reducing the amount of payments or benefits payable to Executive to the extent necessary so that no portion of Executive's payments or benefits will be subject to the excise

13

tax imposed by section 4999 of the Code and any corresponding and/or applicable state law provision. Notwithstanding the foregoing, a reduction will be made under the previous sentence only if, by reason of that reduction, Executive's net after tax benefit exceeds the net after tax benefit he would realize if the reduction were not made. For purposes of this paragraph, "net after tax benefit" means the sum of (i) the total amount received or realized by Executive pursuant to this Agreement that would constitute a "parachute payment" within the meaning of section 280G of the Code and any corresponding and applicable state law provision, plus (ii) all other payments or benefits that Executive receives or realizes or is then entitled to receive or realize from the Company and any of its affiliates that would constitute a "parachute payment" within the meaning of Section 280G of the Code and any corresponding and applicable state law provision, less (iii) the amount of federal or state income taxes payable with respect to the payments or benefits described in (i) and (ii) above calculated at the maximum marginal individual income tax rate for each year in which payments or benefits are realized by Executive (based upon the rate in effect for that year as set forth in the Code at the time of the first receipt or realization of the foregoing), less (iv) the amount of excise taxes imposed with respect to the payments or benefits described in (i) and (ii) above by section 4999 of the Code and any corresponding and applicable state law provision. All determinations and calculations made in this paragraph shall be made by an independent accounting firm (the "Accounting Firm") selected by the Company prior to the Change in Control and the Company will bear all costs and expenses incurred by the Accounting Firm in connection with its determination. The Accounting Firm shall be a nationally recognized United States public accounting firm which has not, during the two (2) years preceding the date of its selection, acted in any way on behalf of (x) the Company or any affiliate thereof or (y) Executive. If any payments or benefits are reduced pursuant to this Section 16(b), they shall be reduced in the following order: First all payments and benefits that do not constitute "nonqualified deferred compensation" within the meaning of section 409A of the Code or that are exempt from section 409A of the Code (with the payments or benefits being

reduced in reverse order of when they otherwise would be made or provided); second, all payments or benefits that constitute “nonqualified deferred compensation” within the meaning of section 409A of the Code that are not exempt from section 409A of the Code that were granted to Executive in the 12-month period of time preceding the applicable Change in Control, in the order such benefits were granted to Executive; and third, all remaining payments and benefits shall be reduced pro-rata. Notwithstanding the foregoing, if (i) reducing payments or benefits in the order described above would result in the imposition on Executive of an additional tax under section 409A of the Code (or similar state or local law), (ii) Executive so notifies the Company before such reductions and payments are made and benefits provided, and (iii) reducing the payments or benefits in another order would not result in the imposition on Executive of an additional tax under section 409A of the Code (or similar state or local law), payments and benefits shall instead be reduced in such other order.

(c) Section 409A Compliance.

(i) With respect to any reimbursement of expenses or any provision of in-kind benefits to Executive specified under this Agreement, such reimbursement of expenses or provision of in-kind benefits shall be subject to the following conditions: (1) the expenses eligible for reimbursement or the amount of in-kind benefits provided in one taxable year shall not affect the expenses eligible for reimbursement or the amount of in-kind benefits provided in any other taxable year, except for any medical reimbursement arrangements providing for the reimbursement of expenses referred to in section 105(b) of the Code; (2) the reimbursement of an eligible expense shall be made no later than the end of the year following the year in which such expense was incurred; and (3) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit.

14

(ii) A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits considered “deferred compensation” (as defined under Treasury Regulation section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation sections 1.409A-1(b)(3) through (b)(12)) upon or following a termination of employment unless such termination is also a “separation from service” and, for purposes of any such provision of this Agreement, references to a “termination,” “termination of employment” or like terms shall mean “separation from service.” For purposes of section 409A of the Code, the date as of which Company and Executive reasonably anticipate that no further services would be performed by Executive for Company shall be construed as the date that Executive first incurs a “separation from service” as defined under section 409A of the Code.

(iii) Notwithstanding anything in this Agreement to the contrary, if a payment obligation arises on account of Executive’s separation from service while Executive is a “specified employee” as described in section 409A of the Code and the Treasury Regulations thereunder and as determined by Company in accordance with its procedures, by which determination Executive is bound, any payment of “deferred compensation” (as defined under Treasury Regulation section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation sections 1.409A-1(b)(3) through (b)(12)) shall be made on the first business day of the seventh month following the date of Executive’s separation from service, or, if earlier, within fifteen (15) days after the appointment of the personal representative or executor of Executive’s estate following Executive’s death together with interest on them for the period of delay at a rate equal to the average prime interest rate published in the Wall Street Journal on any day chosen by the Company during that period. Thereafter, Executive shall receive any remaining payments as if there had not been an earlier delay.

(iv) Notwithstanding anything to the contrary contained in this Agreement, the Executive shall have no legally-enforceable right to, and the Company shall have no obligation to make, any payment or provide any benefit to Executive if having such a right or obligation would result in the imposition of additional taxes under section 409A of the Code, and (ii) any provision that would cause any payment or benefit to fail to satisfy section 409A will have no force and effect until amended to comply therewith (which amendment may be retroactive to the extent permitted by section 409A and may be accomplished by the Company without the Executive’s consent). If any payment is not made or any benefit is not provided under the terms of this Section 16(c)(iv), it is the Company’s present intention to make a similar payment or provide a similar benefit to the Executive in a manner that will not result in the imposition of additional taxes under section 409A of the Code, to the extent feasible. Each payment made under this Agreement is intended to be a separate payment for the purposes of section 409A of the Code.

(v) The Company does not guarantee any particular tax effect to Executive under this Agreement. Company shall not be liable to Executive for any payment made under this Agreement that is determined to result in an additional tax, penalty or interest under section 409A of the Code, nor for reporting in good faith any payment made under this Agreement as an amount includible in gross income under section 409A of the Code. The parties intend that this Agreement shall be interpreted and administered in accordance with section 409A of the Code to the extent Section 409A of the Code is applicable.

17. U.S. Citizenship and Immigration Services; Confidentiality and Inventions Agreement. Executive agrees to timely file all documents required by the Department of Homeland Security to verify his/her identity and lawful employment in the United States. In addition, as a

15

condition to Executive’s employment with the Company, Executive is required to complete, sign, return, and abide by the Company’s Employee Confidentiality and Inventions Agreement.

18. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute the same instrument.

19. Resignation from Positions. Upon Executive’s cessation of employment with the Company for any reason, Executive agrees that Executive shall be deemed to have resigned as an officer and as a director (if applicable) from the Company and every subsidiary of the Company on which Executive is then serving as an officer or director, and from any other entity or company on which Executive is then serving as a director or officer at the request of the Company, in each case effective as of the date of Executive’s cessation of employment. In the event of Executive’s cessation of employment, Executive agrees to execute a general resignation resigning from all positions then held by Executive on every subsidiary of the Company and other entity or company on which Executive is then serving as a director or officer at the request of the Company. Executive hereby grants the corporate secretary of the Company an irrevocable power of attorney to execute on behalf of Executive all such resignations, documents and instruments and to take all such other actions as reasonably necessary to carry out the intention of this Section 19.

20. **Executive's Commencement of Employment.** It is a condition precedent to the effectiveness of this Agreement that Executive commences working full-time for the Company at the Company's principal executive offices on the Effective Date. If Executive does not commence such full-time employment on the Effective Date, then this Agreement shall be null and void and the Company shall have no obligations hereunder or otherwise to Executive.

21. **Executive's Acknowledgement.**

EXECUTIVE ACKNOWLEDGES THAT ALL UNDERSTANDINGS AND AGREEMENTS BETWEEN THE COMPANY AND HIM RELATING TO THE SUBJECTS COVERED IN THIS AGREEMENT ARE CONTAINED IN IT (INCLUDING THE AGREEMENTS SET FORTH AS EXHIBITS) AND THAT HE HAS ENTERED INTO THIS AGREEMENT VOLUNTARILY AND NOT IN RELIANCE ON ANY PROMISES OR REPRESENTATIONS BY THE COMPANY OTHER THAN THOSE CONTAINED IN THIS AGREEMENT.

EXECUTIVE FURTHER ACKNOWLEDGES THAT HE HAS CAREFULLY READ THIS AGREEMENT (INCLUDING THE AGREEMENTS SET FORTH AS EXHIBITS), THAT HE UNDERSTANDS ALL OF SUCH AGREEMENTS, AND THAT HE HAS BEEN GIVEN THE OPPORTUNITY TO DISCUSS SUCH AGREEMENTS WITH HIS/HER PRIVATE LEGAL COUNSEL AND HAS AVAILED HIMSELF OF THAT OPPORTUNITY TO THE EXTENT HE WISHED TO DO SO. EXECUTIVE UNDERSTANDS THAT THE DISPUTE RESOLUTION PROVISIONS OF THIS AGREEMENT GIVE UP THE RIGHT TO A JURY TRIAL ON MATTERS COVERED BY THEM.

16

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates written below.

ACCURAY INCORPORATED,
a Delaware Corporation

By: /s/ Joshua H. Levine
Name: Joshua H. Levine
Title: President & Chief Executive Officer

By: /s/ Darren J. Milliken
Name: Darren J. Milliken
Title: Senior Vice President, General Counsel

Accepted and Agreed,

Derek Bertocci: /s/ Derek Bertocci

Signed on: January 4, 2013

17

Exhibit A

FORM OF SEPARATION AGREEMENT AND GENERAL RELEASE

[See attached]

SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release (this "Agreement") is hereby entered into by and between _____, an individual ("Executive"), and Accuray Incorporated, a Delaware corporation, on behalf of itself and all of its subsidiaries (collectively, the "Company").

Recitals

A. Executive has been employed by the Company pursuant to an employment agreement by and between the Company and Executive effective as of October _____, 2012 (the "Employment Agreement"), and currently is serving as **[specify position held at time of termination]**;

B. Executive's employment with the Company and any of its parents, direct or indirect subsidiaries, affiliates, divisions, or related entities (collectively referred to herein as the "Company and its Related Entities") will be ended on the terms and conditions set forth in this Agreement.

Agreement

In consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Effective Date.** Except as otherwise provided herein, this Agreement shall be effective on the eighth day after it has been executed by both of the parties (the "Effective Date").

2. **End of Employment and Service as a Director.** Executive's employment with the Company and its Related Entities has ended or will end effective as of Pacific Time, on (the "**Termination Date**"). If Executive is a member of the Board of Directors of the Company and/or its Related Entities (the "**Board**") Executive hereby voluntarily resigns from the Board, effective

3. **Continuation of Benefits After the Termination Date.** Except as expressly provided in this Agreement or in the plan documents governing the Company's employee benefit plans, after the Termination Date, Executive will no longer be eligible for, receive, accrue, or participate in any other benefits or benefit plans provided by the Company and its Related Entities, including, without limitation, medical, dental and life insurance benefits, and the Company's 401(k) retirement plan; provided, however, that nothing in this Agreement shall waive Executive's right to any vested benefits, including vested amounts in the Company's 401(k) retirement plan, which amounts shall be handled as provided in the plan.

4. **Payments Upon Termination.** Executive will be entitled to receive payment of the following: (i) all earned but unpaid compensation (including accrued unpaid vacation) through the effective date of termination, payable on or before the termination date; and

1

(ii) reimbursement, made in accordance with **Section 4(e)** of the Employment Agreement, of any monies advanced or incurred by Executive in connection with his/her employment for reasonable and necessary Company-related expenses incurred on or before the Termination Date. The provisions of this Agreement shall not waive or terminate any rights to compensation or vested benefits under the Company's benefits plans or as required by law, or to indemnification Executive may have under the Company's Certificate of Incorporation, Bylaws or separate indemnification agreement, as applicable.

5. **Severance Benefits or Enhanced Severance Benefits.** In return for Executive's promises in this Agreement, the Company will provide Executive with the Severance Benefits or Enhanced Severance Benefits as defined in **Sections 5(a) and 5(e)** of the Employment Agreement and as applicable based on the nature of the termination, subject to the terms and conditions set forth in the Employment Agreement, including, but not limited to, **Section 16** thereof. The Severance Benefits or Enhanced Severance Benefits will be paid as specified in **Section 5(a)** or **Section 5(e)** of the Employment Agreement, as applicable and shall be subject to required withholdings and authorized deductions and to **Section 21** below. For purposes of this Agreement, the term "**Severance Period**" means twelve (12) months, regardless of whether Executive receives the Severance Benefits or the Enhanced Severance Benefits.

6. **Effect of Revocation or Subsequent Employment.**

(a) If Executive properly revokes this Agreement in accordance with **Section 13** below, Executive shall not be entitled to receive the payments and benefits under **Section 5**, above, except that Executive's rights under COBRA will continue.

(b) The Company's obligation to reimburse premiums for insurance coverage under COBRA or otherwise will be extinguished as of the date Executive's coverage begins under the group health plan of any new employer. If Executive violates the restrictions in **Section 17**, below, the Company's obligation to pay premiums for insurance under COBRA or otherwise will be immediately extinguished, and the other remedies specified in **Section 17**, below, shall apply.

7. **Acknowledgement of Total Compensation and Indebtedness.** Executive acknowledges and agrees that the cash payments under **Sections 4 and 5** of this Agreement extinguish any and all obligations for monies, or other compensation or benefits that Executive claims or could claim to have earned or claims or could claim is owed to him as a result of his/her employment by the Company and its Related Entities through the Termination Date, under the Employment Agreement or otherwise. Notwithstanding the foregoing, the parties acknowledge and agree that the provisions of this **Section 7** shall not terminate any rights Executive has under **Section 3** or to other payments Executive may have, and to any indemnification Executive may have under the Company's Bylaws or separate indemnification agreement, as applicable.

8. **Status of Related Agreements and Future Employment.**

(a) Agreements Between Executive and the Company. [**Agreements to be scheduled at time**].

2

(b) Employment Agreement. The parties agree that the Employment Agreement shall be terminated as of the Termination Date. Notwithstanding the termination of the Employment Agreement, the parties hereto acknowledge that certain rights and obligations set forth in the Employment Agreement extend beyond the Termination Date. In the event that any provision of this Agreement conflicts with **Section 6** of the Employment Agreement, the terms and provisions of the section(s) providing the greatest protection to the Company and its Related Entities shall control.

9. **Release by Executive.**

(a) Except for any obligations or covenants of the Company pursuant to this Agreement and as otherwise expressly provided in this Agreement, Executive, for himself and his/her heirs, executors, administrators, assigns, successors and agents (collectively, the "**Executive's Affiliates**") hereby fully and without limitation releases and forever discharges the Company and its Related Entities, and each of their respective agents, representatives, shareholders, owners, officers, directors, employees, consultants, attorneys, auditors, accountants, investigators, affiliates, successors and assigns (collectively, the "**Company Releasees**"), both individually and collectively, from any and all waivable rights, claims, demands, liabilities, actions, causes of action, damages, losses, costs, expenses and compensation, of whatever nature whatsoever, known or unknown, fixed or contingent, which Executive or any of Executive's Affiliates has or may have or may claim to have against the Company Releasees by reason of any matter, cause, or thing whatsoever, from the beginning of time to the Effective Date ("**Claims**"), arising out of, based upon, or relating to his/her employment or the termination of his/her employment with the Company and its Related Entities and/or his/her service as an officer of any of the Company Releasees, any agreement or compensation arrangement between Executive and any of the Company Releasees, to the maximum extent permitted by law.

(b) Executive specifically and expressly releases any Claims arising out of or based on: the California Fair Employment and Housing Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the National Labor Relations Act and the Equal Pay Act, as the same may be amended from time to time; the California common law on fraud, misrepresentation, negligence, defamation, infliction of emotional distress or other tort, breach of contract or covenant, violation of public policy or wrongful termination; state or federal wage and hour laws, and other provisions of the California Labor Code, to the extent these may be released herein as a matter of law; or any other state or federal law, rule, or regulation dealing with the employment relationship, except those claims which may not be released herein as a matter of law.

(c) Nothing contained in this Section 9 or any other provision of this Agreement shall release or waive any right that Executive has to indemnification and/or reimbursement of expenses by the Company and its Related Entities with respect to which Executive may be eligible as provided in California Labor Code section 2802, the Company's and its Related Entities' Certificates of Incorporation, Bylaws and any applicable directors and officers, errors & omissions, umbrella or general liability insurance policies, any indemnification agreements, including the Employment Agreement; or any other applicable source, nor prevent Executive from cooperating in an investigation of the Company by the Equal Employment Opportunity Commission ("EEOC").

3

10. Waiver of Civil Code Section 1542.

(a) Executive understands and agrees that the release provided herein extends to all Claims released above whether known or unknown, suspected or unsuspected, which may be released as a matter of law. Executive expressly waives and relinquishes any and all rights he may have under California Civil Code section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS/HER OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS/HER OR HER SETTLEMENT WITH THE DEBTOR."

(b) Executive expressly waives and releases any rights and benefits which he has or may have under any similar law or rule of any other jurisdiction. It is the intention of each party through this Agreement to fully, finally and forever settle and release the Claims as set forth above. In furtherance of such intention, the release herein given shall be and remain in effect as a full and complete release of such matters notwithstanding the discovery of any additional Claims or facts relating thereto.

11. [If Executive is age 40 or over on Termination Date] Release of Federal Age Discrimination Claims by Executive. Executive hereby knowingly and voluntarily waives and releases all rights and claims, known or unknown, arising under the Age Discrimination In Employment Act of 1967, as amended, which he might otherwise have had against the Company or any of the Company Releasees regarding any actions which occurred prior to the date that Executive signed this Agreement, except that Executive is not prevented from cooperating in an investigation by the EEOC or from filing an EEOC charge other than for personal relief.

12. Release by Company and its Related Entities. The Company and its Related Entities hereby release and forever discharge Executive, from any and all waivable actions, causes of action, covenants, contracts, claims and demands of whatever character, nature and kind, whether known or unknown, which the Company and its Related Entities ever had, now have, or any of them hereafter can, shall or may have by reason of Executive's employment and/or his/her service as a director and/or officer of the Company and/or its Related Entities; provided, however, that this general release shall not apply, or be deemed or construed to apply, to (a) any of Executive's continuing obligations pursuant to this Agreement or the Employment Agreement, (b) criminal conduct or acts or omissions constituting willful misconduct or gross negligence by Executive during his/her employment with the Company, or (c) recoupment of all or a portion of any previously awarded bonus or equity award pursuant to the Company's Recoupment (Clawback) Policy that was in effect when the bonus was paid or the equity award vested or was exercised by Executive, whichever was later.

13. [If Executive is age 40 or over on Termination Date] Review and Revocation Rights. Executive hereby is advised of the following:

(a) Executive has the right to consult with an attorney before signing this Agreement and is encouraged by the Company to do so;

4

(b) Executive has twenty-one (21) days from his/her receipt of this Agreement to consider it; and

(c) Executive has seven (7) days after signing this Agreement to revoke this Agreement, and this Agreement will not be effective until that revocation period has expired without revocation. Executive agrees that in order to exercise his/her right to revoke this Agreement within such seven (7) day period, he must do so in a signed writing delivered to the Company's Board before the close of business on the seventh calendar day after he signs this Agreement.

14. Confidentiality of Agreement. After the execution of this Agreement by Executive, neither Executive, his/her attorney, nor any person acting by, through, under or in concert with them, shall disclose any of the terms of or amount paid under this Agreement (other than to state that the Company has filed this Agreement and/or agreements related thereto as public documents) or the negotiation thereof to any individual or entity; provided, however, that the foregoing shall not prevent such disclosures by Executive to his/her attorney, tax advisors and/or immediate family members, or as may be required by law.

15. No Filings. Executive represents that he has not filed any lawsuits, claims, charges or complaints, which are pending as of the date hereof, against the Company Releasees with any local, state or federal agency or court from the beginning of time to the date of execution of this Agreement, and that Executive is not aware of any facts that would support any Claims or any compliance-related or code of ethics violations of any kind whatsoever against the Company Releasees, including without limitation any claims for any work-related injuries. If Executive hereafter commences, joins in, or in any manner seeks relief through any suit arising out of, based upon, or relating to any of the Claims released in this Agreement, or in any manner asserts against the Company Releasees any of the Claims released in this Agreement, then Executive agrees to pay to the Company Releasees against whom such Claim(s) is asserted, in addition to any other damages caused thereby, all attorneys' fees incurred by the Company Releasees in defending or otherwise responding to the

suit or Claim; provided, however, that this provision shall not obligate Executive to pay the Company Releasees' attorneys' fees in any action challenging the release of claims under the Older Workers Benefit Protection Act or the ADEA, unless otherwise allowed by law. If any governmental agency or court ever assumes jurisdiction over any such lawsuit, claim, charge or complaint and/or purports to bring any legal proceeding, in whole or in part, on behalf of Executive based upon events occurring prior to the execution of this Agreement, Executive will request such agency or court to withdraw from and/or to dismiss the lawsuit, claim, charge or complaint with prejudice.

16. Confidential and Proprietary Information. Executive acknowledges that certain information, observations and data obtained by him during the course of or related to his/her employment with the Company and its Related Entities (including, without limitation, projection programs, business plans, business matrix programs (*i.e.*, measurement of business), strategic financial projections, certain financial information, shareholder information, technology and product design information, marketing plans or proposals, personnel information, customer lists and other customer information) are the sole property of the Company and its Related Entities and constitute Proprietary Information as defined in Section 6 of the Employment Agreement. Executive represents and warrants that he has returned all files, customer lists, financial information and other property of the Company and its Related Entities that were in

5

Executive's possession or control without retaining copies thereof. Executive further represents and warrants that he does not have in his/her possession or control any files, customer lists, financial information or other property of the Company and its Related Entities. In addition to his/her promises in Section 6 of the Employment Agreement, Executive agrees that he will not disclose to any person or use any such information, observations or data without the written consent of the Board. If Executive is served with a deposition subpoena or other legal process calling for the disclosure of such information, or if he is contacted by any third person requesting such information, he will notify the Board as soon as is reasonably practicable after receiving notice and will reasonably cooperate with the Company and its Related Entities in minimizing the disclosure thereof; provided, that nothing in this Agreement will affect Executive's obligations to testify truthfully in response to any subpoena or other legally required discovery proceeding.

17. Prohibited Activities.

(a) Non-Solicitation of Customers and Other Business Partners. Executive recognizes that by virtue of his/her employment with the Company, he will be introduced to and involved in the solicitation and servicing of existing customers and other business partners of the Company and new customers and business partners obtained by the Company during his/her employment. Executive understands and agrees that all efforts expended in soliciting and servicing such customers and business partners shall be for the benefit of the Company. Executive further agrees that during his/her employment with the Company he will not engage in any conduct which could in any way jeopardize or disturb any of the customer and business partner relationships of the Company. In addition, Executive agrees that, for a period beginning on the Effective Date and ending twelve (12) months after termination of Executive's employment with the Company, regardless of the reason for such termination, Executive shall not use any Proprietary Information to, directly or indirectly, solicit, direct, interfere with, or entice away from the Company any existing customer, licensee, licensor, vendor, contractor or distributor of the Company or for the customer or other business partner to expand its business with a competitor, without the prior written consent of the Board.

(b) Non-Solicitation of Employees. Executive recognizes the substantial expenditure of time and effort which the Company devotes to the recruitment, hiring, orientation, training and retention of its employees. Accordingly, Executive agrees that, for a period beginning on the Effective Date and ending twelve (12) months after termination of Executive's employment with the Company, regardless of the reason for such termination, Executive shall not use any Proprietary Information, directly or indirectly, for himself or on behalf of any other person or entity, solicit, offer employment to, hire or otherwise retain the services of any employee of the Company in a position classified as exempt from overtime pay requirements. For purposes of the foregoing, "employee of the Company" shall include any person who was an employee of the Company at any time within six (6) months prior to the prohibited conduct.

(c) Scope of Restrictions. Executive agrees that the restrictions in Sections 17 (a) and (b), above, are reasonable and necessary to protect the Company's trade secrets and that they do not foreclose Executive from working in the medical device industry generally. To the extent that any of the provisions in this Section 17 are held to be overly broad or otherwise unenforceable at the time enforcement is sought, Executive agrees that the provision shall be reformed and enforced to the greatest extent permissible by law. Executive further agrees that if

6

any portion of this Section 17 is held to be unenforceable, that the remaining provisions of it shall be enforced as written.

18. Remedies. Executive acknowledges that any misuse of Proprietary Information belonging to the Company and its Related Entities, or any violation of Section 6 of the Employment Agreement, and any violation of Sections 14, 16 and 17 of this Agreement, will result in irreparable harm to the Company and its Related Entities, and therefore, the Company and its Related Entities shall, in addition to any other remedies, be entitled to immediate injunctive relief. To the extent there is any conflict between Section 6 of the Employment Agreement and this Section 18, the provision providing the greatest protection to the Company and its Related Entities shall control. In addition, in the event of a breach of any provision of this Agreement by Executive, including Sections 14, 16 and 17, Executive shall forfeit, and the Company and its Related Entities may withhold payment of any unpaid portion of, the Severance Benefits or Enhanced Severance Benefits provided under Section 5, above.

19. Cooperation Clause.

(a) To facilitate the orderly conduct of the Company and its Related Entities' businesses, for the Severance Period, Executive agrees to cooperate, at no charge, with the Company and its Related Entities' reasonable requests for information or assistance related to the time of his/her employment.

(b) For the Severance Period, Executive agrees to cooperate, at no charge, with the Company's and its Related Entities' and its or their counsel's reasonable requests for information or assistance related to (i) any investigations (including internal investigations) and audits of the Company's and its Related Entities' management's current and past conduct and business and accounting practices and (ii) the Company's and its Related Entities' defense of, or other participation in, any administrative, judicial, or other proceeding arising from any charge, complaint or other action which has

Sunnyvale, California 94089
Attn: Board of Directors
c/o Corporate Secretary
Fax No. (408) 789-4205

If to Executive: Address: most recent on file with the Company
Email: most recent on file with the Company

Such addresses may be changed, from time to time, by means of a notice given in the manner provided above. Notice will conclusively be deemed to have been given when personally delivered (including, but not limited to, by messenger or courier); or if given by mail, on the third business day after being sent by first class, United States certified or registered mail; or if given by Federal Express or other similar overnight service, on the date of delivery; or if given by electronic mail, teletype or facsimile machine during normal business hours on a business day, when confirmation of transmission is indicated by the sender's machine; or if given by electronic mail, teletype or facsimile machine at any time other than during normal business hours on a business day, the first business day following when confirmation of transmission is indicated by the sender's machine. Unless otherwise agreed, notices, requests, demands and other communications delivered to legal counsel of any party hereto, whether or not such counsel shall consist of in-house or outside counsel, shall not constitute duly given notice to any party hereto.

34. Miscellaneous Provisions.

(a) The parties represent that they have read this Agreement and fully understand all of its terms; that they have conferred with their attorneys, or have knowingly and voluntarily chosen not to confer with their attorneys about this Agreement; that they have executed this Agreement without coercion or duress of any kind; and that they understand any rights that they have or may have, and they are signing this Agreement with full knowledge of any such rights.

(b) Both parties have participated in the drafting of this Agreement with the assistance of counsel to the extent they desired. The language in all parts of this Agreement must be in all cases construed simply according to its fair meaning and not strictly for or against any party. Whenever the context requires, all words used in the singular must be construed to have been used in the plural, and vice versa, and each gender must include any other gender. The captions of the Sections of this Agreement are for convenience only and must not affect the construction or interpretation of any of the provision herein.

(c) Each provision of this Agreement to be performed by a party hereto is both a covenant and condition, and is a material consideration for the other party's performance hereunder, and any breach thereof by the party will be a material default hereunder. All rights, remedies, undertakings, obligations, options, covenants, conditions and agreements contained in this Agreement are cumulative and no one of them is exclusive of any other. Time is of the essence in the performance of this Agreement.

(d) Each party acknowledges that no representation, statement or promise made by any other party, or by the agent or attorney of any other party, except for those in this Agreement, has been relied on by him or it in entering into this Agreement.

(e) Unless expressly set forth otherwise, all references herein to a "day" are deemed to be a reference to a calendar day. All references to "business day" mean any day of the year other than a Saturday, Sunday or a public or bank holiday in Orange County, California. Unless expressly stated otherwise, cross-references herein refer to provisions within this Agreement and are not references to any other document.

(f) Each party to this Agreement will cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

EACH OF THE PARTIES ACKNOWLEDGES THAT HE/IT HAS READ THIS AGREEMENT, UNDERSTANDS IT AND IS VOLUNTARILY ENTERING INTO IT, AND THAT IT INCLUDES A WAIVER OF THE RIGHT TO A TRIAL BY JURY, AND, WITH RESPECT TO EXECUTIVE, HE UNDERSTANDS THAT THIS AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the dates written below.

EXECUTIVE:

Date: _____

COMPANY:

Accuray Incorporated

By: _____
Name: _____
Title: _____
Date: _____

Exhibit B

EQUITY AWARD SUMMARY

ACCURAY INCORPORATED

Personnel Grant Summary

As of 01/01/2013

Derek Bertocci

AWARDS

<u>Grant Number</u>	<u>Grant Date</u>	<u>Plan</u>	<u>Type</u>	<u>Shares</u>	<u>Price</u>
00006622	10/31/2012	2007	RSU	31,600.00	\$ 0.00000
00004059	09/30/2011	2007	RSU	12,500.00	\$ 0.00000
00003037	08/31/2010	2007	RSU	13,300.00	\$ 0.00000
P0004103	09/30/2011	2007	PSU	18,750.00	\$ 0.00000
M0006705	10/31/2012	2007	PSU	19,700.00	\$ 0.00000
P0004131	09/30/2011	2007	PSU	25,300.00	\$ 0.00000
				<u>121,150.00</u>	

STOCK OPTIONS

<u>Grant Number</u>	<u>Grant Date</u>	<u>Plan</u>	<u>Type</u>	<u>Shares</u>	<u>Price</u>
00002624	08/31/2009	2007	NQ	65,000.00	\$ 6.41000
00004032	09/30/2011	2007	NQ	45,000.00	\$ 4.01000
00006612	10/31/2012	2007	NQ	27,600.00	\$ 6.96000
00002537	02/27/2009	2007	NQ	275,000.00	\$ 4.67000
00003038	08/31/2010	2007	NQ	40,000.00	\$ 6.58000
				<u>452,600.00</u>	



RENEWAL EXECUTIVE EMPLOYMENT AGREEMENT

This Employment Agreement (“Agreement”) is entered into and effective as of January 1, 2013 (“Effective Date”), by and between Accuray Incorporated, a Delaware corporation (the “Company”) and Theresa Dadone (“Executive”).

RECITALS

A. The Company is in the business of developing, manufacturing and selling radiation oncology, including radio surgery and radiation therapy, technologies and devices (the “Business”).

B. The Company wishes to continue the employment of Executive as Senior Vice President, Human Resources, and Executive desires to serve the Company in such capacity pursuant to the terms and conditions in this Agreement.

C. As of the Effective Date, Executive is a full time employee with the Company.

NOW, THEREFORE, the parties agree as follows:

1. **Position and Duties.**

(a) During the term of this Agreement, Executive will be employed by the Company to serve as Senior Vice President, Human Resources of the Company, reporting to the Company’s Chief Executive Officer (“CEO”). Executive will be responsible for performing the duties and responsibilities customarily expected to be performed by such position of a publicly reporting business entity; and (vi) performing such other duties and functions as are reasonably required and/or as may be reasonably prescribed by the Company from time to time.

(b) The location of Executive’s employment will be the Company’s headquarters offices, but Executive from time to time may be required to travel to other geographic locations in connection with the performance of his/her duties.

2. **Standards of Performance.** Executive will at all times faithfully, industriously and to the best of his/her ability, experience and talents perform all of the duties required of and from him pursuant to the terms of this Agreement. Executive will devote his/her full business energies and abilities and all of his/her business time to the performance of his/her duties hereunder and will not, without the Company’s prior written consent, render to others any service of any kind (whether or not for compensation) that, in the Company’s sole but reasonable judgment, would interfere with the full performance of his/her duties hereunder. Notwithstanding the foregoing, Executive is permitted to spend reasonable amounts of time to manage his/her personal financial and legal affairs and, with the Company’s consent which will not be unreasonably withheld, to serve on one civic, charitable, not-for-profit, industry or corporate board or advisory committee, provided that such activities, individually and collectively, do not materially interfere with the performance of Executive’s duties hereunder. In no event will Executive engage in any activities that could reasonably create a conflict of interest or the appearance of a conflict of interest. Executive shall be subject to the Company’s policies, procedures and approval practices, as generally in effect from time to time.

1310 Chesapeake Terrace, Sunnyvale CA 94089 Tel: 408.716.4600 Fax: 408.716.4601 www accuray.com

3. **Term.** Executive will be employed for no specific term and until terminated pursuant to Section 5, below, of this Agreement. The Company and Executive shall each have a right to terminate this Agreement and Executive’s employment as provided in Section 5. This Agreement may not be terminated without a related termination of Executive’s employment.

4. **Compensation and Benefits.**

(a) **Base Salary.** As an annual base salary (“Base Salary”) for all services rendered pursuant to this Agreement, Executive will be paid an initial Base Salary in the gross amount of \$256,500 calculated on an annualized basis, less necessary withholdings and authorized deductions, and payable pursuant to the Company’s regular payroll practices at the time. The Base Salary is first subject to review and adjustment within the first three (3) months after the end of the fiscal year current fiscal year, and, thereafter, subject to periodic review and adjustment not less frequently than annually within the first three (3) months after the end of the next successive fiscal year, in the sole discretion of the Company. Executive’s Base Salary will not be reduced from the level in effect from time to time, except that the Base Salary may be reduced in connection with a salary reduction program of general application to senior executives of the Company.

(b) **Performance Bonus.** During Executive’s employment under this Agreement, Executive will be eligible for a performance bonus, subject to the terms and conditions of the Company’s Performance Bonus Plan, which is applicable to senior executives of the Company. The target amount of Executive’s annual bonus is fifty percent (50%) of Executive’s annual Base Salary. However, payment of the performance bonus will be conditioned on the Company’s achievement of corporate performance objectives approved by the Company and on the Executive’s achievement of individual performance metrics to be established annually and approved by the Company all as established pursuant to the Company’s Performance Bonus Plan as then in effect, and the bonus may be zero. For the avoidance of doubt, the performance bonus will be payable only if the corporate performance objectives approved by the Company are achieved as determined by the Company, subject to the Company’s right to exercise discretion in determining the amount of the bonus to be awarded, if any. To encourage continued tenure with the Company, Executive must be employed by the Company as of the payment date to be eligible for a performance bonus for the year to which the bonus relates, unless otherwise provided in Section 5. Performance bonuses will be paid out according to the terms of the applicable bonus plan.

(c) Equity Incentive Awards.

(i) Stock Options. The Company may to grant to Executive the option to purchase shares of the Company's common stock ("Options") pursuant to the Accuray Incorporated 2007 Incentive Award Plan (the "Incentive Plan"). All Options shall be subject to the terms and conditions of the Incentive Plan and a stock option grant notice and grant agreement in a form prescribed by the Company (the "Option Agreement"), which Executive must sign as a condition to receiving the Options. All equity awards granted to Executive as of the date of this Agreement are listed on Exhibit B.

(ii) Restricted Stock Units. The Company may grant to Executive restricted stock units ("RSUs") pursuant to the Incentive Plan. All RSUs are subject to and conditioned on approval of the grant and its terms by the Board. All RSUs shall be subject to the terms and conditions

RENEWAL EXECUTIVE EMPLOYMENT AGMT STD 12.20.12

ACCURAY CONFIDENTIAL

2

of the Incentive Plan and a RSU grant notice and grant agreement in a form prescribed by the Company ("RSU Agreement"), which Executive must sign as a condition to receiving the RSUs. All equity awards granted to Executive as of the date of this Agreement are listed on Exhibit B.

(iii) Market Stock Units. The Company may grant to Executive performance-based market stock units ("MSUs") pursuant to the Incentive Plan. All MSUs are subject to and conditioned on approval of the grant and its terms by the Board. All granted MSUs shall vest as provided in the applicable MSU Agreement. All MSUs shall be subject to the terms and conditions of the Incentive Plan and a MSU Agreement in a form prescribed by the Company, which Executive must sign as a condition to receiving the MSUs. All equity awards granted to Executive as of the date of this Agreement are listed on Exhibit B.

(d) Paid Time Off and Benefits. Executive will accrue and be allowed to use paid time off for vacation, illness and holidays pursuant to the Company's policies that apply to executive officers of the Company. In addition, Executive is entitled to participate in any plans regarding benefits of employment, including pension, profit sharing, group health, disability insurance and other employee pension and welfare benefit plans now existing or hereafter established to the extent that Executive is eligible under the terms of such plans and if the other executive officers of the Company generally are eligible to participate in such plan. The Company may, in its sole discretion and from time to time, establish additional senior management benefit plans as it deems appropriate. Executive understands that any such plans may be modified or eliminated in the Company's sole discretion in accordance with applicable law, provided that no such modification or elimination shall result in reducing or eliminating any benefits in which Executive's right has vested.

(e) Reimbursement of Business Expenses. The Company will promptly reimburse to Executive his/her reasonable, customary and documented out-of-pocket business expenses in connection with the performance of his/her duties under this Agreement, and in accordance with the policies and procedures established by the Company; provided that each reimbursement shall be requested within two months after being incurred.

(f) Sarbanes-Oxley Act Loan Prohibition and Company Compensation-Related Policies. To the extent that any Company benefit, program, practice, arrangement or this Agreement would or might otherwise result in Executive's receipt of an illegal loan (the "Loan"), the Company shall use commercially reasonable efforts to provide Executive with a substitute for the Loan that is lawful and of at least equal value to Executive. If this cannot be done, or if doing so would be significantly more expensive to the Company than making the Loan, the Company need not make the Loan to Executive or provide him a substitute for it. Further, Executive acknowledges that any bonus or equity award provided for in this Agreement or otherwise awarded to him shall be subject to the Company's Recoupment (Clawback) Policy, as such policy may be amended from time to time, and agrees that he will be subject to, and shall comply with, the Company's stock ownership requirements which are set forth in its Amended and Restated Corporate Governance Guidelines as such requirements may be amended from time to time.

