UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2021

OR

☐ **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 001-40690

RxSight, Inc.

(Exact name of Registrant as specified in its Charter)

Delaware	**94-3268801**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
100 Columbia Aliso Viejo, California	**92656**
(Address of principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code: (949) 521-7830

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, $0.001 par value per share	RXST	The Nasdaq Stock Market LLC

Securities registered pursuant to Section 12(g) of the Act: **None**

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. YES ☐ NO ☒

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. YES ☒ NO ☐

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

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

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

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

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

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

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES ☐ NO ☒

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the Registrant, based on the closing price of the shares of common stock on the Nasdaq Global Market on December 31, 2021 was approximately $236 million. The Registrant has elected to use December 31, 2021, which was the last business day of the Registrant's most recently completed fiscal year, as the calculation date because on June 30, 2021 (the last business day of the Registrant's mostly recently completed second fiscal quarter), the Registrant was a privately-held company.

The number of shares of Registrant's Common Stock outstanding as of February 15, 2022 was 27,417,993.

DOCUMENTS INCORPORATED BY REFERENCE

The Registrant intends to file a definitive proxy statement pursuant to Regulation 14A within 120 days of the end of the fiscal year ended December 31, 2021. Portions of such definitive proxy statement are incorporated by reference into Part III of this Annual Report on Form 10-K.

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

The following discussion and analysis should be read together with our consolidated financial statements and the notes to those statements included elsewhere in this Annual Report on Form 10-K. This Annual Report on Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, that are based on our management's beliefs and assumptions and on information currently available to our management. In this Annual Report on Form 10-K, "we," "us" and "our" refer to RxSight, Inc.

The forward-looking statements are contained principally in the section entitled "Risk Factors" in Part I, Item 1A of this Annual Report on Form 10-K and "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Part II, Item 7 of this Annual Report on Form 10-K. Forward-looking statements include, but are not limited to, statements concerning the following:

- our plans to conduct further clinical trials and any expectations related to such trials;
- our plans and expected timeline related to our products, or developing new products, to address additional indications or otherwise;
- the expected use of our products by doctors;
- our ability to obtain, maintain and expand regulatory clearances for our products and any new products we create;
- the expected growth of our business and our organization;
- our intentions regarding investment in our business as we pursue growth;
- our expected uses of our existing resources;
- the expectations regarding government and third-party payer coverage and reimbursement;
- our ability to retain and recruit key personnel, including the continued development of a sales and marketing infrastructure;
- our ability to obtain an adequate supply of materials and components for our products from our third-party suppliers, including single- and sole-source suppliers;
- our ability to manufacture sufficient quantities of our products with sufficient quality;
- our ability to obtain, maintain and enforce intellectual property protection for our products and protect our intellectual property rights;
- our ability to expand our business into new geographic markets;
- our ability to comply with applicable SEC rules and Nasdaq continued listing requirements;
- our ability to comply with existing and future government laws, rules and regulations both in the United States and internationally;
- our expectations regarding allocation of resources toward expenses associated with being a public company;
- our estimates of our expenses, ongoing losses, future revenue, capital requirements and our need for, or ability to obtain, additional financing;
- the sufficiency of our existing capital resources to fund our future operating expenses and capital expenditure requirements;
- our expectations regarding the time during which we will be an emerging growth company under the JOBS Act and a smaller reporting company under the Exchange Act;
- the volatility of the trading price of our common stock;

- our ability to identify and develop new and planned products and/or acquire new products;
- development and projections relating to our competitors or our industry, including anticipated growth rates for the conventional and premium IOL markets;
- the impact of local, regional, national and international economic conditions and events; and
- the impact of the COVID-19 pandemic, including currently known and unknown coronavirus variants, as applied to our business.

Forward-looking statements include statements that are not historical facts and can be identified by terminology such as “may,” “will,” “should,” “could,” “would,” “expects,” “plans,” “intends,” “anticipates,” “believes,” “estimates,” “predicts,” “projects,” “potential,” or “continue,” or the negative of such terms and other same terminology.

Forward-looking statements involve known and unknown risks, uncertainties, and other factors that may cause our actual results, performance, or achievements to be materially different from any future results, performance, or achievements expressed or implied by the forward-looking statements. We discuss these risks in greater detail in Part I, Item 1A, “Risk Factors,” elsewhere in this Annual Report on Form 10-K. Given these uncertainties, you should not place undue reliance on these forward-looking statements. Moreover, we operate in a very competitive and rapidly changing environment. New risks emerge from time to time. It is not possible for us to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. In light of these risks, uncertainties and assumptions, the future events and trends discussed in this Annual Report on Form 10-K may not occur and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements.

The forward-looking statements made in this Annual Report on Form 10-K relate only to events as of the date on which the statements are made. Except as required by law, we assume no obligation to update these forward-looking statements, or to update the reasons actual results could differ materially from those anticipated in these forward-looking statements, even if new information becomes available in the future.