5. Termination of Employment.

(a) By Company Without Cause. The Company may terminate Executive's employment without Cause (as defined below) effective on thirty (30) days' written notice, during

3

which notice period Executive may be relieved of his/her duties and placed on paid terminal leave. In such event and subject to the other provisions of this Agreement, Executive will be entitled to:

(i) continued coverage under the Company's insurance benefit plans through the termination date and such other benefits to which he may be entitled pursuant to the Company's benefit plans, provided, however, that Executive shall not participate in any severance plan of the Company;

(ii) payment of all earned but unpaid compensation (including accrued unpaid vacation) through the effective date of termination, payable on or before the termination date; and

(iii) reimbursement of expenses incurred on or before the termination date in accordance with Section 4(f), above, if a request for reimbursement of the expenses was timely submitted to the Company; plus

(iv) payment of the equivalent of the Base Salary without regard to any reduction that would otherwise constitute Good Reason he/she would have earned over the next six (6) months (the "Severance Period") following the termination date (less necessary withholdings and authorized deductions) at his/her then current Base Salary rate (the "Severance Payment"), payable in a lump sum on the date that is thirty (30) days after the termination date, subject to Section 16, below, the release of claims requirement specified below;

(v) payment of a prorated portion of Executive's target bonus for the fiscal year during which termination occurs, calculated by dividing the number of days from the start of the fiscal year through the termination date by 365 and multiplying the target bonus by this percentage (but

not by more than 100%), and paid at the same time as the Severance Payment; provided, however, that if the termination date is after the seventh month of the fiscal year, Executive will receive 100% of his/her target bonus for that fiscal year;

(vi) reimbursement of insurance premiums payable to retain group health coverage as of the termination date for himself and his eligible dependents pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1986 (“COBRA”) for six (6) months or the maximum period of COBRA coverage, whichever is less; provided that Executive must submit a reimbursement request in accordance with Company policy within 30 days of paying such insurance premiums. The Company will reimburse the executive within 30 days of receiving a properly submitted request. In addition, if Executive accepts other employment within such six (6) months, the Company’s obligation under this Section 5(a)(vi) will be extinguished as of the date Executive becomes covered under the group health plan of Executive’s new employer; and

(vii) payment for executive outplacement assistance services with the Company’s then current outplacement services vendor and in accordance with the Company’s then current policies and practices with respect to outplacement assistance for other executives of the Company for up to twelve (12) months after the termination date.

The payments and benefits set forth in Sections 5(a)(i)-(iii) shall be referred to as the “Accrued Benefits”, and the payments and benefits set forth in Sections 5(a)(iv)-(vii) shall be referred to as the “Severance Benefits”. Executive shall not receive the Severance Benefits (or the “Enhanced Severance Benefits” as provided in Section 5(e)) unless Executive executes the separation agreement and general

4

release attached as Exhibit A, and the same becomes irrevocable pursuant to its terms within the 30-day period following his/her termination of employment.

(b) By Company With Cause. The Company may terminate Executive’s employment at any time and without prior notice, written or otherwise, for Cause. As used in this Agreement, “Cause” shall mean any of the following conduct by Executive: (i) material breach of this Agreement, or of a Company policy or of a law, rule or regulation applicable to the Company or its operations; (ii) demonstrated and material neglect of duties, or failure or refusal to perform the material duties of his/her position, or the failure to follow the reasonable and lawful instructions of the Company; (iii) gross misconduct or dishonesty, self-dealing, fraud or similar conduct that the Company reasonably determines has caused, is causing or reasonably is likely to cause harm to the Company; (iv) conviction of or plea of guilty or *nolo contendere* to any crime other than a traffic offense that is punishable by a sentence of incarceration. Termination pursuant to Section 5(b)(ii) shall be effective only if such failure continues after Executive has been given written notice thereof and fifteen (15) business days thereafter in which to present his/her position to the Company or to cure the same, unless the Company reasonably determines that the reason(s) for termination are not capable of being cured. In the event of termination for Cause, Executive will be entitled only to the Accrued Benefits through the termination date, which will be the date on which the notice is given. The Company will have no further obligation to pay any compensation of any kind (including without limitation any bonus or portion of a bonus that otherwise may have become due and payable to Executive with respect to the year in which such termination date occurs), or severance payment of any kind nor to make any payment in lieu of notice.

(c) Incapacity or Death.

(i) If Executive becomes unable, due to physical or mental illness or injury, to perform the essential duties of his/her position for more than 12 consecutive weeks in any twelve month period during this Agreement with or without reasonable accommodation (“Incapacity”), the Company has the right to terminate Executive’s employment on fifteen (15) days’ written notice. In the event of termination for Incapacity, Executive will be entitled to receive the Accrued Benefits, and the unvested stock options and RSUs previously granted to Executive that would have vested within six (6) months after the date of termination for Incapacity shall become immediately vested; and.

(ii) Executive’s employment pursuant to this Agreement shall be immediately terminated without notice by the Company upon the death of Executive. If Executive dies while actively employed pursuant to this Agreement, the Company will pay to his/her estate or designated beneficiaries within sixty (60) days the Accrued Benefits, and the unvested stock options and RSUs previously granted to Executive that would have vested within six (6) months after the date of termination upon the death of Executive shall become immediately vested.

(d) Resignation for Good Reason. Executive may terminate this Agreement for Good Reason (as defined below) by giving written notice of such termination, which termination will become effective on the thirtieth (30th) day following receipt by the Company. As used in this Agreement, “Good Reason” shall mean any one of the following: (i) a material reduction in Executive’s Base Salary and/or a material breach of this Agreement resulting from the failure to provide the benefits required in Section 4, (ii) any action or inaction that constitutes a material breach by the Company of this Agreement; (iii) a material diminution in Executive’s authority, duties or responsibilities such that they are materially inconsistent with his/her position as Senior Vice President, Human Resources of the

5

Company; and (iv) relocation of the Company’s headquarters to a location that materially increases Executive’s commute, provided that no termination for Good Reason shall be effective until Executive has given the Company written notice (pursuant to Section 11 below) within sixty (60) days after Executive becomes aware of the initial occurrence of any of the foregoing specifying the event or condition constituting the Good Reason and the specific reasonable cure requested by Executive, and the Company has failed to cure the occurrence within thirty (30) days of receiving written notice from Executive, and Executive resigns within six (6) months after Executive becomes aware of the initial occurrence. In the event of a termination for Good Reason, Executive will be entitled to the Accrued Benefits and the Severance Benefits, on the same conditions, form of payment and timing as set forth in Section 5(a).

(e) Effect of Change in Control. Executive may terminate this Agreement upon a Change in Control (as defined below) if the successor to the Company or to the Company’s business fails (A) to offer Executive the position of Senior Vice President, Human Resources of the successor company with duties, responsibilities, and overall compensation and benefits materially similar to those enjoyed by Executive immediately preceding the Change in Control, or (B) to assume the obligations of the Company under and to become a party to this Agreement, provided that no termination upon a Change in Control shall be effective until Executive has given the successor to the Company written notice (pursuant to Section 11 below) within sixty (60) days of the initial occurrence of any of the foregoing specifying the event giving rise to the termination upon a Change in Control and the specific reasonable cure requested by Executive, and the successor to the Company or to the Company’s business has failed to cure the occurrence within thirty (30) days of receiving written notice from Executive, and Executive resigns within six (6) months after Executive becomes aware of the initial occurrence. In the event of

a termination upon a Change in Control, Executive will be entitled to the Accrued Benefits, and subject to the same conditions set forth in the final paragraph of Section 5(a), (i) four times the Severance Payment set forth in Section 5(a)(iv), paid in the same form (i.e., a lump sum) and at the same time (i.e., 30 days after the termination date) as the Severance Payments set forth in Section 5(a)(iv), (ii) the reimbursement of two times Executive's insurance premiums for twelve (12) months in the same form and at the same time and under the same conditions as provided in Section 5(a)(vi), (iii) two hundred percent (200%) of Executive's target bonus for the fiscal year during which termination occurs, but no less than the target bonus in effect for the fiscal year immediately prior to the Change in Control if the Change in Control occurs within the first three (3) months of the fiscal year, payable at the same time as the payment under clause (i) of this Section 5(e), (iv) all outstanding unvested stock options and RSUs previously granted to Executive shall become immediately vested (the "Enhanced Severance Benefits"), and (v) payment for executive outplacement assistance services with the Company's then current outplacement services vendor and in accordance with the Company's then current policies and practices with respect to outplacement assistance for other executives of the Company for up to twelve (12) months after the termination date; provided, however, for the sake of clarity, if any payments or benefits are payable under this Section 5(e), no payments or benefits shall be made under any other subsection of this Section 5 including Section 5(a) and Section 5(d).

As used in this Agreement, a "Change in Control" shall mean any of the following events:

(i) the acquisition by any Group or Person (as such terms are defined in Section 13(d) or 14(d) of the Securities Exchange Act of 1934, as amended (the "1934 Act")), other than (A) a trustee or other fiduciary holding securities of the Company under an employee benefit plan of the

6

Company or (B) an entity in which the Company directly or indirectly beneficially owns fifty percent (50%) or more of the voting securities of such entity (an "Affiliate"), of any securities of the Company, immediately after which such Group or Person has beneficial ownership (within the meaning of Rule 13d-3 promulgated under the 1934 Act) of more than fifty percent (50%) of (X) the outstanding shares of Common Stock or (Y) the combined voting power of the Company's then outstanding securities entitled to vote generally in the election of directors;

(ii) the Company (and/or its subsidiaries) is a party to a merger or consolidation with a Person other than an Affiliate, which merger or consolidation results in (a) the holders of voting securities of the Company outstanding immediately before such merger or consolidation failing to continue to represent (either by remaining outstanding or being converted into voting securities of the surviving entity) more than fifty percent (50%) of the combined voting power of the then outstanding voting securities of the corporation or entity resulting from or surviving such merger or consolidation or (b) individuals who are directors of the Company just prior to such merger or consolidation not constituting more than fifty percent (50%) of the members of the Board of Directors of the surviving entity or corporation immediately after the consummation of such merger or consolidation; or

(iii) all or substantially all of the assets of the Company and its subsidiaries are, in any transaction or series of transactions, sold or otherwise disposed of (or consummation of any transaction, or series of related transactions, having similar effect, other than to an Affiliate;

provided, however, that in no event shall a "Change in Control" be deemed to have occurred for purposes of this Agreement solely because the Company engages in an internal reorganization, which may include a transfer of assets to, or a merger or consolidation with, one or more Affiliates. Additionally, with respect to the payment of any "nonqualified deferred compensation" within the meaning of section 409A of the Internal Revenue Code of 1986, as amended (the "Code") that is not exempt from section 409A of the Code, no event shall constitute a Change in Control unless it also constitutes a change in the ownership of the Company (as defined in Treasury Regulation section 1.409A-3(i)(5)(v)), a change in effective control of the Company (as defined in Treasury Regulation section 1.409A-3(i)(5)(vi)), or a change in the ownership of a substantial portion of the assets of the Company (as defined in Treasury Regulation section 1.409A-3(i)(5)(vii)).

(f) Voluntary Resignation without Good Reason. Executive may terminate this Agreement without Good Reason effective on sixty (60) day's written notice, unless the Company in its sole discretion accepts the resignation earlier. In the event that Executive resigns without Good Reason as defined above in Section 5(d), Executive will be entitled only to the Accrued Benefits through the termination date. The Company will have no further obligation to pay any compensation of any kind (including without limitation any bonus or portion of a bonus that otherwise may have become due and payable to Executive with respect to the year in which such termination date occurs unless he remains employed with the Company as of the date bonuses are paid to other senior executives of the Company), or severance payments of any kind.

6. Proprietary Information Obligations.

(a) Proprietary Information and Confidentiality. Both before and during the term of Executive's employment, Executive will have access to and become acquainted with Company

7

confidential and proprietary information (together "Proprietary Information"), including but not limited to information or plans concerning the Company's products and technologies; customer relationships; personnel; sales, marketing and financial operations and methods; trade secrets; formulae and secret developments and inventions; processes; and other compilations of information, records, and specifications. Executive will not disclose any of the Proprietary Information directly or indirectly, or use it in any way, either during his/her employment pursuant to this Agreement or at any time thereafter, except as reasonably required or specifically requested in the course of his/her employment with the Company or as authorized in writing by the Company. Notwithstanding the foregoing, Proprietary Information does not include information that is otherwise publicly known or available, provided it has not become public as a result of a breach of this Agreement or any other agreement Executive has to keep information confidential. It is not a breach of this Agreement for Executive to disclose Proprietary Information pursuant to an order of a court or other governmental or legal body.

(b) Inventions Agreement and Assignment.

(i) Executive hereby agrees to disclose promptly to the Company (or any persons designated by it) all developments, designs, creations, improvements, original works of authorship, formulas, processes, know-how, techniques and/or inventions (collectively, the "Inventions") (A) which are made or conceived or reduced to practice by Executive, either alone or jointly with others, in performing his/her duties during the period of

Executive's employment by the Company, that relate to or are useful in the business of the Company; or (B) which result from tasks assigned to Executive by the Company, or from Executive's use of the premises or other resources owned, leased or contracted by the Company.

(ii) Executive agrees that all such Inventions which the Company in its discretion determines to be related to or useful in its business or its research or development, or which result from work performed by Executive for the Company, will be the sole and exclusive property of the Company and its assigns, and the Company and its assigns will have the right to use and/or to apply for patents, copyrights or other statutory or common law protections for such Inventions in any and all countries. Executive further agrees to assist the Company in every reasonable way (but at the Company's expense) to obtain and from time to time enforce patents, copyrights and other statutory or common law protections for such Inventions in any and all countries. To that end, Executive will execute all documents for use in applying for and obtaining such patents, copyrights and other statutory or common law protections therefor and enforcing the same, as the Company may desire, together with any assignments thereof to the Company or to persons or entities designated by the Company. Should the Company be unable to secure Executive's signature on any document necessary to apply for, prosecute, obtain, or enforce any patent, copyright or other right or protection relating to any Invention, whether due to his/her mental or physical incapacity or any other cause, Executive hereby irrevocably designates and appoints the Company and each of its duly authorized officers and agents as Executive's agent and attorney-in-fact, to act for and in his/her behalf and stead, to execute and file any such document, and to do all other lawfully permitted acts to further the prosecution, issuance, and enforcement of patents, copyrights or other rights or protections with the same force and effect as if executed and delivered by Executive. Executive's obligations under this Section 6(b)(ii) will continue beyond the termination of Executive's employment with the Company, but the Company will compensate Executive at a reasonable rate after such termination for time actually spent by Executive at the Company's request in providing such assistance.

8

(iii) Executive hereby acknowledges that all original works of authorship which are made by Executive (solely or jointly with others) within the scope of Executive's employment which are protectable by copyright are "works for hire," as that term is defined in the United States Copyright Act (17 USCA, Section 101).

(iv) Any provision in this Agreement requiring Executive to assign Executive's rights in any Invention to the Company will not apply to any invention that is exempt under the provisions of California Labor Code section 2870, which provides:

"(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his/her or her rights in an invention to his/her or her employer shall not apply to an invention that the employee developed entirely on his/her or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either: (1) relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or (2) result from any work performed by the employee for the employer. (b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable."

(c) Non-Solicitation of Customers and Other Business Partners. Executive recognizes that by virtue of his/her employment with the Company, he will be introduced to and involved in the solicitation and servicing of existing customers and other business partners of the Company and new customers and business partners obtained by the Company during his/her employment. Executive understands and agrees that all efforts expended in soliciting and servicing such customers and business partners shall be for the benefit of the Company. Executive further agrees that during his/her employment with the Company he will not engage in any conduct which could in any way jeopardize or disturb any of the customer and business partner relationships of the Company. In addition, Executive agrees that, for a period beginning on the Effective Date and ending twelve (12) months after termination of Executive's employment with the Company, regardless of the reason for such termination, Executive shall not use any Proprietary Information to, directly or indirectly, solicit, direct, interfere with, or entice away from the Company any existing customer, licensee, licensor, vendor, contractor or distributor of the Company or for the customer or other business partner to expand its business with a competitor, without the prior written consent of the Company.

(d) Non-Solicitation of Employees. Executive recognizes the substantial expenditure of time and effort which the Company devotes to the recruitment, hiring, orientation, training and retention of its employees. Accordingly, Executive agrees that, for a period beginning on the Effective Date and ending twelve (12) months after termination of Executive's employment with the Company, regardless of the reason for such termination, Executive shall not use any Proprietary Information, directly or indirectly, for himself or on behalf of any other person or entity, solicit, offer employment to, hire or otherwise retain the services of any employee of the Company in a position classified as exempt from overtime pay requirements. For purposes of the foregoing, "employee of the Company" shall

9

include any person who was an employee of the Company at any time within six (6) months prior to the prohibited conduct.

(e) Company Property and Materials.

(i) All files, records, documents, computer-recorded or electronic information, drawings, specifications, equipment, and similar items relating to Company business, whether prepared by Executive or otherwise coming into his/her possession, will remain the Company's exclusive property and will not be removed from Company premises under any circumstances whatsoever without the Company's prior written consent, except when, and only for the period, necessary to carry out Executive's duties hereunder

(ii) In the event of termination of Executive's employment for any reason, Executive will promptly deliver to the Company all Company equipment (including, without limitation, any cellular phones, beeper/pagers, computer hardware and software, fax machines and other tools of the trade) and all originals and copies of all documents, including without limitation, all books, customer lists, forms, documents supplied by customers, records, product lists, writings, manuals, reports, financial documents and other documents or property in Executive's possession or control, which relate to the Company's business in any way whatsoever, and in particular to customers of the Company, or which may be considered to constitute or contain Proprietary Information as defined above, and Executive will neither retain, reproduce, nor distribute copies thereof (other than copies of Executive's electronic or hardcopy address and telephone contact data base or directories).

(f) **Remedies for Breach.** Executive acknowledges that any breach by Executive of this Section 6 would cause the Company irreparable injury and damage for which monetary damages are inadequate. Accordingly, in the event of a breach or a threatened breach of this Section 6, the Company will be entitled to seek an injunction restraining such breach. In addition, in the event of a breach of this Section 6, the Company's obligation to pay any unpaid portion of the Severance Payment or other benefits as set forth in Sections 5(a) and (d) of this Agreement will be extinguished. Nothing contained herein will be construed as prohibiting the Company from pursuing any other remedy available to the Company for such breach or such threatened breach. Executive has carefully read and considered these restrictions and agrees they are fair and reasonable restrictions on Executive and are reasonably required for the protection of the interests of the Company. Executive agrees not to circumvent the spirit of these restrictions by attempting to accomplish indirectly what Executive is otherwise restricted from doing directly. Executive agrees that the restrictions in this Section 6 are reasonable and necessary to protect the Company's Proprietary Information, and they do not prevent Executive from working in the medical device industry. Executive agrees that the covenants and agreements by Executive contained in this Section 6 shall be in addition to any other agreements and covenants Executive may have agreed to in any other employee proprietary information, confidentiality, non-disclosure or other similar agreement and that this Section 6 shall not be deemed to limit such other covenants and agreements, all of which shall continue to survive the termination of this Agreement in accordance with their respective terms. A breach by Executive of the terms of such other agreements and covenants shall be deemed to be a breach by Executive of this Section 6 and of this Agreement. To the extent any of the provisions in this Section 6 are held to be overly broad or otherwise unenforceable at the time enforcement is sought, Executive agrees that the provision shall be reformed and enforced to the greatest extent permissible by law. Executive further agrees that if any portion of this Section 6 is held to be unenforceable, the remaining provisions of this Section 6 shall be enforced as written.

10

7. Interpretation, Governing Law and Exclusive Forum. The validity, interpretation, construction, and performance of this Agreement shall be governed by the laws of the State of California (excluding any that mandate the use of another jurisdiction's laws). Any arbitration (unless otherwise mutually agreed), litigation or similar proceeding with respect to such matters only may be brought within Santa Clara County, California, and all parties to this Agreement consent to California's jurisdiction.

8. Entire Agreement. All oral or written agreements or representations, express or implied, with respect to the subject matter of this Agreement are set forth in this Agreement.

9. Severability. In the event that one or more of the provisions contained in this Agreement are held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such holding shall not impair the validity, legality or enforceability of the remaining provisions herein.

10. Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, Executive and his/her estate, but Executive may not assign or pledge this Agreement or any rights arising under it, except to the extent permitted under the terms of the benefit plans in which he participates. No rights or obligations of the Company under this Agreement may be assigned or transferred except that the Company shall require any successor (whether direct or indirect, by purchase, merger, reorganization, sale, transfer of stock, consideration or otherwise) to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no succession had taken place. As used in this Agreement, "Company" means the Company as hereinbefore defined and any successor to its business and/or assets (by merger, purchase or otherwise as provided in this Section 10) which executes and delivers the agreement provided for in this Section 10 or which otherwise becomes bound by all the terms and provisions of this Agreement by operation of law. In the event that any successor refuses to assume the obligations hereunder, the Company as hereinbefore defined shall remain fully responsible for all obligations hereunder.

11. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be given by hand delivery, electronic mail, facsimile, telecopy, overnight courier service, or by United States certified or registered mail, return receipt requested. Each such notice, request, demand or other communication shall be effective (i) if delivered by hand or by overnight courier service, when delivered at the address specified in this Section 11; (ii) if given by electronic mail, facsimile or telecopy, when such electronic mail, facsimile or telecopy is transmitted to the electronic mail address or facsimile or telecopy number specified in this Section 11 and confirmation is received if during normal business hours on a business day, and otherwise, on the next business day; and (iii) if given by certified or registered mail, three (3) days after the mailing thereof. Notices shall be addressed to the parties as follows (or at such other address, email address or fax number as either party may from time to time specify in writing by giving notice as provided herein):

11

If to the Company: Accuray Incorporated
 1310 Chesapeake Terrace
 Sunnyvale, California 94089
 Attn: General Counsel
 Fax No. (408) 789-4205

If to Executive: Theresa Dadone
 Address: most recent on file with the Company
 Email: most recent on file with the Company

12. Indemnification. As soon as reasonably practicable after the due execution of this Agreement by each of the parties hereto, the Company and Executive will enter into the Company's standard form of indemnification agreement utilized by the Company for its directors and executive officers.

13. Dispute Resolution. The parties agree that all disputes, claims or controversies between them and between Executive and any of the Company's affiliated entities and the successor of all such entities, including any dispute, claim or controversy arising from or otherwise in connection with this Agreement and/or Executive's employment with the Company, will be resolved as follows:

(a) Prior to initiating any other proceeding, the complaining party will provide the other party with a written statement of the claim identifying any supporting witnesses or documents and the requested relief. The responding party shall within forty-five (45) days furnish a statement of the relief, if any, that it is willing to provide, and identify supporting witnesses or documents.

(b) If the matter is not resolved by the exchange of statements of claim and statements of response as provided herein, the parties shall submit the dispute to non-binding mediation, the cost of the mediator to be paid by the Company, before a mediator and/or service to be jointly selected by the parties. Each party will bear his/her or its own attorney's fees and witness fees.

(c) If the parties cannot agree on a mediator and/or if the matter is not otherwise resolved by mediation, any controversy or claim between Executive and the Company and any of its current or former directors, officers and employees, including any arising out of or relating to this Agreement or breach thereof, shall be settled by final and binding arbitration in the county in which Executive last worked, or elsewhere as mutually agreed by the parties, by a single arbitrator pursuant to the Employment Dispute Rules of Judicial Arbitration and Mediation Services, Inc. ("JAMS"), unless the parties to the dispute agree to another arbitration service or independent arbitrator. The parties may conduct discovery to the extent permitted in a court of law; the arbitrator will render an award together with a written opinion indicating the bases for such opinion; and the arbitrator will have full authority to award all remedies that would be available in court. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Each party shall bear its own attorney's fees and costs, unless the claim is based on a statute that provides otherwise. The Company will pay the arbitrator's fees and any administrative charges of the arbitration service, except that if Executive initiates the claim, he will pay a portion of the administrative charges equal to the amount he would have paid to initiate the claim in a court of general jurisdiction.

12

(d) EXECUTIVE AND THE COMPANY AGREE THAT THIS ARBITRATION PROCEDURE WILL BE THE EXCLUSIVE MEANS OF REDRESS FOR ANY DISPUTES RELATING TO OR ARISING FROM EXECUTIVE'S EMPLOYMENT WITH THE COMPANY OR TERMINATION THEREFROM, INCLUDING DISPUTES OVER UNPAID WAGES, BREACH OF CONTRACT OR TORT, VIOLATION OF PUBLIC POLICY, RIGHTS PROVIDED BY FEDERAL, STATE OR LOCAL STATUTES, REGULATIONS, ORDINANCES, AND COMMON LAW, LAWS THAT PROHIBIT DISCRIMINATION BASED ON ANY PROTECTED CLASSIFICATION, AND ANY OTHER STATUTES OR LAWS RELATING TO AN EXECUTIVE'S RELATIONSHIP WITH THE COMPANY. THE FOREGOING NOTWITHSTANDING, CLAIMS FOR WORKERS' COMPENSATION BENEFITS OR UNEMPLOYMENT INSURANCE, OR ANY OTHER CLAIMS WHERE MANDATORY ARBITRATION IS PROHIBITED BY LAW, ARE NOT COVERED BY THIS ARBITRATION PROVISION. THE PARTIES EXPRESSLY WAIVE THE RIGHT TO A JURY TRIAL, AND AGREE THAT THE ARBITRATOR'S AWARD SHALL BE FINAL AND BINDING ON BOTH PARTIES. THIS ARBITRATION PROVISION IS TO BE CONSTRUED AS BROADLY AS IS PERMISSIBLE UNDER APPLICABLE LAW.

14. Representations. Each person executing this Agreement hereby represents and warrants on behalf of himself and of the entity/individual on whose behalf he is executing the Agreement that he is authorized to represent and bind the entity/individual on whose behalf he is executing the Agreement. Executive specifically represents and warrants to the Company that he reasonably believes (a) he is not under any contractual or other obligations that would prevent, limit or impair Executive's performance of his/her obligations under this Agreement and (b) that entering into this Agreement will not result in a breach of any other agreement to which he is a party. Executive acknowledges that Executive has been given the opportunity to consult with legal counsel and seek such advice and consultation as Executive deems appropriate or necessary.

15. Amendments and Waivers. No provisions of this Agreement may be modified, waived, or discharged except by a written document signed by Executive and a duly authorized Company officer. Thus, for example, promotions, commendations, and/or bonuses shall not, by themselves, modify, amend, or extend this Agreement. A waiver of any conditions or provisions of this Agreement in a given instance shall not be deemed a waiver of such conditions or provisions at any other time.

16. Taxes.

(a) Withholdings. The Company may withhold from any compensation and benefits payable under this Agreement all federal, state, city and other taxes or amounts as shall be determined by the Company to be required to be withheld pursuant to applicable laws, or governmental regulations or rulings. Executive shall be solely responsible for the satisfaction of any taxes (including employment taxes imposed on employees and penalty taxes on nonqualified deferred compensation).

(b) Net Proceeds Maximization. Notwithstanding any provision of this Agreement to the contrary, if all or any portion of the payments or benefits received or realized by Executive pursuant to this Agreement either alone or together with other payments or benefits that Executive receives or realizes or is then entitled to receive or realize from the Company or any of its affiliates would constitute an "excess parachute payment" within the meaning of section 280G of the Code and/or any corresponding and applicable state law provision, the payments or benefits provided to Executive under this Agreement will be reduced by reducing the amount of payments or benefits payable to Executive to the extent necessary so that no portion of Executive's payments or benefits will be subject to the excise

13

tax imposed by section 4999 of the Code and any corresponding and/or applicable state law provision. Notwithstanding the foregoing, a reduction will be made under the previous sentence only if, by reason of that reduction, Executive's net after tax benefit exceeds the net after tax benefit he would realize if the reduction were not made. For purposes of this paragraph, "net after tax benefit" means the sum of (i) the total amount received or realized by Executive pursuant to this Agreement that would constitute a "parachute payment" within the meaning of section 280G of the Code and any corresponding and applicable state law provision, plus (ii) all other payments or benefits that Executive receives or realizes or is then entitled to receive or realize from the Company and any of its affiliates that would constitute a "parachute payment" within the meaning of Section 280G of the Code and any corresponding and applicable state law provision, less (iii) the amount of federal or state income taxes payable with respect to the payments or benefits described in (i) and (ii) above calculated at the maximum marginal individual income tax rate for each year in which payments or benefits are realized by Executive (based upon the rate in effect for that year as set forth in the Code at the time of the first receipt or realization of the foregoing), less (iv) the amount of excise taxes imposed with respect to the payments or benefits described in (i) and (ii) above by section 4999 of the Code and any corresponding and applicable state law provision. All determinations and calculations made in this paragraph shall be made by an independent accounting firm (the "Accounting Firm") selected by the Company prior to the Change in Control and the Company will bear all costs and expenses incurred by the Accounting Firm in connection with its determination. The Accounting Firm shall be a nationally recognized United States public accounting firm which has not, during the two (2) years preceding the date of its selection, acted in any way on behalf of (x) the Company or any affiliate thereof or (y) Executive. If any payments or benefits are reduced pursuant to this Section 16(b), they shall be reduced in the following order: First all payments and benefits that do not constitute "nonqualified deferred compensation" within the meaning of section 409A of the Code or that are exempt from section 409A of the Code (with the payments or benefits being

reduced in reverse order of when they otherwise would be made or provided); second, all payments or benefits that constitute “nonqualified deferred compensation” within the meaning of section 409A of the Code that are not exempt from section 409A of the Code that were granted to Executive in the 12-month period of time preceding the applicable Change in Control, in the order such benefits were granted to Executive; and third, all remaining payments and benefits shall be reduced pro-rata. Notwithstanding the foregoing, if (i) reducing payments or benefits in the order described above would result in the imposition on Executive of an additional tax under section 409A of the Code (or similar state or local law), (ii) Executive so notifies the Company before such reductions and payments are made and benefits provided, and (iii) reducing the payments or benefits in another order would not result in the imposition on Executive of an additional tax under section 409A of the Code (or similar state or local law), payments and benefits shall instead be reduced in such other order.

(c) Section 409A Compliance.

(i) With respect to any reimbursement of expenses or any provision of in-kind benefits to Executive specified under this Agreement, such reimbursement of expenses or provision of in-kind benefits shall be subject to the following conditions: (1) the expenses eligible for reimbursement or the amount of in-kind benefits provided in one taxable year shall not affect the expenses eligible for reimbursement or the amount of in-kind benefits provided in any other taxable year, except for any medical reimbursement arrangements providing for the reimbursement of expenses referred to in section 105(b) of the Code; (2) the reimbursement of an eligible expense shall be made no later than the end of the year following the year in which such expense was incurred; and (3) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit.

14

(ii) A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits considered “deferred compensation” (as defined under Treasury Regulation section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation sections 1.409A-1(b)(3) through (b)(12)) upon or following a termination of employment unless such termination is also a “separation from service” and, for purposes of any such provision of this Agreement, references to a “termination,” “termination of employment” or like terms shall mean “separation from service.” For purposes of section 409A of the Code, the date as of which Company and Executive reasonably anticipate that no further services would be performed by Executive for Company shall be construed as the date that Executive first incurs a “separation from service” as defined under section 409A of the Code.

(iii) Notwithstanding anything in this Agreement to the contrary, if a payment obligation arises on account of Executive’s separation from service while Executive is a “specified employee” as described in section 409A of the Code and the Treasury Regulations thereunder and as determined by Company in accordance with its procedures, by which determination Executive is bound, any payment of “deferred compensation” (as defined under Treasury Regulation section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation sections 1.409A-1(b)(3) through (b)(12)) shall be made on the first business day of the seventh month following the date of Executive’s separation from service, or, if earlier, within fifteen (15) days after the appointment of the personal representative or executor of Executive’s estate following Executive’s death together with interest on them for the period of delay at a rate equal to the average prime interest rate published in the Wall Street Journal on any day chosen by the Company during that period. Thereafter, Executive shall receive any remaining payments as if there had not been an earlier delay.

(iv) Notwithstanding anything to the contrary contained in this Agreement, the Executive shall have no legally-enforceable right to, and the Company shall have no obligation to make, any payment or provide any benefit to Executive if having such a right or obligation would result in the imposition of additional taxes under section 409A of the Code, and (ii) any provision that would cause any payment or benefit to fail to satisfy section 409A will have no force and effect until amended to comply therewith (which amendment may be retroactive to the extent permitted by section 409A and may be accomplished by the Company without the Executive’s consent). If any payment is not made or any benefit is not provided under the terms of this Section 16(c)(iv), it is the Company’s present intention to make a similar payment or provide a similar benefit to the Executive in a manner that will not result in the imposition of additional taxes under section 409A of the Code, to the extent feasible. Each payment made under this Agreement is intended to be a separate payment for the purposes of section 409A of the Code.

(v) The Company does not guarantee any particular tax effect to Executive under this Agreement. Company shall not be liable to Executive for any payment made under this Agreement that is determined to result in an additional tax, penalty or interest under section 409A of the Code, nor for reporting in good faith any payment made under this Agreement as an amount includible in gross income under section 409A of the Code. The parties intend that this Agreement shall be interpreted and administered in accordance with section 409A of the Code to the extent Section 409A of the Code is applicable.

17. U.S. Citizenship and Immigration Services; Confidentiality and Inventions Agreement. Executive agrees to timely file all documents required by the Department of Homeland Security to verify his/her identity and lawful employment in the United States. In addition, as a

15

condition to Executive’s employment with the Company, Executive is required to complete, sign, return, and abide by the Company’s Employee Confidentiality and Inventions Agreement.

18. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute the same instrument.

19. Resignation from Positions. Upon Executive’s cessation of employment with the Company for any reason, Executive agrees that Executive shall be deemed to have resigned as an officer and as a director (if applicable) from the Company and every subsidiary of the Company on which Executive is then serving as an officer or director, and from any other entity or company on which Executive is then serving as a director or officer at the request of the Company, in each case effective as of the date of Executive’s cessation of employment. In the event of Executive’s cessation of employment, Executive agrees to execute a general resignation resigning from all positions then held by Executive on every subsidiary of the Company and other entity or company on which Executive is then serving as a director or officer at the request of the Company. Executive hereby grants the corporate secretary of the Company an irrevocable power of attorney to execute on behalf of Executive all such resignations, documents and instruments and to take all such other actions as reasonably necessary to carry out the intention of this Section 19.

20. **Executive's Commencement of Employment.** It is a condition precedent to the effectiveness of this Agreement that Executive commences working full-time for the Company at the Company's principal executive offices on the Effective Date. If Executive does not commence such full-time employment on the Effective Date, then this Agreement shall be null and void and the Company shall have no obligations hereunder or otherwise to Executive.

21. **Executive's Acknowledgement.**

EXECUTIVE ACKNOWLEDGES THAT ALL UNDERSTANDINGS AND AGREEMENTS BETWEEN THE COMPANY AND HIM RELATING TO THE SUBJECTS COVERED IN THIS AGREEMENT ARE CONTAINED IN IT (INCLUDING THE AGREEMENTS SET FORTH AS EXHIBITS) AND THAT HE HAS ENTERED INTO THIS AGREEMENT VOLUNTARILY AND NOT IN RELIANCE ON ANY PROMISES OR REPRESENTATIONS BY THE COMPANY OTHER THAN THOSE CONTAINED IN THIS AGREEMENT.

EXECUTIVE FURTHER ACKNOWLEDGES THAT HE HAS CAREFULLY READ THIS AGREEMENT (INCLUDING THE AGREEMENTS SET FORTH AS EXHIBITS), THAT HE UNDERSTANDS ALL OF SUCH AGREEMENTS, AND THAT HE HAS BEEN GIVEN THE OPPORTUNITY TO DISCUSS SUCH AGREEMENTS WITH HIS/HER PRIVATE LEGAL COUNSEL AND HAS AVAILED HIMSELF OF THAT OPPORTUNITY TO THE EXTENT HE WISHED TO DO SO. EXECUTIVE UNDERSTANDS THAT THE DISPUTE RESOLUTION PROVISIONS OF THIS AGREEMENT GIVE UP THE RIGHT TO A JURY TRIAL ON MATTERS COVERED BY THEM.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates written below.

ACCURAY INCORPORATED,
a Delaware Corporation

By: /s/ Joshua H. Levine
Name: Joshua H. Levine
Title: President & Chief Executive Officer

By: /s/ Darren J. Milliken
Name: Darren J. Milliken
Title: Senior Vice President, General Counsel

Accepted and Agreed,

Theresa Dadone: /s/ Theresa Dadone

Signed on: 12/28/12

Exhibit A

FORM OF SEPARATION AGREEMENT AND GENERAL RELEASE

[See attached]

SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release (this "Agreement") is hereby entered into by and between _____, an individual ("Executive"), and Accuray Incorporated, a Delaware corporation, on behalf of itself and all of its subsidiaries (collectively, the "Company").

Recitals

A. Executive has been employed by the Company pursuant to an employment agreement by and between the Company and Executive effective as of October _____, 2012 (the "Employment Agreement"), and currently is serving as **[specify position held at time of termination]**;

B. Executive's employment with the Company and any of its parents, direct or indirect subsidiaries, affiliates, divisions, or related entities (collectively referred to herein as the "Company and its Related Entities") will be ended on the terms and conditions set forth in this Agreement.