Our discussion and analysis of our financial condition and results of operations is based upon our Consolidated Financial Statements, which have been prepared in accordance with generally accepted accounting principles in the United States, or GAAP. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses. On an ongoing basis, we evaluate our estimates including those related to revenue recognition; valuation of the Company’s common stock, warrants and other equity awards; estimated probability and timing of redemption of equity instruments, the realization of income tax assets and estimates of tax liabilities, and obsolete, excess and slow-moving inventory. We base our estimates on historical experience and on various other assumptions we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities not readily apparent from other sources. Actual results may differ materially from these estimates.

This Annual Report on Form 10-K also contains estimates, projections and other information concerning our industry, our business, and market opportunity, including data regarding the estimated size of the market. Information that is based on estimates, forecasts, projections, market research or similar methodologies is inherently subject to uncertainties and actual events or circumstances may differ materially from events and circumstances reflected in this information. Unless otherwise expressly stated, we obtained this industry, business, market and other data from reports, research surveys, studies and similar data prepared by market research firms and other third parties, industry, medical and general publications, government data and similar sources.

This Annual Report on Form 10-K contains references to trademarks and service marks belonging to other entities. Solely for convenience, trademarks and trade names referred to in this Annual Report on Form 10-K may appear without the ® or TM symbols, but such references are not intended to indicate, in any way, that the applicable licensor will not assert, to the fullest extent under applicable law, its rights to these trademarks and trade names. We do not intend our use or display of other companies’ trade names, trademarks or service marks to imply a relationship with, or endorsement or sponsorship of it by, any other companies.

PART I

Item 1. Business

Overview

We are a commercial-stage medical technology company dedicated to improving the vision of patients following cataract surgery. Our proprietary RxSight Light Adjustable Lens system ("RxSight system"), comprised of our RxSight Light Adjustable Lens ("LAL"), RxSight Light Delivery Device ("LDD") and accessories, is the first and only commercially available intraocular lens ("IOL") technology that enables doctors to customize and optimize visual acuity for patients after cataract surgery. Our LAL is made of proprietary photosensitive material that changes shape in response to specific patterns of ultraviolet ("UV") light generated by our LDD. With the RxSight system, the surgeon performs a standard cataract procedure to implant the LAL, determines refractive error with patient input after healing is complete, and then uses the LDD to modify the LAL with the exact amount of visual correction needed to achieve the patient's desired vision outcomes. Alternative IOL technologies, in contrast, are not adjustable following the cataract procedure and therefore require patients to make pre-operative choices about their visual preferences, which can often result in patient dissatisfaction when visual outcomes fail to meet expectations. We designed our RxSight system to maximize patient and doctor satisfaction through superior visual outcomes. In the pivotal study that formed the basis for our FDA approval, the observed rate of eyes with 20/20 or better uncorrected distance visual acuity for our LAL was 70.1%. This compares favorably to the results of pivotal studies with similar study designs and patient populations that supported FDA approval of Alcon's Acrysof Toric (38.4%), and J&J's Tecnis Toric (43.6%). We began commercializing our solution in the United States in the third quarter of 2019 and are focused on establishing the RxSight system as the standard of care for premium IOL procedures. As of December 31, 2021, we had an installed base of 206 LDDs in ophthalmology practices and since our inception though December 31, 2021, surgeons have performed almost 17,000 surgeries with our RxSight system.

Cataract surgery is the most common surgical procedure in the world, with approximately 29.7 million cataract surgeries performed worldwide in 2021, including 4.7 million in the United States. A cataract is a loss of transparency in the normally clear lens of the eye that can cause blurry or hazy vision, significantly interfering with daily activities and affecting quality of life. Cataracts increase in prevalence with age and develop in approximately 50% of individuals by age 60 affecting both eyes 80% to 90% of the time and requiring surgery to restore vision in most cases. During cataract surgery, the patient's natural lens is replaced with a clear artificial lens called an intraocular lens ("IOL"). There are two broad categories of IOLs used, conventional and premium. Based on the category of IOL used, cataracts surgeries can be differentiated as either conventional or premium procedures. In conventional cataract surgery, patients receive conventional monofocal IOLs that are designed to provide vision at one distance, and do not correct for corneal astigmatism and presbyopia. Nearly all conventional IOL patients therefore will need spectacles to attain their best vision after surgery. With premium cataract surgery, patients receive premium IOLs designed to correct for corneal astigmatism and/or presbyopia and therefore to provide for reduced spectacle dependence. Because 60% of cataract patients rate being spectacle free after cataract surgery as extremely important, we believe the premium IOL market is underpenetrated. During 2021, according to the Market Scope 2021 Premium Cataract Surgery Market Report (the "Market Scope 2021 Premium Report"), premium IOL procedures performed were approximately 15% of all procedures performed in the United States and approximately 9% of the total procedures performed worldwide. According to the Market Scope 2021 Premium Report, total worldwide procedures increased approximately 36% from 2020 due to the COVID-19 pandemic negatively impacting procedures in 2020. Revenue for the premium IOL market was estimated to be $1.5 billion, or 31% of the total IOL market for 2021, due to higher lens pricing and increased procedures from 2020. In addition, the premium IOL market is projected to grow significantly faster as worldwide cataract procedure volumes return to pre COVID-19 levels. According to the Market Scope 2021 Premium Report, global premium cataract procedures are expected to grow at a compound annual growth rate ("CAGR") of 10% from 2021 to 2026, however revenues are expected to grow at a CAGR of 12% from $1.5 billion in 2021 to a $2.7 billion in 2026 as compared to a 4% CAGR revenue growth for the conventional IOL market. Premium cataract procedures are between 10 and 15 times more profitable for the doctors and ophthalmology practices than conventional cataract procedures. The premium IOL market is also less impacted by changes in reimbursement rates because patients in most markets are required to pay out-of-pocket to cover the full or incremental costs of premium cataract procedures (depending on the country), while healthcare payors typically only cover the full cost of conventional cataract procedures.

We believe that the premium cataract surgery market remains underpenetrated due to both doctors' reluctance to recommend premium IOL offerings to the full universe of eligible patients and patients' confusion in assessing

the tradeoffs associated with the wide range of competitive premium IOL offerings. We believe competitive premium IOL offerings often cannot deliver on patient expectations with respect to the patient's ability to see at near and intermediate distances without reliance on spectacles. Once a patient has selected a competitive premium IOL, the surgeon must rely on a series of pre-operative diagnostic tests and predictive formulae to choose a lens that delivers the accuracy and outcomes desired by the patient. According to published clinical data from the pivotal studies of competitive premium IOL technologies, the percentage of patients that achieved 20/20 vision with both eyes at all distances was only 40%. As a result, doctors often lack confidence with competitive premium IOL offerings given their inability to meet patients' expectations consistently.

We designed our RxSight system to address the shortcomings of existing competitive premium IOL technologies and provide a solution that doctors can trust to improve visual outcomes. In contrast to competitive premium IOL solutions, for which patients are required (before surgery) to specify their visual priorities and willingness to accept optical trade-offs associated with those choices, our RxSight system offers peace of mind that patients can iterate their final vision characteristics with customized post-surgical adjustments. The surgeon first performs a standard cataract implant procedure, replacing the patient's natural lens with the LAL. Approximately three weeks post cataract surgery, after healing has occurred, the patient undergoes a standard post-operative refraction to determine the refractive error and the prescription required to give the patient the best vision. This prescription is much like that used for spectacle lenses, but instead is used as an input to the LDD. To adjust the LAL, the patient is positioned at the LDD for a treatment that lasts between approximately 30 seconds and 2.5 minutes, depending on the required prescription. The patient returns after approximately three to five days, at which time they can undergo another refraction and adjustment, if needed, to "dial in" their best vision. Once the patient and the doctor are satisfied, then the adjustment is locked in for life with another light treatment. While up to three post-surgical adjustment visits are offered by the doctor, in our pivotal clinical study, patients had an average of 1.6 adjustments. While many patients choose to have both eyes corrected for distance, approximately 75% elect for what is called a blended vision approach that takes advantage of the LAL's depth of focus to deliver a customized blended vision solution. By titrating the correction for near, intermediate or far in each eye, this approach provides the highest rates of excellent vision with both eyes at all distances.

We believe the RxSight system offers significant advantages over other commercially available conventional and premium IOLs that will drive its broad adoption. The primary benefits of our solution include:

- first and only IOL that can be customized after surgery and healing of the eye;
- provides doctors and patients with confidence in better visual outcomes and a low risk of side effects;
- provides a precise treatment range and excellent vision rates with both eyes at all distances;
- uses a familiar industry standard IOL implantation procedure and an IOL adjustment procedure that is easy-to-learn;
- allows patients to preview their vision selection prior to LAL adjustment; and
- provides a premium IOL alternative that can help doctors grow their practice revenues and profits.

Our RxSight system has FDA approval for the reduction of residual astigmatism to improve uncorrected visual acuity after removal of the cataractous natural lens by phacoemulsification and implantation of the intraocular lens in the capsular bag, in adult patients with pre-existing corneal astigmatism of > 0.75 diopters and without pre-existing macular disease. Our system has also received the CE mark and marketing approval in Mexico for improving uncorrected visual acuity by adjusting the LAL power to correct residual postoperative refractive error, including for -2.0 to + 2.0 diopters of sphere and -3.0 to -0.50 diopters of cylinder and by changing lens curvature to introduce controlled amounts of spherical aberration (+/- 1 micron) and center near add (up to 2.0 diopters). We are currently focusing our commercial efforts in the United States. Our commercial strategy is focused on a "razor and razor blade" model through which we aim to drive new customer adoption, which generally begins with the sale of an LDD, and then help the customer incorporate the LAL into their practice to drive utilization and premium procedure growth. We believe this commercial strategy over time may provide a degree of predictability in terms of our commercial growth and a consumable revenue stream from sales of our LALs. We are currently focused on driving adoption with surgeons performing a high volume of premium cataract procedures. According to the 2021 Premium Cataract Surgery Market Report approximately 10,000 surgeons perform cataract surgeries in the United