Agreement

In consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Effective Date.** Except as otherwise provided herein, this Agreement shall be effective on the eighth day after it has been executed by both of the parties (the "Effective Date").
2. **End of Employment and Service as a Director.** Executive's employment with the Company and its Related Entities has ended or will end effective as of Pacific Time, on (the "Termination Date"). If Executive is a member of the Board of Directors of the Company and/or its Related Entities (the "Board") Executive hereby voluntarily resigns from the Board, effective .
3. **Continuation of Benefits After the Termination Date.** Except as expressly provided in this Agreement or in the plan documents governing the Company's employee benefit plans, after the Termination Date, Executive will no longer be eligible for, receive, accrue, or participate in any other benefits or benefit plans provided by the Company and its Related Entities, including, without limitation, medical, dental and life insurance benefits, and the Company's 401(k) retirement plan; provided, however, that nothing in this Agreement shall waive Executive's right to any vested benefits, including vested amounts in the Company's 401(k) retirement plan, which amounts shall be handled as provided in the plan.
4. **Payments Upon Termination.** Executive will be entitled to receive payment of the following: (i) all earned but unpaid compensation (including accrued unpaid vacation) through the effective date of termination, payable on or before the termination date; and

1

(ii) reimbursement, made in accordance with Section 4(e) of the Employment Agreement, of any monies advanced or incurred by Executive in connection with his/her employment for reasonable and necessary Company-related expenses incurred on or before the Termination Date. The provisions of this Agreement shall not waive or terminate any rights to compensation or vested benefits under the Company's benefits plans or as required by law, or to indemnification Executive may have under the Company's Certificate of Incorporation, Bylaws or separate indemnification agreement, as applicable.

5. **Severance Benefits or Enhanced Severance Benefits.** In return for Executive's promises in this Agreement, the Company will provide Executive with the Severance Benefits or Enhanced Severance Benefits as defined in Sections 5(a) and 5(e) of the Employment Agreement and as applicable based on the nature of the termination, subject to the terms and conditions set forth in the Employment Agreement, including, but not limited to, Section 16 thereof. The Severance Benefits or Enhanced Severance Benefits will be paid as specified in Section 5(a) or Section 5(e) of the Employment Agreement, as applicable and shall be subject to required withholdings and authorized deductions and to Section 21 below. For purposes of this Agreement, the term "Severance Period" means twelve (12) months, regardless of whether Executive receives the Severance Benefits or the Enhanced Severance Benefits.

6. **Effect of Revocation or Subsequent Employment.**

(a) If Executive properly revokes this Agreement in accordance with Section 13 below, Executive shall not be entitled to receive the payments and benefits under Section 5, above, except that Executive's rights under COBRA will continue.

(b) The Company's obligation to reimburse premiums for insurance coverage under COBRA or otherwise will be extinguished as of the date Executive's coverage begins under the group health plan of any new employer. If Executive violates the restrictions in Section 17, below, the Company's obligation to pay premiums for insurance under COBRA or otherwise will be immediately extinguished, and the other remedies specified in Section 17, below, shall apply.

7. **Acknowledgement of Total Compensation and Indebtedness.** Executive acknowledges and agrees that the cash payments under Sections 4 and 5 of this Agreement extinguish any and all obligations for monies, or other compensation or benefits that Executive claims or could claim to have earned or claims or could claim is owed to him as a result of his/her employment by the Company and its Related Entities through the Termination Date, under the Employment Agreement or otherwise. Notwithstanding the foregoing, the parties acknowledge and agree that the provisions of this Section 7 shall not terminate any rights Executive has under Section 3 or to other payments Executive may have, and to any indemnification Executive may have under the Company's Bylaws or separate indemnification agreement, as applicable.

8. **Status of Related Agreements and Future Employment.**

(a) Agreements Between Executive and the Company. [**Agreements to be scheduled at time**].

2

(b) Employment Agreement. The parties agree that the Employment Agreement shall be terminated as of the Termination Date. Notwithstanding the termination of the Employment Agreement, the parties hereto acknowledge that certain rights and obligations set forth in the Employment Agreement extend beyond the Termination Date. In the event that any provision of this Agreement conflicts with Section 6 of the Employment Agreement, the terms and provisions of the section(s) providing the greatest protection to the Company and its Related Entities shall control.

9. **Release by Executive.**

(a) Except for any obligations or covenants of the Company pursuant to this Agreement and as otherwise expressly provided in this Agreement, Executive, for himself and his/her heirs, executors, administrators, assigns, successors and agents (collectively, the "Executive's Affiliates") hereby fully and without limitation releases and forever discharges the Company and its Related Entities, and each of their respective agents, representatives, shareholders, owners, officers, directors, employees, consultants, attorneys, auditors, accountants, investigators, affiliates, successors and assigns (collectively, the "Company Releasees"), both individually and collectively, from any and all waivable rights, claims, demands, liabilities, actions, causes of action, damages, losses, costs, expenses and compensation, of whatever nature whatsoever, known or unknown, fixed or contingent, which Executive or any of Executive's Affiliates has or may have or may claim to have against the Company Releasees by reason of any matter, cause, or thing whatsoever, from the beginning of time to the Effective Date ("Claims"), arising out of, based upon, or relating to his/her employment or the termination of his/her employment

with the Company and its Related Entities and/or his/her service as an officer of any of the Company Releasees, any agreement or compensation arrangement between Executive and any of the Company Releasees, to the maximum extent permitted by law.

(b) Executive specifically and expressly releases any Claims arising out of or based on: the California Fair Employment and Housing Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the National Labor Relations Act and the Equal Pay Act, as the same may be amended from time to time; the California common law on fraud, misrepresentation, negligence, defamation, infliction of emotional distress or other tort, breach of contract or covenant, violation of public policy or wrongful termination; state or federal wage and hour laws, and other provisions of the California Labor Code, to the extent these may be released herein as a matter of law; or any other state or federal law, rule, or regulation dealing with the employment relationship, except those claims which may not be released herein as a matter of law.

(c) Nothing contained in this Section 9 or any other provision of this Agreement shall release or waive any right that Executive has to indemnification and/or reimbursement of expenses by the Company and its Related Entities with respect to which Executive may be eligible as provided in California Labor Code section 2802, the Company's and its Related Entities' Certificates of Incorporation, Bylaws and any applicable directors and officers, errors & omissions, umbrella or general liability insurance policies, any indemnification agreements, including the Employment Agreement; or any other applicable source, nor prevent Executive from cooperating in an investigation of the Company by the Equal Employment Opportunity Commission ("EEOC").

3

10. Waiver of Civil Code Section 1542.

(a) Executive understands and agrees that the release provided herein extends to all Claims released above whether known or unknown, suspected or unsuspected, which may be released as a matter of law. Executive expressly waives and relinquishes any and all rights he may have under California Civil Code section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS/HER OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS/HER OR HER SETTLEMENT WITH THE DEBTOR."

(b) Executive expressly waives and releases any rights and benefits which he has or may have under any similar law or rule of any other jurisdiction. It is the intention of each party through this Agreement to fully, finally and forever settle and release the Claims as set forth above. In furtherance of such intention, the release herein given shall be and remain in effect as a full and complete release of such matters notwithstanding the discovery of any additional Claims or facts relating thereto.

11. [If Executive is age 40 or over on Termination Date] Release of Federal Age Discrimination Claims by Executive. Executive hereby knowingly and voluntarily waives and releases all rights and claims, known or unknown, arising under the Age Discrimination In Employment Act of 1967, as amended, which he might otherwise have had against the Company or any of the Company Releasees regarding any actions which occurred prior to the date that Executive signed this Agreement, except that Executive is not prevented from cooperating in an investigation by the EEOC or from filing an EEOC charge other than for personal relief.

12. Release by Company and its Related Entities. The Company and its Related Entities hereby release and forever discharge Executive, from any and all waivable actions, causes of action, covenants, contracts, claims and demands of whatever character, nature and kind, whether known or unknown, which the Company and its Related Entities ever had, now have, or any of them hereafter can, shall or may have by reason of Executive's employment and/or his/her service as a director and/or officer of the Company and/or its Related Entities; provided, however, that this general release shall not apply, or be deemed or construed to apply, to (a) any of Executive's continuing obligations pursuant to this Agreement or the Employment Agreement, (b) criminal conduct or acts or omissions constituting willful misconduct or gross negligence by Executive during his/her employment with the Company, or (c) recoupment of all or a portion of any previously awarded bonus or equity award pursuant to the Company's Recoupment (Clawback) Policy that was in effect when the bonus was paid or the equity award vested or was exercised by Executive, whichever was later.

13. [If Executive is age 40 or over on Termination Date] Review and Revocation Rights. Executive hereby is advised of the following:

(a) Executive has the right to consult with an attorney before signing this Agreement and is encouraged by the Company to do so;

4

(b) Executive has twenty-one (21) days from his/her receipt of this Agreement to consider it; and

(c) Executive has seven (7) days after signing this Agreement to revoke this Agreement, and this Agreement will not be effective until that revocation period has expired without revocation. Executive agrees that in order to exercise his/her right to revoke this Agreement within such seven (7) day period, he must do so in a signed writing delivered to the Company's Board before the close of business on the seventh calendar day after he signs this Agreement.

14. Confidentiality of Agreement. After the execution of this Agreement by Executive, neither Executive, his/her attorney, nor any person acting by, through, under or in concert with them, shall disclose any of the terms of or amount paid under this Agreement (other than to state that the Company has filed this Agreement and/or agreements related thereto as public documents) or the negotiation thereof to any individual or entity; provided, however, that the foregoing shall not prevent such disclosures by Executive to his/her attorney, tax advisors and/or immediate family members, or as may be required by law.

15. No Filings. Executive represents that he has not filed any lawsuits, claims, charges or complaints, which are pending as of the date hereof, against the Company Releasees with any local, state or federal agency or court from the beginning of time to the date of execution of this Agreement, and that Executive is not aware of any facts that would support any Claims or any compliance-related or code of ethics violations of any kind whatsoever against the Company Releasees, including without limitation any claims for any work-related injuries. If Executive hereafter commences, joins in, or in any manner

seeks relief through any suit arising out of, based upon, or relating to any of the Claims released in this Agreement, or in any manner asserts against the Company Releasees any of the Claims released in this Agreement, then Executive agrees to pay to the Company Releasees against whom such Claim(s) is asserted, in addition to any other damages caused thereby, all attorneys' fees incurred by the Company Releasees in defending or otherwise responding to the suit or Claim; provided, however, that this provision shall not obligate Executive to pay the Company Releasees' attorneys' fees in any action challenging the release of claims under the Older Workers Benefit Protection Act or the ADEA, unless otherwise allowed by law. If any governmental agency or court ever assumes jurisdiction over any such lawsuit, claim, charge or complaint and/or purports to bring any legal proceeding, in whole or in part, on behalf of Executive based upon events occurring prior to the execution of this Agreement, Executive will request such agency or court to withdraw from and/or to dismiss the lawsuit, claim, charge or complaint with prejudice.

16. Confidential and Proprietary Information. Executive acknowledges that certain information, observations and data obtained by him during the course of or related to his/her employment with the Company and its Related Entities (including, without limitation, projection programs, business plans, business matrix programs (*i.e.*, measurement of business), strategic financial projections, certain financial information, shareholder information, technology and product design information, marketing plans or proposals, personnel information, customer lists and other customer information) are the sole property of the Company and its Related Entities and constitute Proprietary Information as defined in Section 6 of the Employment Agreement. Executive represents and warrants that he has returned all files, customer lists, financial information and other property of the Company and its Related Entities that were in

5

Executive's possession or control without retaining copies thereof. Executive further represents and warrants that he does not have in his/her possession or control any files, customer lists, financial information or other property of the Company and its Related Entities. In addition to his/her promises in Section 6 of the Employment Agreement, Executive agrees that he will not disclose to any person or use any such information, observations or data without the written consent of the Board. If Executive is served with a deposition subpoena or other legal process calling for the disclosure of such information, or if he is contacted by any third person requesting such information, he will notify the Board as soon as is reasonably practicable after receiving notice and will reasonably cooperate with the Company and its Related Entities in minimizing the disclosure thereof; provided, that nothing in this Agreement will affect Executive's obligations to testify truthfully in response to any subpoena or other legally required discovery proceeding.

17. Prohibited Activities.

(a) Non-Solicitation of Customers and Other Business Partners. Executive recognizes that by virtue of his/her employment with the Company, he will be introduced to and involved in the solicitation and servicing of existing customers and other business partners of the Company and new customers and business partners obtained by the Company during his/her employment. Executive understands and agrees that all efforts expended in soliciting and servicing such customers and business partners shall be for the benefit of the Company. Executive further agrees that during his/her employment with the Company he will not engage in any conduct which could in any way jeopardize or disturb any of the customer and business partner relationships of the Company. In addition, Executive agrees that, for a period beginning on the Effective Date and ending twelve (12) months after termination of Executive's employment with the Company, regardless of the reason for such termination, Executive shall not use any Proprietary Information to, directly or indirectly, solicit, direct, interfere with, or entice away from the Company any existing customer, licensee, licensor, vendor, contractor or distributor of the Company or for the customer or other business partner to expand its business with a competitor, without the prior written consent of the Board.

(b) Non-Solicitation of Employees. Executive recognizes the substantial expenditure of time and effort which the Company devotes to the recruitment, hiring, orientation, training and retention of its employees. Accordingly, Executive agrees that, for a period beginning on the Effective Date and ending twelve (12) months after termination of Executive's employment with the Company, regardless of the reason for such termination, Executive shall not use any Proprietary Information, directly or indirectly, for himself or on behalf of any other person or entity, solicit, offer employment to, hire or otherwise retain the services of any employee of the Company in a position classified as exempt from overtime pay requirements. For purposes of the foregoing, "employee of the Company" shall include any person who was an employee of the Company at any time within six (6) months prior to the prohibited conduct.

(c) Scope of Restrictions. Executive agrees that the restrictions in Sections 17 (a) and (b), above, are reasonable and necessary to protect the Company's trade secrets and that they do not foreclose Executive from working in the medical device industry generally. To the extent that any of the provisions in this Section 17 are held to be overly broad or otherwise unenforceable at the time enforcement is sought, Executive agrees that the provision shall be reformed and enforced to the greatest extent permissible by law. Executive further agrees that if

6

any portion of this Section 17 is held to be unenforceable, that the remaining provisions of it shall be enforced as written.

18. Remedies. Executive acknowledges that any misuse of Proprietary Information belonging to the Company and its Related Entities, or any violation of Section 6 of the Employment Agreement, and any violation of Sections 14, 16 and 17 of this Agreement, will result in irreparable harm to the Company and its Related Entities, and therefore, the Company and its Related Entities shall, in addition to any other remedies, be entitled to immediate injunctive relief. To the extent there is any conflict between Section 6 of the Employment Agreement and this Section 18, the provision providing the greatest protection to the Company and its Related Entities shall control. In addition, in the event of a breach of any provision of this Agreement by Executive, including Sections 14, 16 and 17, Executive shall forfeit, and the Company and its Related Entities may withhold payment of any unpaid portion of, the Severance Benefits or Enhanced Severance Benefits provided under Section 5, above.

19. Cooperation Clause.

(a) To facilitate the orderly conduct of the Company and its Related Entities' businesses, for the Severance Period, Executive agrees to cooperate, at no charge, with the Company and its Related Entities' reasonable requests for information or assistance related to the time of his/her employment.

(b) For the Severance Period, Executive agrees to cooperate, at no charge, with the Company's and its Related Entities' and its or their counsel's reasonable requests for information or assistance related to (i) any investigations (including internal investigations) and audits of the Company's and its Related Entities' management's current and past conduct and business and accounting practices and (ii) the Company's and its Related Entities' defense of, or other participation in, any administrative, judicial, or other proceeding arising from any charge, complaint or other action which has been or may be filed relating to the period during which Executive was employed by the Company and its Related Entities. The Company will promptly reimburse Executive for his/her reasonable, customary and documented out-of-pocket business expenses in connection with the performance of his/her duties under this Section 19. Except as required by law or authorized in advance by the Board of Directors of the Company, Executive will not communicate, directly or indirectly, with any third party other than Executive's legal counsel, including any person or representative of any group of people or entity who is suing or has indicated that a legal action against the Company and its Related Entities or any of their directors or officers is being contemplated, concerning the management or governance of the Company and its Related Entities, the operations of the Company and its Related Entities, the legal positions taken by the Company and its Related Entities, or the financial status of the Company and its Related Entities. If asked about any such individuals or matters, Executive shall say: "I have no comment," and shall direct the inquirer to the Company. Executive acknowledges that any violation of this Section 19 will result in irreparable harm to the Company and its Related Entities and will give rise to an immediate action by the Company and its Related Entities for injunctive relief.

20. **No Future Employment.** Executive understands that his/her employment with the Company and its Related Entities will irrevocably end as of the Termination Date and will not be resumed at any time in the future. Executive agrees that he will not apply for, seek or

7

accept employment by the Company and its Related Entities at any time, unless invited to do so by the Company and its Related Entities.

21. **Tax Issues.** The parties agree that the payments and benefits provided under this Agreement, and all other contracts, arrangements or programs that apply to him, shall be subject to Section 16 of the Employment Agreement.

22. **Non-disparagement.** Executive agrees not to criticize, denigrate, or otherwise disparage the Company and its Related Entities, or any of their directors, officers, products, processes, experiments, policies, practices, standards of business conduct, or areas or techniques of research. The Company agrees not to authorize or condone denigrating or disparaging statements about Executive to any third party, including by press release or other formally released announcement. Factually accurate statements in legal or public filings shall not violate this provision. In addition, nothing in this Section 22 shall prohibit Executive or the Company or the Board, or any of their employees or members from complying with any lawful subpoena or court order or taking any other actions affirmatively authorized by law.

23. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to principles of conflict of laws.

24. **Dispute Resolution.** The parties hereby agree that all disputes, claims or controversies arising from or otherwise in connection with this Agreement (except for injunctive relief sought by either party) between them and between Executive and any of the Company's affiliated entities and the successor of all such entities, and any director, shareholder or employee of the Company will be resolved in accordance with Section 13 of the Employment Agreement, except for its attorneys' fee provision.

25. **Attorneys' Fees.** Except as otherwise provided herein, in any action, litigation or proceeding between the parties arising out of or in relation to this Agreement, including any purported breach of this Agreement, the prevailing party shall be entitled to an award of its costs and expenses, including reasonable attorneys' fees.

26. **Non-Admission of Liability.** The parties understand and agree that neither the payment of any sum of money nor the execution of this Agreement by the parties will constitute or be construed as an admission of any wrongdoing or liability whatsoever by any party.

27. **Severability.** If any one or more of the provisions contained herein (or parts thereof), or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity and enforceability of any such provision in every other respect and of the remaining provisions hereof will not be in any way impaired or affected, it being intended that all of the rights and privileges shall be enforceable to the fullest extent permitted by law.

28. **Entire Agreement.** This Agreement represents the sole and entire agreement among the parties and, except as expressly stated herein, supersedes all prior agreements, negotiations and discussions among the parties with respect to the subject matters contained herein.

8

29. **Waiver.** No waiver by any party hereto at any time of any breach of, or compliance with, any condition or provision of this Agreement to be performed by any other party hereto may be deemed a waiver of similar or dissimilar provisions or conditions at the same time or at any prior or subsequent time.

30. **Amendment.** This Agreement may be modified or amended only if such modification or amendment is agreed to in writing and signed by duly authorized representatives of the parties hereto, which writing expressly states the intent of the parties to modify this Agreement.

31. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed to be an original as against any party that has signed it, but both of which together will constitute one and the same instrument.

32. **Assignment.** This Agreement inures to the benefit of and is binding upon the Company and its successors and assigns, but Executive's rights under this Agreement are not assignable, except to his/her estate.

33. **Notice.** All notices, requests, demands, claims and other communications hereunder shall be in writing and shall be deemed to have been duly given (a) if personally delivered or delivered by overnight courier; (b) if sent by electronic mail, telecopy or facsimile (except for legal process); or (c) if mailed by overnight or by first class, United States certified or registered mail, postage prepaid, return receipt requested, and properly addressed as follows:

If to the Company: Accuray Incorporated
 1310 Chesapeake Terrace
 Sunnyvale, California 94089
 Attn: Board of Directors
 c/o Corporate Secretary
 Fax No. (408) 789-4205

If to Executive: Address: most recent on file with the Company
 Email: most recent on file with the Company

Such addresses may be changed, from time to time, by means of a notice given in the manner provided above. Notice will conclusively be deemed to have been given when personally delivered (including, but not limited to, by messenger or courier); or if given by mail, on the third business day after being sent by first class, United States certified or registered mail; or if given by Federal Express or other similar overnight service, on the date of delivery; or if given by electronic mail, teletype or facsimile machine during normal business hours on a business day, when confirmation of transmission is indicated by the sender's machine; or if given by electronic mail, teletype or facsimile machine at any time other than during normal business hours on a business day, the first business day following when confirmation of transmission is indicated by the sender's machine. Unless otherwise agreed, notices, requests, demands and other communications delivered to legal counsel of any party hereto, whether or not such counsel shall consist of in-house or outside counsel, shall not constitute duly given notice to any party hereto.

34. Miscellaneous Provisions.

(a) The parties represent that they have read this Agreement and fully understand all of its terms; that they have conferred with their attorneys, or have knowingly and voluntarily chosen not to confer with their attorneys about this Agreement; that they have executed this Agreement without coercion or duress of any kind; and that they understand any rights that they have or may have, and they are signing this Agreement with full knowledge of any such rights.

(b) Both parties have participated in the drafting of this Agreement with the assistance of counsel to the extent they desired. The language in all parts of this Agreement must be in all cases construed simply according to its fair meaning and not strictly for or against any party. Whenever the context requires, all words used in the singular must be construed to have been used in the plural, and vice versa, and each gender must include any other gender. The captions of the Sections of this Agreement are for convenience only and must not affect the construction or interpretation of any of the provision herein.

(c) Each provision of this Agreement to be performed by a party hereto is both a covenant and condition, and is a material consideration for the other party's performance hereunder, and any breach thereof by the party will be a material default hereunder. All rights, remedies, undertakings, obligations, options, covenants, conditions and agreements contained in this Agreement are cumulative and no one of them is exclusive of any other. Time is of the essence in the performance of this Agreement.

(d) Each party acknowledges that no representation, statement or promise made by any other party, or by the agent or attorney of any other party, except for those in this Agreement, has been relied on by him or it in entering into this Agreement.

(e) Unless expressly set forth otherwise, all references herein to a "day" are deemed to be a reference to a calendar day. All references to "business day" mean any day of the year other than a Saturday, Sunday or a public or bank holiday in Orange County, California. Unless expressly stated otherwise, cross-references herein refer to provisions within this Agreement and are not references to any other document.

(f) Each party to this Agreement will cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

EACH OF THE PARTIES ACKNOWLEDGES THAT HE/IT HAS READ THIS AGREEMENT, UNDERSTANDS IT AND IS VOLUNTARILY ENTERING INTO IT, AND THAT IT INCLUDES A WAIVER OF THE RIGHT TO A TRIAL BY JURY, AND, WITH RESPECT TO EXECUTIVE, HE UNDERSTANDS THAT THIS AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the dates written below.

EXECUTIVE:

Date: _____

COMPANY:

Accuray Incorporated

By: _____

Name: _____

Title: _____

Date: _____

Exhibit B**EQUITY AWARD SUMMARY****ACCURAY INCORPORATED***Personnel Grant Summary***As of 01/01/2013****Theresa Dadone****AWARDS**

<u>Grant Number</u>	<u>Grant Date</u>	<u>Plan</u>	<u>Type</u>	<u>Shares</u>	<u>Price</u>
00004062	09/30/2011	2007	RSU	6,000.00	\$ 0.00000
00003034	08/31/2010	2007	RSU	10,000.00	\$ 0.00000
00002185	08/29/2008	2007	RSU	2,500.00	\$ 0.00000
00002063	02/29/2008	2007	RSU	5,000.00	\$ 0.00000
00001553	07/20/2007	2007	RSU	8,000.00	\$ 0.00000
M0006708	10/31/2012	2007	PSU	10,900.00	\$ 0.00000
00006625	10/31/2012	2007	RSU	17,400.00	\$ 0.00000
P0004134	09/30/2011	2007	PSU	17,400.00	\$ 0.00000
P0004106	09/30/2011	2007	PSU	9,000.00	\$ 0.00000
				86,200.00	

STOCK OPTIONS

<u>Grant Number</u>	<u>Grant Date</u>	<u>Plan</u>	<u>Type</u>	<u>Shares</u>	<u>Price</u>
00006615	10/31/2012	2007	NQ	15,200.00	\$ 6.96000
00004035	09/30/2011	2007	NQ	23,000.00	\$ 4.01000
00003033	08/31/2010	2007	NQ	30,000.00	\$ 6.58000
00002627	08/31/2009	2007	NQ	25,000.00	\$ 6.41000
00002183	08/29/2008	2007	NQ	30,000.00	\$ 8.25000
00001555	07/20/2007	2007	NQ	65,000.00	\$ 18.40000
00002049	02/29/2008	2007	NQ	30,000.00	\$ 10.36000
				218,200.00	



RENEWAL EXECUTIVE EMPLOYMENT AGREEMENT

This Employment Agreement (“Agreement”) is entered into and effective as of January 1, 2013 (“Effective Date”), by and between Accuray Incorporated, a Delaware corporation (the “Company”) and Kelly Lundy (“Executive”).

RECITALS

A. The Company is in the business of developing, manufacturing and selling radiation oncology, including radio surgery and radiation therapy, technologies and devices (the “Business”).

B. The Company wishes to continue the employment of Executive as Senior Vice President, Chief Commercial Officer, and Executive desires to serve the Company in such capacity pursuant to the terms and conditions in this Agreement.

C. As of the Effective Date, Executive is a full-time employee of the Company.

NOW, THEREFORE, the parties agree as follows:

1. **Position and Duties.**

(a) During the term of this Agreement, Executive will be employed by the Company to serve as Senior Vice President, Chief Commercial Officer of the Company, reporting to the Company’s Chief Executive Officer (“CEO”). Executive will be responsible for performing the duties and responsibilities customarily expected to be performed by such position of a publicly reporting business entity; and (vi) performing such other duties and functions as are reasonably required and/or as may be reasonably prescribed by the Company from time to time.

(b) The location of Executive’s employment will be the Company’s headquarters offices, but Executive from time to time may be required to travel to other geographic locations in connection with the performance of his/her duties.

2. **Standards of Performance.** Executive will at all times faithfully, industriously and to the best of his/her ability, experience and talents perform all of the duties required of and from him pursuant to the terms of this Agreement. Executive will devote his/her full business energies and abilities and all of his/her business time to the performance of his/her duties hereunder and will not, without the Company’s prior written consent, render to others any service of any kind (whether or not for compensation) that, in the Company’s sole but reasonable judgment, would interfere with the full performance of his/her duties hereunder. Notwithstanding the foregoing, Executive is permitted to spend reasonable amounts of time to manage his/her personal financial and legal affairs and, with the Company’s consent which will not be unreasonably withheld, to serve on one civic, charitable, not-for-profit, industry or corporate board or advisory committee, provided that such activities, individually and collectively, do not materially interfere with the performance of Executive’s duties hereunder. In no event will Executive engage in any activities that could reasonably create a conflict of interest or the appearance of a conflict of interest. Executive shall be subject to the Company’s policies, procedures and approval practices, as generally in effect from time to time.

1310 Chesapeake Terrace, Sunnyvale CA 94089 Tel: 408.716.4600 Fax: 408.716.4601 www accuray.com

3. **Term.** Executive will be employed for no specific term and until terminated pursuant to Section 5, below, of this Agreement. The Company and Executive shall each have a right to terminate this Agreement and Executive’s employment as provided in Section 5. This Agreement may not be terminated without a related termination of Executive’s employment.

4. **Compensation and Benefits.**

(a) **Base Salary.** As an annual base salary (“Base Salary”) for all services rendered pursuant to this Agreement, Executive will be paid an initial Base Salary in the gross amount of \$329,600 calculated on an annualized basis, less necessary withholdings and authorized deductions, and payable pursuant to the Company’s regular payroll practices at the time. The Base Salary is first subject to review and adjustment within the first three (3) months after the end of the fiscal year current fiscal year, and, thereafter, subject to periodic review and adjustment not less frequently than annually within the first three (3) months after the end of the next successive fiscal year, in the sole discretion of the Company. Executive’s Base Salary will not be reduced from the level in effect from time to time, except that the Base Salary may be reduced in connection with a salary reduction program of general application to senior executives of the Company.

(b) **Performance Bonus.** During Executive’s employment under this Agreement, Executive will be eligible for a performance bonus, subject to the terms and conditions of the Company’s Performance Bonus Plan, which is applicable to senior executives of the Company. The target amount of Executive’s annual bonus is sixty five percent (65%) of Executive’s annual Base Salary. However, payment of the performance bonus will be conditioned on the Company’s achievement of corporate performance objectives approved by the Company and on the Executive’s achievement of individual performance metrics to be established annually and approved by the Company all as established pursuant to the Company’s Performance Bonus Plan as then in effect, and the bonus may be zero. For the avoidance of doubt, the performance bonus will be payable only if the corporate performance objectives approved by the Company are achieved as determined by the Company, subject to the Company’s right to exercise discretion in determining the amount of the bonus to be awarded, if any. To encourage continued tenure with the Company, Executive must be employed by the Company as of the payment date to be eligible for a performance bonus for the year to which the bonus relates, unless otherwise provided in Section 5. Performance bonuses will be paid out according to the terms of the applicable bonus plan.

(c) Equity Incentive Awards.

(i) Stock Options. The Company may grant to Executive the option to purchase shares of the Company's common stock ("Options") pursuant to the Accuray Incorporated 2007 Incentive Award Plan (the "Incentive Plan"). All Options shall be subject to the terms and conditions of the Incentive Plan and a stock option grant notice and grant agreement in a form prescribed by the Company (the "Option Agreement"), which Executive must sign as a condition to receiving the Options. All equity awards granted to Executive as of the date of this Agreement are listed on Exhibit B.

(ii) Restricted Stock Units. The Company may grant to Executive restricted stock units ("RSUs") pursuant to the Incentive Plan. All RSUs are subject to and conditioned on approval of the grant and its terms by the Board. All RSUs shall be subject to the terms and conditions

RENEWAL EXECUTIVE EMPLOYMENT AGMT STD 12.20.12

ACCURAY CONFIDENTIAL

2

of the Incentive Plan and a RSU grant notice and grant agreement in a form prescribed by the Company ("RSU Agreement"), which Executive must sign as a condition to receiving the RSUs. All equity awards granted to Executive as of the date of this Agreement are listed on Exhibit B.

(iii) Market Stock Units. The Company may grant to Executive performance-based market stock units ("MSUs") pursuant to the Incentive Plan. All MSUs are subject to and conditioned on approval of the grant and its terms by the Board. All granted MSUs shall vest as provided in the applicable MSU Agreement. All MSUs shall be subject to the terms and conditions of the Incentive Plan and a MSU Agreement in a form prescribed by the Company, which Executive must sign as a condition to receiving the MSUs. All equity awards granted to Executive as of the date of this Agreement are listed on Exhibit B.

(d) Paid Time Off and Benefits. Executive will accrue and be allowed to use paid time off for vacation, illness and holidays pursuant to the Company's policies that apply to executive officers of the Company. In addition, Executive is entitled to participate in any plans regarding benefits of employment, including pension, profit sharing, group health, disability insurance and other employee pension and welfare benefit plans now existing or hereafter established to the extent that Executive is eligible under the terms of such plans and if the other executive officers of the Company generally are eligible to participate in such plan. The Company may, in its sole discretion and from time to time, establish additional senior management benefit plans as it deems appropriate. Executive understands that any such plans may be modified or eliminated in the Company's sole discretion in accordance with applicable law, provided that no such modification or elimination shall result in reducing or eliminating any benefits in which Executive's right has vested.

(e) Reimbursement of Business Expenses. The Company will promptly reimburse to Executive his/her reasonable, customary and documented out-of-pocket business expenses in connection with the performance of his/her duties under this Agreement, and in accordance with the policies and procedures established by the Company; provided that each reimbursement shall be requested within two months after being incurred.

(f) Sarbanes-Oxley Act Loan Prohibition and Company Compensation-Related Policies. To the extent that any Company benefit, program, practice, arrangement or this Agreement would or might otherwise result in Executive's receipt of an illegal loan (the "Loan"), the Company shall use commercially reasonable efforts to provide Executive with a substitute for the Loan that is lawful and of at least equal value to Executive. If this cannot be done, or if doing so would be significantly more expensive to the Company than making the Loan, the Company need not make the Loan to Executive or provide him a substitute for it. Further, Executive acknowledges that any bonus or equity award provided for in this Agreement or otherwise awarded to him shall be subject to the Company's Recoupment (Clawback) Policy, as such policy may be amended from time to time, and agrees that he will be subject to, and shall comply with, the Company's stock ownership requirements which are set forth in its Amended and Restated Corporate Governance Guidelines as such requirements may be amended from time to time.

5. Termination of Employment.

(a) By Company Without Cause. The Company may terminate Executive's employment without Cause (as defined below) effective on thirty (30) days' written notice, during

3

which notice period Executive may be relieved of his/her duties and placed on paid terminal leave. In such event and subject to the other provisions of this Agreement, Executive will be entitled to:

(i) continued coverage under the Company's insurance benefit plans through the termination date and such other benefits to which he may be entitled pursuant to the Company's benefit plans, provided, however, that Executive shall not participate in any severance plan of the Company;

(ii) payment of all earned but unpaid compensation (including accrued unpaid vacation) through the effective date of termination, payable on or before the termination date; and

(iii) reimbursement of expenses incurred on or before the termination date in accordance with Section 4(f), above, if a request for reimbursement of the expenses was timely submitted to the Company; plus

(iv) payment of the equivalent of the Base Salary without regard to any reduction that would otherwise constitute Good Reason he/she would have earned over the next six (6) months (the "Severance Period") following the termination date (less necessary withholdings and authorized deductions) at his/her then current Base Salary rate (the "Severance Payment"), payable in a lump sum on the date that is thirty (30) days after the termination date, subject to Section 16, below, the release of claims requirement specified below;

(v) payment of a prorated portion of Executive's target bonus for the fiscal year during which termination occurs, calculated by dividing the number of days from the start of the fiscal year through the termination date by 365 and multiplying the target bonus by this percentage (but

not by more than 100%), and paid at the same time as the Severance Payment; provided, however, that if the termination date is after the seventh month of the fiscal year, Executive will receive 100% of his/her target bonus for that fiscal year;

(vi) reimbursement of insurance premiums payable to retain group health coverage as of the termination date for himself and his eligible dependents pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1986 (“COBRA”) for six (6) months or the maximum period of COBRA coverage, whichever is less; provided that Executive must submit a reimbursement request in accordance with Company policy within 30 days of paying such insurance premiums. The Company will reimburse the executive within 30 days of receiving a properly submitted request. In addition, if Executive accepts other employment within such six (6) months, the Company’s obligation under this Section 5(a)(vi) will be extinguished as of the date Executive becomes covered under the group health plan of Executive’s new employer; and

(vii) payment for executive outplacement assistance services with the Company’s then current outplacement services vendor and in accordance with the Company’s then current policies and practices with respect to outplacement assistance for other executives of the Company for up to twelve (12) months after the termination date.

The payments and benefits set forth in Sections 5(a)(i)-(iii) shall be referred to as the “Accrued Benefits”, and the payments and benefits set forth in Sections 5(a)(iv)-(vii) shall be referred to as the “Severance Benefits”. Executive shall not receive the Severance Benefits (or the “Enhanced Severance Benefits” as provided in Section 5(e)) unless Executive executes the separation agreement and general

4

release attached as Exhibit A, and the same becomes irrevocable pursuant to its terms within the 30-day period following his/her termination of employment.

(b) By Company With Cause. The Company may terminate Executive’s employment at any time and without prior notice, written or otherwise, for Cause. As used in this Agreement, “Cause” shall mean any of the following conduct by Executive: (i) material breach of this Agreement, or of a Company policy or of a law, rule or regulation applicable to the Company or its operations; (ii) demonstrated and material neglect of duties, or failure or refusal to perform the material duties of his/her position, or the failure to follow the reasonable and lawful instructions of the Company; (iii) gross misconduct or dishonesty, self-dealing, fraud or similar conduct that the Company reasonably determines has caused, is causing or reasonably is likely to cause harm to the Company; (iv) conviction of or plea of guilty or *nolo contendere* to any crime other than a traffic offense that is punishable by a sentence of incarceration. Termination pursuant to Section 5(b)(ii) shall be effective only if such failure continues after Executive has been given written notice thereof and fifteen (15) business days thereafter in which to present his/her position to the Company or to cure the same, unless the Company reasonably determines that the reason(s) for termination are not capable of being cured. In the event of termination for Cause, Executive will be entitled only to the Accrued Benefits through the termination date, which will be the date on which the notice is given. The Company will have no further obligation to pay any compensation of any kind (including without limitation any bonus or portion of a bonus that otherwise may have become due and payable to Executive with respect to the year in which such termination date occurs), or severance payment of any kind nor to make any payment in lieu of notice.

(c) Incapacity or Death.

(i) If Executive becomes unable, due to physical or mental illness or injury, to perform the essential duties of his/her position for more than 12 consecutive weeks in any twelve month period during this Agreement with or without reasonable accommodation (“Incapacity”), the Company has the right to terminate Executive’s employment on fifteen (15) days’ written notice. In the event of termination for Incapacity, Executive will be entitled to receive the Accrued Benefits, and the unvested stock options and RSUs previously granted to Executive that would have vested within six (6) months after the date of termination for Incapacity shall become immediately vested; and.

(ii) Executive’s employment pursuant to this Agreement shall be immediately terminated without notice by the Company upon the death of Executive. If Executive dies while actively employed pursuant to this Agreement, the Company will pay to his/her estate or designated beneficiaries within sixty (60) days the Accrued Benefits, and the unvested stock options and RSUs previously granted to Executive that would have vested within six (6) months after the date of termination upon the death of Executive shall become immediately vested.