States and we estimate that as many as 3,000 surgeons performed approximately 70% to 80% of the premium procedures in the United States in 2021. We believe this provides an attractive and concentrated market opportunity addressable with a focused sales force. We currently employ a sales team that, as of December 31, 2021, includes 18 LDD sales personnel and 14 LAL sales personnel, and a group of 55 clinical specialists, field service, customer service, and marketing personnel. While we intend to initially focus our growing commercial efforts in the United States, in the future, we may selectively pursue commercial expansion in Canada, Japan, Europe, Australia or other geographies with significant market opportunity for premium IOLs.

Our near-term research and development activities are focused on enhancements to the RxSight system to improve the patient and doctor experience, expand the range of patients that can be treated as well as expand its indications. We believe that over time, our adjustable lens solution can be used to address a broad range of cataract surgery patients, including those that would otherwise elect for a conventional cataract procedure today. Our vision is that a vast majority of the patients and surgeons that undergo or perform a cataract surgery procedure, will elect to use our RxSight technology that provides a customizable solution delivering better visual outcomes.

Our success factors

We are focused on establishing our RxSight system as the standard of care for premium cataract surgery and providing a solution that doctors and patients can trust to deliver optimal visual outcomes without unwanted visual side effects. We believe our key success factors include:

- ***First and only commercially available IOL technology that allows customization and optimization of patient vision after surgery.*** We have developed our RxSight system over the last 20 years and have incorporated expertise and proprietary technologies across multiple disciplines, including optics, material science, chemistry, software and hardware engineering. Our LAL uses a proprietary silicone formulation that enables changing the mechanical and optical properties of the lens following implantation. Unlike other currently available IOLs, the vast majority of which are made from acrylic, the LAL contains both long and short silicone polymers, along with other photo-active compounds that enable permanent polymerization of the silicone post-operatively using UV light. Our LDD uses proprietary software and algorithms to deliver a short UV exposure treatment that polymerizes specific portions of the lens that allows doctors to adjust spherical and cylindrical refraction in 0.25 diopter increments, similar to the adjustment increments used to refract patients for glasses or contact lenses, as well as in other refractive procedures like LASIK. We believe our commitment to innovation, extensive technical capabilities, and world-class engineering teams will enable us to deliver future product enhancements and expansion of indications for our platform. Certain aspects of our RxSight system are protected by our portfolio of patents. As of January 31, 2022, we owned or exclusively in-licensed approximately 24 issued U.S. patents, 19 issued patents outside the United States, 10 pending non-provisional U.S. patent applications, 20 pending foreign patent applications and four pending Patent Cooperation Treaty applications.

- ***Superior visual outcomes and premium IOL experience for patients.*** In the pivotal study that formed the basis for our FDA approval, the observed rate of eyes with 20/20 or better uncorrected distance visual acuity for our LAL was 70.1%. This compares favorably to the results of pivotal studies with similar study designs and patient populations that supported FDA approval of Alcon's Acrysof Toric (38.4%), and J&J's Tecnis Toric (43.6%). Additionally, LAL patients reported a low rate of glare or halo, visual side effects that are frequently reported with presbyopia correcting IOLs. We believe our system also delivers a premium experience for patients by shifting patient decisions from before surgery (after which they are difficult to change) to after surgery, when patients work with their doctors to dial-in their optimal visual acuity, thereby lowering the likelihood for remedial or secondary corrective procedures. We believe these qualities will lead to broad commercial adoption of the RxSight system.

- ***Attractive value proposition for doctors.*** We believe the RxSight system provides a myriad of benefits for doctors that will help facilitate adoption and incorporation into their clinical practice. The clinical benefit of "dialing-in" to achieve superior visual outcomes after the procedure will give doctors more confidence to recommend a premium IOL solution that can meet patients' expectations. This can provide economic benefits by empowering doctors to grow their practice by increasing the number of premium IOL surgeries, which generally have higher revenue and profit margin than conventional procedures. Over the longer term, we also believe that using our technology can help drive patient

referrals to the practice. We designed and are offering our LDD at a price to create an attractive return on investment for our customers over a reasonable period of time. For example, an online, third-party survey by Haffey & Company of 15 practices that use the RxSight system revealed that LAL procedures were sourced from all other categories of other IOLs and were well balanced across monofocal, astigmatism-correcting and presbyopia-correcting IOLs. Based on an average of 16 LAL cases per month at these practices, a payback period of five months for the purchase price of the LDD was seen. Using lower national average selling prices for astigmatism-correcting and presbyopia-correcting IOLs and a monthly procedural volume of only six cases resulted in a payback period of 18 months for such practices. Following the payback period, practices continue to reap the financial benefits of converting patients to the higher revenue RxSight procedure. Our RxSight system also offers several practice and workflow benefits. Because the RxSight is a versatile lens that can be used to address a wide variety of different patients and their needs, we believe doctors can use the LAL as their primary and first choice of premium IOL, rather than having to choose between, and hold in inventory, different IOLs to address different patient needs. The RxSight implantation procedure is a familiar industry standard IOL implantation procedure and the light adjustment procedure is easy to learn, which we believe will help lower barriers to adoption.

- ***Large and growing IOL market underpenetrated within broader IOL industry.*** Cataract surgery is the most common surgical procedure in the United and worldwide, with over 29.7 million procedures performed globally and 4.7 million procedures performed in the United States in 2021. While 60% of cataract patients rate being spectacle free after cataract surgery as extremely important, in 2021 premium procedures were 9% and 15% of the total procedures performed worldwide and in the United States, respectively. According to the Market Scope 2021 Premium Report, revenue for premium IOLs was approximately $562 million in the United States and $1.5 billion worldwide in 2021 and is expected to grow at a CAGR of 11% and 12%, respectively, through 2026. We believe our RxSight system addresses key limitations that have slowed adoption of premium cataract procedures and premium IOL market growth. We believe there is an opportunity to not only gain share in the premium IOL segment of the market but also increase penetration of premium IOLs in the broader IOL market, by converting doctors as well as patients with astigmatism currently electing for conventional cataract surgery.

- ***Primarily out-of-pocket, cash-pay procedure, which we believe makes the premium IOL market less sensitive to reimbursement.*** The premium IOL market benefits from well-established and attractive payment dynamics with, we believe, limited reimbursement risk. In the United States, healthcare payors typically reimburse the surgeon and facility fee, which represent a fraction of the total procedure cost, while patients pay the surgeon an additional fee, which accounts for a significantly larger component of the total cost. Patients have traditionally demonstrated a willingness to pay the incremental out-of-pocket fee to achieve differentiated visual outcomes associated with premium IOLs and premium-cash pay ophthalmic procedures, such as LASIK, are well established. Given the unique benefits and advantages of the RxSight system, we believe customers will find our value proposition to be compelling and affordable in the context of other premium IOL offerings available today.

- ***Concentrated potential customer base, addressable with a focused commercial organization.*** We are initially focusing our commercial efforts in the United States and on driving adoption with doctors performing a high volume of premium cataract procedures. According to the 2021 Premium Cataract Surgery Market Report approximately 10,000 surgeons perform cataract surgeries today in the United States, and we estimate that as many as 3,000 surgeons performed approximately 70% to 80% of premium IOL procedures in the United States in 2021. We believe this concentrated nature of the premium IOL customer base is easily addressable with a focused sales force and lends itself well to our “razor and razor blade” business model, which is focused on winning customers and driving increased utilization of our LALs. Our direct sales team currently includes 18 LDD sales personnel, 14 LAL sales personnel, and a group of over 55 clinical specialists, field service, customer service, and marketing personnel that covering the United States.

- ***Proven management team with a track record of establishing adoption of multiple innovative technology platforms in ophthalmology.*** Our leadership team has extensive experience in scaling ophthalmology businesses, guiding them through the development, approval, launch and commercialization of transformative medical devices. The team is well complemented by leaders with

extensive experience in the full product lifecycle including designing and developing new technologies, collaborating closely with regulatory agencies, identifying the appropriate path to market and subsequently attracting and effectively managing sales and marketing talent. Members of our team have previously worked with leading ophthalmology medical technology companies including Chiron, IntraLase Inc., eyeonics Inc. and LenSx Lasers Inc.

Our growth strategies

Our vision is that a vast majority of the patients and doctors that undergo or perform a cataract surgery procedure will elect to use our RxSight technology that provides a customizable solution delivering better visual outcomes. Our growth strategies to achieve this vision include:

- ***Strategically expanding our salesforce and marketing activities.*** We launched the RxSight system in the third quarter of 2019. As of December 31, 2021, we have grown our commercial team to include 18 LDD sales personnel, 14 LAL sales personnel, and a group of over 55 clinical specialists, field service, customer service, and marketing personnel. Our LDD sales personnel are focused on selling the LDD and establishing doctor relationships, and our clinical specialists, field service and customer service personnel are responsible for installing and training on the use of the LDD, and the LAL sales personnel are focused on continuing fostering patient and doctor education, increasing penetration in each account and assisting with patient flow processes for our RxSight system. While we believe a large proportion of our target market is concentrated within a group of high volume cataract surgeons and addressable with a focused commercial effort, we plan to continue to add highly qualified personnel to our commercial organization, with a strategic mix of sales personnel, clinical specialists, to drive further awareness and penetration within our target doctor base performing premium cataract surgeries. As our customer base continues to grow, we also expect to accelerate marketing initiatives and professional education, including training on best practices and techniques.