(d) Resignation for Good Reason. Executive may terminate this Agreement for Good Reason (as defined below) by giving written notice of such termination, which termination will become effective on the thirtieth (30th) day following receipt by the Company. As used in this Agreement, “Good Reason” shall mean any one of the following: (i) a material reduction in Executive’s Base Salary and/or a material breach of this Agreement resulting from the failure to provide the benefits required in Section 4, (ii) any action or inaction that constitutes a material breach by the Company of this Agreement; (iii) a material diminution in Executive’s authority, duties or responsibilities such that they are materially inconsistent with his/her position as Senior Vice President, Chief Commercial Officer of

5

the Company; and (iv) relocation of the Company’s headquarters to a location that materially increases Executive’s commute, provided that no termination for Good Reason shall be effective until Executive has given the Company written notice (pursuant to Section 11 below) within sixty (60) days after Executive becomes aware of the initial occurrence of any of the foregoing specifying the event or condition constituting the Good Reason and the specific reasonable cure requested by Executive, and the Company has failed to cure the occurrence within thirty (30) days of receiving written notice from Executive, and Executive resigns within six (6) months after Executive becomes aware of the initial occurrence. In the event of a termination for Good Reason, Executive will be entitled to the Accrued Benefits and the Severance Benefits, on the same conditions, form of payment and timing as set forth in Section 5(a).

(e) Effect of Change in Control. Executive may terminate this Agreement upon a Change in Control (as defined below) if the successor to the Company or to the Company’s business fails (A) to offer Executive the position of Senior Vice President, Chief Commercial Officer of the successor company with duties, responsibilities, and overall compensation and benefits materially similar to those enjoyed by Executive immediately preceding the Change in Control, or (B) to assume the obligations of the Company under and to become a party to this Agreement, provided that no termination upon a Change in Control shall be effective until Executive has given the successor to the Company written notice (pursuant to Section 11 below) within sixty (60) days of the initial occurrence of any of the foregoing specifying the event giving rise to the termination upon a Change in Control and the specific reasonable cure requested by Executive, and the successor to the Company or to the Company’s business has failed to cure the occurrence within thirty (30) days of receiving written notice from Executive, and Executive resigns within six (6) months after Executive becomes aware of the initial

occurrence. In the event of a termination upon a Change in Control, Executive will be entitled to the Accrued Benefits, and subject to the same conditions set forth in the final paragraph of Section 5(a), (i) four times the Severance Payment set forth in Section 5(a)(iv), paid in the same form (i.e., a lump sum) and at the same time (i.e., 30 days after the termination date) as the Severance Payments set forth in Section 5(a)(iv), (ii) the reimbursement of two times Executive's insurance premiums for twelve (12) months in the same form and at the same time and under the same conditions as provided in Section 5(a)(vi), (iii) two hundred percent (200%) of Executive's target bonus for the fiscal year during which termination occurs, but no less than the target bonus in effect for the fiscal year immediately prior to the Change in Control if the Change in Control occurs within the first three (3) months of the fiscal year, payable at the same time as the payment under clause (i) of this Section 5(e), (iv) all outstanding unvested stock options and RSUs previously granted to Executive shall become immediately vested (the "Enhanced Severance Benefits"), and (v) payment for executive outplacement assistance services with the Company's then current outplacement services vendor and in accordance with the Company's then current policies and practices with respect to outplacement assistance for other executives of the Company for up to twelve (12) months after the termination date; provided, however, for the sake of clarity, if any payments or benefits are payable under this Section 5(e), no payments or benefits shall be made under any other subsection of this Section 5 including Section 5(a) and Section 5(d).

As used in this Agreement, a "Change in Control" shall mean any of the following events:

(i) the acquisition by any Group or Person (as such terms are defined in Section 13(d) or 14(d) of the Securities Exchange Act of 1934, as amended (the "1934 Act")), other than (A) a trustee or other fiduciary holding securities of the Company under an employee benefit plan of the

6

Company or (B) an entity in which the Company directly or indirectly beneficially owns fifty percent (50%) or more of the voting securities of such entity (an "Affiliate"), of any securities of the Company, immediately after which such Group or Person has beneficial ownership (within the meaning of Rule 13d-3 promulgated under the 1934 Act) of more than fifty percent (50%) of (X) the outstanding shares of Common Stock or (Y) the combined voting power of the Company's then outstanding securities entitled to vote generally in the election of directors;

(ii) the Company (and/or its subsidiaries) is a party to a merger or consolidation with a Person other than an Affiliate, which merger or consolidation results in (a) the holders of voting securities of the Company outstanding immediately before such merger or consolidation failing to continue to represent (either by remaining outstanding or being converted into voting securities of the surviving entity) more than fifty percent (50%) of the combined voting power of the then outstanding voting securities of the corporation or entity resulting from or surviving such merger or consolidation or (b) individuals who are directors of the Company just prior to such merger or consolidation not constituting more than fifty percent (50%) of the members of the Board of Directors of the surviving entity or corporation immediately after the consummation of such merger or consolidation; or

(iii) all or substantially all of the assets of the Company and its subsidiaries are, in any transaction or series of transactions, sold or otherwise disposed of (or consummation of any transaction, or series of related transactions, having similar effect, other than to an Affiliate;

provided, however, that in no event shall a "Change in Control" be deemed to have occurred for purposes of this Agreement solely because the Company engages in an internal reorganization, which may include a transfer of assets to, or a merger or consolidation with, one or more Affiliates. Additionally, with respect to the payment of any "nonqualified deferred compensation" within the meaning of section 409A of the Internal Revenue Code of 1986, as amended (the "Code") that is not exempt from section 409A of the Code, no event shall constitute a Change in Control unless it also constitutes a change in the ownership of the Company (as defined in Treasury Regulation section 1.409A-3(i)(5)(v)), a change in effective control of the Company (as defined in Treasury Regulation section 1.409A-3(i)(5)(vi)), or a change in the ownership of a substantial portion of the assets of the Company (as defined in Treasury Regulation section 1.409A-3(i)(5)(vii)).

(f) Voluntary Resignation without Good Reason. Executive may terminate this Agreement without Good Reason effective on sixty (60) day's written notice, unless the Company in its sole discretion accepts the resignation earlier. In the event that Executive resigns without Good Reason as defined above in Section 5(d), Executive will be entitled only to the Accrued Benefits through the termination date. The Company will have no further obligation to pay any compensation of any kind (including without limitation any bonus or portion of a bonus that otherwise may have become due and payable to Executive with respect to the year in which such termination date occurs unless he remains employed with the Company as of the date bonuses are paid to other senior executives of the Company), or severance payments of any kind.

6. **Proprietary Information Obligations.**

(a) Proprietary Information and Confidentiality. Both before and during the term of Executive's employment, Executive will have access to and become acquainted with Company

7

confidential and proprietary information (together "Proprietary Information"), including but not limited to information or plans concerning the Company's products and technologies; customer relationships; personnel; sales, marketing and financial operations and methods; trade secrets; formulae and secret developments and inventions; processes; and other compilations of information, records, and specifications. Executive will not disclose any of the Proprietary Information directly or indirectly, or use it in any way, either during his/her employment pursuant to this Agreement or at any time thereafter, except as reasonably required or specifically requested in the course of his/her employment with the Company or as authorized in writing by the Company. Notwithstanding the foregoing, Proprietary Information does not include information that is otherwise publicly known or available, provided it has not become public as a result of a breach of this Agreement or any other agreement Executive has to keep information confidential. It is not a breach of this Agreement for Executive to disclose Proprietary Information pursuant to an order of a court or other governmental or legal body.

(b) Inventions Agreement and Assignment.

(i) Executive hereby agrees to disclose promptly to the Company (or any persons designated by it) all developments, designs, creations, improvements, original works of authorship, formulas, processes, know-how, techniques and/or inventions (collectively, the "Inventions") (A) which are made or conceived or reduced to practice by Executive, either alone or jointly with others, in performing his/her duties during the period of

Executive's employment by the Company, that relate to or are useful in the business of the Company; or (B) which result from tasks assigned to Executive by the Company, or from Executive's use of the premises or other resources owned, leased or contracted by the Company.

(ii) Executive agrees that all such Inventions which the Company in its discretion determines to be related to or useful in its business or its research or development, or which result from work performed by Executive for the Company, will be the sole and exclusive property of the Company and its assigns, and the Company and its assigns will have the right to use and/or to apply for patents, copyrights or other statutory or common law protections for such Inventions in any and all countries. Executive further agrees to assist the Company in every reasonable way (but at the Company's expense) to obtain and from time to time enforce patents, copyrights and other statutory or common law protections for such Inventions in any and all countries. To that end, Executive will execute all documents for use in applying for and obtaining such patents, copyrights and other statutory or common law protections therefor and enforcing the same, as the Company may desire, together with any assignments thereof to the Company or to persons or entities designated by the Company. Should the Company be unable to secure Executive's signature on any document necessary to apply for, prosecute, obtain, or enforce any patent, copyright or other right or protection relating to any Invention, whether due to his/her mental or physical incapacity or any other cause, Executive hereby irrevocably designates and appoints the Company and each of its duly authorized officers and agents as Executive's agent and attorney-in-fact, to act for and in his/her behalf and stead, to execute and file any such document, and to do all other lawfully permitted acts to further the prosecution, issuance, and enforcement of patents, copyrights or other rights or protections with the same force and effect as if executed and delivered by Executive. Executive's obligations under this Section 6(b)(ii) will continue beyond the termination of Executive's employment with the Company, but the Company will compensate Executive at a reasonable rate after such termination for time actually spent by Executive at the Company's request in providing such assistance.

8

(iii) Executive hereby acknowledges that all original works of authorship which are made by Executive (solely or jointly with others) within the scope of Executive's employment which are protectable by copyright are "works for hire," as that term is defined in the United States Copyright Act (17 USCA, Section 101).

(iv) Any provision in this Agreement requiring Executive to assign Executive's rights in any Invention to the Company will not apply to any invention that is exempt under the provisions of California Labor Code section 2870, which provides:

"(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his/her or her rights in an invention to his/her or her employer shall not apply to an invention that the employee developed entirely on his/her or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either: (1) relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or (2) result from any work performed by the employee for the employer. (b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable."

(c) Non-Solicitation of Customers and Other Business Partners. Executive recognizes that by virtue of his/her employment with the Company, he will be introduced to and involved in the solicitation and servicing of existing customers and other business partners of the Company and new customers and business partners obtained by the Company during his/her employment. Executive understands and agrees that all efforts expended in soliciting and servicing such customers and business partners shall be for the benefit of the Company. Executive further agrees that during his/her employment with the Company he will not engage in any conduct which could in any way jeopardize or disturb any of the customer and business partner relationships of the Company. In addition, Executive agrees that, for a period beginning on the Effective Date and ending twelve (12) months after termination of Executive's employment with the Company, regardless of the reason for such termination, Executive shall not use any Proprietary Information to, directly or indirectly, solicit, direct, interfere with, or entice away from the Company any existing customer, licensee, licensor, vendor, contractor or distributor of the Company or for the customer or other business partner to expand its business with a competitor, without the prior written consent of the Company.

(d) Non-Solicitation of Employees. Executive recognizes the substantial expenditure of time and effort which the Company devotes to the recruitment, hiring, orientation, training and retention of its employees. Accordingly, Executive agrees that, for a period beginning on the Effective Date and ending twelve (12) months after termination of Executive's employment with the Company, regardless of the reason for such termination, Executive shall not use any Proprietary Information, directly or indirectly, for himself or on behalf of any other person or entity, solicit, offer employment to, hire or otherwise retain the services of any employee of the Company in a position classified as exempt from overtime pay requirements. For purposes of the foregoing, "employee of the Company" shall

9

include any person who was an employee of the Company at any time within six (6) months prior to the prohibited conduct.

(e) Company Property and Materials.

(i) All files, records, documents, computer-recorded or electronic information, drawings, specifications, equipment, and similar items relating to Company business, whether prepared by Executive or otherwise coming into his/her possession, will remain the Company's exclusive property and will not be removed from Company premises under any circumstances whatsoever without the Company's prior written consent, except when, and only for the period, necessary to carry out Executive's duties hereunder

(ii) In the event of termination of Executive's employment for any reason, Executive will promptly deliver to the Company all Company equipment (including, without limitation, any cellular phones, beeper/pagers, computer hardware and software, fax machines and other tools of the trade) and all originals and copies of all documents, including without limitation, all books, customer lists, forms, documents supplied by customers, records, product lists, writings, manuals, reports, financial documents and other documents or property in Executive's possession or control, which relate to the Company's business in any way whatsoever, and in particular to customers of the Company, or which may be considered to constitute or contain Proprietary Information as defined above, and Executive will neither retain, reproduce, nor distribute copies thereof (other than copies of Executive's electronic or hardcopy address and telephone contact data base or directories).

(f) **Remedies for Breach.** Executive acknowledges that any breach by Executive of this Section 6 would cause the Company irreparable injury and damage for which monetary damages are inadequate. Accordingly, in the event of a breach or a threatened breach of this Section 6, the Company will be entitled to seek an injunction restraining such breach. In addition, in the event of a breach of this Section 6, the Company's obligation to pay any unpaid portion of the Severance Payment or other benefits as set forth in Sections 5(a) and (d) of this Agreement will be extinguished. Nothing contained herein will be construed as prohibiting the Company from pursuing any other remedy available to the Company for such breach or such threatened breach. Executive has carefully read and considered these restrictions and agrees they are fair and reasonable restrictions on Executive and are reasonably required for the protection of the interests of the Company. Executive agrees not to circumvent the spirit of these restrictions by attempting to accomplish indirectly what Executive is otherwise restricted from doing directly. Executive agrees that the restrictions in this Section 6 are reasonable and necessary to protect the Company's Proprietary Information, and they do not prevent Executive from working in the medical device industry. Executive agrees that the covenants and agreements by Executive contained in this Section 6 shall be in addition to any other agreements and covenants Executive may have agreed to in any other employee proprietary information, confidentiality, non-disclosure or other similar agreement and that this Section 6 shall not be deemed to limit such other covenants and agreements, all of which shall continue to survive the termination of this Agreement in accordance with their respective terms. A breach by Executive of the terms of such other agreements and covenants shall be deemed to be a breach by Executive of this Section 6 and of this Agreement. To the extent any of the provisions in this Section 6 are held to be overly broad or otherwise unenforceable at the time enforcement is sought, Executive agrees that the provision shall be reformed and enforced to the greatest extent permissible by law. Executive further agrees that if any portion of this Section 6 is held to be unenforceable, the remaining provisions of this Section 6 shall be enforced as written.

10

7. Interpretation, Governing Law and Exclusive Forum. The validity, interpretation, construction, and performance of this Agreement shall be governed by the laws of the State of California (excluding any that mandate the use of another jurisdiction's laws). Any arbitration (unless otherwise mutually agreed), litigation or similar proceeding with respect to such matters only may be brought within Santa Clara County, California, and all parties to this Agreement consent to California's jurisdiction.

8. Entire Agreement. All oral or written agreements or representations, express or implied, with respect to the subject matter of this Agreement are set forth in this Agreement.

9. Severability. In the event that one or more of the provisions contained in this Agreement are held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such holding shall not impair the validity, legality or enforceability of the remaining provisions herein.

10. Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, Executive and his/her estate, but Executive may not assign or pledge this Agreement or any rights arising under it, except to the extent permitted under the terms of the benefit plans in which he participates. No rights or obligations of the Company under this Agreement may be assigned or transferred except that the Company shall require any successor (whether direct or indirect, by purchase, merger, reorganization, sale, transfer of stock, consideration or otherwise) to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no succession had taken place. As used in this Agreement, "Company" means the Company as hereinbefore defined and any successor to its business and/or assets (by merger, purchase or otherwise as provided in this Section 10) which executes and delivers the agreement provided for in this Section 10 or which otherwise becomes bound by all the terms and provisions of this Agreement by operation of law. In the event that any successor refuses to assume the obligations hereunder, the Company as hereinbefore defined shall remain fully responsible for all obligations hereunder.

11. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be given by hand delivery, electronic mail, facsimile, telecopy, overnight courier service, or by United States certified or registered mail, return receipt requested. Each such notice, request, demand or other communication shall be effective (i) if delivered by hand or by overnight courier service, when delivered at the address specified in this Section 11; (ii) if given by electronic mail, facsimile or telecopy, when such electronic mail, facsimile or telecopy is transmitted to the electronic mail address or facsimile or telecopy number specified in this Section 11 and confirmation is received if during normal business hours on a business day, and otherwise, on the next business day; and (iii) if given by certified or registered mail, three (3) days after the mailing thereof. Notices shall be addressed to the parties as follows (or at such other address, email address or fax number as either party may from time to time specify in writing by giving notice as provided herein):

11

If to the Company: Accuray Incorporated
 1310 Chesapeake Terrace
 Sunnyvale, California 94089
 Attn: General Counsel
 Fax No. (408) 789-4205

If to Executive: Kelly Londy
 Address: most recent on file with the Company
 Email: most recent on file with the Company

12. Indemnification. As soon as reasonably practicable after the due execution of this Agreement by each of the parties hereto, the Company and Executive will enter into the Company's standard form of indemnification agreement utilized by the Company for its directors and executive officers.

13. Dispute Resolution. The parties agree that all disputes, claims or controversies between them and between Executive and any of the Company's affiliated entities and the successor of all such entities, including any dispute, claim or controversy arising from or otherwise in connection with this Agreement and/or Executive's employment with the Company, will be resolved as follows:

(a) Prior to initiating any other proceeding, the complaining party will provide the other party with a written statement of the claim identifying any supporting witnesses or documents and the requested relief. The responding party shall within forty-five (45) days furnish a statement of the relief, if any, that it is willing to provide, and identify supporting witnesses or documents.

(b) If the matter is not resolved by the exchange of statements of claim and statements of response as provided herein, the parties shall submit the dispute to non-binding mediation, the cost of the mediator to be paid by the Company, before a mediator and/or service to be jointly selected by the parties. Each party will bear his/her or its own attorney's fees and witness fees.

(c) If the parties cannot agree on a mediator and/or if the matter is not otherwise resolved by mediation, any controversy or claim between Executive and the Company and any of its current or former directors, officers and employees, including any arising out of or relating to this Agreement or breach thereof, shall be settled by final and binding arbitration in the county in which Executive last worked, or elsewhere as mutually agreed by the parties, by a single arbitrator pursuant to the Employment Dispute Rules of Judicial Arbitration and Mediation Services, Inc. ("JAMS"), unless the parties to the dispute agree to another arbitration service or independent arbitrator. The parties may conduct discovery to the extent permitted in a court of law; the arbitrator will render an award together with a written opinion indicating the bases for such opinion; and the arbitrator will have full authority to award all remedies that would be available in court. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Each party shall bear its own attorney's fees and costs, unless the claim is based on a statute that provides otherwise. The Company will pay the arbitrator's fees and any administrative charges of the arbitration service, except that if Executive initiates the claim, he will pay a portion of the administrative charges equal to the amount he would have paid to initiate the claim in a court of general jurisdiction.

12

(d) EXECUTIVE AND THE COMPANY AGREE THAT THIS ARBITRATION PROCEDURE WILL BE THE EXCLUSIVE MEANS OF REDRESS FOR ANY DISPUTES RELATING TO OR ARISING FROM EXECUTIVE'S EMPLOYMENT WITH THE COMPANY OR TERMINATION THEREFROM, INCLUDING DISPUTES OVER UNPAID WAGES, BREACH OF CONTRACT OR TORT, VIOLATION OF PUBLIC POLICY, RIGHTS PROVIDED BY FEDERAL, STATE OR LOCAL STATUTES, REGULATIONS, ORDINANCES, AND COMMON LAW, LAWS THAT PROHIBIT DISCRIMINATION BASED ON ANY PROTECTED CLASSIFICATION, AND ANY OTHER STATUTES OR LAWS RELATING TO AN EXECUTIVE'S RELATIONSHIP WITH THE COMPANY. THE FOREGOING NOTWITHSTANDING, CLAIMS FOR WORKERS' COMPENSATION BENEFITS OR UNEMPLOYMENT INSURANCE, OR ANY OTHER CLAIMS WHERE MANDATORY ARBITRATION IS PROHIBITED BY LAW, ARE NOT COVERED BY THIS ARBITRATION PROVISION. THE PARTIES EXPRESSLY WAIVE THE RIGHT TO A JURY TRIAL, AND AGREE THAT THE ARBITRATOR'S AWARD SHALL BE FINAL AND BINDING ON BOTH PARTIES. THIS ARBITRATION PROVISION IS TO BE CONSTRUED AS BROADLY AS IS PERMISSIBLE UNDER APPLICABLE LAW.

14. Representations. Each person executing this Agreement hereby represents and warrants on behalf of himself and of the entity/individual on whose behalf he is executing the Agreement that he is authorized to represent and bind the entity/individual on whose behalf he is executing the Agreement. Executive specifically represents and warrants to the Company that he reasonably believes (a) he is not under any contractual or other obligations that would prevent, limit or impair Executive's performance of his/her obligations under this Agreement and (b) that entering into this Agreement will not result in a breach of any other agreement to which he is a party. Executive acknowledges that Executive has been given the opportunity to consult with legal counsel and seek such advice and consultation as Executive deems appropriate or necessary.

15. Amendments and Waivers. No provisions of this Agreement may be modified, waived, or discharged except by a written document signed by Executive and a duly authorized Company officer. Thus, for example, promotions, commendations, and/or bonuses shall not, by themselves, modify, amend, or extend this Agreement. A waiver of any conditions or provisions of this Agreement in a given instance shall not be deemed a waiver of such conditions or provisions at any other time.

16. Taxes.

(a) Withholdings. The Company may withhold from any compensation and benefits payable under this Agreement all federal, state, city and other taxes or amounts as shall be determined by the Company to be required to be withheld pursuant to applicable laws, or governmental regulations or rulings. Executive shall be solely responsible for the satisfaction of any taxes (including employment taxes imposed on employees and penalty taxes on nonqualified deferred compensation).

(b) Net Proceeds Maximization. Notwithstanding any provision of this Agreement to the contrary, if all or any portion of the payments or benefits received or realized by Executive pursuant to this Agreement either alone or together with other payments or benefits that Executive receives or realizes or is then entitled to receive or realize from the Company or any of its affiliates would constitute an "excess parachute payment" within the meaning of section 280G of the Code and/or any corresponding and applicable state law provision, the payments or benefits provided to Executive under this Agreement will be reduced by reducing the amount of payments or benefits payable to Executive to the extent necessary so that no portion of Executive's payments or benefits will be subject to the excise

13

tax imposed by section 4999 of the Code and any corresponding and/or applicable state law provision. Notwithstanding the foregoing, a reduction will be made under the previous sentence only if, by reason of that reduction, Executive's net after tax benefit exceeds the net after tax benefit he would realize if the reduction were not made. For purposes of this paragraph, "net after tax benefit" means the sum of (i) the total amount received or realized by Executive pursuant to this Agreement that would constitute a "parachute payment" within the meaning of section 280G of the Code and any corresponding and applicable state law provision, plus (ii) all other payments or benefits that Executive receives or realizes or is then entitled to receive or realize from the Company and any of its affiliates that would constitute a "parachute payment" within the meaning of Section 280G of the Code and any corresponding and applicable state law provision, less (iii) the amount of federal or state income taxes payable with respect to the payments or benefits described in (i) and (ii) above calculated at the maximum marginal individual income tax rate for each year in which payments or benefits are realized by Executive (based upon the rate in effect for that year as set forth in the Code at the time of the first receipt or realization of the foregoing), less (iv) the amount of excise taxes imposed with respect to the payments or benefits described in (i) and (ii) above by section 4999 of the Code and any corresponding and applicable state law provision. All determinations and calculations made in this paragraph shall be made by an independent accounting firm (the "Accounting Firm") selected by the Company prior to the Change in Control and the Company will bear all costs and expenses incurred by the Accounting Firm in connection with its determination. The Accounting Firm shall be a nationally recognized United States public accounting firm which has not, during the two (2) years preceding the date of its selection, acted in any way on behalf of (x) the Company or any affiliate thereof or (y) Executive. If any payments or benefits are reduced pursuant to this Section 16(b), they shall be reduced in the following order: First all payments and benefits that do not constitute "nonqualified deferred compensation" within the meaning of section 409A of the Code or that are exempt from section 409A of the Code (with the payments or benefits being

reduced in reverse order of when they otherwise would be made or provided); second, all payments or benefits that constitute “nonqualified deferred compensation” within the meaning of section 409A of the Code that are not exempt from section 409A of the Code that were granted to Executive in the 12-month period of time preceding the applicable Change in Control, in the order such benefits were granted to Executive; and third, all remaining payments and benefits shall be reduced pro-rata. Notwithstanding the foregoing, if (i) reducing payments or benefits in the order described above would result in the imposition on Executive of an additional tax under section 409A of the Code (or similar state or local law), (ii) Executive so notifies the Company before such reductions and payments are made and benefits provided, and (iii) reducing the payments or benefits in another order would not result in the imposition on Executive of an additional tax under section 409A of the Code (or similar state or local law), payments and benefits shall instead be reduced in such other order.

(c) Section 409A Compliance.

(i) With respect to any reimbursement of expenses or any provision of in-kind benefits to Executive specified under this Agreement, such reimbursement of expenses or provision of in-kind benefits shall be subject to the following conditions: (1) the expenses eligible for reimbursement or the amount of in-kind benefits provided in one taxable year shall not affect the expenses eligible for reimbursement or the amount of in-kind benefits provided in any other taxable year, except for any medical reimbursement arrangements providing for the reimbursement of expenses referred to in section 105(b) of the Code; (2) the reimbursement of an eligible expense shall be made no later than the end of the year following the year in which such expense was incurred; and (3) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit.

14

(ii) A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits considered “deferred compensation” (as defined under Treasury Regulation section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation sections 1.409A-1(b)(3) through (b)(12)) upon or following a termination of employment unless such termination is also a “separation from service” and, for purposes of any such provision of this Agreement, references to a “termination,” “termination of employment” or like terms shall mean “separation from service.” For purposes of section 409A of the Code, the date as of which Company and Executive reasonably anticipate that no further services would be performed by Executive for Company shall be construed as the date that Executive first incurs a “separation from service” as defined under section 409A of the Code.

(iii) Notwithstanding anything in this Agreement to the contrary, if a payment obligation arises on account of Executive’s separation from service while Executive is a “specified employee” as described in section 409A of the Code and the Treasury Regulations thereunder and as determined by Company in accordance with its procedures, by which determination Executive is bound, any payment of “deferred compensation” (as defined under Treasury Regulation section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation sections 1.409A-1(b)(3) through (b)(12)) shall be made on the first business day of the seventh month following the date of Executive’s separation from service, or, if earlier, within fifteen (15) days after the appointment of the personal representative or executor of Executive’s estate following Executive’s death together with interest on them for the period of delay at a rate equal to the average prime interest rate published in the Wall Street Journal on any day chosen by the Company during that period. Thereafter, Executive shall receive any remaining payments as if there had not been an earlier delay.

(iv) Notwithstanding anything to the contrary contained in this Agreement, the Executive shall have no legally-enforceable right to, and the Company shall have no obligation to make, any payment or provide any benefit to Executive if having such a right or obligation would result in the imposition of additional taxes under section 409A of the Code, and (ii) any provision that would cause any payment or benefit to fail to satisfy section 409A will have no force and effect until amended to comply therewith (which amendment may be retroactive to the extent permitted by section 409A and may be accomplished by the Company without the Executive’s consent). If any payment is not made or any benefit is not provided under the terms of this Section 16(c)(iv), it is the Company’s present intention to make a similar payment or provide a similar benefit to the Executive in a manner that will not result in the imposition of additional taxes under section 409A of the Code, to the extent feasible. Each payment made under this Agreement is intended to be a separate payment for the purposes of section 409A of the Code.

(v) The Company does not guarantee any particular tax effect to Executive under this Agreement. Company shall not be liable to Executive for any payment made under this Agreement that is determined to result in an additional tax, penalty or interest under section 409A of the Code, nor for reporting in good faith any payment made under this Agreement as an amount includible in gross income under section 409A of the Code. The parties intend that this Agreement shall be interpreted and administered in accordance with section 409A of the Code to the extent Section 409A of the Code is applicable.

17. U.S. Citizenship and Immigration Services; Confidentiality and Inventions Agreement. Executive agrees to timely file all documents required by the Department of Homeland Security to verify his/her identity and lawful employment in the United States. In addition, as a

15

condition to Executive’s employment with the Company, Executive is required to complete, sign, return, and abide by the Company’s Employee Confidentiality and Inventions Agreement.

18. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute the same instrument.

19. Resignation from Positions. Upon Executive’s cessation of employment with the Company for any reason, Executive agrees that Executive shall be deemed to have resigned as an officer and as a director (if applicable) from the Company and every subsidiary of the Company on which Executive is then serving as an officer or director, and from any other entity or company on which Executive is then serving as a director or officer at the request of the Company, in each case effective as of the date of Executive’s cessation of employment. In the event of Executive’s cessation of employment, Executive agrees to execute a general resignation resigning from all positions then held by Executive on every subsidiary of the Company and other entity or company on which Executive is then serving as a director or officer at the request of the Company. Executive hereby grants the corporate secretary of the Company an irrevocable power of attorney to execute on behalf of Executive all such resignations, documents and instruments and to take all such other actions as reasonably necessary to carry out the intention of this Section 19.

20. **Executive's Commencement of Employment.** It is a condition precedent to the effectiveness of this Agreement that Executive commences working full-time for the Company at the Company's principal executive offices on the Effective Date. If Executive does not commence such full-time employment on the Effective Date, then this Agreement shall be null and void and the Company shall have no obligations hereunder or otherwise to Executive.

21. **Executive's Acknowledgement.**

EXECUTIVE ACKNOWLEDGES THAT ALL UNDERSTANDINGS AND AGREEMENTS BETWEEN THE COMPANY AND HIM RELATING TO THE SUBJECTS COVERED IN THIS AGREEMENT ARE CONTAINED IN IT (INCLUDING THE AGREEMENTS SET FORTH AS EXHIBITS) AND THAT HE HAS ENTERED INTO THIS AGREEMENT VOLUNTARILY AND NOT IN RELIANCE ON ANY PROMISES OR REPRESENTATIONS BY THE COMPANY OTHER THAN THOSE CONTAINED IN THIS AGREEMENT.

EXECUTIVE FURTHER ACKNOWLEDGES THAT HE HAS CAREFULLY READ THIS AGREEMENT (INCLUDING THE AGREEMENTS SET FORTH AS EXHIBITS), THAT HE UNDERSTANDS ALL OF SUCH AGREEMENTS, AND THAT HE HAS BEEN GIVEN THE OPPORTUNITY TO DISCUSS SUCH AGREEMENTS WITH HIS/HER PRIVATE LEGAL COUNSEL AND HAS AVAILED HIMSELF OF THAT OPPORTUNITY TO THE EXTENT HE WISHED TO DO SO. EXECUTIVE UNDERSTANDS THAT THE DISPUTE RESOLUTION PROVISIONS OF THIS AGREEMENT GIVE UP THE RIGHT TO A JURY TRIAL ON MATTERS COVERED BY THEM.

16

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates written below.

ACCURAY INCORPORATED,
a Delaware Corporation

By: /s/ Joshua H. Levine
Name: Joshua H. Levine
Title: President & Chief Executive Officer

By: /s/ Darren J. Milliken
Name: Darren J. Milliken
Title: Senior Vice President, General Counsel

Accepted and Agreed,

Kelly Londy: /s/ Kelly Londy

Signed on: 1/1/13

17

Exhibit A

FORM OF SEPARATION AGREEMENT AND GENERAL RELEASE

[See attached]

SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release (this "Agreement") is hereby entered into by and between _____, an individual ("Executive"), and Accuray Incorporated, a Delaware corporation, on behalf of itself and all of its subsidiaries (collectively, the "Company").

Recitals

A. Executive has been employed by the Company pursuant to an employment agreement by and between the Company and Executive effective as of October _____, 2012 (the "Employment Agreement"), and currently is serving as **[specify position held at time of termination]**;

B. Executive's employment with the Company and any of its parents, direct or indirect subsidiaries, affiliates, divisions, or related entities (collectively referred to herein as the "Company and its Related Entities") will be ended on the terms and conditions set forth in this Agreement.

Agreement

In consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Effective Date.** Except as otherwise provided herein, this Agreement shall be effective on the eighth day after it has been executed by both of the parties (the "Effective Date").

2. **End of Employment and Service as a Director.** Executive's employment with the Company and its Related Entities has ended or will end effective as of Pacific Time, on (the "**Termination Date**"). If Executive is a member of the Board of Directors of the Company and/or its Related Entities (the "**Board**") Executive hereby voluntarily resigns from the Board, effective

3. **Continuation of Benefits After the Termination Date.** Except as expressly provided in this Agreement or in the plan documents governing the Company's employee benefit plans, after the Termination Date, Executive will no longer be eligible for, receive, accrue, or participate in any other benefits or benefit plans provided by the Company and its Related Entities, including, without limitation, medical, dental and life insurance benefits, and the Company's 401(k) retirement plan; provided, however, that nothing in this Agreement shall waive Executive's right to any vested benefits, including vested amounts in the Company's 401(k) retirement plan, which amounts shall be handled as provided in the plan.

4. **Payments Upon Termination.** Executive will be entitled to receive payment of the following: (i) all earned but unpaid compensation (including accrued unpaid vacation) through the effective date of termination, payable on or before the termination date; and

1

(ii) reimbursement, made in accordance with **Section 4(e)** of the Employment Agreement, of any monies advanced or incurred by Executive in connection with his/her employment for reasonable and necessary Company-related expenses incurred on or before the Termination Date. The provisions of this Agreement shall not waive or terminate any rights to compensation or vested benefits under the Company's benefits plans or as required by law, or to indemnification Executive may have under the Company's Certificate of Incorporation, Bylaws or separate indemnification agreement, as applicable.

5. **Severance Benefits or Enhanced Severance Benefits.** In return for Executive's promises in this Agreement, the Company will provide Executive with the Severance Benefits or Enhanced Severance Benefits as defined in **Sections 5(a) and 5(e)** of the Employment Agreement and as applicable based on the nature of the termination, subject to the terms and conditions set forth in the Employment Agreement, including, but not limited to, **Section 16** thereof. The Severance Benefits or Enhanced Severance Benefits will be paid as specified in **Section 5(a)** or **Section 5(e)** of the Employment Agreement, as applicable and shall be subject to required withholdings and authorized deductions and to **Section 21** below. For purposes of this Agreement, the term "**Severance Period**" means twelve (12) months, regardless of whether Executive receives the Severance Benefits or the Enhanced Severance Benefits.

6. **Effect of Revocation or Subsequent Employment.**

(a) If Executive properly revokes this Agreement in accordance with **Section 13** below, Executive shall not be entitled to receive the payments and benefits under **Section 5**, above, except that Executive's rights under COBRA will continue.

(b) The Company's obligation to reimburse premiums for insurance coverage under COBRA or otherwise will be extinguished as of the date Executive's coverage begins under the group health plan of any new employer. If Executive violates the restrictions in **Section 17**, below, the Company's obligation to pay premiums for insurance under COBRA or otherwise will be immediately extinguished, and the other remedies specified in **Section 17**, below, shall apply.

7. **Acknowledgement of Total Compensation and Indebtedness.** Executive acknowledges and agrees that the cash payments under **Sections 4 and 5** of this Agreement extinguish any and all obligations for monies, or other compensation or benefits that Executive claims or could claim to have earned or claims or could claim is owed to him as a result of his/her employment by the Company and its Related Entities through the Termination Date, under the Employment Agreement or otherwise. Notwithstanding the foregoing, the parties acknowledge and agree that the provisions of this **Section 7** shall not terminate any rights Executive has under **Section 3** or to other payments Executive may have, and to any indemnification Executive may have under the Company's Bylaws or separate indemnification agreement, as applicable.

8. **Status of Related Agreements and Future Employment.**

(a) **Agreements Between Executive and the Company.** [**Agreements to be scheduled at time**].

2

(b) **Employment Agreement.** The parties agree that the Employment Agreement shall be terminated as of the Termination Date. Notwithstanding the termination of the Employment Agreement, the parties hereto acknowledge that certain rights and obligations set forth in the Employment Agreement extend beyond the Termination Date. In the event that any provision of this Agreement conflicts with **Section 6** of the Employment Agreement, the terms and provisions of the section(s) providing the greatest protection to the Company and its Related Entities shall control.

9. **Release by Executive.**

(a) Except for any obligations or covenants of the Company pursuant to this Agreement and as otherwise expressly provided in this Agreement, Executive, for himself and his/her heirs, executors, administrators, assigns, successors and agents (collectively, the "**Executive's Affiliates**") hereby fully and without limitation releases and forever discharges the Company and its Related Entities, and each of their respective agents, representatives, shareholders, owners, officers, directors, employees, consultants, attorneys, auditors, accountants, investigators, affiliates, successors and assigns (collectively, the "**Company Releasees**"), both individually and collectively, from any and all waivable rights, claims, demands, liabilities, actions, causes of action, damages, losses, costs, expenses and compensation, of whatever nature whatsoever, known or unknown, fixed or contingent, which Executive or any of Executive's Affiliates has or may have or may claim to have against the Company Releasees by reason of any matter, cause, or thing whatsoever, from the beginning of time to the Effective Date ("**Claims**"), arising out of, based upon, or relating to his/her employment or the termination of his/her employment with the Company and its Related Entities and/or his/her service as an officer of any of the Company Releasees, any agreement or compensation arrangement between Executive and any of the Company Releasees, to the maximum extent permitted by law.