- ***Establishing new customers and growing our installed base of LDDs.*** We believe our novel technology provides a differentiated value proposition to doctors as well as patients and provides us the opportunity to both gain market share in the premium IOL market as well as increase the penetration of premium IOL surgery in the broader cataract surgery market. Our initial focus is to grow our market share by winning customers within the as many of the 3,000 cataract surgeons that perform a high volume of premium IOL procedures in the United States. To do so, we aim to convert these doctors to the RxSight system by highlighting the clinical, economic and workflow benefits of our solution over other premium IOL technologies. We also intend to address the broader universe of the remaining approximately 7,000 doctors that may perform only a small portion of premium procedures or only perform conventional cataract surgery. We will address this customer universe by promoting broader awareness at industry conferences and tradeshows and highlighting the practice building and economic benefits of our solution, its ease of use, as well as the improved visual outcomes. We are investing in professional education, additional clinical studies and registries that expand our evidence base, facilitating peer-to-peer dialogue and forums and communicating the benefits of our technology through marketing initiatives, publications and podium presentations. We believe that as more patients and doctors gain confidence in our technology, this will drive broader adoption, awareness and confidence amongst the industry to adopt, use and recommend our technology.

- ***Increasing the utilization of our LALs by empowering doctors to grow their practices.*** Following winning a customer account, we aim to drive increased utilization of our LALs by helping our customers build their practices. We believe this will ultimately result in a growing consumable revenue stream from sales of our LALs. Our team of clinical specialists, field service and customer service personnel are focused on helping our customers be successful with our solution. In addition to personnel support, we provide doctors with marketing materials, such as patient brochures, literature and digital content for website and social media promotions. We also provide ongoing training to doctors on new technology features and developments and education on the benefits of our solution for patients.

- ***Investing in system enhancements to meet the evolving needs of doctors as well as patients.*** We will continue to enhance our RxSight system to improve the patient and doctor experience, which we expect will help drive adoption. Since our commercial launch, we have implemented a number of impactful product enhancements across our hardware and software platforms, including increasing the range of

available LAL powers, modifying the LAL to improve image quality, reducing the margin of residual refractive error, developing new UV spectacles with improved aesthetics and usability and adding a photosensitive anterior layer to help protect the lens from unwanted UV exposure. Our near-term product enhancement efforts are focused on improving ease of use, functionality, cost and efficiency. For example, we are at an advanced stage of development with a working prototype of a lower cost version of the LDD, which we believe will help increase its affordability to lower volume premium IOL practices and facilitate broader adoption across the ophthalmic surgery community. It is anticipated that this lower cost LDD would require a 180 day PMA Supplement for approval in the United States and will require CE Mark certification through a notified body for registration in the European Union.

- ***Expanding the RxSight system's indications to address additional patients and procedures.*** We believe our RxSight system is a platform technology that can be used to address a substantial portion of the IOL market. Since our initial FDA approval in November 2017, we have received eighteen supplemental approvals that enable the RxSight system to meet evolving customer needs. These approvals include increasing the range of LAL powers, treatment of lower amounts of residual astigmatism, allowing an optional third refractive adjustment, the introduction of ActivShield to provide additional UV protection from ambient UV sources and improved surgical tools.

- ***Growing our commercial operations in international markets.*** While our current commercial focus is on the large opportunity within the United States, we believe the RxSight system offers compelling benefits for the large population of cataract patients in international markets. According to the 2021 Premium Cataract Surgery Market Report, over 70% of the premium IOL procedures in 2021 were outside the United States. Our system has CE Mark approval and approval in Mexico for improving uncorrected visual acuity by adjusting the LAL power to correct residual postoperative refractive error. We may selectively pursue commercial expansion in these or other geographies that accept these approvals in the future, with a priority on markets where we see significant potential opportunity. New approvals may also be sought in large cataract markets with more complex regulatory processes in Asia.

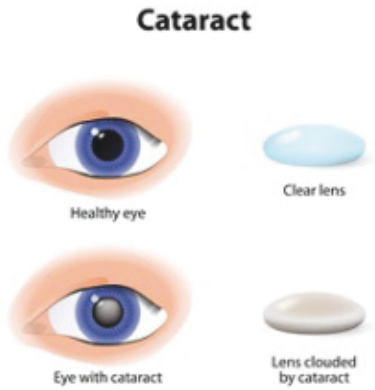
- ***Scaling our business to achieve cost and production efficiencies.*** We expect to realize operating leverage through increased scale efficiencies as our commercial operations grow. We have executed a number of design and manufacturing process improvements to streamline both LAL and LDD production, and have developed a lower cost to manufacture LDD, which has been submitted to the FDA for approval. We are also concurrently executing on our strategy to optimize our diverse supply chain and to develop second sources from less expensive suppliers. We anticipate that the combination of these strategies will drive margin improvement in the future when introduced into production and offered for sale.