(b) Executive specifically and expressly releases any Claims arising out of or based on: the California Fair Employment and Housing Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the National Labor Relations Act and the Equal Pay Act, as the same may be amended from time to time; the California common law on fraud, misrepresentation, negligence, defamation, infliction of emotional distress or other tort, breach of contract or covenant, violation of public policy or wrongful termination; state or federal wage and hour laws, and other provisions of the California Labor Code, to the extent these may be released herein as a matter of law; or any other state or federal law, rule, or regulation dealing with the employment relationship, except those claims which may not be released herein as a matter of law.

(c) Nothing contained in this Section 9 or any other provision of this Agreement shall release or waive any right that Executive has to indemnification and/or reimbursement of expenses by the Company and its Related Entities with respect to which Executive may be eligible as provided in California Labor Code section 2802, the Company's and its Related Entities' Certificates of Incorporation, Bylaws and any applicable directors and officers, errors & omissions, umbrella or general liability insurance policies, any indemnification agreements, including the Employment Agreement; or any other applicable source, nor prevent Executive from cooperating in an investigation of the Company by the Equal Employment Opportunity Commission ("EEOC").

3

10. Waiver of Civil Code Section 1542.

(a) Executive understands and agrees that the release provided herein extends to all Claims released above whether known or unknown, suspected or unsuspected, which may be released as a matter of law. Executive expressly waives and relinquishes any and all rights he may have under California Civil Code section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS/HER OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS/HER OR HER SETTLEMENT WITH THE DEBTOR."

(b) Executive expressly waives and releases any rights and benefits which he has or may have under any similar law or rule of any other jurisdiction. It is the intention of each party through this Agreement to fully, finally and forever settle and release the Claims as set forth above. In furtherance of such intention, the release herein given shall be and remain in effect as a full and complete release of such matters notwithstanding the discovery of any additional Claims or facts relating thereto.

11. [If Executive is age 40 or over on Termination Date] Release of Federal Age Discrimination Claims by Executive. Executive hereby knowingly and voluntarily waives and releases all rights and claims, known or unknown, arising under the Age Discrimination In Employment Act of 1967, as amended, which he might otherwise have had against the Company or any of the Company Releasees regarding any actions which occurred prior to the date that Executive signed this Agreement, except that Executive is not prevented from cooperating in an investigation by the EEOC or from filing an EEOC charge other than for personal relief.

12. Release by Company and its Related Entities. The Company and its Related Entities hereby release and forever discharge Executive, from any and all waivable actions, causes of action, covenants, contracts, claims and demands of whatever character, nature and kind, whether known or unknown, which the Company and its Related Entities ever had, now have, or any of them hereafter can, shall or may have by reason of Executive's employment and/or his/her service as a director and/or officer of the Company and/or its Related Entities; provided, however, that this general release shall not apply, or be deemed or construed to apply, to (a) any of Executive's continuing obligations pursuant to this Agreement or the Employment Agreement, (b) criminal conduct or acts or omissions constituting willful misconduct or gross negligence by Executive during his/her employment with the Company, or (c) recoupment of all or a portion of any previously awarded bonus or equity award pursuant to the Company's Recoupment (Clawback) Policy that was in effect when the bonus was paid or the equity award vested or was exercised by Executive, whichever was later.

13. [If Executive is age 40 or over on Termination Date] Review and Revocation Rights. Executive hereby is advised of the following:

(a) Executive has the right to consult with an attorney before signing this Agreement and is encouraged by the Company to do so;

4

(b) Executive has twenty-one (21) days from his/her receipt of this Agreement to consider it; and

(c) Executive has seven (7) days after signing this Agreement to revoke this Agreement, and this Agreement will not be effective until that revocation period has expired without revocation. Executive agrees that in order to exercise his/her right to revoke this Agreement within such seven (7) day period, he must do so in a signed writing delivered to the Company's Board before the close of business on the seventh calendar day after he signs this Agreement.

14. Confidentiality of Agreement. After the execution of this Agreement by Executive, neither Executive, his/her attorney, nor any person acting by, through, under or in concert with them, shall disclose any of the terms of or amount paid under this Agreement (other than to state that the Company has filed this Agreement and/or agreements related thereto as public documents) or the negotiation thereof to any individual or entity; provided, however, that the foregoing shall not prevent such disclosures by Executive to his/her attorney, tax advisors and/or immediate family members, or as may be required by law.

15. No Filings. Executive represents that he has not filed any lawsuits, claims, charges or complaints, which are pending as of the date hereof, against the Company Releasees with any local, state or federal agency or court from the beginning of time to the date of execution of this Agreement, and that Executive is not aware of any facts that would support any Claims or any compliance-related or code of ethics violations of any kind whatsoever against the Company Releasees, including without limitation any claims for any work-related injuries. If Executive hereafter commences, joins in, or in any manner seeks relief through any suit arising out of, based upon, or relating to any of the Claims released in this Agreement, or in any manner asserts against the Company Releasees any of the Claims released in this Agreement, then Executive agrees to pay to the Company Releasees against whom such Claim(s) is asserted, in addition to any other damages caused thereby, all attorneys' fees incurred by the Company Releasees in defending or otherwise responding to the

suit or Claim; provided, however, that this provision shall not obligate Executive to pay the Company Releasees' attorneys' fees in any action challenging the release of claims under the Older Workers Benefit Protection Act or the ADEA, unless otherwise allowed by law. If any governmental agency or court ever assumes jurisdiction over any such lawsuit, claim, charge or complaint and/or purports to bring any legal proceeding, in whole or in part, on behalf of Executive based upon events occurring prior to the execution of this Agreement, Executive will request such agency or court to withdraw from and/or to dismiss the lawsuit, claim, charge or complaint with prejudice.

16. Confidential and Proprietary Information. Executive acknowledges that certain information, observations and data obtained by him during the course of or related to his/her employment with the Company and its Related Entities (including, without limitation, projection programs, business plans, business matrix programs (*i.e.*, measurement of business), strategic financial projections, certain financial information, shareholder information, technology and product design information, marketing plans or proposals, personnel information, customer lists and other customer information) are the sole property of the Company and its Related Entities and constitute Proprietary Information as defined in Section 6 of the Employment Agreement. Executive represents and warrants that he has returned all files, customer lists, financial information and other property of the Company and its Related Entities that were in

5

Executive's possession or control without retaining copies thereof. Executive further represents and warrants that he does not have in his/her possession or control any files, customer lists, financial information or other property of the Company and its Related Entities. In addition to his/her promises in Section 6 of the Employment Agreement, Executive agrees that he will not disclose to any person or use any such information, observations or data without the written consent of the Board. If Executive is served with a deposition subpoena or other legal process calling for the disclosure of such information, or if he is contacted by any third person requesting such information, he will notify the Board as soon as is reasonably practicable after receiving notice and will reasonably cooperate with the Company and its Related Entities in minimizing the disclosure thereof; provided, that nothing in this Agreement will affect Executive's obligations to testify truthfully in response to any subpoena or other legally required discovery proceeding.

17. Prohibited Activities.

(a) Non-Solicitation of Customers and Other Business Partners. Executive recognizes that by virtue of his/her employment with the Company, he will be introduced to and involved in the solicitation and servicing of existing customers and other business partners of the Company and new customers and business partners obtained by the Company during his/her employment. Executive understands and agrees that all efforts expended in soliciting and servicing such customers and business partners shall be for the benefit of the Company. Executive further agrees that during his/her employment with the Company he will not engage in any conduct which could in any way jeopardize or disturb any of the customer and business partner relationships of the Company. In addition, Executive agrees that, for a period beginning on the Effective Date and ending twelve (12) months after termination of Executive's employment with the Company, regardless of the reason for such termination, Executive shall not use any Proprietary Information to, directly or indirectly, solicit, direct, interfere with, or entice away from the Company any existing customer, licensee, licensor, vendor, contractor or distributor of the Company or for the customer or other business partner to expand its business with a competitor, without the prior written consent of the Board.

(b) Non-Solicitation of Employees. Executive recognizes the substantial expenditure of time and effort which the Company devotes to the recruitment, hiring, orientation, training and retention of its employees. Accordingly, Executive agrees that, for a period beginning on the Effective Date and ending twelve (12) months after termination of Executive's employment with the Company, regardless of the reason for such termination, Executive shall not use any Proprietary Information, directly or indirectly, for himself or on behalf of any other person or entity, solicit, offer employment to, hire or otherwise retain the services of any employee of the Company in a position classified as exempt from overtime pay requirements. For purposes of the foregoing, "employee of the Company" shall include any person who was an employee of the Company at any time within six (6) months prior to the prohibited conduct.

(c) Scope of Restrictions. Executive agrees that the restrictions in Sections 17 (a) and (b), above, are reasonable and necessary to protect the Company's trade secrets and that they do not foreclose Executive from working in the medical device industry generally. To the extent that any of the provisions in this Section 17 are held to be overly broad or otherwise unenforceable at the time enforcement is sought, Executive agrees that the provision shall be reformed and enforced to the greatest extent permissible by law. Executive further agrees that if

6

any portion of this Section 17 is held to be unenforceable, that the remaining provisions of it shall be enforced as written.

18. Remedies. Executive acknowledges that any misuse of Proprietary Information belonging to the Company and its Related Entities, or any violation of Section 6 of the Employment Agreement, and any violation of Sections 14, 16 and 17 of this Agreement, will result in irreparable harm to the Company and its Related Entities, and therefore, the Company and its Related Entities shall, in addition to any other remedies, be entitled to immediate injunctive relief. To the extent there is any conflict between Section 6 of the Employment Agreement and this Section 18, the provision providing the greatest protection to the Company and its Related Entities shall control. In addition, in the event of a breach of any provision of this Agreement by Executive, including Sections 14, 16 and 17, Executive shall forfeit, and the Company and its Related Entities may withhold payment of any unpaid portion of, the Severance Benefits or Enhanced Severance Benefits provided under Section 5, above.

19. Cooperation Clause.

(a) To facilitate the orderly conduct of the Company and its Related Entities' businesses, for the Severance Period, Executive agrees to cooperate, at no charge, with the Company and its Related Entities' reasonable requests for information or assistance related to the time of his/her employment.

(b) For the Severance Period, Executive agrees to cooperate, at no charge, with the Company's and its Related Entities' and its or their counsel's reasonable requests for information or assistance related to (i) any investigations (including internal investigations) and audits of the Company's and its Related Entities' management's current and past conduct and business and accounting practices and (ii) the Company's and its Related Entities' defense of, or other participation in, any administrative, judicial, or other proceeding arising from any charge, complaint or other action which has been or may be filed

relating to the period during which Executive was employed by the Company and its Related Entities. The Company will promptly reimburse Executive for his/her reasonable, customary and documented out-of-pocket business expenses in connection with the performance of his/her duties under this Section 19. Except as required by law or authorized in advance by the Board of Directors of the Company, Executive will not communicate, directly or indirectly, with any third party other than Executive's legal counsel, including any person or representative of any group of people or entity who is suing or has indicated that a legal action against the Company and its Related Entities or any of their directors or officers is being contemplated, concerning the management or governance of the Company and its Related Entities, the operations of the Company and its Related Entities, the legal positions taken by the Company and its Related Entities, or the financial status of the Company and its Related Entities. If asked about any such individuals or matters, Executive shall say: "I have no comment," and shall direct the inquirer to the Company. Executive acknowledges that any violation of this Section 19 will result in irreparable harm to the Company and its Related Entities and will give rise to an immediate action by the Company and its Related Entities for injunctive relief.

20. No Future Employment. Executive understands that his/her employment with the Company and its Related Entities will irrevocably end as of the Termination Date and will not be resumed at any time in the future. Executive agrees that he will not apply for, seek or

7

accept employment by the Company and its Related Entities at any time, unless invited to do so by the Company and its Related Entities.

21. Tax Issues. The parties agree that the payments and benefits provided under this Agreement, and all other contracts, arrangements or programs that apply to him, shall be subject to Section 16 of the Employment Agreement.

22. Non-disparagement. Executive agrees not to criticize, denigrate, or otherwise disparage the Company and its Related Entities, or any of their directors, officers, products, processes, experiments, policies, practices, standards of business conduct, or areas or techniques of research. The Company agrees not to authorize or condone denigrating or disparaging statements about Executive to any third party, including by press release or other formally released announcement. Factually accurate statements in legal or public filings shall not violate this provision. In addition, nothing in this Section 22 shall prohibit Executive or the Company or the Board, or any of their employees or members from complying with any lawful subpoena or court order or taking any other actions affirmatively authorized by law.

23. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to principles of conflict of laws.

24. Dispute Resolution. The parties hereby agree that all disputes, claims or controversies arising from or otherwise in connection with this Agreement (except for injunctive relief sought by either party) between them and between Executive and any of the Company's affiliated entities and the successor of all such entities, and any director, shareholder or employee of the Company will be resolved in accordance with Section 13 of the Employment Agreement, except for its attorneys' fee provision.

25. Attorneys' Fees. Except as otherwise provided herein, in any action, litigation or proceeding between the parties arising out of or in relation to this Agreement, including any purported breach of this Agreement, the prevailing party shall be entitled to an award of its costs and expenses, including reasonable attorneys' fees.

26. Non-Admission of Liability. The parties understand and agree that neither the payment of any sum of money nor the execution of this Agreement by the parties will constitute or be construed as an admission of any wrongdoing or liability whatsoever by any party.

27. Severability. If any one or more of the provisions contained herein (or parts thereof), or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity and enforceability of any such provision in every other respect and of the remaining provisions hereof will not be in any way impaired or affected, it being intended that all of the rights and privileges shall be enforceable to the fullest extent permitted by law.

28. Entire Agreement. This Agreement represents the sole and entire agreement among the parties and, except as expressly stated herein, supersedes all prior agreements, negotiations and discussions among the parties with respect to the subject matters contained herein.

8

29. Waiver. No waiver by any party hereto at any time of any breach of, or compliance with, any condition or provision of this Agreement to be performed by any other party hereto may be deemed a waiver of similar or dissimilar provisions or conditions at the same time or at any prior or subsequent time.

30. Amendment. This Agreement may be modified or amended only if such modification or amendment is agreed to in writing and signed by duly authorized representatives of the parties hereto, which writing expressly states the intent of the parties to modify this Agreement.

31. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed to be an original as against any party that has signed it, but both of which together will constitute one and the same instrument.

32. Assignment. This Agreement inures to the benefit of and is binding upon the Company and its successors and assigns, but Executive's rights under this Agreement are not assignable, except to his/her estate.

33. Notice. All notices, requests, demands, claims and other communications hereunder shall be in writing and shall be deemed to have been duly given (a) if personally delivered or delivered by overnight courier; (b) if sent by electronic mail, telecopy or facsimile (except for legal process); or (c) if mailed by overnight or by first class, United States certified or registered mail, postage prepaid, return receipt requested, and properly addressed as follows:

If to the Company:

Accuray Incorporated
1310 Chesapeake Terrace
Sunnyvale, California 94089

If to Executive:

Address: most recent on file with the Company
Email: most recent on file with the Company

Such addresses may be changed, from time to time, by means of a notice given in the manner provided above. Notice will conclusively be deemed to have been given when personally delivered (including, but not limited to, by messenger or courier); or if given by mail, on the third business day after being sent by first class, United States certified or registered mail; or if given by Federal Express or other similar overnight service, on the date of delivery; or if given by electronic mail, telecopy or facsimile machine during normal business hours on a business day, when confirmation of transmission is indicated by the sender's machine; or if given by electronic mail, telecopy or facsimile machine at any time other than during normal business hours on a business day, the first business day following when confirmation of transmission is indicated by the sender's machine. Unless otherwise agreed, notices, requests, demands and other communications delivered to legal counsel of any party hereto, whether or not such counsel shall consist of in-house or outside counsel, shall not constitute duly given notice to any party hereto.

34. Miscellaneous Provisions.

(a) The parties represent that they have read this Agreement and fully understand all of its terms; that they have conferred with their attorneys, or have knowingly and voluntarily chosen not to confer with their attorneys about this Agreement; that they have executed this Agreement without coercion or duress of any kind; and that they understand any rights that they have or may have, and they are signing this Agreement with full knowledge of any such rights.

(b) Both parties have participated in the drafting of this Agreement with the assistance of counsel to the extent they desired. The language in all parts of this Agreement must be in all cases construed simply according to its fair meaning and not strictly for or against any party. Whenever the context requires, all words used in the singular must be construed to have been used in the plural, and vice versa, and each gender must include any other gender. The captions of the Sections of this Agreement are for convenience only and must not affect the construction or interpretation of any of the provision herein.

(c) Each provision of this Agreement to be performed by a party hereto is both a covenant and condition, and is a material consideration for the other party's performance hereunder, and any breach thereof by the party will be a material default hereunder. All rights, remedies, undertakings, obligations, options, covenants, conditions and agreements contained in this Agreement are cumulative and no one of them is exclusive of any other. Time is of the essence in the performance of this Agreement.

(d) Each party acknowledges that no representation, statement or promise made by any other party, or by the agent or attorney of any other party, except for those in this Agreement, has been relied on by him or it in entering into this Agreement.

(e) Unless expressly set forth otherwise, all references herein to a "day" are deemed to be a reference to a calendar day. All references to "business day" mean any day of the year other than a Saturday, Sunday or a public or bank holiday in Orange County, California. Unless expressly stated otherwise, cross-references herein refer to provisions within this Agreement and are not references to any other document.

(f) Each party to this Agreement will cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

EACH OF THE PARTIES ACKNOWLEDGES THAT HE/IT HAS READ THIS AGREEMENT, UNDERSTANDS IT AND IS VOLUNTARILY ENTERING INTO IT, AND THAT IT INCLUDES A WAIVER OF THE RIGHT TO A TRIAL BY JURY, AND, WITH RESPECT TO EXECUTIVE, HE UNDERSTANDS THAT THIS AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the dates written below.

EXECUTIVE:

Date: _____

COMPANY:

Accuray Incorporated

By: _____

Name: _____

Title: _____

Date: _____

Exhibit B

EQUITY AWARD SUMMARY

ACCURAY INCORPORATED

Personnel Grant Summary

As of 01/01/2013

Kelly Lundy

AWARDS

<u>Grant Number</u>	<u>Grant Date</u>	<u>Plan</u>	<u>Type</u>	<u>Shares</u>	<u>Price</u>
00004670	11/30/2011	2007	RSU	27,500.00	\$ 0.00000
M0006706	10/31/2012	2007	PSU	14,600.00	\$ 0.00000
00006623	10/31/2012	2007	RSU	23,300.00	\$ 0.00000
P0004673	11/30/2011	2007	PSU	41,250.00	\$ 0.00000
00006785	12/31/2012	2007	RSU	27,500.00	\$ 0.00000
				<u>134,150.00</u>	

STOCK OPTIONS

<u>Grant Number</u>	<u>Grant Date</u>	<u>Plan</u>	<u>Type</u>	<u>Shares</u>	<u>Price</u>
00006613	10/31/2012	2007	NQ	20,400.00	\$ 6.96000
00004660	11/30/2011	2007	NQ	100,000.00	\$ 4.01000
				<u>120,400.00</u>	



RENEWAL EXECUTIVE EMPLOYMENT AGREEMENT

This Employment Agreement (“Agreement”) is entered into is and effective as of January 1, 2013 (“Effective Date”), by and between Accuray Incorporated, a Delaware corporation (the “Company”) and Darren Milliken (“Executive”).

RECITALS

A. The Company is in the business of developing, manufacturing and selling radiation oncology, including radio surgery and radiation therapy, technologies and devices (the “Business”).

B. The Company wishes to continue the employment of Executive as Senior Vice President, General Counsel, and Executive desires to serve the Company in such capacity pursuant to the terms and conditions in this Agreement.

C. As of the Effective Date, Executive is a full time employee with the Company.

NOW, THEREFORE, the parties agree as follows:

1. **Position and Duties.**

(a) During the term of this Agreement, Executive will be employed by the Company to serve as Senior Vice President, General Counsel and Corporate Secretary of the Company, reporting to the Company’s Chief Executive Officer (“CEO”). Executive will be responsible for performing the duties and responsibilities customarily expected to be performed by such position of a publicly reporting business entity; and (vi) performing such other duties and functions as are reasonably required and/or as may be reasonably prescribed by the Company from time to time.

(b) The location of Executive’s employment will be the Company’s headquarters offices, but Executive from time to time may be required to travel to other geographic locations in connection with the performance of his/her duties.

2. **Standards of Performance.** Executive will at all times faithfully, industriously and to the best of his/her ability, experience and talents perform all of the duties required of and from him pursuant to the terms of this Agreement. Executive will devote his/her full business energies and abilities and all of his/her business time to the performance of his/her duties hereunder and will not, without the Company’s prior written consent, render to others any service of any kind (whether or not for compensation) that, in the Company’s sole but reasonable judgment, would interfere with the full performance of his/her duties hereunder. Notwithstanding the foregoing, Executive is permitted to spend reasonable amounts of time to manage his/her personal financial and legal affairs and, with the Company’s consent which will not be unreasonably withheld, to serve on one civic, charitable, not-for-profit, industry or corporate board or advisory committee, provided that such activities, individually and collectively, do not materially interfere with the performance of Executive’s duties hereunder. In no event will Executive engage in any activities that could reasonably create a conflict of interest or the appearance of a conflict of interest. Executive shall be subject to the Company’s policies, procedures and approval practices, as generally in effect from time to time.

1310 Chesapeake Terrace, Sunnyvale CA 94089 Tel: 408.716.4600 Fax: 408.716.4601 www accuray.com

3. **Term.** Executive will be employed for no specific term and until terminated pursuant to Section 5, below, of this Agreement. The Company and Executive shall each have a right to terminate this Agreement and Executive’s employment as provided in Section 5. This Agreement may not be terminated without a related termination of Executive’s employment.

4. **Compensation and Benefits.**

(a) **Base Salary.** As an annual base salary (“Base Salary”) for all services rendered pursuant to this Agreement, Executive will be paid an initial Base Salary in the gross amount of \$284,900 calculated on an annualized basis, less necessary withholdings and authorized deductions, and payable pursuant to the Company’s regular payroll practices at the time. The Base Salary is first subject to review and adjustment within the first three (3) months after the end of the fiscal year current fiscal year, and, thereafter, subject to periodic review and adjustment not less frequently than annually within the first three (3) months after the end of the next successive fiscal year, in the sole discretion of the Company. Executive’s Base Salary will not be reduced from the level in effect from time to time, except that the Base Salary may be reduced in connection with a salary reduction program of general application to senior executives of the Company.

(b) **Performance Bonus.** During Executive’s employment under this Agreement, Executive will be eligible for a performance bonus, subject to the terms and conditions of the Company’s Performance Bonus Plan, which is applicable to senior executives of the Company. The target amount of Executive’s annual bonus is fifty percent (50%) of Executive’s annual Base Salary. However, payment of the performance bonus will be conditioned on the Company’s achievement of corporate performance objectives approved by the Company and on the Executive’s achievement of individual performance metrics to be established annually and approved by the Company all as established pursuant to the Company’s Performance Bonus Plan as then in effect, and the bonus may be zero. For the avoidance of doubt, the performance bonus will be payable only if the corporate performance objectives approved by the Company are achieved as determined by the Company, subject to the Company’s right to exercise discretion in determining the amount of the bonus to be awarded, if any. To encourage continued tenure with the Company, Executive must be employed by the Company as of the payment date to be eligible for a performance bonus for the year to which the bonus relates, unless otherwise provided in Section 5. Performance bonuses will be paid out according to the terms of the applicable bonus plan.

(c) Equity Incentive Awards.

(i) Stock Options. The Company may grant to Executive the option to purchase shares of the Company's common stock ("Options") pursuant to the Accuray Incorporated 2007 Incentive Award Plan (the "Incentive Plan"). All Options shall be subject to the terms and conditions of the Incentive Plan and a stock option grant notice and grant agreement in a form prescribed by the Company (the "Option Agreement"), which Executive must sign as a condition to receiving the Options. All equity awards granted to Executive as of the date of this Agreement are listed on Exhibit B.

(ii) Restricted Stock Units. The Company may grant to Executive restricted stock units ("RSUs") pursuant to the Incentive Plan. All RSUs are subject to and conditioned on approval of the grant and its terms by the Board. All RSUs shall be subject to the terms and conditions

RENEWAL EXECUTIVE EMPLOYMENT AGMT STD 12.20.12

ACCURAY CONFIDENTIAL

2

of the Incentive Plan and a RSU grant notice and grant agreement in a form prescribed by the Company ("RSU Agreement"), which Executive must sign as a condition to receiving the RSUs. All equity awards granted to Executive as of the date of this Agreement are listed on Exhibit B.

(iii) Market Stock Units. The Company may grant to Executive performance-based market stock units ("MSUs") pursuant to the Incentive Plan. All MSUs are subject to and conditioned on approval of the grant and its terms by the Board. All granted MSUs shall vest as provided in the applicable MSU Agreement. All MSUs shall be subject to the terms and conditions of the Incentive Plan and a MSU Agreement in a form prescribed by the Company, which Executive must sign as a condition to receiving the MSUs. All equity awards granted to Executive as of the date of this Agreement are listed on Exhibit B.

(d) Paid Time Off and Benefits. Executive will accrue and be allowed to use paid time off for vacation, illness and holidays pursuant to the Company's policies that apply to executive officers of the Company. In addition, Executive is entitled to participate in any plans regarding benefits of employment, including pension, profit sharing, group health, disability insurance and other employee pension and welfare benefit plans now existing or hereafter established to the extent that Executive is eligible under the terms of such plans and if the other executive officers of the Company generally are eligible to participate in such plan. The Company may, in its sole discretion and from time to time, establish additional senior management benefit plans as it deems appropriate. Executive understands that any such plans may be modified or eliminated in the Company's sole discretion in accordance with applicable law, provided that no such modification or elimination shall result in reducing or eliminating any benefits in which Executive's right has vested.

(e) Reimbursement of Business Expenses. The Company will promptly reimburse to Executive his/her reasonable, customary and documented out-of-pocket business expenses in connection with the performance of his/her duties under this Agreement, and in accordance with the policies and procedures established by the Company; provided that each reimbursement shall be requested within two months after being incurred.

(f) Sarbanes-Oxley Act Loan Prohibition and Company Compensation-Related Policies. To the extent that any Company benefit, program, practice, arrangement or this Agreement would or might otherwise result in Executive's receipt of an illegal loan (the "Loan"), the Company shall use commercially reasonable efforts to provide Executive with a substitute for the Loan that is lawful and of at least equal value to Executive. If this cannot be done, or if doing so would be significantly more expensive to the Company than making the Loan, the Company need not make the Loan to Executive or provide him a substitute for it. Further, Executive acknowledges that any bonus or equity award provided for in this Agreement or otherwise awarded to him shall be subject to the Company's Recoupment (Clawback) Policy, as such policy may be amended from time to time, and agrees that he will be subject to, and shall comply with, the Company's stock ownership requirements which are set forth in its Amended and Restated Corporate Governance Guidelines as such requirements may be amended from time to time.

5. Termination of Employment.

(a) By Company Without Cause. The Company may terminate Executive's employment without Cause (as defined below) effective on thirty (30) days' written notice, during

3

which notice period Executive may be relieved of his/her duties and placed on paid terminal leave. In such event and subject to the other provisions of this Agreement, Executive will be entitled to:

(i) continued coverage under the Company's insurance benefit plans through the termination date and such other benefits to which he may be entitled pursuant to the Company's benefit plans, provided, however, that Executive shall not participate in any severance plan of the Company;

(ii) payment of all earned but unpaid compensation (including accrued unpaid vacation) through the effective date of termination, payable on or before the termination date; and

(iii) reimbursement of expenses incurred on or before the termination date in accordance with Section 4(f), above, if a request for reimbursement of the expenses was timely submitted to the Company; plus

(iv) payment of the equivalent of the Base Salary without regard to any reduction that would otherwise constitute Good Reason he/she would have earned over the next six (6) months (the "Severance Period") following the termination date (less necessary withholdings and authorized deductions) at his/her then current Base Salary rate (the "Severance Payment"), payable in a lump sum on the date that is thirty (30) days after the termination date, subject to Section 16, below, the release of claims requirement specified below;

(v) payment of a prorated portion of Executive's target bonus for the fiscal year during which termination occurs, calculated by dividing the number of days from the start of the fiscal year through the termination date by 365 and multiplying the target bonus by this percentage (but

not by more than 100%), and paid at the same time as the Severance Payment; provided, however, that if the termination date is after the seventh month of the fiscal year, Executive will receive 100% of his/her target bonus for that fiscal year;

(vi) reimbursement of insurance premiums payable to retain group health coverage as of the termination date for himself and his eligible dependents pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1986 (“COBRA”) for six (6) months or the maximum period of COBRA coverage, whichever is less; provided that Executive must submit a reimbursement request in accordance with Company policy within 30 days of paying such insurance premiums. The Company will reimburse the executive within 30 days of receiving a properly submitted request. In addition, if Executive accepts other employment within such six (6) months, the Company’s obligation under this Section 5(a)(vi) will be extinguished as of the date Executive becomes covered under the group health plan of Executive’s new employer; and

(vii) payment for executive outplacement assistance services with the Company’s then current outplacement services vendor and in accordance with the Company’s then current policies and practices with respect to outplacement assistance for other executives of the Company for up to twelve (12) months after the termination date.

The payments and benefits set forth in Sections 5(a)(i)-(iii) shall be referred to as the “Accrued Benefits”, and the payments and benefits set forth in Sections 5(a)(iv)-(vii) shall be referred to as the “Severance Benefits”. Executive shall not receive the Severance Benefits (or the “Enhanced Severance Benefits” as provided in Section 5(e)) unless Executive executes the separation agreement and general

4

release attached as Exhibit A, and the same becomes irrevocable pursuant to its terms within the 30-day period following his/her termination of employment.

(b) By Company With Cause. The Company may terminate Executive’s employment at any time and without prior notice, written or otherwise, for Cause. As used in this Agreement, “Cause” shall mean any of the following conduct by Executive: (i) material breach of this Agreement, or of a Company policy or of a law, rule or regulation applicable to the Company or its operations; (ii) demonstrated and material neglect of duties, or failure or refusal to perform the material duties of his/her position, or the failure to follow the reasonable and lawful instructions of the Company; (iii) gross misconduct or dishonesty, self-dealing, fraud or similar conduct that the Company reasonably determines has caused, is causing or reasonably is likely to cause harm to the Company; (iv) conviction of or plea of guilty or *nolo contendere* to any crime other than a traffic offense that is punishable by a sentence of incarceration. Termination pursuant to Section 5(b)(ii) shall be effective only if such failure continues after Executive has been given written notice thereof and fifteen (15) business days thereafter in which to present his/her position to the Company or to cure the same, unless the Company reasonably determines that the reason(s) for termination are not capable of being cured. In the event of termination for Cause, Executive will be entitled only to the Accrued Benefits through the termination date, which will be the date on which the notice is given. The Company will have no further obligation to pay any compensation of any kind (including without limitation any bonus or portion of a bonus that otherwise may have become due and payable to Executive with respect to the year in which such termination date occurs), or severance payment of any kind nor to make any payment in lieu of notice.

(c) Incapacity or Death.

(i) If Executive becomes unable, due to physical or mental illness or injury, to perform the essential duties of his/her position for more than 12 consecutive weeks in any twelve month period during this Agreement with or without reasonable accommodation (“Incapacity”), the Company has the right to terminate Executive’s employment on fifteen (15) days’ written notice. In the event of termination for Incapacity, Executive will be entitled to receive the Accrued Benefits, and the unvested stock options and RSUs previously granted to Executive that would have vested within six (6) months after the date of termination for Incapacity shall become immediately vested; and.

(ii) Executive’s employment pursuant to this Agreement shall be immediately terminated without notice by the Company upon the death of Executive. If Executive dies while actively employed pursuant to this Agreement, the Company will pay to his/her estate or designated beneficiaries within sixty (60) days the Accrued Benefits, and the unvested stock options and RSUs previously granted to Executive that would have vested within six (6) months after the date of termination upon the death of Executive shall become immediately vested.

(d) Resignation for Good Reason. Executive may terminate this Agreement for Good Reason (as defined below) by giving written notice of such termination, which termination will become effective on the thirtieth (30th) day following receipt by the Company. As used in this Agreement, “Good Reason” shall mean any one of the following: (i) a material reduction in Executive’s Base Salary and/or a material breach of this Agreement resulting from the failure to provide the benefits required in Section 4, (ii) any action or inaction that constitutes a material breach by the Company of this Agreement; (iii) a material diminution in Executive’s authority, duties or responsibilities such that they are materially inconsistent with his/her position as Senior Vice President, General Counsel and

5

Corporate Secretary of the Company; and (iv) relocation of the Company’s headquarters to a location that materially increases Executive’s commute, provided that no termination for Good Reason shall be effective until Executive has given the Company written notice (pursuant to Section 11 below) within sixty (60) days after Executive becomes aware of the initial occurrence of any of the foregoing specifying the event or condition constituting the Good Reason and the specific reasonable cure requested by Executive, and the Company has failed to cure the occurrence within thirty (30) days of receiving written notice from Executive, and Executive resigns within six (6) months after Executive becomes aware of the initial occurrence. In the event of a termination for Good Reason, Executive will be entitled to the Accrued Benefits and the Severance Benefits, on the same conditions, form of payment and timing as set forth in Section 5(a).

(e) Effect of Change in Control. Executive may terminate this Agreement upon a Change in Control (as defined below) if the successor to the Company or to the Company’s business fails (A) to offer Executive the position of Senior Vice President, General Counsel and Corporate Secretary of the successor company with duties, responsibilities, and overall compensation and benefits materially similar to those enjoyed by Executive immediately preceding the Change in Control, or (B) to assume the obligations of the Company under and to become a party to this Agreement, provided that no termination upon a Change in Control shall be effective until Executive has given the successor to the Company written notice (pursuant to Section 11 below) within sixty (60) days of the initial occurrence of any of the foregoing specifying the event giving rise to the termination upon a Change in Control and the specific reasonable cure requested by Executive, and the successor to the Company or to the Company’s business has failed to cure the occurrence

within thirty (30) days of receiving written notice from Executive, and Executive resigns within six (6) months after Executive becomes aware of the initial occurrence. In the event of a termination upon a Change in Control, Executive will be entitled to the Accrued Benefits, and subject to the same conditions set forth in the final paragraph of Section 5(a), (i) four times the Severance Payment set forth in Section 5(a)(iv), paid in the same form (i.e., a lump sum) and at the same time (i.e., 30 days after the termination date) as the Severance Payments set forth in Section 5(a)(iv), (ii) the reimbursement of two times Executive's insurance premiums for twelve (12) months in the same form and at the same time and under the same conditions as provided in Section 5(a)(vi), (iii) two hundred percent (200%) of Executive's target bonus for the fiscal year during which termination occurs, but no less than the target bonus in effect for the fiscal year immediately prior to the Change in Control if the Change in Control occurs within the first three (3) months of the fiscal year, payable at the same time as the payment under clause (i) of this Section 5(e), (iv) all outstanding unvested stock options and RSUs previously granted to Executive shall become immediately vested (the "Enhanced Severance Benefits"), and (v) payment for executive outplacement assistance services with the Company's then current outplacement services vendor and in accordance with the Company's then current policies and practices with respect to outplacement assistance for other executives of the Company for up to twelve (12) months after the termination date; provided, however, for the sake of clarity, if any payments or benefits are payable under this Section 5(e), no payments or benefits shall be made under any other subsection of this Section 5 including Section 5(a) and Section 5(d).

As used in this Agreement, a "Change in Control" shall mean any of the following events:

(i) the acquisition by any Group or Person (as such terms are defined in Section 13(d) or 14(d) of the Securities Exchange Act of 1934, as amended (the "1934 Act")), other than (A) a trustee or other fiduciary holding securities of the Company under an employee benefit plan of the

6

Company or (B) an entity in which the Company directly or indirectly beneficially owns fifty percent (50%) or more of the voting securities of such entity (an "Affiliate"), of any securities of the Company, immediately after which such Group or Person has beneficial ownership (within the meaning of Rule 13d-3 promulgated under the 1934 Act) of more than fifty percent (50%) of (X) the outstanding shares of Common Stock or (Y) the combined voting power of the Company's then outstanding securities entitled to vote generally in the election of directors;

(ii) the Company (and/or its subsidiaries) is a party to a merger or consolidation with a Person other than an Affiliate, which merger or consolidation results in (a) the holders of voting securities of the Company outstanding immediately before such merger or consolidation failing to continue to represent (either by remaining outstanding or being converted into voting securities of the surviving entity) more than fifty percent (50%) of the combined voting power of the then outstanding voting securities of the corporation or entity resulting from or surviving such merger or consolidation or (b) individuals who are directors of the Company just prior to such merger or consolidation not constituting more than fifty percent (50%) of the members of the Board of Directors of the surviving entity or corporation immediately after the consummation of such merger or consolidation; or

(iii) all or substantially all of the assets of the Company and its subsidiaries are, in any transaction or series of transactions, sold or otherwise disposed of (or consummation of any transaction, or series of related transactions, having similar effect, other than to an Affiliate);

provided, however, that in no event shall a "Change in Control" be deemed to have occurred for purposes of this Agreement solely because the Company engages in an internal reorganization, which may include a transfer of assets to, or a merger or consolidation with, one or more Affiliates. Additionally, with respect to the payment of any "nonqualified deferred compensation" within the meaning of section 409A of the Internal Revenue Code of 1986, as amended (the "Code") that is not exempt from section 409A of the Code, no event shall constitute a Change in Control unless it also constitutes a change in the ownership of the Company (as defined in Treasury Regulation section 1.409A-3(i)(5)(v)), a change in effective control of the Company (as defined in Treasury Regulation section 1.409A-3(i)(5)(vi)), or a change in the ownership of a substantial portion of the assets of the Company (as defined in Treasury Regulation section 1.409A-3(i)(5)(vii)).