Our market and industry

Overview of cataracts

Cataracts are an irreversible and progressive ophthalmic condition in which the eye's natural lens loses its original transparency and increasingly obstructs or otherwise interferes with the passage of light to the retina, leading to loss of vision and (in advanced cases) to blindness. While there are multiple causes of cataracts, most are age-related. Cataracts affect approximately 50% of all adults by the age of 60 with prevalence continuing to increase with age. As cataracts progress, they also can increase the eye's sensitivity to light, particularly at night. Cataract

formations occur at different rates but affect both eyes in most cases. According to the National Eye Institute, cataracts are the leading cause of blindness worldwide, despite the availability of effective surgical treatment.



Cataract patients are also often burdened by other common visual disorders, such as refractive error and presbyopia. Refractive errors, caused by mismatches in the focusing power of the anterior structure of the eye (cornea and lens) that prevents proper focus of light onto the retina, includes myopia (near-sightedness, or the inability to see clearly at distance), hyperopia (far-sightedness or the inability to see clearly at close up) and astigmatism (distorted vision at all distances). Astigmatism generally is caused by an imperfection in curvature of the cornea. Presbyopia typically occurs in middle age and is caused by the loss of accommodation (flexibility) of the lens of the eye, resulting in the gradual loss of the eyes' ability to focus on nearby objects.

Amongst the common visual disorders, cataracts are unique in that they cannot be treated non-invasively with eyeglasses or contact lenses. Most patients are typically diagnosed with cataracts during a routine annual visit to their optometrist ("OD") or ophthalmologist. Once a patient has been diagnosed with cataracts, eyeglasses may help improve vision temporarily; however, surgery is usually recommended to replace the affected natural lens and the OD may refer the patient to a cataract surgeon.

Overview of cataract surgery

Cataract surgery is the most common surgical procedure in the world. In 2021, according to the Market Scope 2021 Premium Report, 29.7 million cataract surgeries were performed globally, of which 4.7 million were performed in the United States. The number of cataract surgeries performed globally and in the United States is expected to continue to expand as the population over 60 years old is expected to double by 2050, increasing from 962 million (13% of the total population) in 2017 to two billion (21% of the total population) by 2050.

Cataract surgery involves replacement of the patient's natural cloudy lens with a clear artificial IOL. Cataract surgery is often bifurcated into two procedure categories, conventional and premium, delineated by the type of lens used during surgery. In conventional cataract surgery, the patient receives a monofocal IOL implant, which is designed to provide vision at one pre-defined distance without correction for other visual problems that often affect cataract surgery patients such as corneal astigmatism and presbyopia. Nearly all patients undergoing conventional cataract surgery will need to rely on glasses to achieve the best distance, intermediate and near vision. Premium cataract surgery involves the use of premium IOLs which are designed also to correct for corneal astigmatism and/or presbyopia. The most commonly used premium IOLs in the market today include multifocal, EDOF and toric lenses. These product offerings reduce the need for spectacles relative to conventional IOLs, but still impose trade-offs with respect to their ability to provide spectacle-free near, intermediate and distance vision.

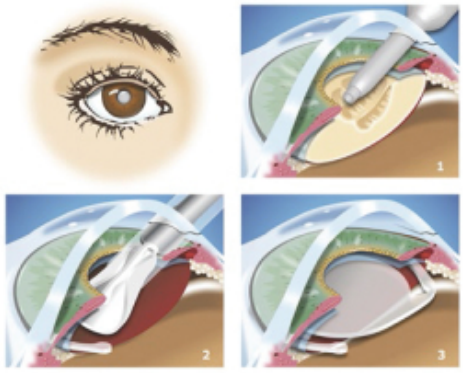
When preparing patients for cataract surgery, surgeons must have a comprehensive understanding of available IOL options and how to best match a patient to the technology that fits their priorities. Patient decisions are based on a number of factors and tend to be heavily influenced by surgeon recommendations as well as the individual patient's motivation for spectacle independence as well as willingness to tolerate side effects. During an initial consultation, cataract surgeons often ask patients to fill out a survey regarding their vision experiences and expectations to determine if the patient is a good candidate for a premium IOLs. If the patient is deemed to be a

candidate, the surgeon then helps select the appropriate IOL based upon the patient's lifestyle and therefore the type of vision they most value (i.e., near, intermediate or distance). Significant time is often required to educate patients on the various trade-offs with respect to the visual outcomes associated with each type of premium IOL. Following the patient consultation, surgery is usually scheduled within several weeks or months.

Prior to surgery, the surgeon will have the patient's eyes measured using one or more diagnostic devices that help the surgeon predict the lens focusing power best suited to achieve the optimal postoperative outcome. Focusing power, expressed in diopters (D), refers to how a lens focuses light to a point (spherical power) or a line (cylindrical or astigmatic power). Accurately predicting lens power is critical to reducing postoperative residual refractive error and delivering the best possible visual outcome.