(f) Voluntary Resignation without Good Reason. Executive may terminate this Agreement without Good Reason effective on sixty (60) day's written notice, unless the Company in its sole discretion accepts the resignation earlier. In the event that Executive resigns without Good Reason as defined above in Section 5(d), Executive will be entitled only to the Accrued Benefits through the termination date. The Company will have no further obligation to pay any compensation of any kind (including without limitation any bonus or portion of a bonus that otherwise may have become due and payable to Executive with respect to the year in which such termination date occurs unless he remains employed with the Company as of the date bonuses are paid to other senior executives of the Company), or severance payments of any kind.

6. Proprietary Information Obligations.

(a) Proprietary Information and Confidentiality. Both before and during the term of Executive's employment, Executive will have access to and become acquainted with Company

7

confidential and proprietary information (together "Proprietary Information"), including but not limited to information or plans concerning the Company's products and technologies; customer relationships; personnel; sales, marketing and financial operations and methods; trade secrets; formulae and secret developments and inventions; processes; and other compilations of information, records, and specifications. Executive will not disclose any of the Proprietary Information directly or indirectly, or use it in any way, either during his/her employment pursuant to this Agreement or at any time thereafter, except as reasonably required or specifically requested in the course of his/her employment with the Company or as authorized in writing by the Company. Notwithstanding the foregoing, Proprietary Information does not include information that is otherwise publicly known or available, provided it has not become public as a result of a breach of this Agreement or any other agreement Executive has to keep information confidential. It is not a breach of this Agreement for Executive to disclose Proprietary Information pursuant to an order of a court or other governmental or legal body.

(b) Inventions Agreement and Assignment.

(i) Executive hereby agrees to disclose promptly to the Company (or any persons designated by it) all developments, designs, creations, improvements, original works of authorship, formulas, processes, know-how, techniques and/or inventions (collectively, the "Inventions") (A) which are made or conceived or reduced to practice by Executive, either alone or jointly with others, in performing his/her duties during the period of

Executive's employment by the Company, that relate to or are useful in the business of the Company; or (B) which result from tasks assigned to Executive by the Company, or from Executive's use of the premises or other resources owned, leased or contracted by the Company.

(ii) Executive agrees that all such Inventions which the Company in its discretion determines to be related to or useful in its business or its research or development, or which result from work performed by Executive for the Company, will be the sole and exclusive property of the Company and its assigns, and the Company and its assigns will have the right to use and/or to apply for patents, copyrights or other statutory or common law protections for such Inventions in any and all countries. Executive further agrees to assist the Company in every reasonable way (but at the Company's expense) to obtain and from time to time enforce patents, copyrights and other statutory or common law protections for such Inventions in any and all countries. To that end, Executive will execute all documents for use in applying for and obtaining such patents, copyrights and other statutory or common law protections therefor and enforcing the same, as the Company may desire, together with any assignments thereof to the Company or to persons or entities designated by the Company. Should the Company be unable to secure Executive's signature on any document necessary to apply for, prosecute, obtain, or enforce any patent, copyright or other right or protection relating to any Invention, whether due to his/her mental or physical incapacity or any other cause, Executive hereby irrevocably designates and appoints the Company and each of its duly authorized officers and agents as Executive's agent and attorney-in-fact, to act for and in his/her behalf and stead, to execute and file any such document, and to do all other lawfully permitted acts to further the prosecution, issuance, and enforcement of patents, copyrights or other rights or protections with the same force and effect as if executed and delivered by Executive. Executive's obligations under this Section 6(b)(ii) will continue beyond the termination of Executive's employment with the Company, but the Company will compensate Executive at a reasonable rate after such termination for time actually spent by Executive at the Company's request in providing such assistance.

8

(iii) Executive hereby acknowledges that all original works of authorship which are made by Executive (solely or jointly with others) within the scope of Executive's employment which are protectable by copyright are "works for hire," as that term is defined in the United States Copyright Act (17 USCA, Section 101).

(iv) Any provision in this Agreement requiring Executive to assign Executive's rights in any Invention to the Company will not apply to any invention that is exempt under the provisions of California Labor Code section 2870, which provides:

"(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his/her or her rights in an invention to his/her or her employer shall not apply to an invention that the employee developed entirely on his/her or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either: (1) relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or (2) result from any work performed by the employee for the employer. (b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable."

(c) Non-Solicitation of Customers and Other Business Partners. Executive recognizes that by virtue of his/her employment with the Company, he will be introduced to and involved in the solicitation and servicing of existing customers and other business partners of the Company and new customers and business partners obtained by the Company during his/her employment. Executive understands and agrees that all efforts expended in soliciting and servicing such customers and business partners shall be for the benefit of the Company. Executive further agrees that during his/her employment with the Company he will not engage in any conduct which could in any way jeopardize or disturb any of the customer and business partner relationships of the Company. In addition, Executive agrees that, for a period beginning on the Effective Date and ending twelve (12) months after termination of Executive's employment with the Company, regardless of the reason for such termination, Executive shall not use any Proprietary Information to, directly or indirectly, solicit, direct, interfere with, or entice away from the Company any existing customer, licensee, licensor, vendor, contractor or distributor of the Company or for the customer or other business partner to expand its business with a competitor, without the prior written consent of the Company.

(d) Non-Solicitation of Employees. Executive recognizes the substantial expenditure of time and effort which the Company devotes to the recruitment, hiring, orientation, training and retention of its employees. Accordingly, Executive agrees that, for a period beginning on the Effective Date and ending twelve (12) months after termination of Executive's employment with the Company, regardless of the reason for such termination, Executive shall not use any Proprietary Information, directly or indirectly, for himself or on behalf of any other person or entity, solicit, offer employment to, hire or otherwise retain the services of any employee of the Company in a position classified as exempt from overtime pay requirements. For purposes of the foregoing, "employee of the Company" shall

9

include any person who was an employee of the Company at any time within six (6) months prior to the prohibited conduct.

(e) Company Property and Materials.

(i) All files, records, documents, computer-recorded or electronic information, drawings, specifications, equipment, and similar items relating to Company business, whether prepared by Executive or otherwise coming into his/her possession, will remain the Company's exclusive property and will not be removed from Company premises under any circumstances whatsoever without the Company's prior written consent, except when, and only for the period, necessary to carry out Executive's duties hereunder

(ii) In the event of termination of Executive's employment for any reason, Executive will promptly deliver to the Company all Company equipment (including, without limitation, any cellular phones, beeper/pagers, computer hardware and software, fax machines and other tools of the trade) and all originals and copies of all documents, including without limitation, all books, customer lists, forms, documents supplied by customers, records, product lists, writings, manuals, reports, financial documents and other documents or property in Executive's possession or control, which relate to the Company's business in any way whatsoever, and in particular to customers of the Company, or which may be considered to constitute or contain Proprietary Information as defined above, and Executive will neither retain, reproduce, nor distribute copies thereof (other than copies of Executive's electronic or hardcopy address and telephone contact data base or directories).

(f) **Remedies for Breach.** Executive acknowledges that any breach by Executive of this Section 6 would cause the Company irreparable injury and damage for which monetary damages are inadequate. Accordingly, in the event of a breach or a threatened breach of this Section 6, the Company will be entitled to seek an injunction restraining such breach. In addition, in the event of a breach of this Section 6, the Company's obligation to pay any unpaid portion of the Severance Payment or other benefits as set forth in Sections 5(a) and (d) of this Agreement will be extinguished. Nothing contained herein will be construed as prohibiting the Company from pursuing any other remedy available to the Company for such breach or such threatened breach. Executive has carefully read and considered these restrictions and agrees they are fair and reasonable restrictions on Executive and are reasonably required for the protection of the interests of the Company. Executive agrees not to circumvent the spirit of these restrictions by attempting to accomplish indirectly what Executive is otherwise restricted from doing directly. Executive agrees that the restrictions in this Section 6 are reasonable and necessary to protect the Company's Proprietary Information, and they do not prevent Executive from working in the medical device industry. Executive agrees that the covenants and agreements by Executive contained in this Section 6 shall be in addition to any other agreements and covenants Executive may have agreed to in any other employee proprietary information, confidentiality, non-disclosure or other similar agreement and that this Section 6 shall not be deemed to limit such other covenants and agreements, all of which shall continue to survive the termination of this Agreement in accordance with their respective terms. A breach by Executive of the terms of such other agreements and covenants shall be deemed to be a breach by Executive of this Section 6 and of this Agreement. To the extent any of the provisions in this Section 6 are held to be overly broad or otherwise unenforceable at the time enforcement is sought, Executive agrees that the provision shall be reformed and enforced to the greatest extent permissible by law. Executive further agrees that if any portion of this Section 6 is held to be unenforceable, the remaining provisions of this Section 6 shall be enforced as written.

10

7. Interpretation, Governing Law and Exclusive Forum. The validity, interpretation, construction, and performance of this Agreement shall be governed by the laws of the State of California (excluding any that mandate the use of another jurisdiction's laws). Any arbitration (unless otherwise mutually agreed), litigation or similar proceeding with respect to such matters only may be brought within Santa Clara County, California, and all parties to this Agreement consent to California's jurisdiction.

8. Entire Agreement. All oral or written agreements or representations, express or implied, with respect to the subject matter of this Agreement are set forth in this Agreement.

9. Severability. In the event that one or more of the provisions contained in this Agreement are held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such holding shall not impair the validity, legality or enforceability of the remaining provisions herein.

10. Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, Executive and his/her estate, but Executive may not assign or pledge this Agreement or any rights arising under it, except to the extent permitted under the terms of the benefit plans in which he participates. No rights or obligations of the Company under this Agreement may be assigned or transferred except that the Company shall require any successor (whether direct or indirect, by purchase, merger, reorganization, sale, transfer of stock, consideration or otherwise) to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no succession had taken place. As used in this Agreement, "Company" means the Company as hereinbefore defined and any successor to its business and/or assets (by merger, purchase or otherwise as provided in this Section 10) which executes and delivers the agreement provided for in this Section 10 or which otherwise becomes bound by all the terms and provisions of this Agreement by operation of law. In the event that any successor refuses to assume the obligations hereunder, the Company as hereinbefore defined shall remain fully responsible for all obligations hereunder.

11. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be given by hand delivery, electronic mail, facsimile, teletype, overnight courier service, or by United States certified or registered mail, return receipt requested. Each such notice, request, demand or other communication shall be effective (i) if delivered by hand or by overnight courier service, when delivered at the address specified in this Section 11; (ii) if given by electronic mail, facsimile or teletype, when such electronic mail, facsimile or teletype is transmitted to the electronic mail address or facsimile or teletype number specified in this Section 11 and confirmation is received if during normal business hours on a business day, and otherwise, on the next business day; and (iii) if given by certified or registered mail, three (3) days after the mailing thereof. Notices shall be addressed to the parties as follows (or at such other address, email address or fax number as either party may from time to time specify in writing by giving notice as provided herein):

11

If to the Company: Accuray Incorporated
 1310 Chesapeake Terrace
 Sunnyvale, California 94089
 Attn: General Counsel
 Fax No. (408) 789-4205

If to Executive: Darren Milliken
 Address: most recent on file with the Company
 Email: most recent on file with the Company

12. Indemnification. As soon as reasonably practicable after the due execution of this Agreement by each of the parties hereto, the Company and Executive will enter into the Company's standard form of indemnification agreement utilized by the Company for its directors and executive officers.

13. Dispute Resolution. The parties agree that all disputes, claims or controversies between them and between Executive and any of the Company's affiliated entities and the successor of all such entities, including any dispute, claim or controversy arising from or otherwise in connection with this Agreement and/or Executive's employment with the Company, will be resolved as follows:

(a) Prior to initiating any other proceeding, the complaining party will provide the other party with a written statement of the claim identifying any supporting witnesses or documents and the requested relief. The responding party shall within forty-five (45) days furnish a statement of the relief, if any, that it is willing to provide, and identify supporting witnesses or documents.

(b) If the matter is not resolved by the exchange of statements of claim and statements of response as provided herein, the parties shall submit the dispute to non-binding mediation, the cost of the mediator to be paid by the Company, before a mediator and/or service to be jointly selected by the parties. Each party will bear his/her or its own attorney's fees and witness fees.

(c) If the parties cannot agree on a mediator and/or if the matter is not otherwise resolved by mediation, any controversy or claim between Executive and the Company and any of its current or former directors, officers and employees, including any arising out of or relating to this Agreement or breach thereof, shall be settled by final and binding arbitration in the county in which Executive last worked, or elsewhere as mutually agreed by the parties, by a single arbitrator pursuant to the Employment Dispute Rules of Judicial Arbitration and Mediation Services, Inc. ("JAMS"), unless the parties to the dispute agree to another arbitration service or independent arbitrator. The parties may conduct discovery to the extent permitted in a court of law; the arbitrator will render an award together with a written opinion indicating the bases for such opinion; and the arbitrator will have full authority to award all remedies that would be available in court. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Each party shall bear its own attorney's fees and costs, unless the claim is based on a statute that provides otherwise. The Company will pay the arbitrator's fees and any administrative charges of the arbitration service, except that if Executive initiates the claim, he will pay a portion of the administrative charges equal to the amount he would have paid to initiate the claim in a court of general jurisdiction.

12

(d) EXECUTIVE AND THE COMPANY AGREE THAT THIS ARBITRATION PROCEDURE WILL BE THE EXCLUSIVE MEANS OF REDRESS FOR ANY DISPUTES RELATING TO OR ARISING FROM EXECUTIVE'S EMPLOYMENT WITH THE COMPANY OR TERMINATION THEREFROM, INCLUDING DISPUTES OVER UNPAID WAGES, BREACH OF CONTRACT OR TORT, VIOLATION OF PUBLIC POLICY, RIGHTS PROVIDED BY FEDERAL, STATE OR LOCAL STATUTES, REGULATIONS, ORDINANCES, AND COMMON LAW, LAWS THAT PROHIBIT DISCRIMINATION BASED ON ANY PROTECTED CLASSIFICATION, AND ANY OTHER STATUTES OR LAWS RELATING TO AN EXECUTIVE'S RELATIONSHIP WITH THE COMPANY. THE FOREGOING NOTWITHSTANDING, CLAIMS FOR WORKERS' COMPENSATION BENEFITS OR UNEMPLOYMENT INSURANCE, OR ANY OTHER CLAIMS WHERE MANDATORY ARBITRATION IS PROHIBITED BY LAW, ARE NOT COVERED BY THIS ARBITRATION PROVISION. THE PARTIES EXPRESSLY WAIVE THE RIGHT TO A JURY TRIAL, AND AGREE THAT THE ARBITRATOR'S AWARD SHALL BE FINAL AND BINDING ON BOTH PARTIES. THIS ARBITRATION PROVISION IS TO BE CONSTRUED AS BROADLY AS IS PERMISSIBLE UNDER APPLICABLE LAW.

14. Representations. Each person executing this Agreement hereby represents and warrants on behalf of himself and of the entity/individual on whose behalf he is executing the Agreement that he is authorized to represent and bind the entity/individual on whose behalf he is executing the Agreement. Executive specifically represents and warrants to the Company that he reasonably believes (a) he is not under any contractual or other obligations that would prevent, limit or impair Executive's performance of his/her obligations under this Agreement and (b) that entering into this Agreement will not result in a breach of any other agreement to which he is a party. Executive acknowledges that Executive has been given the opportunity to consult with legal counsel and seek such advice and consultation as Executive deems appropriate or necessary.

15. Amendments and Waivers. No provisions of this Agreement may be modified, waived, or discharged except by a written document signed by Executive and a duly authorized Company officer. Thus, for example, promotions, commendations, and/or bonuses shall not, by themselves, modify, amend, or extend this Agreement. A waiver of any conditions or provisions of this Agreement in a given instance shall not be deemed a waiver of such conditions or provisions at any other time.

16. Taxes.

(a) Withholdings. The Company may withhold from any compensation and benefits payable under this Agreement all federal, state, city and other taxes or amounts as shall be determined by the Company to be required to be withheld pursuant to applicable laws, or governmental regulations or rulings. Executive shall be solely responsible for the satisfaction of any taxes (including employment taxes imposed on employees and penalty taxes on nonqualified deferred compensation).

(b) Net Proceeds Maximization. Notwithstanding any provision of this Agreement to the contrary, if all or any portion of the payments or benefits received or realized by Executive pursuant to this Agreement either alone or together with other payments or benefits that Executive receives or realizes or is then entitled to receive or realize from the Company or any of its affiliates would constitute an "excess parachute payment" within the meaning of section 280G of the Code and/or any corresponding and applicable state law provision, the payments or benefits provided to Executive under this Agreement will be reduced by reducing the amount of payments or benefits payable to Executive to the extent necessary so that no portion of Executive's payments or benefits will be subject to the excise

13

tax imposed by section 4999 of the Code and any corresponding and/or applicable state law provision. Notwithstanding the foregoing, a reduction will be made under the previous sentence only if, by reason of that reduction, Executive's net after tax benefit exceeds the net after tax benefit he would realize if the reduction were not made. For purposes of this paragraph, "net after tax benefit" means the sum of (i) the total amount received or realized by Executive pursuant to this Agreement that would constitute a "parachute payment" within the meaning of section 280G of the Code and any corresponding and applicable state law provision, plus (ii) all other payments or benefits that Executive receives or realizes or is then entitled to receive or realize from the Company and any of its affiliates that would constitute a "parachute payment" within the meaning of Section 280G of the Code and any corresponding and applicable state law provision, less (iii) the amount of federal or state income taxes payable with respect to the payments or benefits described in (i) and (ii) above calculated at the maximum marginal individual income tax rate for each year in which payments or benefits are realized by Executive (based upon the rate in effect for that year as set forth in the Code at the time of the first receipt or realization of the foregoing), less (iv) the amount of excise taxes imposed with respect to the payments or benefits described in (i) and (ii) above by section 4999 of the Code and any corresponding and applicable state law provision. All determinations and calculations made in this paragraph shall be made by an independent accounting firm (the "Accounting Firm") selected by the Company prior to the Change in Control and the Company will bear all costs and expenses incurred by the Accounting Firm in connection with its determination. The Accounting Firm shall be a nationally recognized United States public accounting firm which has not, during the two (2) years preceding the date of its selection, acted in any way on behalf of (x) the Company or any affiliate thereof or (y) Executive. If any payments or benefits are reduced pursuant to this Section 16(b), they shall be reduced in the following order: First all payments and benefits that do not constitute "nonqualified deferred compensation" within the meaning of section 409A of the Code or that are exempt from section 409A of the Code (with the payments or benefits being

reduced in reverse order of when they otherwise would be made or provided); second, all payments or benefits that constitute “nonqualified deferred compensation” within the meaning of section 409A of the Code that are not exempt from section 409A of the Code that were granted to Executive in the 12-month period of time preceding the applicable Change in Control, in the order such benefits were granted to Executive; and third, all remaining payments and benefits shall be reduced pro-rata. Notwithstanding the foregoing, if (i) reducing payments or benefits in the order described above would result in the imposition on Executive of an additional tax under section 409A of the Code (or similar state or local law), (ii) Executive so notifies the Company before such reductions and payments are made and benefits provided, and (iii) reducing the payments or benefits in another order would not result in the imposition on Executive of an additional tax under section 409A of the Code (or similar state or local law), payments and benefits shall instead be reduced in such other order.

(c) Section 409A Compliance.

(i) With respect to any reimbursement of expenses or any provision of in-kind benefits to Executive specified under this Agreement, such reimbursement of expenses or provision of in-kind benefits shall be subject to the following conditions: (1) the expenses eligible for reimbursement or the amount of in-kind benefits provided in one taxable year shall not affect the expenses eligible for reimbursement or the amount of in-kind benefits provided in any other taxable year, except for any medical reimbursement arrangements providing for the reimbursement of expenses referred to in section 105(b) of the Code; (2) the reimbursement of an eligible expense shall be made no later than the end of the year following the year in which such expense was incurred; and (3) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit.

14

(ii) A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits considered “deferred compensation” (as defined under Treasury Regulation section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation sections 1.409A-1(b)(3) through (b)(12)) upon or following a termination of employment unless such termination is also a “separation from service” and, for purposes of any such provision of this Agreement, references to a “termination,” “termination of employment” or like terms shall mean “separation from service.” For purposes of section 409A of the Code, the date as of which Company and Executive reasonably anticipate that no further services would be performed by Executive for Company shall be construed as the date that Executive first incurs a “separation from service” as defined under section 409A of the Code.

(iii) Notwithstanding anything in this Agreement to the contrary, if a payment obligation arises on account of Executive’s separation from service while Executive is a “specified employee” as described in section 409A of the Code and the Treasury Regulations thereunder and as determined by Company in accordance with its procedures, by which determination Executive is bound, any payment of “deferred compensation” (as defined under Treasury Regulation section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation sections 1.409A-1(b)(3) through (b)(12)) shall be made on the first business day of the seventh month following the date of Executive’s separation from service, or, if earlier, within fifteen (15) days after the appointment of the personal representative or executor of Executive’s estate following Executive’s death together with interest on them for the period of delay at a rate equal to the average prime interest rate published in the Wall Street Journal on any day chosen by the Company during that period. Thereafter, Executive shall receive any remaining payments as if there had not been an earlier delay.

(iv) Notwithstanding anything to the contrary contained in this Agreement, the Executive shall have no legally-enforceable right to, and the Company shall have no obligation to make, any payment or provide any benefit to Executive if having such a right or obligation would result in the imposition of additional taxes under section 409A of the Code, and (ii) any provision that would cause any payment or benefit to fail to satisfy section 409A will have no force and effect until amended to comply therewith (which amendment may be retroactive to the extent permitted by section 409A and may be accomplished by the Company without the Executive’s consent). If any payment is not made or any benefit is not provided under the terms of this Section 16(c)(iv), it is the Company’s present intention to make a similar payment or provide a similar benefit to the Executive in a manner that will not result in the imposition of additional taxes under section 409A of the Code, to the extent feasible. Each payment made under this Agreement is intended to be a separate payment for the purposes of section 409A of the Code.

(v) The Company does not guarantee any particular tax effect to Executive under this Agreement. Company shall not be liable to Executive for any payment made under this Agreement that is determined to result in an additional tax, penalty or interest under section 409A of the Code, nor for reporting in good faith any payment made under this Agreement as an amount includible in gross income under section 409A of the Code. The parties intend that this Agreement shall be interpreted and administered in accordance with section 409A of the Code to the extent Section 409A of the Code is applicable.

17. U.S. Citizenship and Immigration Services; Confidentiality and Inventions Agreement. Executive agrees to timely file all documents required by the Department of Homeland Security to verify his/her identity and lawful employment in the United States. In addition, as a

15

condition to Executive’s employment with the Company, Executive is required to complete, sign, return, and abide by the Company’s Employee Confidentiality and Inventions Agreement.

18. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute the same instrument.

19. Resignation from Positions. Upon Executive’s cessation of employment with the Company for any reason, Executive agrees that Executive shall be deemed to have resigned as an officer and as a director (if applicable) from the Company and every subsidiary of the Company on which Executive is then serving as an officer or director, and from any other entity or company on which Executive is then serving as a director or officer at the request of the Company, in each case effective as of the date of Executive’s cessation of employment. In the event of Executive’s cessation of employment, Executive agrees to execute a general resignation resigning from all positions then held by Executive on every subsidiary of the Company and other entity or company on which Executive is then serving as a director or officer at the request of the Company. Executive hereby grants the corporate secretary of the Company an irrevocable power of attorney to execute on behalf of Executive all such resignations, documents and instruments and to take all such other actions as reasonably necessary to carry out the intention of this Section 19.

20. **Executive's Commencement of Employment.** It is a condition precedent to the effectiveness of this Agreement that Executive commences working full-time for the Company at the Company's principal executive offices on the Effective Date. If Executive does not commence such full-time employment on the Effective Date, then this Agreement shall be null and void and the Company shall have no obligations hereunder or otherwise to Executive.

21. **Executive's Acknowledgement.**

EXECUTIVE ACKNOWLEDGES THAT ALL UNDERSTANDINGS AND AGREEMENTS BETWEEN THE COMPANY AND HIM RELATING TO THE SUBJECTS COVERED IN THIS AGREEMENT ARE CONTAINED IN IT (INCLUDING THE AGREEMENTS SET FORTH AS EXHIBITS) AND THAT HE HAS ENTERED INTO THIS AGREEMENT VOLUNTARILY AND NOT IN RELIANCE ON ANY PROMISES OR REPRESENTATIONS BY THE COMPANY OTHER THAN THOSE CONTAINED IN THIS AGREEMENT.

EXECUTIVE FURTHER ACKNOWLEDGES THAT HE HAS CAREFULLY READ THIS AGREEMENT (INCLUDING THE AGREEMENTS SET FORTH AS EXHIBITS), THAT HE UNDERSTANDS ALL OF SUCH AGREEMENTS, AND THAT HE HAS BEEN GIVEN THE OPPORTUNITY TO DISCUSS SUCH AGREEMENTS WITH HIS/HER PRIVATE LEGAL COUNSEL AND HAS AVAILED HIMSELF OF THAT OPPORTUNITY TO THE EXTENT HE WISHED TO DO SO. EXECUTIVE UNDERSTANDS THAT THE DISPUTE RESOLUTION PROVISIONS OF THIS AGREEMENT GIVE UP THE RIGHT TO A JURY TRIAL ON MATTERS COVERED BY THEM.

16

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates written below.

ACCURAY INCORPORATED,
a Delaware Corporation

By: /s/ Joshua H. Levine
Name: Joshua H. Levine
Title: President & Chief Executive Officer

By: /s/ Alaleh Nouri
Name: Alaleh A. Nouri
Title: Vice President, Legal

Accepted and Agreed,

Darren J. Milliken: /s/ Darren J. Milliken

Signed on: Jan. 4, 2013

17

Exhibit A

FORM OF SEPARATION AGREEMENT AND GENERAL RELEASE

[See attached]

SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release (this "Agreement") is hereby entered into by and between _____, an individual ("Executive"), and Accuray Incorporated, a Delaware corporation, on behalf of itself and all of its subsidiaries (collectively, the "Company").

Recitals

A. Executive has been employed by the Company pursuant to an employment agreement by and between the Company and Executive effective as of October _____, 2012 (the "Employment Agreement"), and currently is serving as **[specify position held at time of termination]**;

B. Executive's employment with the Company and any of its parents, direct or indirect subsidiaries, affiliates, divisions, or related entities (collectively referred to herein as the "Company and its Related Entities") will be ended on the terms and conditions set forth in this Agreement.

Agreement

In consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Effective Date.** Except as otherwise provided herein, this Agreement shall be effective on the eighth day after it has been executed by both of the parties (the "Effective Date").

2. **End of Employment and Service as a Director.** Executive's employment with the Company and its Related Entities has ended or will end effective as of Pacific Time, on (the "**Termination Date**"). If Executive is a member of the Board of Directors of the Company and/or its Related Entities (the "**Board**") Executive hereby voluntarily resigns from the Board, effective

3. **Continuation of Benefits After the Termination Date.** Except as expressly provided in this Agreement or in the plan documents governing the Company's employee benefit plans, after the Termination Date, Executive will no longer be eligible for, receive, accrue, or participate in any other benefits or benefit plans provided by the Company and its Related Entities, including, without limitation, medical, dental and life insurance benefits, and the Company's 401(k) retirement plan; provided, however, that nothing in this Agreement shall waive Executive's right to any vested benefits, including vested amounts in the Company's 401(k) retirement plan, which amounts shall be handled as provided in the plan.

4. **Payments Upon Termination.** Executive will be entitled to receive payment of the following: (i) all earned but unpaid compensation (including accrued unpaid vacation) through the effective date of termination, payable on or before the termination date; and

1

(ii) reimbursement, made in accordance with Section 4(e) of the Employment Agreement, of any monies advanced or incurred by Executive in connection with his/her employment for reasonable and necessary Company-related expenses incurred on or before the Termination Date. The provisions of this Agreement shall not waive or terminate any rights to compensation or vested benefits under the Company's benefits plans or as required by law, or to indemnification Executive may have under the Company's Certificate of Incorporation, Bylaws or separate indemnification agreement, as applicable.

5. **Severance Benefits or Enhanced Severance Benefits.** In return for Executive's promises in this Agreement, the Company will provide Executive with the Severance Benefits or Enhanced Severance Benefits as defined in Sections 5(a) and 5(e) of the Employment Agreement and as applicable based on the nature of the termination, subject to the terms and conditions set forth in the Employment Agreement, including, but not limited to, Section 16 thereof. The Severance Benefits or Enhanced Severance Benefits will be paid as specified in Section 5(a) or Section 5(e) of the Employment Agreement, as applicable and shall be subject to required withholdings and authorized deductions and to Section 21 below. For purposes of this Agreement, the term "**Severance Period**" means twelve (12) months, regardless of whether Executive receives the Severance Benefits or the Enhanced Severance Benefits.

6. **Effect of Revocation or Subsequent Employment.**

(a) If Executive properly revokes this Agreement in accordance with Section 13 below, Executive shall not be entitled to receive the payments and benefits under Section 5, above, except that Executive's rights under COBRA will continue.

(b) The Company's obligation to reimburse premiums for insurance coverage under COBRA or otherwise will be extinguished as of the date Executive's coverage begins under the group health plan of any new employer. If Executive violates the restrictions in Section 17, below, the Company's obligation to pay premiums for insurance under COBRA or otherwise will be immediately extinguished, and the other remedies specified in Section 17, below, shall apply.

7. **Acknowledgement of Total Compensation and Indebtedness.** Executive acknowledges and agrees that the cash payments under Sections 4 and 5 of this Agreement extinguish any and all obligations for monies, or other compensation or benefits that Executive claims or could claim to have earned or claims or could claim is owed to him as a result of his/her employment by the Company and its Related Entities through the Termination Date, under the Employment Agreement or otherwise. Notwithstanding the foregoing, the parties acknowledge and agree that the provisions of this Section 7 shall not terminate any rights Executive has under Section 3 or to other payments Executive may have, and to any indemnification Executive may have under the Company's Bylaws or separate indemnification agreement, as applicable.

8. **Status of Related Agreements and Future Employment.**

(a) Agreements Between Executive and the Company. [**Agreements to be scheduled at time**].

2

(b) Employment Agreement. The parties agree that the Employment Agreement shall be terminated as of the Termination Date. Notwithstanding the termination of the Employment Agreement, the parties hereto acknowledge that certain rights and obligations set forth in the Employment Agreement extend beyond the Termination Date. In the event that any provision of this Agreement conflicts with Section 6 of the Employment Agreement, the terms and provisions of the section(s) providing the greatest protection to the Company and its Related Entities shall control.

9. **Release by Executive.**

(a) Except for any obligations or covenants of the Company pursuant to this Agreement and as otherwise expressly provided in this Agreement, Executive, for himself and his/her heirs, executors, administrators, assigns, successors and agents (collectively, the "**Executive's Affiliates**") hereby fully and without limitation releases and forever discharges the Company and its Related Entities, and each of their respective agents, representatives, shareholders, owners, officers, directors, employees, consultants, attorneys, auditors, accountants, investigators, affiliates, successors and assigns (collectively, the "**Company Releasees**"), both individually and collectively, from any and all waivable rights, claims, demands, liabilities, actions, causes of action, damages, losses, costs, expenses and compensation, of whatever nature whatsoever, known or unknown, fixed or contingent, which Executive or any of Executive's Affiliates has or may have or may claim to have against the Company Releasees by reason of any matter, cause, or thing whatsoever, from the beginning of time to the Effective Date ("**Claims**"), arising out of, based upon, or relating to his/her employment or the termination of his/her employment with the Company and its Related Entities and/or his/her service as an officer of any of the Company Releasees, any agreement or compensation arrangement between Executive and any of the Company Releasees, to the maximum extent permitted by law.

(b) Executive specifically and expressly releases any Claims arising out of or based on: the California Fair Employment and Housing Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the National Labor Relations Act and the Equal Pay Act, as the same may be amended from time to time; the California common law on fraud, misrepresentation, negligence, defamation, infliction of emotional distress or other tort, breach of contract or covenant, violation of public policy or wrongful termination; state or federal wage and hour laws, and other provisions of the California Labor Code, to the extent these may be released herein as a matter of law; or any other state or federal law, rule, or regulation dealing with the employment relationship, except those claims which may not be released herein as a matter of law.

(c) Nothing contained in this Section 9 or any other provision of this Agreement shall release or waive any right that Executive has to indemnification and/or reimbursement of expenses by the Company and its Related Entities with respect to which Executive may be eligible as provided in California Labor Code section 2802, the Company's and its Related Entities' Certificates of Incorporation, Bylaws and any applicable directors and officers, errors & omissions, umbrella or general liability insurance policies, any indemnification agreements, including the Employment Agreement; or any other applicable source, nor prevent Executive from cooperating in an investigation of the Company by the Equal Employment Opportunity Commission ("EEOC").

3

10. Waiver of Civil Code Section 1542.

(a) Executive understands and agrees that the release provided herein extends to all Claims released above whether known or unknown, suspected or unsuspected, which may be released as a matter of law. Executive expressly waives and relinquishes any and all rights he may have under California Civil Code section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS/HER OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS/HER OR HER SETTLEMENT WITH THE DEBTOR."

(b) Executive expressly waives and releases any rights and benefits which he has or may have under any similar law or rule of any other jurisdiction. It is the intention of each party through this Agreement to fully, finally and forever settle and release the Claims as set forth above. In furtherance of such intention, the release herein given shall be and remain in effect as a full and complete release of such matters notwithstanding the discovery of any additional Claims or facts relating thereto.

11. [If Executive is age 40 or over on Termination Date] Release of Federal Age Discrimination Claims by Executive. Executive hereby knowingly and voluntarily waives and releases all rights and claims, known or unknown, arising under the Age Discrimination In Employment Act of 1967, as amended, which he might otherwise have had against the Company or any of the Company Releasees regarding any actions which occurred prior to the date that Executive signed this Agreement, except that Executive is not prevented from cooperating in an investigation by the EEOC or from filing an EEOC charge other than for personal relief.

12. Release by Company and its Related Entities. The Company and its Related Entities hereby release and forever discharge Executive, from any and all waivable actions, causes of action, covenants, contracts, claims and demands of whatever character, nature and kind, whether known or unknown, which the Company and its Related Entities ever had, now have, or any of them hereafter can, shall or may have by reason of Executive's employment and/or his/her service as a director and/or officer of the Company and/or its Related Entities; provided, however, that this general release shall not apply, or be deemed or construed to apply, to (a) any of Executive's continuing obligations pursuant to this Agreement or the Employment Agreement, (b) criminal conduct or acts or omissions constituting willful misconduct or gross negligence by Executive during his/her employment with the Company, or (c) recoupment of all or a portion of any previously awarded bonus or equity award pursuant to the Company's Recoupment (Clawback) Policy that was in effect when the bonus was paid or the equity award vested or was exercised by Executive, whichever was later.

13. [If Executive is age 40 or over on Termination Date] Review and Revocation Rights. Executive hereby is advised of the following:

(a) Executive has the right to consult with an attorney before signing this Agreement and is encouraged by the Company to do so;

4

(b) Executive has twenty-one (21) days from his/her receipt of this Agreement to consider it; and

(c) Executive has seven (7) days after signing this Agreement to revoke this Agreement, and this Agreement will not be effective until that revocation period has expired without revocation. Executive agrees that in order to exercise his/her right to revoke this Agreement within such seven (7) day period, he must do so in a signed writing delivered to the Company's Board before the close of business on the seventh calendar day after he signs this Agreement.

14. Confidentiality of Agreement. After the execution of this Agreement by Executive, neither Executive, his/her attorney, nor any person acting by, through, under or in concert with them, shall disclose any of the terms of or amount paid under this Agreement (other than to state that the Company has filed this Agreement and/or agreements related thereto as public documents) or the negotiation thereof to any individual or entity; provided, however, that the foregoing shall not prevent such disclosures by Executive to his/her attorney, tax advisors and/or immediate family members, or as may be required by law.

15. No Filings. Executive represents that he has not filed any lawsuits, claims, charges or complaints, which are pending as of the date hereof, against the Company Releasees with any local, state or federal agency or court from the beginning of time to the date of execution of this Agreement, and that Executive is not aware of any facts that would support any Claims or any compliance-related or code of ethics violations of any kind whatsoever against the Company Releasees, including without limitation any claims for any work-related injuries. If Executive hereafter commences, joins in, or in any manner seeks relief through any suit arising out of, based upon, or relating to any of the Claims released in this Agreement, or in any manner asserts against the Company Releasees any of the Claims released in this Agreement, then Executive agrees to pay to the Company Releasees against whom such Claim(s) is asserted, in addition to any other damages caused thereby, all attorneys' fees incurred by the Company Releasees in defending or otherwise responding to the

suit or Claim; provided, however, that this provision shall not obligate Executive to pay the Company Releasees' attorneys' fees in any action challenging the release of claims under the Older Workers Benefit Protection Act or the ADEA, unless otherwise allowed by law. If any governmental agency or court ever assumes jurisdiction over any such lawsuit, claim, charge or complaint and/or purports to bring any legal proceeding, in whole or in part, on behalf of Executive based upon events occurring prior to the execution of this Agreement, Executive will request such agency or court to withdraw from and/or to dismiss the lawsuit, claim, charge or complaint with prejudice.

16. Confidential and Proprietary Information. Executive acknowledges that certain information, observations and data obtained by him during the course of or related to his/her employment with the Company and its Related Entities (including, without limitation, projection programs, business plans, business matrix programs (*i.e.*, measurement of business), strategic financial projections, certain financial information, shareholder information, technology and product design information, marketing plans or proposals, personnel information, customer lists and other customer information) are the sole property of the Company and its Related Entities and constitute Proprietary Information as defined in Section 6 of the Employment Agreement. Executive represents and warrants that he has returned all files, customer lists, financial information and other property of the Company and its Related Entities that were in

5

Executive's possession or control without retaining copies thereof. Executive further represents and warrants that he does not have in his/her possession or control any files, customer lists, financial information or other property of the Company and its Related Entities. In addition to his/her promises in Section 6 of the Employment Agreement, Executive agrees that he will not disclose to any person or use any such information, observations or data without the written consent of the Board. If Executive is served with a deposition subpoena or other legal process calling for the disclosure of such information, or if he is contacted by any third person requesting such information, he will notify the Board as soon as is reasonably practicable after receiving notice and will reasonably cooperate with the Company and its Related Entities in minimizing the disclosure thereof; provided, that nothing in this Agreement will affect Executive's obligations to testify truthfully in response to any subpoena or other legally required discovery proceeding.

17. Prohibited Activities.

(a) Non-Solicitation of Customers and Other Business Partners. Executive recognizes that by virtue of his/her employment with the Company, he will be introduced to and involved in the solicitation and servicing of existing customers and other business partners of the Company and new customers and business partners obtained by the Company during his/her employment. Executive understands and agrees that all efforts expended in soliciting and servicing such customers and business partners shall be for the benefit of the Company. Executive further agrees that during his/her employment with the Company he will not engage in any conduct which could in any way jeopardize or disturb any of the customer and business partner relationships of the Company. In addition, Executive agrees that, for a period beginning on the Effective Date and ending twelve (12) months after termination of Executive's employment with the Company, regardless of the reason for such termination, Executive shall not use any Proprietary Information to, directly or indirectly, solicit, direct, interfere with, or entice away from the Company any existing customer, licensee, licensor, vendor, contractor or distributor of the Company or for the customer or other business partner to expand its business with a competitor, without the prior written consent of the Board.

(b) Non-Solicitation of Employees. Executive recognizes the substantial expenditure of time and effort which the Company devotes to the recruitment, hiring, orientation, training and retention of its employees. Accordingly, Executive agrees that, for a period beginning on the Effective Date and ending twelve (12) months after termination of Executive's employment with the Company, regardless of the reason for such termination, Executive shall not use any Proprietary Information, directly or indirectly, for himself or on behalf of any other person or entity, solicit, offer employment to, hire or otherwise retain the services of any employee of the Company in a position classified as exempt from overtime pay requirements. For purposes of the foregoing, "employee of the Company" shall include any person who was an employee of the Company at any time within six (6) months prior to the prohibited conduct.

(c) Scope of Restrictions. Executive agrees that the restrictions in Sections 17 (a) and (b), above, are reasonable and necessary to protect the Company's trade secrets and that they do not foreclose Executive from working in the medical device industry generally. To the extent that any of the provisions in this Section 17 are held to be overly broad or otherwise unenforceable at the time enforcement is sought, Executive agrees that the provision shall be reformed and enforced to the greatest extent permissible by law. Executive further agrees that if

6

any portion of this Section 17 is held to be unenforceable, that the remaining provisions of it shall be enforced as written.

18. Remedies. Executive acknowledges that any misuse of Proprietary Information belonging to the Company and its Related Entities, or any violation of Section 6 of the Employment Agreement, and any violation of Sections 14, 16 and 17 of this Agreement, will result in irreparable harm to the Company and its Related Entities, and therefore, the Company and its Related Entities shall, in addition to any other remedies, be entitled to immediate injunctive relief. To the extent there is any conflict between Section 6 of the Employment Agreement and this Section 18, the provision providing the greatest protection to the Company and its Related Entities shall control. In addition, in the event of a breach of any provision of this Agreement by Executive, including Sections 14, 16 and 17, Executive shall forfeit, and the Company and its Related Entities may withhold payment of any unpaid portion of, the Severance Benefits or Enhanced Severance Benefits provided under Section 5, above.

19. Cooperation Clause.

(a) To facilitate the orderly conduct of the Company and its Related Entities' businesses, for the Severance Period, Executive agrees to cooperate, at no charge, with the Company and its Related Entities' reasonable requests for information or assistance related to the time of his/her employment.

(b) For the Severance Period, Executive agrees to cooperate, at no charge, with the Company's and its Related Entities' and its or their counsel's reasonable requests for information or assistance related to (i) any investigations (including internal investigations) and audits of the Company's and its Related Entities' management's current and past conduct and business and accounting practices and (ii) the Company's and its Related Entities' defense of, or other participation in, any administrative, judicial, or other proceeding arising from any charge, complaint or other action which has been or may be filed

Attn: Board of Directors
c/o Corporate Secretary
Fax No. (408) 789-4205

If to Executive: Address: most recent on file with the Company
Email: most recent on file with the Company

Such addresses may be changed, from time to time, by means of a notice given in the manner provided above. Notice will conclusively be deemed to have been given when personally delivered (including, but not limited to, by messenger or courier); or if given by mail, on the third business day after being sent by first class, United States certified or registered mail; or if given by Federal Express or other similar overnight service, on the date of delivery; or if given by electronic mail, telecopy or facsimile machine during normal business hours on a business day, when confirmation of transmission is indicated by the sender's machine; or if given by electronic mail, telecopy or facsimile machine at any time other than during normal business hours on a business day, the first business day following when confirmation of transmission is indicated by the sender's machine. Unless otherwise agreed, notices, requests, demands and other communications delivered to legal counsel of any party hereto, whether or not such counsel shall consist of in-house or outside counsel, shall not constitute duly given notice to any party hereto.

34. Miscellaneous Provisions.

(a) The parties represent that they have read this Agreement and fully understand all of its terms; that they have conferred with their attorneys, or have knowingly and voluntarily chosen not to confer with their attorneys about this Agreement; that they have executed this Agreement without coercion or duress of any kind; and that they understand any rights that they have or may have, and they are signing this Agreement with full knowledge of any such rights.

(b) Both parties have participated in the drafting of this Agreement with the assistance of counsel to the extent they desired. The language in all parts of this Agreement must be in all cases construed simply according to its fair meaning and not strictly for or against any party. Whenever the context requires, all words used in the singular must be construed to have been used in the plural, and vice versa, and each gender must include any other gender. The captions of the Sections of this Agreement are for convenience only and must not affect the construction or interpretation of any of the provision herein.

(c) Each provision of this Agreement to be performed by a party hereto is both a covenant and condition, and is a material consideration for the other party's performance hereunder, and any breach thereof by the party will be a material default hereunder. All rights, remedies, undertakings, obligations, options, covenants, conditions and agreements contained in this Agreement are cumulative and no one of them is exclusive of any other. Time is of the essence in the performance of this Agreement.

(d) Each party acknowledges that no representation, statement or promise made by any other party, or by the agent or attorney of any other party, except for those in this Agreement, has been relied on by him or it in entering into this Agreement.

(e) Unless expressly set forth otherwise, all references herein to a "day" are deemed to be a reference to a calendar day. All references to "business day" mean any day of the year other than a Saturday, Sunday or a public or bank holiday in Orange County, California. Unless expressly stated otherwise, cross-references herein refer to provisions within this Agreement and are not references to any other document.

(f) Each party to this Agreement will cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

EACH OF THE PARTIES ACKNOWLEDGES THAT HE/IT HAS READ THIS AGREEMENT, UNDERSTANDS IT AND IS VOLUNTARILY ENTERING INTO IT, AND THAT IT INCLUDES A WAIVER OF THE RIGHT TO A TRIAL BY JURY, AND, WITH RESPECT TO EXECUTIVE, HE UNDERSTANDS THAT THIS AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the dates written below.

EXECUTIVE:

Date: _____

COMPANY:

Accuray Incorporated

By: _____
Name: _____
Title: _____

Date: _____

EQUITY AWARD SUMMARY

ACCURAY INCORPORATED

Personnel Grant Summary

As of 01/01/2013

Darren J. Milliken

AWARDS

Grant Number	Grant Date	Plan	Type	Shares	Price
00001077	02/08/2007	2007	RSU	12,500.00	\$ 0.00000
00002404	10/31/2008	2007	RSU	3,000.00	\$ 0.00000
00003044	08/31/2010	2007	RSU	6,000.00	\$ 0.00000
00004061	09/30/2011	2007	RSU	6,750.00	\$ 0.00000
P0004105	09/30/2011	2007	PSU	10,125.00	\$ 0.00000
P0004133	09/30/2011	2007	PSU	20,200.00	\$ 0.00000
00006624	10/31/2012	2007	RSU	22,400.00	\$ 0.00000
M0006707	10/31/2012	2007	PSU	14,000.00	\$ 0.00000
				94,975.00	

STOCK OPTIONS

Grant Number	Grant Date	Plan	Type	Shares	Price
00000648	05/18/2004	1998	ISO	135,000.00	\$ 1.75000
00001852	12/31/2007	2007	NQ	1,275.00	\$ 15.22000
00002055	01/31/2008	2007	NQ	11,225.00	\$ 9.52000
00002281	10/31/2008	2007	NQ	15,000.00	\$ 6.32000
00002606	05/29/2009	2007	NQ	25,000.00	\$ 6.16000
00002612	08/31/2009	2007	NQ	20,000.00	\$ 6.41000
00002628	08/31/2009	2007	NQ	15,000.00	\$ 6.41000
00003043	08/31/2010	2007	NQ	18,000.00	\$ 6.58000
00004034	09/30/2011	2007	NQ	26,000.00	\$ 4.01000
00006614	10/31/2012	2007	NQ	19,600.00	\$ 6.96000
				286,100.00	



RENEWAL EXECUTIVE EMPLOYMENT AGREEMENT

This Employment Agreement (“Agreement”) is entered into and is effective as of January 1, 2013 (“Effective Date”), by and between Accuray Incorporated, a Delaware corporation (the “Company”) and Robert Ragusa (“Executive”).

RECITALS

- A. The Company is in the business of developing, manufacturing and selling radiation oncology, including radio surgery and radiation therapy, technologies and devices (the “Business”).
- B. The Company wishes to continue the employment of Executive as Senior Vice President, Global Operations, and Executive desires to serve the Company in such capacity pursuant to the terms and conditions in this Agreement.
- C. As of the Effective Date, Executive is a full time employee with the Company.

NOW, THEREFORE, the parties agree as follows:

1. **Position and Duties.**

(a) During the term of this Agreement, Executive will be employed by the Company to serve as Senior Vice President, Global Operations of the Company, reporting to the Company’s Chief Executive Officer (“CEO”). Executive will be responsible for performing the duties and responsibilities customarily expected to be performed by such position of a publicly reporting business entity; and (vi) performing such other duties and functions as are reasonably required and/or as may be reasonably prescribed by the Company from time to time.

(b) The location of Executive’s employment will be the Company’s headquarters offices, but Executive from time to time may be required to travel to other geographic locations in connection with the performance of his/her duties.

2. **Standards of Performance.** Executive will at all times faithfully, industriously and to the best of his/her ability, experience and talents perform all of the duties required of and from him pursuant to the terms of this Agreement. Executive will devote his/her full business energies and abilities and all of his/her business time to the performance of his/her duties hereunder and will not, without the Company’s prior written consent, render to others any service of any kind (whether or not for compensation) that, in the Company’s sole but reasonable judgment, would interfere with the full performance of his/her duties hereunder. Notwithstanding the foregoing, Executive is permitted to spend reasonable amounts of time to manage his/her personal financial and legal affairs and, with the Company’s consent which will not be unreasonably withheld, to serve on one civic, charitable, not-for-profit, industry or corporate board or advisory committee, provided that such activities, individually and collectively, do not materially interfere with the performance of Executive’s duties hereunder. In no event will Executive engage in any activities that could reasonably create a conflict of interest or the appearance of a conflict of interest. Executive shall be subject to the Company’s policies, procedures and approval practices, as generally in effect from time to time.

1310 Chesapeake Terrace, Sunnyvale CA 94089 Tel: 408.716.4600 Fax: 408.716.4601 www accuray.com

3. **Term.** Executive will be employed for no specific term and until terminated pursuant to Section 5, below, of this Agreement. The Company and Executive shall each have a right to terminate this Agreement and Executive’s employment as provided in Section 5. This Agreement may not be terminated without a related termination of Executive’s employment.

4. **Compensation and Benefits.**

(a) **Base Salary.** As an annual base salary (“Base Salary”) for all services rendered pursuant to this Agreement, Executive will be paid an initial Base Salary in the gross amount of \$294,600 calculated on an annualized basis, less necessary withholdings and authorized deductions, and payable pursuant to the Company’s regular payroll practices at the time. The Base Salary is first subject to review and adjustment within the first three (3) months after the end of the fiscal year current fiscal year, and, thereafter, subject to periodic review and adjustment not less frequently than annually within the first three (3) months after the end of the next successive fiscal year, in the sole discretion of the Company. Executive’s Base Salary will not be reduced from the level in effect from time to time, except that the Base Salary may be reduced in connection with a salary reduction program of general application to senior executives of the Company.

(b) **Performance Bonus.** During Executive’s employment under this Agreement, Executive will be eligible for a performance bonus, subject to the terms and conditions of the Company’s Performance Bonus Plan, which is applicable to senior executives of the Company. The target amount of Executive’s annual bonus is fifty percent (50%) of Executive’s annual Base Salary. However, payment of the performance bonus will be conditioned on the Company’s achievement of corporate performance objectives approved by the Company and on the Executive’s achievement of individual performance metrics to be established annually and approved by the Company all as established pursuant to the Company’s Performance Bonus Plan as then in effect, and the bonus may be zero. For the avoidance of doubt, the performance bonus will be payable only if the corporate performance objectives approved by the Company are achieved as determined by the Company, subject to the Company’s right to exercise discretion in determining the amount of the bonus to be awarded, if any. To encourage continued tenure with the Company, Executive must be employed by the Company as of the payment date to be eligible for a performance bonus for the year to which the bonus relates, unless otherwise provided in Section 5. Performance bonuses will be paid out according to the terms of the applicable bonus plan.

(c) Equity Incentive Awards.

(i) Stock Options. The Company may to grant to Executive the option to purchase shares of the Company's common stock ("Options") pursuant to the Accuray Incorporated 2007 Incentive Award Plan (the "Incentive Plan"). All Options shall be subject to the terms and conditions of the Incentive Plan and a stock option grant notice and grant agreement in a form prescribed by the Company (the "Option Agreement"), which Executive must sign as a condition to receiving the Options. All equity awards granted to Executive as of the date of this Agreement are listed on Exhibit B.

(ii) Restricted Stock Units. The Company may grant to Executive restricted stock units ("RSUs") pursuant to the Incentive Plan. All RSUs are subject to and conditioned on approval of the grant and its terms by the Board. All RSUs shall be subject to the terms and conditions

RENEWAL EXECUTIVE EMPLOYMENT AGMT STD 12.20.12

ACCURAY CONFIDENTIAL

2

of the Incentive Plan and a RSU grant notice and grant agreement in a form prescribed by the Company ("RSU Agreement"), which Executive must sign as a condition to receiving the RSUs. All equity awards granted to Executive as of the date of this Agreement are listed on Exhibit B.

(iii) Market Stock Units. The Company may grant to Executive performance-based market stock units ("MSUs") pursuant to the Incentive Plan. All MSUs are subject to and conditioned on approval of the grant and its terms by the Board. All granted MSUs shall vest as provided in the applicable MSU Agreement. All MSUs shall be subject to the terms and conditions of the Incentive Plan and a MSU Agreement in a form prescribed by the Company, which Executive must sign as a condition to receiving the MSUs. All equity awards granted to Executive as of the date of this Agreement are listed on Exhibit B.

(d) Paid Time Off and Benefits. Executive will accrue and be allowed to use paid time off for vacation, illness and holidays pursuant to the Company's policies that apply to executive officers of the Company. In addition, Executive is entitled to participate in any plans regarding benefits of employment, including pension, profit sharing, group health, disability insurance and other employee pension and welfare benefit plans now existing or hereafter established to the extent that Executive is eligible under the terms of such plans and if the other executive officers of the Company generally are eligible to participate in such plan. The Company may, in its sole discretion and from time to time, establish additional senior management benefit plans as it deems appropriate. Executive understands that any such plans may be modified or eliminated in the Company's sole discretion in accordance with applicable law, provided that no such modification or elimination shall result in reducing or eliminating any benefits in which Executive's right has vested.

(e) Reimbursement of Business Expenses. The Company will promptly reimburse to Executive his/her reasonable, customary and documented out-of-pocket business expenses in connection with the performance of his/her duties under this Agreement, and in accordance with the policies and procedures established by the Company; provided that each reimbursement shall be requested within two months after being incurred.

(f) Sarbanes-Oxley Act Loan Prohibition and Company Compensation-Related Policies. To the extent that any Company benefit, program, practice, arrangement or this Agreement would or might otherwise result in Executive's receipt of an illegal loan (the "Loan"), the Company shall use commercially reasonable efforts to provide Executive with a substitute for the Loan that is lawful and of at least equal value to Executive. If this cannot be done, or if doing so would be significantly more expensive to the Company than making the Loan, the Company need not make the Loan to Executive or provide him a substitute for it. Further, Executive acknowledges that any bonus or equity award provided for in this Agreement or otherwise awarded to him shall be subject to the Company's Recoupment (Clawback) Policy, as such policy may be amended from time to time, and agrees that he will be subject to, and shall comply with, the Company's stock ownership requirements which are set forth in its Amended and Restated Corporate Governance Guidelines as such requirements may be amended from time to time.

5. Termination of Employment.

(a) By Company Without Cause. The Company may terminate Executive's employment without Cause (as defined below) effective on thirty (30) days' written notice, during

3

which notice period Executive may be relieved of his/her duties and placed on paid terminal leave. In such event and subject to the other provisions of this Agreement, Executive will be entitled to:

(i) continued coverage under the Company's insurance benefit plans through the termination date and such other benefits to which he may be entitled pursuant to the Company's benefit plans, provided, however, that Executive shall not participate in any severance plan of the Company;

(ii) payment of all earned but unpaid compensation (including accrued unpaid vacation) through the effective date of termination, payable on or before the termination date; and

(iii) reimbursement of expenses incurred on or before the termination date in accordance with Section 4(f), above, if a request for reimbursement of the expenses was timely submitted to the Company; plus

(iv) payment of the equivalent of the Base Salary without regard to any reduction that would otherwise constitute Good Reason he/she would have earned over the next six (6) months (the "Severance Period") following the termination date (less necessary withholdings and authorized deductions) at his/her then current Base Salary rate (the "Severance Payment"), payable in a lump sum on the date that is thirty (30) days after the termination date, subject to Section 16, below, the release of claims requirement specified below;

(v) payment of a prorated portion of Executive's target bonus for the fiscal year during which termination occurs, calculated by dividing the number of days from the start of the fiscal year through the termination date by 365 and multiplying the target bonus by this percentage (but

not by more than 100%), and paid at the same time as the Severance Payment; provided, however, that if the termination date is after the seventh month of the fiscal year, Executive will receive 100% of his/her target bonus for that fiscal year;

(vi) reimbursement of insurance premiums payable to retain group health coverage as of the termination date for himself and his eligible dependents pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1986 (“COBRA”) for six (6) months or the maximum period of COBRA coverage, whichever is less; provided that Executive must submit a reimbursement request in accordance with Company policy within 30 days of paying such insurance premiums. The Company will reimburse the executive within 30 days of receiving a properly submitted request. In addition, if Executive accepts other employment within such six (6) months, the Company’s obligation under this Section 5(a)(vi) will be extinguished as of the date Executive becomes covered under the group health plan of Executive’s new employer; and

(vii) payment for executive outplacement assistance services with the Company’s then current outplacement services vendor and in accordance with the Company’s then current policies and practices with respect to outplacement assistance for other executives of the Company for up to twelve (12) months after the termination date.

The payments and benefits set forth in Sections 5(a)(i)-(iii) shall be referred to as the “Accrued Benefits”, and the payments and benefits set forth in Sections 5(a)(iv)-(vii) shall be referred to as the “Severance Benefits”. Executive shall not receive the Severance Benefits (or the “Enhanced Severance Benefits” as provided in Section 5(e)) unless Executive executes the separation agreement and general

4

release attached as Exhibit A, and the same becomes irrevocable pursuant to its terms within the 30-day period following his/her termination of employment.

(b) By Company With Cause. The Company may terminate Executive’s employment at any time and without prior notice, written or otherwise, for Cause. As used in this Agreement, “Cause” shall mean any of the following conduct by Executive: (i) material breach of this Agreement, or of a Company policy or of a law, rule or regulation applicable to the Company or its operations; (ii) demonstrated and material neglect of duties, or failure or refusal to perform the material duties of his/her position, or the failure to follow the reasonable and lawful instructions of the Company; (iii) gross misconduct or dishonesty, self-dealing, fraud or similar conduct that the Company reasonably determines has caused, is causing or reasonably is likely to cause harm to the Company; (iv) conviction of or plea of guilty or *nolo contendere* to any crime other than a traffic offense that is punishable by a sentence of incarceration. Termination pursuant to Section 5(b)(ii) shall be effective only if such failure continues after Executive has been given written notice thereof and fifteen (15) business days thereafter in which to present his/her position to the Company or to cure the same, unless the Company reasonably determines that the reason(s) for termination are not capable of being cured. In the event of termination for Cause, Executive will be entitled only to the Accrued Benefits through the termination date, which will be the date on which the notice is given. The Company will have no further obligation to pay any compensation of any kind (including without limitation any bonus or portion of a bonus that otherwise may have become due and payable to Executive with respect to the year in which such termination date occurs), or severance payment of any kind nor to make any payment in lieu of notice.

(c) Incapacity or Death.

(i) If Executive becomes unable, due to physical or mental illness or injury, to perform the essential duties of his/her position for more than 12 consecutive weeks in any twelve month period during this Agreement with or without reasonable accommodation (“Incapacity”), the Company has the right to terminate Executive’s employment on fifteen (15) days’ written notice. In the event of termination for Incapacity, Executive will be entitled to receive the Accrued Benefits, and the unvested stock options and RSUs previously granted to Executive that would have vested within six (6) months after the date of termination for Incapacity shall become immediately vested; and.

(ii) Executive’s employment pursuant to this Agreement shall be immediately terminated without notice by the Company upon the death of Executive. If Executive dies while actively employed pursuant to this Agreement, the Company will pay to his/her estate or designated beneficiaries within sixty (60) days the Accrued Benefits, and the unvested stock options and RSUs previously granted to Executive that would have vested within six (6) months after the date of termination upon the death of Executive shall become immediately vested.

(d) Resignation for Good Reason. Executive may terminate this Agreement for Good Reason (as defined below) by giving written notice of such termination, which termination will become effective on the thirtieth (30th) day following receipt by the Company. As used in this Agreement, “Good Reason” shall mean any one of the following: (i) a material reduction in Executive’s Base Salary and/or a material breach of this Agreement resulting from the failure to provide the benefits required in Section 4, (ii) any action or inaction that constitutes a material breach by the Company of this Agreement; (iii) a material diminution in Executive’s authority, duties or responsibilities such that they are materially inconsistent with his/her position as Senior Vice President, Global Operations of the

5

Company; and (iv) relocation of the Company’s headquarters to a location that materially increases Executive’s commute, provided that no termination for Good Reason shall be effective until Executive has given the Company written notice (pursuant to Section 11 below) within sixty (60) days after Executive becomes aware of the initial occurrence of any of the foregoing specifying the event or condition constituting the Good Reason and the specific reasonable cure requested by Executive, and the Company has failed to cure the occurrence within thirty (30) days of receiving written notice from Executive, and Executive resigns within six (6) months after Executive becomes aware of the initial occurrence. In the event of a termination for Good Reason, Executive will be entitled to the Accrued Benefits and the Severance Benefits, on the same conditions, form of payment and timing as set forth in Section 5(a).

(e) Effect of Change in Control. Executive may terminate this Agreement upon a Change in Control (as defined below) if the successor to the Company or to the Company’s business fails (A) to offer Executive the position of Senior Vice President, Global Operations of the successor company with duties, responsibilities, and overall compensation and benefits materially similar to those enjoyed by Executive immediately preceding the Change in Control, or (B) to assume the obligations of the Company under and to become a party to this Agreement, provided that no termination upon a Change in Control shall be effective until Executive has given the successor to the Company written notice (pursuant to Section 11 below) within sixty (60) days of the initial occurrence of any of the foregoing specifying the event giving rise to the termination upon a Change in Control and the specific reasonable cure requested by Executive, and the successor to the Company or to the Company’s business has failed to cure the occurrence within thirty (30) days of receiving written notice from Executive, and Executive resigns within six (6) months after Executive becomes aware of the initial occurrence. In the event of

a termination upon a Change in Control, Executive will be entitled to the Accrued Benefits, and subject to the same conditions set forth in the final paragraph of Section 5(a), (i) four times the Severance Payment set forth in Section 5(a)(iv), paid in the same form (i.e., a lump sum) and at the same time (i.e., 30 days after the termination date) as the Severance Payments set forth in Section 5(a)(iv), (ii) the reimbursement of two times Executive's insurance premiums for twelve (12) months in the same form and at the same time and under the same conditions as provided in Section 5(a)(vi), (iii) two hundred percent (200%) of Executive's target bonus for the fiscal year during which termination occurs, but no less than the target bonus in effect for the fiscal year immediately prior to the Change in Control if the Change in Control occurs within the first three (3) months of the fiscal year, payable at the same time as the payment under clause (i) of this Section 5(e), (iv) all outstanding unvested stock options and RSUs previously granted to Executive shall become immediately vested (the "Enhanced Severance Benefits"), and (v) payment for executive outplacement assistance services with the Company's then current outplacement services vendor and in accordance with the Company's then current policies and practices with respect to outplacement assistance for other executives of the Company for up to twelve (12) months after the termination date; provided, however, for the sake of clarity, if any payments or benefits are payable under this Section 5(e), no payments or benefits shall be made under any other subsection of this Section 5 including Section 5(a) and Section 5(d).

As used in this Agreement, a "Change in Control" shall mean any of the following events:

(i) the acquisition by any Group or Person (as such terms are defined in Section 13(d) or 14(d) of the Securities Exchange Act of 1934, as amended (the "1934 Act")), other than (A) a trustee or other fiduciary holding securities of the Company under an employee benefit plan of the

6

Company or (B) an entity in which the Company directly or indirectly beneficially owns fifty percent (50%) or more of the voting securities of such entity (an "Affiliate"), of any securities of the Company, immediately after which such Group or Person has beneficial ownership (within the meaning of Rule 13d-3 promulgated under the 1934 Act) of more than fifty percent (50%) of (X) the outstanding shares of Common Stock or (Y) the combined voting power of the Company's then outstanding securities entitled to vote generally in the election of directors;

(ii) the Company (and/or its subsidiaries) is a party to a merger or consolidation with a Person other than an Affiliate, which merger or consolidation results in (a) the holders of voting securities of the Company outstanding immediately before such merger or consolidation failing to continue to represent (either by remaining outstanding or being converted into voting securities of the surviving entity) more than fifty percent (50%) of the combined voting power of the then outstanding voting securities of the corporation or entity resulting from or surviving such merger or consolidation or (b) individuals who are directors of the Company just prior to such merger or consolidation not constituting more than fifty percent (50%) of the members of the Board of Directors of the surviving entity or corporation immediately after the consummation of such merger or consolidation; or

(iii) all or substantially all of the assets of the Company and its subsidiaries are, in any transaction or series of transactions, sold or otherwise disposed of (or consummation of any transaction, or series of related transactions, having similar effect, other than to an Affiliate;

provided, however, that in no event shall a "Change in Control" be deemed to have occurred for purposes of this Agreement solely because the Company engages in an internal reorganization, which may include a transfer of assets to, or a merger or consolidation with, one or more Affiliates. Additionally, with respect to the payment of any "nonqualified deferred compensation" within the meaning of section 409A of the Internal Revenue Code of 1986, as amended (the "Code") that is not exempt from section 409A of the Code, no event shall constitute a Change in Control unless it also constitutes a change in the ownership of the Company (as defined in Treasury Regulation section 1.409A-3(i)(5)(v)), a change in effective control of the Company (as defined in Treasury Regulation section 1.409A-3(i)(5)(vi)), or a change in the ownership of a substantial portion of the assets of the Company (as defined in Treasury Regulation section 1.409A-3(i)(5)(vii)).

(f) Voluntary Resignation without Good Reason. Executive may terminate this Agreement without Good Reason effective on sixty (60) day's written notice, unless the Company in its sole discretion accepts the resignation earlier. In the event that Executive resigns without Good Reason as defined above in Section 5(d), Executive will be entitled only to the Accrued Benefits through the termination date. The Company will have no further obligation to pay any compensation of any kind (including without limitation any bonus or portion of a bonus that otherwise may have become due and payable to Executive with respect to the year in which such termination date occurs unless he remains employed with the Company as of the date bonuses are paid to other senior executives of the Company), or severance payments of any kind.

6. Proprietary Information Obligations.

(a) Proprietary Information and Confidentiality. Both before and during the term of Executive's employment, Executive will have access to and become acquainted with Company

7

confidential and proprietary information (together "Proprietary Information"), including but not limited to information or plans concerning the Company's products and technologies; customer relationships; personnel; sales, marketing and financial operations and methods; trade secrets; formulae and secret developments and inventions; processes; and other compilations of information, records, and specifications. Executive will not disclose any of the Proprietary Information directly or indirectly, or use it in any way, either during his/her employment pursuant to this Agreement or at any time thereafter, except as reasonably required or specifically requested in the course of his/her employment with the Company or as authorized in writing by the Company. Notwithstanding the foregoing, Proprietary Information does not include information that is otherwise publicly known or available, provided it has not become public as a result of a breach of this Agreement or any other agreement Executive has to keep information confidential. It is not a breach of this Agreement for Executive to disclose Proprietary Information pursuant to an order of a court or other governmental or legal body.

(b) Inventions Agreement and Assignment.

(i) Executive hereby agrees to disclose promptly to the Company (or any persons designated by it) all developments, designs, creations, improvements, original works of authorship, formulas, processes, know-how, techniques and/or inventions (collectively, the "Inventions") (A) which are made or conceived or reduced to practice by Executive, either alone or jointly with others, in performing his/her duties during the period of

Executive's employment by the Company, that relate to or are useful in the business of the Company; or (B) which result from tasks assigned to Executive by the Company, or from Executive's use of the premises or other resources owned, leased or contracted by the Company.

(ii) Executive agrees that all such Inventions which the Company in its discretion determines to be related to or useful in its business or its research or development, or which result from work performed by Executive for the Company, will be the sole and exclusive property of the Company and its assigns, and the Company and its assigns will have the right to use and/or to apply for patents, copyrights or other statutory or common law protections for such Inventions in any and all countries. Executive further agrees to assist the Company in every reasonable way (but at the Company's expense) to obtain and from time to time enforce patents, copyrights and other statutory or common law protections for such Inventions in any and all countries. To that end, Executive will execute all documents for use in applying for and obtaining such patents, copyrights and other statutory or common law protections therefor and enforcing the same, as the Company may desire, together with any assignments thereof to the Company or to persons or entities designated by the Company. Should the Company be unable to secure Executive's signature on any document necessary to apply for, prosecute, obtain, or enforce any patent, copyright or other right or protection relating to any Invention, whether due to his/her mental or physical incapacity or any other cause, Executive hereby irrevocably designates and appoints the Company and each of its duly authorized officers and agents as Executive's agent and attorney-in-fact, to act for and in his/her behalf and stead, to execute and file any such document, and to do all other lawfully permitted acts to further the prosecution, issuance, and enforcement of patents, copyrights or other rights or protections with the same force and effect as if executed and delivered by Executive. Executive's obligations under this Section 6(b)(ii) will continue beyond the termination of Executive's employment with the Company, but the Company will compensate Executive at a reasonable rate after such termination for time actually spent by Executive at the Company's request in providing such assistance.

8

(iii) Executive hereby acknowledges that all original works of authorship which are made by Executive (solely or jointly with others) within the scope of Executive's employment which are protectable by copyright are "works for hire," as that term is defined in the United States Copyright Act (17 USCA, Section 101).

(iv) Any provision in this Agreement requiring Executive to assign Executive's rights in any Invention to the Company will not apply to any invention that is exempt under the provisions of California Labor Code section 2870, which provides:

"(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his/her or her rights in an invention to his/her or her employer shall not apply to an invention that the employee developed entirely on his/her or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either: (1) relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or (2) result from any work performed by the employee for the employer. (b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable."

(c) Non-Solicitation of Customers and Other Business Partners. Executive recognizes that by virtue of his/her employment with the Company, he will be introduced to and involved in the solicitation and servicing of existing customers and other business partners of the Company and new customers and business partners obtained by the Company during his/her employment. Executive understands and agrees that all efforts expended in soliciting and servicing such customers and business partners shall be for the benefit of the Company. Executive further agrees that during his/her employment with the Company he will not engage in any conduct which could in any way jeopardize or disturb any of the customer and business partner relationships of the Company. In addition, Executive agrees that, for a period beginning on the Effective Date and ending twelve (12) months after termination of Executive's employment with the Company, regardless of the reason for such termination, Executive shall not use any Proprietary Information to, directly or indirectly, solicit, direct, interfere with, or entice away from the Company any existing customer, licensee, licensor, vendor, contractor or distributor of the Company or for the customer or other business partner to expand its business with a competitor, without the prior written consent of the Company.

(d) Non-Solicitation of Employees. Executive recognizes the substantial expenditure of time and effort which the Company devotes to the recruitment, hiring, orientation, training and retention of its employees. Accordingly, Executive agrees that, for a period beginning on the Effective Date and ending twelve (12) months after termination of Executive's employment with the Company, regardless of the reason for such termination, Executive shall not use any Proprietary Information, directly or indirectly, for himself or on behalf of any other person or entity, solicit, offer employment to, hire or otherwise retain the services of any employee of the Company in a position classified as exempt from overtime pay requirements. For purposes of the foregoing, "employee of the Company" shall

9

include any person who was an employee of the Company at any time within six (6) months prior to the prohibited conduct.

(e) Company Property and Materials.

(i) All files, records, documents, computer-recorded or electronic information, drawings, specifications, equipment, and similar items relating to Company business, whether prepared by Executive or otherwise coming into his/her possession, will remain the Company's exclusive property and will not be removed from Company premises under any circumstances whatsoever without the Company's prior written consent, except when, and only for the period, necessary to carry out Executive's duties hereunder

(ii) In the event of termination of Executive's employment for any reason, Executive will promptly deliver to the Company all Company equipment (including, without limitation, any cellular phones, beeper/pagers, computer hardware and software, fax machines and other tools of the trade) and all originals and copies of all documents, including without limitation, all books, customer lists, forms, documents supplied by customers, records, product lists, writings, manuals, reports, financial documents and other documents or property in Executive's possession or control, which relate to the Company's business in any way whatsoever, and in particular to customers of the Company, or which may be considered to constitute or contain Proprietary Information as defined above, and Executive will neither retain, reproduce, nor distribute copies thereof (other than copies of Executive's electronic or hardcopy address and telephone contact data base or directories).

(f) **Remedies for Breach.** Executive acknowledges that any breach by Executive of this Section 6 would cause the Company irreparable injury and damage for which monetary damages are inadequate. Accordingly, in the event of a breach or a threatened breach of this Section 6, the Company will be entitled to seek an injunction restraining such breach. In addition, in the event of a breach of this Section 6, the Company's obligation to pay any unpaid portion of the Severance Payment or other benefits as set forth in Sections 5(a) and (d) of this Agreement will be extinguished. Nothing contained herein will be construed as prohibiting the Company from pursuing any other remedy available to the Company for such breach or such threatened breach. Executive has carefully read and considered these restrictions and agrees they are fair and reasonable restrictions on Executive and are reasonably required for the protection of the interests of the Company. Executive agrees not to circumvent the spirit of these restrictions by attempting to accomplish indirectly what Executive is otherwise restricted from doing directly. Executive agrees that the restrictions in this Section 6 are reasonable and necessary to protect the Company's Proprietary Information, and they do not prevent Executive from working in the medical device industry. Executive agrees that the covenants and agreements by Executive contained in this Section 6 shall be in addition to any other agreements and covenants Executive may have agreed to in any other employee proprietary information, confidentiality, non-disclosure or other similar agreement and that this Section 6 shall not be deemed to limit such other covenants and agreements, all of which shall continue to survive the termination of this Agreement in accordance with their respective terms. A breach by Executive of the terms of such other agreements and covenants shall be deemed to be a breach by Executive of this Section 6 and of this Agreement. To the extent any of the provisions in this Section 6 are held to be overly broad or otherwise unenforceable at the time enforcement is sought, Executive agrees that the provision shall be reformed and enforced to the greatest extent permissible by law. Executive further agrees that if any portion of this Section 6 is held to be unenforceable, the remaining provisions of this Section 6 shall be enforced as written.

10

7. Interpretation, Governing Law and Exclusive Forum. The validity, interpretation, construction, and performance of this Agreement shall be governed by the laws of the State of California (excluding any that mandate the use of another jurisdiction's laws). Any arbitration (unless otherwise mutually agreed), litigation or similar proceeding with respect to such matters only may be brought within Santa Clara County, California, and all parties to this Agreement consent to California's jurisdiction.

8. Entire Agreement. All oral or written agreements or representations, express or implied, with respect to the subject matter of this Agreement are set forth in this Agreement.

9. Severability. In the event that one or more of the provisions contained in this Agreement are held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such holding shall not impair the validity, legality or enforceability of the remaining provisions herein.

10. Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, Executive and his/her estate, but Executive may not assign or pledge this Agreement or any rights arising under it, except to the extent permitted under the terms of the benefit plans in which he participates. No rights or obligations of the Company under this Agreement may be assigned or transferred except that the Company shall require any successor (whether direct or indirect, by purchase, merger, reorganization, sale, transfer of stock, consideration or otherwise) to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no succession had taken place. As used in this Agreement, "Company" means the Company as hereinbefore defined and any successor to its business and/or assets (by merger, purchase or otherwise as provided in this Section 10) which executes and delivers the agreement provided for in this Section 10 or which otherwise becomes bound by all the terms and provisions of this Agreement by operation of law. In the event that any successor refuses to assume the obligations hereunder, the Company as hereinbefore defined shall remain fully responsible for all obligations hereunder.

11. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be given by hand delivery, electronic mail, facsimile, teletype, overnight courier service, or by United States certified or registered mail, return receipt requested. Each such notice, request, demand or other communication shall be effective (i) if delivered by hand or by overnight courier service, when delivered at the address specified in this Section 11; (ii) if given by electronic mail, facsimile or teletype, when such electronic mail, facsimile or teletype is transmitted to the electronic mail address or facsimile or teletype number specified in this Section 11 and confirmation is received if during normal business hours on a business day, and otherwise, on the next business day; and (iii) if given by certified or registered mail, three (3) days after the mailing thereof. Notices shall be addressed to the parties as follows (or at such other address, email address or fax number as either party may from time to time specify in writing by giving notice as provided herein):

11

If to the Company: Accuray Incorporated
 1310 Chesapeake Terrace
 Sunnyvale, California 94089
 Attn: General Counsel
 Fax No. (408) 789-4205

If to Executive: Robert Ragusa
 Address: most recent on file with the Company
 Email: most recent on file with the Company

12. Indemnification. As soon as reasonably practicable after the due execution of this Agreement by each of the parties hereto, the Company and Executive will enter into the Company's standard form of indemnification agreement utilized by the Company for its directors and executive officers.

13. Dispute Resolution. The parties agree that all disputes, claims or controversies between them and between Executive and any of the Company's affiliated entities and the successor of all such entities, including any dispute, claim or controversy arising from or otherwise in connection with this Agreement and/or Executive's employment with the Company, will be resolved as follows:

(a) Prior to initiating any other proceeding, the complaining party will provide the other party with a written statement of the claim identifying any supporting witnesses or documents and the requested relief. The responding party shall within forty-five (45) days furnish a statement of the relief, if any, that it is willing to provide, and identify supporting witnesses or documents.

(b) If the matter is not resolved by the exchange of statements of claim and statements of response as provided herein, the parties shall submit the dispute to non-binding mediation, the cost of the mediator to be paid by the Company, before a mediator and/or service to be jointly selected by the parties. Each party will bear his/her or its own attorney's fees and witness fees.

(c) If the parties cannot agree on a mediator and/or if the matter is not otherwise resolved by mediation, any controversy or claim between Executive and the Company and any of its current or former directors, officers and employees, including any arising out of or relating to this Agreement or breach thereof, shall be settled by final and binding arbitration in the county in which Executive last worked, or elsewhere as mutually agreed by the parties, by a single arbitrator pursuant to the Employment Dispute Rules of Judicial Arbitration and Mediation Services, Inc. ("JAMS"), unless the parties to the dispute agree to another arbitration service or independent arbitrator. The parties may conduct discovery to the extent permitted in a court of law; the arbitrator will render an award together with a written opinion indicating the bases for such opinion; and the arbitrator will have full authority to award all remedies that would be available in court. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Each party shall bear its own attorney's fees and costs, unless the claim is based on a statute that provides otherwise. The Company will pay the arbitrator's fees and any administrative charges of the arbitration service, except that if Executive initiates the claim, he will pay a portion of the administrative charges equal to the amount he would have paid to initiate the claim in a court of general jurisdiction.

12

(d) EXECUTIVE AND THE COMPANY AGREE THAT THIS ARBITRATION PROCEDURE WILL BE THE EXCLUSIVE MEANS OF REDRESS FOR ANY DISPUTES RELATING TO OR ARISING FROM EXECUTIVE'S EMPLOYMENT WITH THE COMPANY OR TERMINATION THEREFROM, INCLUDING DISPUTES OVER UNPAID WAGES, BREACH OF CONTRACT OR TORT, VIOLATION OF PUBLIC POLICY, RIGHTS PROVIDED BY FEDERAL, STATE OR LOCAL STATUTES, REGULATIONS, ORDINANCES, AND COMMON LAW, LAWS THAT PROHIBIT DISCRIMINATION BASED ON ANY PROTECTED CLASSIFICATION, AND ANY OTHER STATUTES OR LAWS RELATING TO AN EXECUTIVE'S RELATIONSHIP WITH THE COMPANY. THE FOREGOING NOTWITHSTANDING, CLAIMS FOR WORKERS' COMPENSATION BENEFITS OR UNEMPLOYMENT INSURANCE, OR ANY OTHER CLAIMS WHERE MANDATORY ARBITRATION IS PROHIBITED BY LAW, ARE NOT COVERED BY THIS ARBITRATION PROVISION. THE PARTIES EXPRESSLY WAIVE THE RIGHT TO A JURY TRIAL, AND AGREE THAT THE ARBITRATOR'S AWARD SHALL BE FINAL AND BINDING ON BOTH PARTIES. THIS ARBITRATION PROVISION IS TO BE CONSTRUED AS BROADLY AS IS PERMISSIBLE UNDER APPLICABLE LAW.

14. Representations. Each person executing this Agreement hereby represents and warrants on behalf of himself and of the entity/individual on whose behalf he is executing the Agreement that he is authorized to represent and bind the entity/individual on whose behalf he is executing the Agreement. Executive specifically represents and warrants to the Company that he reasonably believes (a) he is not under any contractual or other obligations that would prevent, limit or impair Executive's performance of his/her obligations under this Agreement and (b) that entering into this Agreement will not result in a breach of any other agreement to which he is a party. Executive acknowledges that Executive has been given the opportunity to consult with legal counsel and seek such advice and consultation as Executive deems appropriate or necessary.

15. Amendments and Waivers. No provisions of this Agreement may be modified, waived, or discharged except by a written document signed by Executive and a duly authorized Company officer. Thus, for example, promotions, commendations, and/or bonuses shall not, by themselves, modify, amend, or extend this Agreement. A waiver of any conditions or provisions of this Agreement in a given instance shall not be deemed a waiver of such conditions or provisions at any other time.

16. Taxes.

(a) Withholdings. The Company may withhold from any compensation and benefits payable under this Agreement all federal, state, city and other taxes or amounts as shall be determined by the Company to be required to be withheld pursuant to applicable laws, or governmental regulations or rulings. Executive shall be solely responsible for the satisfaction of any taxes (including employment taxes imposed on employees and penalty taxes on nonqualified deferred compensation).

(b) Net Proceeds Maximization. Notwithstanding any provision of this Agreement to the contrary, if all or any portion of the payments or benefits received or realized by Executive pursuant to this Agreement either alone or together with other payments or benefits that Executive receives or realizes or is then entitled to receive or realize from the Company or any of its affiliates would constitute an "excess parachute payment" within the meaning of section 280G of the Code and/or any corresponding and applicable state law provision, the payments or benefits provided to Executive under this Agreement will be reduced by reducing the amount of payments or benefits payable to Executive to the extent necessary so that no portion of Executive's payments or benefits will be subject to the excise

13

tax imposed by section 4999 of the Code and any corresponding and/or applicable state law provision. Notwithstanding the foregoing, a reduction will be made under the previous sentence only if, by reason of that reduction, Executive's net after tax benefit exceeds the net after tax benefit he would realize if the reduction were not made. For purposes of this paragraph, "net after tax benefit" means the sum of (i) the total amount received or realized by Executive pursuant to this Agreement that would constitute a "parachute payment" within the meaning of section 280G of the Code and any corresponding and applicable state law provision, plus (ii) all other payments or benefits that Executive receives or realizes or is then entitled to receive or realize from the Company and any of its affiliates that would constitute a "parachute payment" within the meaning of Section 280G of the Code and any corresponding and applicable state law provision, less (iii) the amount of federal or state income taxes payable with respect to the payments or benefits described in (i) and (ii) above calculated at the maximum marginal individual income tax rate for each year in which payments or benefits are realized by Executive (based upon the rate in effect for that year as set forth in the Code at the time of the first receipt or realization of the foregoing), less (iv) the amount of excise taxes imposed with respect to the payments or benefits described in (i) and (ii) above by section 4999 of the Code and any corresponding and applicable state law provision. All determinations and calculations made in this paragraph shall be made by an independent accounting firm (the "Accounting Firm") selected by the Company prior to the Change in Control and the Company will bear all costs and expenses incurred by the Accounting Firm in connection with its determination. The Accounting Firm shall be a nationally recognized United States public accounting firm which has not, during the two (2) years preceding the date of its selection, acted in any way on behalf of (x) the Company or any affiliate thereof or (y) Executive. If any payments or benefits are reduced pursuant to this Section 16(b), they shall be reduced in the following order: First all payments and benefits that do not constitute "nonqualified deferred compensation" within the meaning of section 409A of the Code or that are exempt from section 409A of the Code (with the payments or benefits being

reduced in reverse order of when they otherwise would be made or provided); second, all payments or benefits that constitute “nonqualified deferred compensation” within the meaning of section 409A of the Code that are not exempt from section 409A of the Code that were granted to Executive in the 12-month period of time preceding the applicable Change in Control, in the order such benefits were granted to Executive; and third, all remaining payments and benefits shall be reduced pro-rata. Notwithstanding the foregoing, if (i) reducing payments or benefits in the order described above would result in the imposition on Executive of an additional tax under section 409A of the Code (or similar state or local law), (ii) Executive so notifies the Company before such reductions and payments are made and benefits provided, and (iii) reducing the payments or benefits in another order would not result in the imposition on Executive of an additional tax under section 409A of the Code (or similar state or local law), payments and benefits shall instead be reduced in such other order.

(c) Section 409A Compliance.

(i) With respect to any reimbursement of expenses or any provision of in-kind benefits to Executive specified under this Agreement, such reimbursement of expenses or provision of in-kind benefits shall be subject to the following conditions: (1) the expenses eligible for reimbursement or the amount of in-kind benefits provided in one taxable year shall not affect the expenses eligible for reimbursement or the amount of in-kind benefits provided in any other taxable year, except for any medical reimbursement arrangements providing for the reimbursement of expenses referred to in section 105(b) of the Code; (2) the reimbursement of an eligible expense shall be made no later than the end of the year following the year in which such expense was incurred; and (3) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit.

14

(ii) A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits considered “deferred compensation” (as defined under Treasury Regulation section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation sections 1.409A-1(b)(3) through (b)(12)) upon or following a termination of employment unless such termination is also a “separation from service” and, for purposes of any such provision of this Agreement, references to a “termination,” “termination of employment” or like terms shall mean “separation from service.” For purposes of section 409A of the Code, the date as of which Company and Executive reasonably anticipate that no further services would be performed by Executive for Company shall be construed as the date that Executive first incurs a “separation from service” as defined under section 409A of the Code.

(iii) Notwithstanding anything in this Agreement to the contrary, if a payment obligation arises on account of Executive’s separation from service while Executive is a “specified employee” as described in section 409A of the Code and the Treasury Regulations thereunder and as determined by Company in accordance with its procedures, by which determination Executive is bound, any payment of “deferred compensation” (as defined under Treasury Regulation section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation sections 1.409A-1(b)(3) through (b)(12)) shall be made on the first business day of the seventh month following the date of Executive’s separation from service, or, if earlier, within fifteen (15) days after the appointment of the personal representative or executor of Executive’s estate following Executive’s death together with interest on them for the period of delay at a rate equal to the average prime interest rate published in the Wall Street Journal on any day chosen by the Company during that period. Thereafter, Executive shall receive any remaining payments as if there had not been an earlier delay.

(iv) Notwithstanding anything to the contrary contained in this Agreement, the Executive shall have no legally-enforceable right to, and the Company shall have no obligation to make, any payment or provide any benefit to Executive if having such a right or obligation would result in the imposition of additional taxes under section 409A of the Code, and (ii) any provision that would cause any payment or benefit to fail to satisfy section 409A will have no force and effect until amended to comply therewith (which amendment may be retroactive to the extent permitted by section 409A and may be accomplished by the Company without the Executive’s consent). If any payment is not made or any benefit is not provided under the terms of this Section 16(c)(iv), it is the Company’s present intention to make a similar payment or provide a similar benefit to the Executive in a manner that will not result in the imposition of additional taxes under section 409A of the Code, to the extent feasible. Each payment made under this Agreement is intended to be a separate payment for the purposes of section 409A of the Code.

(v) The Company does not guarantee any particular tax effect to Executive under this Agreement. Company shall not be liable to Executive for any payment made under this Agreement that is determined to result in an additional tax, penalty or interest under section 409A of the Code, nor for reporting in good faith any payment made under this Agreement as an amount includible in gross income under section 409A of the Code. The parties intend that this Agreement shall be interpreted and administered in accordance with section 409A of the Code to the extent Section 409A of the Code is applicable.

17. U.S. Citizenship and Immigration Services; Confidentiality and Inventions Agreement. Executive agrees to timely file all documents required by the Department of Homeland Security to verify his/her identity and lawful employment in the United States. In addition, as a

15

condition to Executive’s employment with the Company, Executive is required to complete, sign, return, and abide by the Company’s Employee Confidentiality and Inventions Agreement.

18. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute the same instrument.

19. Resignation from Positions. Upon Executive’s cessation of employment with the Company for any reason, Executive agrees that Executive shall be deemed to have resigned as an officer and as a director (if applicable) from the Company and every subsidiary of the Company on which Executive is then serving as an officer or director, and from any other entity or company on which Executive is then serving as a director or officer at the request of the Company, in each case effective as of the date of Executive’s cessation of employment. In the event of Executive’s cessation of employment, Executive agrees to execute a general resignation resigning from all positions then held by Executive on every subsidiary of the Company and other entity or company on which Executive is then serving as a director or officer at the request of the Company. Executive hereby grants the corporate secretary of the Company an irrevocable power of attorney to execute on behalf of Executive all such resignations, documents and instruments and to take all such other actions as reasonably necessary to carry out the intention of this Section 19.

20. **Executive's Commencement of Employment.** It is a condition precedent to the effectiveness of this Agreement that Executive commences working full-time for the Company at the Company's principal executive offices on the Effective Date. If Executive does not commence such full-time employment on the Effective Date, then this Agreement shall be null and void and the Company shall have no obligations hereunder or otherwise to Executive.

21. **Executive's Acknowledgement.**

EXECUTIVE ACKNOWLEDGES THAT ALL UNDERSTANDINGS AND AGREEMENTS BETWEEN THE COMPANY AND HIM RELATING TO THE SUBJECTS COVERED IN THIS AGREEMENT ARE CONTAINED IN IT (INCLUDING THE AGREEMENTS SET FORTH AS EXHIBITS) AND THAT HE HAS ENTERED INTO THIS AGREEMENT VOLUNTARILY AND NOT IN RELIANCE ON ANY PROMISES OR REPRESENTATIONS BY THE COMPANY OTHER THAN THOSE CONTAINED IN THIS AGREEMENT.

EXECUTIVE FURTHER ACKNOWLEDGES THAT HE HAS CAREFULLY READ THIS AGREEMENT (INCLUDING THE AGREEMENTS SET FORTH AS EXHIBITS), THAT HE UNDERSTANDS ALL OF SUCH AGREEMENTS, AND THAT HE HAS BEEN GIVEN THE OPPORTUNITY TO DISCUSS SUCH AGREEMENTS WITH HIS/HER PRIVATE LEGAL COUNSEL AND HAS AVAILED HIMSELF OF THAT OPPORTUNITY TO THE EXTENT HE WISHED TO DO SO. EXECUTIVE UNDERSTANDS THAT THE DISPUTE RESOLUTION PROVISIONS OF THIS AGREEMENT GIVE UP THE RIGHT TO A JURY TRIAL ON MATTERS COVERED BY THEM.

16

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates written below.

ACCURAY INCORPORATED,
a Delaware Corporation

By: /s/ Joshua H. Levine
Name: Joshua H. Levine
Title: President & Chief Executive Officer

By: /s/ Darren J. Milliken
Name: Darren J. Milliken
Title: Senior Vice President, General Counsel

Accepted and Agreed,

Robert Ragusa: /s/ Robert Ragusa

Signed on: 12/31/2012

17

Exhibit A

FORM OF SEPARATION AGREEMENT AND GENERAL RELEASE

[See attached]

SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release (this "Agreement") is hereby entered into by and between _____, an individual ("Executive"), and Accuray Incorporated, a Delaware corporation, on behalf of itself and all of its subsidiaries (collectively, the "Company").

Recitals

A. Executive has been employed by the Company pursuant to an employment agreement by and between the Company and Executive effective as of October _____, 2012 (the "Employment Agreement"), and currently is serving as **[specify position held at time of termination]**;

B. Executive's employment with the Company and any of its parents, direct or indirect subsidiaries, affiliates, divisions, or related entities (collectively referred to herein as the "Company and its Related Entities") will be ended on the terms and conditions set forth in this Agreement.

Agreement

In consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Effective Date.** Except as otherwise provided herein, this Agreement shall be effective on the eighth day after it has been executed by both of the parties (the "Effective Date").

2. **End of Employment and Service as a Director.** Executive's employment with the Company and its Related Entities has ended or will end effective as of _____ Pacific Time, on _____ (the "Termination Date"). If Executive is a member of the Board of Directors of the Company and/or its Related Entities (the "Board") Executive hereby voluntarily resigns from the Board, effective _____.

3. **Continuation of Benefits After the Termination Date.** Except as expressly provided in this Agreement or in the plan documents governing the Company's employee benefit plans, after the Termination Date, Executive will no longer be eligible for, receive, accrue, or participate in any other benefits or benefit plans provided by the Company and its Related Entities, including, without limitation, medical, dental and life insurance benefits, and the Company's 401(k) retirement plan; provided, however, that nothing in this Agreement shall waive Executive's right to any vested benefits, including vested amounts in the Company's 401(k) retirement plan, which amounts shall be handled as provided in the plan.

4. **Payments Upon Termination.** Executive will be entitled to receive payment of the following: (i) all earned but unpaid compensation (including accrued unpaid vacation) through the effective date of termination, payable on or before the termination date; and

1

(ii) reimbursement, made in accordance with Section 4(e) of the Employment Agreement, of any monies advanced or incurred by Executive in connection with his/her employment for reasonable and necessary Company-related expenses incurred on or before the Termination Date. The provisions of this Agreement shall not waive or terminate any rights to compensation or vested benefits under the Company's benefits plans or as required by law, or to indemnification Executive may have under the Company's Certificate of Incorporation, Bylaws or separate indemnification agreement, as applicable.

5. **Severance Benefits or Enhanced Severance Benefits.** In return for Executive's promises in this Agreement, the Company will provide Executive with the Severance Benefits or Enhanced Severance Benefits as defined in Sections 5(a) and 5(e) of the Employment Agreement and as applicable based on the nature of the termination, subject to the terms and conditions set forth in the Employment Agreement, including, but not limited to, Section 16 thereof. The Severance Benefits or Enhanced Severance Benefits will be paid as specified in Section 5(a) or Section 5(e) of the Employment Agreement, as applicable and shall be subject to required withholdings and authorized deductions and to Section 21 below. For purposes of this Agreement, the term "Severance Period" means twelve (12) months, regardless of whether Executive receives the Severance Benefits or the Enhanced Severance Benefits.

6. **Effect of Revocation or Subsequent Employment.**

(a) If Executive properly revokes this Agreement in accordance with Section 13 below, Executive shall not be entitled to receive the payments and benefits under Section 5, above, except that Executive's rights under COBRA will continue.

(b) The Company's obligation to reimburse premiums for insurance coverage under COBRA or otherwise will be extinguished as of the date Executive's coverage begins under the group health plan of any new employer. If Executive violates the restrictions in Section 17, below, the Company's obligation to pay premiums for insurance under COBRA or otherwise will be immediately extinguished, and the other remedies specified in Section 17, below, shall apply.

7. **Acknowledgement of Total Compensation and Indebtedness.** Executive acknowledges and agrees that the cash payments under Sections 4 and 5 of this Agreement extinguish any and all obligations for monies, or other compensation or benefits that Executive claims or could claim to have earned or claims or could claim is owed to him as a result of his/her employment by the Company and its Related Entities through the Termination Date, under the Employment Agreement or otherwise. Notwithstanding the foregoing, the parties acknowledge and agree that the provisions of this Section 7 shall not terminate any rights Executive has under Section 3 or to other payments Executive may have, and to any indemnification Executive may have under the Company's Bylaws or separate indemnification agreement, as applicable.

8. **Status of Related Agreements and Future Employment.**

(a) Agreements Between Executive and the Company. [Agreements to be scheduled at time].

2

(b) Employment Agreement. The parties agree that the Employment Agreement shall be terminated as of the Termination Date. Notwithstanding the termination of the Employment Agreement, the parties hereto acknowledge that certain rights and obligations set forth in the Employment Agreement extend beyond the Termination Date. In the event that any provision of this Agreement conflicts with Section 6 of the Employment Agreement, the terms and provisions of the section(s) providing the greatest protection to the Company and its Related Entities shall control.

9. **Release by Executive.**

(a) Except for any obligations or covenants of the Company pursuant to this Agreement and as otherwise expressly provided in this Agreement, Executive, for himself and his/her heirs, executors, administrators, assigns, successors and agents (collectively, the "Executive's Affiliates") hereby fully and without limitation releases and forever discharges the Company and its Related Entities, and each of their respective agents, representatives, shareholders, owners, officers, directors, employees, consultants, attorneys, auditors, accountants, investigators, affiliates, successors and assigns (collectively, the "Company Releasees"), both individually and collectively, from any and all waivable rights, claims, demands, liabilities, actions, causes of action, damages, losses, costs, expenses and compensation, of whatever nature whatsoever, known or unknown, fixed or contingent, which Executive or any of Executive's Affiliates has or may have or may claim to have against the Company Releasees by reason of any matter, cause, or thing whatsoever, from the beginning of time to the Effective Date ("Claims"), arising out of, based upon, or relating to his/her employment or the termination of his/her employment with the Company and its Related Entities and/or his/her service as an officer of any of the Company Releasees, any agreement or compensation arrangement between Executive and any of the Company Releasees, to the maximum extent permitted by law.

(b) Executive specifically and expressly releases any Claims arising out of or based on: the California Fair Employment and Housing Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the National Labor Relations Act and the Equal Pay Act, as the same may be amended from time to time; the California common law on fraud, misrepresentation, negligence, defamation, infliction of emotional distress or other tort, breach of contract or covenant, violation of public policy or wrongful termination; state or federal wage and hour laws, and other provisions of the California Labor Code, to the extent these may be released herein as a matter of law; or any other state or federal law, rule, or regulation dealing with the employment relationship, except those claims which may not be released herein as a matter of law.

(c) Nothing contained in this Section 9 or any other provision of this Agreement shall release or waive any right that Executive has to indemnification and/or reimbursement of expenses by the Company and its Related Entities with respect to which Executive may be eligible as provided in California Labor Code section 2802, the Company's and its Related Entities' Certificates of Incorporation, Bylaws and any applicable directors and officers, errors & omissions, umbrella or general liability insurance policies, any indemnification agreements, including the Employment Agreement; or any other applicable source, nor prevent Executive from cooperating in an investigation of the Company by the Equal Employment Opportunity Commission ("EEOC").

3

10. Waiver of Civil Code Section 1542.

(a) Executive understands and agrees that the release provided herein extends to all Claims released above whether known or unknown, suspected or unsuspected, which may be released as a matter of law. Executive expressly waives and relinquishes any and all rights he may have under California Civil Code section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS/HER OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS/HER OR HER SETTLEMENT WITH THE DEBTOR."

(b) Executive expressly waives and releases any rights and benefits which he has or may have under any similar law or rule of any other jurisdiction. It is the intention of each party through this Agreement to fully, finally and forever settle and release the Claims as set forth above. In furtherance of such intention, the release herein given shall be and remain in effect as a full and complete release of such matters notwithstanding the discovery of any additional Claims or facts relating thereto.

11. [If Executive is age 40 or over on Termination Date] Release of Federal Age Discrimination Claims by Executive. Executive hereby knowingly and voluntarily waives and releases all rights and claims, known or unknown, arising under the Age Discrimination In Employment Act of 1967, as amended, which he might otherwise have had against the Company or any of the Company Releasees regarding any actions which occurred prior to the date that Executive signed this Agreement, except that Executive is not prevented from cooperating in an investigation by the EEOC or from filing an EEOC charge other than for personal relief.

12. Release by Company and its Related Entities. The Company and its Related Entities hereby release and forever discharge Executive, from any and all waivable actions, causes of action, covenants, contracts, claims and demands of whatever character, nature and kind, whether known or unknown, which the Company and its Related Entities ever had, now have, or any of them hereafter can, shall or may have by reason of Executive's employment and/or his/her service as a director and/or officer of the Company and/or its Related Entities; provided, however, that this general release shall not apply, or be deemed or construed to apply, to (a) any of Executive's continuing obligations pursuant to this Agreement or the Employment Agreement, (b) criminal conduct or acts or omissions constituting willful misconduct or gross negligence by Executive during his/her employment with the Company, or (c) recoupment of all or a portion of any previously awarded bonus or equity award pursuant to the Company's Recoupment (Clawback) Policy that was in effect when the bonus was paid or the equity award vested or was exercised by Executive, whichever was later.

13. [If Executive is age 40 or over on Termination Date] Review and Revocation Rights. Executive hereby is advised of the following:

(a) Executive has the right to consult with an attorney before signing this Agreement and is encouraged by the Company to do so;

4

(b) Executive has twenty-one (21) days from his/her receipt of this Agreement to consider it; and

(c) Executive has seven (7) days after signing this Agreement to revoke this Agreement, and this Agreement will not be effective until that revocation period has expired without revocation. Executive agrees that in order to exercise his/her right to revoke this Agreement within such seven (7) day period, he must do so in a signed writing delivered to the Company's Board before the close of business on the seventh calendar day after he signs this Agreement.

14. Confidentiality of Agreement. After the execution of this Agreement by Executive, neither Executive, his/her attorney, nor any person acting by, through, under or in concert with them, shall disclose any of the terms of or amount paid under this Agreement (other than to state that the Company has filed this Agreement and/or agreements related thereto as public documents) or the negotiation thereof to any individual or entity; provided, however, that the foregoing shall not prevent such disclosures by Executive to his/her attorney, tax advisors and/or immediate family members, or as may be required by law.

15. No Filings. Executive represents that he has not filed any lawsuits, claims, charges or complaints, which are pending as of the date hereof, against the Company Releasees with any local, state or federal agency or court from the beginning of time to the date of execution of this Agreement, and that Executive is not aware of any facts that would support any Claims or any compliance-related or code of ethics violations of any kind whatsoever against the Company Releasees, including without limitation any claims for any work-related injuries. If Executive hereafter commences, joins in, or in any manner seeks relief through any suit arising out of, based upon, or relating to any of the Claims released in this Agreement, or in any manner asserts against the Company Releasees any of the Claims released in this Agreement, then Executive agrees to pay to the Company Releasees against whom such Claim(s) is asserted, in addition to any other damages caused thereby, all attorneys' fees incurred by the Company Releasees in defending or otherwise responding to the

suit or Claim; provided, however, that this provision shall not obligate Executive to pay the Company Releasees' attorneys' fees in any action challenging the release of claims under the Older Workers Benefit Protection Act or the ADEA, unless otherwise allowed by law. If any governmental agency or court ever assumes jurisdiction over any such lawsuit, claim, charge or complaint and/or purports to bring any legal proceeding, in whole or in part, on behalf of Executive based upon events occurring prior to the execution of this Agreement, Executive will request such agency or court to withdraw from and/or to dismiss the lawsuit, claim, charge or complaint with prejudice.

16. Confidential and Proprietary Information. Executive acknowledges that certain information, observations and data obtained by him during the course of or related to his/her employment with the Company and its Related Entities (including, without limitation, projection programs, business plans, business matrix programs (*i.e.*, measurement of business), strategic financial projections, certain financial information, shareholder information, technology and product design information, marketing plans or proposals, personnel information, customer lists and other customer information) are the sole property of the Company and its Related Entities and constitute Proprietary Information as defined in Section 6 of the Employment Agreement. Executive represents and warrants that he has returned all files, customer lists, financial information and other property of the Company and its Related Entities that were in

5

Executive's possession or control without retaining copies thereof. Executive further represents and warrants that he does not have in his/her possession or control any files, customer lists, financial information or other property of the Company and its Related Entities. In addition to his/her promises in Section 6 of the Employment Agreement, Executive agrees that he will not disclose to any person or use any such information, observations or data without the written consent of the Board. If Executive is served with a deposition subpoena or other legal process calling for the disclosure of such information, or if he is contacted by any third person requesting such information, he will notify the Board as soon as is reasonably practicable after receiving notice and will reasonably cooperate with the Company and its Related Entities in minimizing the disclosure thereof; provided, that nothing in this Agreement will affect Executive's obligations to testify truthfully in response to any subpoena or other legally required discovery proceeding.

17. Prohibited Activities.

(a) Non-Solicitation of Customers and Other Business Partners. Executive recognizes that by virtue of his/her employment with the Company, he will be introduced to and involved in the solicitation and servicing of existing customers and other business partners of the Company and new customers and business partners obtained by the Company during his/her employment. Executive understands and agrees that all efforts expended in soliciting and servicing such customers and business partners shall be for the benefit of the Company. Executive further agrees that during his/her employment with the Company he will not engage in any conduct which could in any way jeopardize or disturb any of the customer and business partner relationships of the Company. In addition, Executive agrees that, for a period beginning on the Effective Date and ending twelve (12) months after termination of Executive's employment with the Company, regardless of the reason for such termination, Executive shall not use any Proprietary Information to, directly or indirectly, solicit, direct, interfere with, or entice away from the Company any existing customer, licensee, licensor, vendor, contractor or distributor of the Company or for the customer or other business partner to expand its business with a competitor, without the prior written consent of the Board.

(b) Non-Solicitation of Employees. Executive recognizes the substantial expenditure of time and effort which the Company devotes to the recruitment, hiring, orientation, training and retention of its employees. Accordingly, Executive agrees that, for a period beginning on the Effective Date and ending twelve (12) months after termination of Executive's employment with the Company, regardless of the reason for such termination, Executive shall not use any Proprietary Information, directly or indirectly, for himself or on behalf of any other person or entity, solicit, offer employment to, hire or otherwise retain the services of any employee of the Company in a position classified as exempt from overtime pay requirements. For purposes of the foregoing, "employee of the Company" shall include any person who was an employee of the Company at any time within six (6) months prior to the prohibited conduct.

(c) Scope of Restrictions. Executive agrees that the restrictions in Sections 17 (a) and (b), above, are reasonable and necessary to protect the Company's trade secrets and that they do not foreclose Executive from working in the medical device industry generally. To the extent that any of the provisions in this Section 17 are held to be overly broad or otherwise unenforceable at the time enforcement is sought, Executive agrees that the provision shall be reformed and enforced to the greatest extent permissible by law. Executive further agrees that if

6

any portion of this Section 17 is held to be unenforceable, that the remaining provisions of it shall be enforced as written.

18. Remedies. Executive acknowledges that any misuse of Proprietary Information belonging to the Company and its Related Entities, or any violation of Section 6 of the Employment Agreement, and any violation of Sections 14, 16 and 17 of this Agreement, will result in irreparable harm to the Company and its Related Entities, and therefore, the Company and its Related Entities shall, in addition to any other remedies, be entitled to immediate injunctive relief. To the extent there is any conflict between Section 6 of the Employment Agreement and this Section 18, the provision providing the greatest protection to the Company and its Related Entities shall control. In addition, in the event of a breach of any provision of this Agreement by Executive, including Sections 14, 16 and 17, Executive shall forfeit, and the Company and its Related Entities may withhold payment of any unpaid portion of, the Severance Benefits or Enhanced Severance Benefits provided under Section 5, above.

19. Cooperation Clause.

(a) To facilitate the orderly conduct of the Company and its Related Entities' businesses, for the Severance Period, Executive agrees to cooperate, at no charge, with the Company and its Related Entities' reasonable requests for information or assistance related to the time of his/her employment.

(b) For the Severance Period, Executive agrees to cooperate, at no charge, with the Company's and its Related Entities' and its or their counsel's reasonable requests for information or assistance related to (i) any investigations (including internal investigations) and audits of the Company's and its Related Entities' management's current and past conduct and business and accounting practices and (ii) the Company's and its Related Entities' defense of, or other participation in, any administrative, judicial, or other proceeding arising from any charge, complaint or other action which has

Sunnyvale, California 94089
Attn: Board of Directors
c/o Corporate Secretary
Fax No. (408) 789-4205

If to Executive: Address: most recent on file with the Company
Email: most recent on file with the Company

Such addresses may be changed, from time to time, by means of a notice given in the manner provided above. Notice will conclusively be deemed to have been given when personally delivered (including, but not limited to, by messenger or courier); or if given by mail, on the third business day after being sent by first class, United States certified or registered mail; or if given by Federal Express or other similar overnight service, on the date of delivery; or if given by electronic mail, teletype or facsimile machine during normal business hours on a business day, when confirmation of transmission is indicated by the sender's machine; or if given by electronic mail, teletype or facsimile machine at any time other than during normal business hours on a business day, the first business day following when confirmation of transmission is indicated by the sender's machine. Unless otherwise agreed, notices, requests, demands and other communications delivered to legal counsel of any party hereto, whether or not such counsel shall consist of in-house or outside counsel, shall not constitute duly given notice to any party hereto.

34. Miscellaneous Provisions.

(a) The parties represent that they have read this Agreement and fully understand all of its terms; that they have conferred with their attorneys, or have knowingly and voluntarily chosen not to confer with their attorneys about this Agreement; that they have executed this Agreement without coercion or duress of any kind; and that they understand any rights that they have or may have, and they are signing this Agreement with full knowledge of any such rights.

(b) Both parties have participated in the drafting of this Agreement with the assistance of counsel to the extent they desired. The language in all parts of this Agreement must be in all cases construed simply according to its fair meaning and not strictly for or against any party. Whenever the context requires, all words used in the singular must be construed to have been used in the plural, and vice versa, and each gender must include any other gender. The captions of the Sections of this Agreement are for convenience only and must not affect the construction or interpretation of any of the provision herein.

(c) Each provision of this Agreement to be performed by a party hereto is both a covenant and condition, and is a material consideration for the other party's performance hereunder, and any breach thereof by the party will be a material default hereunder. All rights, remedies, undertakings, obligations, options, covenants, conditions and agreements contained in this Agreement are cumulative and no one of them is exclusive of any other. Time is of the essence in the performance of this Agreement.

(d) Each party acknowledges that no representation, statement or promise made by any other party, or by the agent or attorney of any other party, except for those in this Agreement, has been relied on by him or it in entering into this Agreement.

(e) Unless expressly set forth otherwise, all references herein to a "day" are deemed to be a reference to a calendar day. All references to "business day" mean any day of the year other than a Saturday, Sunday or a public or bank holiday in Orange County, California. Unless expressly stated otherwise, cross-references herein refer to provisions within this Agreement and are not references to any other document.

(f) Each party to this Agreement will cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

EACH OF THE PARTIES ACKNOWLEDGES THAT HE/IT HAS READ THIS AGREEMENT, UNDERSTANDS IT AND IS VOLUNTARILY ENTERING INTO IT, AND THAT IT INCLUDES A WAIVER OF THE RIGHT TO A TRIAL BY JURY, AND, WITH RESPECT TO EXECUTIVE, HE UNDERSTANDS THAT THIS AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the dates written below.

EXECUTIVE:

Date: _____

COMPANY:

Accuray Incorporated

By: _____

Name: _____

Title: _____

Date: _____

Exhibit B

EQUITY AWARD SUMMARY

ACCURAY INCORPORATED

Personnel Grant Summary

As of 01/01/2013

Robert Ragusa

AWARDS

<u>Grant Number</u>	<u>Grant Date</u>	<u>Plan</u>	<u>Type</u>	<u>Shares</u>	<u>Price</u>
M0006710	10/31/2012	2007	PSU	10,700.00	\$ 0.00000
00006628	10/31/2012	2007	RSU	17,100.00	\$ 0.00000
P0004138	09/30/2011	2007	PSU	20,000.00	\$ 0.00000
P0004110	09/30/2011	2007	PSU	5,625.00	\$ 0.00000
00004066	09/30/2011	2007	RSU	3,750.00	\$ 0.00000
P0006784	10/31/2012	2007	PSU	36,000.00	\$ 0.00000
				<u>93,175.00</u>	

STOCK OPTIONS

<u>Grant Number</u>	<u>Grant Date</u>	<u>Plan</u>	<u>Type</u>	<u>Shares</u>	<u>Price</u>
00006618	10/31/2012	2007	NQ	15,000.00	\$ 6.96000
00004039	09/30/2011	2007	NQ	14,000.00	\$ 4.01000
00003447	06/30/2011	2007	NQ	25,000.00	\$ 8.01000
00003423	03/31/2011	2007	NQ	25,000.00	\$ 9.02000
00003392	11/30/2010	2007	NQ	25,000.00	\$ 5.98000
00002962	05/31/2010	2007	NQ	100,000.00	\$ 6.10000
00004030	09/30/2011	2007	NQ	25,000.00	\$ 4.01000
				<u>229,000.00</u>	

Certifications

I, Joshua H. Levine, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Accuray Incorporated, a Delaware corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects, the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 9, 2013

/s/ Joshua H. Levine

Joshua H. Levine

President and Chief Executive Officer

Certifications

I, Derek Bertocci, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Accuray Incorporated, a Delaware corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects, the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 9, 2013

/s/ Derek Bertocci

Derek Bertocci

Senior Vice President and Chief Financial Officer

Certification of Chief Executive Officer and Chief Financial Officer

Pursuant to 18 U.S.C. § 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officers of Accuray Incorporated, a Delaware corporation (the “Company”) hereby certify, to such officers’ knowledge, that:

- (i) the accompanying Quarterly Report on Form 10-Q of the Company for the three months ended March 31, 2013 (the “Report”) fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 9, 2013

/s/ Joshua H. Levine

Joshua H. Levine

President and Chief Executive Officer

/s/ Derek Bertocci

Derek Bertocci

Senior Vice President and Chief Financial Officer