Once surgery begins, the clouded lens is usually removed through a process known as phacoemulsification. During phacoemulsification, an ophthalmic surgeon makes a small surgical incision in the cornea and inserts an ultrasonic probe that breaks up, or emulsifies, the clouded lens while a hollow needle removes the pieces of the lens. After the cataract is removed, the surgeon inserts the replacement IOL through the same surgical incision. In the United States, cataract surgery is commonly performed in the outpatient setting, such as an Ambulatory Surgery Center ("ASC"), by an ophthalmologist specializing in cataract surgery and often requires only 5 to 15 minutes to complete the procedure. Typically, the patient returns a day after surgery to have their eye evaluated and ensure healing is underway. After approximately one month, patients that received a conventional lens usually return to their optometrist to be fitted for glasses. Patients that selected premium IOLs but are unsatisfied with their visual results may be fitted for glasses or elect for a secondary, remedial procedure.

Illustrated below is an eye before cataract surgery. In Image #1 the surgeon has made a small surgical incision in the cornea and has inserted an ultrasonic probe to break up the clouded lens while the hollow needle (at the tip) removes the pieces of the lens. Image #2 illustrates the eye after the cataract is removed and the surgeon inserts the replacement IOL through the same surgical incision. Image #3 illustrates the new lens before the surgical incision is closed.



In the United States, a healthcare payor (primarily Centers for Medicare and Medicaid Services ("CMS")) typically provides reimbursement of approximately $500 for a surgeon fee and approximately $1,000 for a facility fee, which includes a conventional IOL. Accounting for reductions in CMS reimbursement and for inflation, reimbursement has decreased two thirds since 1991. The surgeon fee covers all pre-operative cataract testing, the cataract operation and follow-up care for three months. In premium cataract surgery the healthcare payor (primarily CMS) also reimburses the same surgeon and facility fees, but the patient pays the surgeon an additional fee of approximately $1,500 for a toric IOL and an average of up to $6,500 for other premium lenses, which includes the cost of the premium IOL.

Our market opportunity

In 2021, conventional cataract surgery represented 90% of procedures worldwide and 85% of procedures in the United States; however, revenue for the premium IOL market is approximately 31% of the total IOL market, due to higher lens pricing, and is expected to grow significantly faster. According to the Market Scope 2021 Premium Report, the conventional IOL market revenues were approximately $4.8 billion worldwide in 2021 and is expected

to grow to $6.8 billion in 2026, a CAGR of 7.2%. In 2021, premium IOL revenue was approximately $562 million in the United States and $1.5 billion worldwide and is expected to grow at a CAGR of 11% and 12%, respectively, through 2026. The premium cataract surgery market is expected to grow at a meaningfully higher rate than the conventional cataract surgery market due to a number of factors including the growing number of patients who prefer to be spectacle-free post-surgery, technological innovations in premium IOLs, increased access to healthcare and rising disposable income. Premium cataract procedures are also between 10 and 15 times more profitable for doctors and ophthalmology practices than conventional cataract procedures and less impacted by changes in reimbursement because patients are required to pay out-of-pocket to cover the full or incremental costs of premium cataract procedures (depending on the country), while healthcare payors typically cover the full cost of conventional cataract procedures.

We believe there is an opportunity to not only gain share in the premium IOL segment of the market but also increase penetration of premium IOLs in the broader IOL market, by converting doctors and patients currently electing for conventional cataract surgery. While 60% of cataract patients rate being spectacle free after cataract surgery as extremely important, in 2021, premium IOLs represented approximately 9% and 15% of the procedures worldwide and in the United States, respectively. We believe that the premium cataract surgery market remains underpenetrated due to both doctors' reluctance to recommend premium IOL offerings to the full universe of eligible patients and patients' confusion in assessing the tradeoffs associated with the wide range of commercially available premium IOL offerings. Furthermore, we believe current premium IOL offerings often cannot deliver on patient expectations with respect to the patient's ability to see at near, intermediate and far distances without reliance on spectacles.

We are currently focused on further driving awareness and penetration of our system in the premium cataract surgery market, and in the near term, are primarily focusing our commercial efforts on our RxSight system within the United States. We believe this is the most compelling market given the large population of individuals above the age of 60 that are covered by health insurance, the concentrated base of cataract surgeons experienced with premium IOL offerings, the high gross domestic product per capita and the favorable US healthcare reimbursement system which has a well-established history of covering a portion of the cost for cataract surgery.

Overview of non-adjustable premium IOLs and their limitations

Premium IOLs are designed to correct for the shortcomings of conventional monofocal lenses by correcting for the additional visual problems of astigmatism and/or presbyopia. Astigmatism occurs when there is imperfection in the curvature of the cornea, resulting in blurred distance and near vision. Presbyopia is the gradual loss of the eyes' ability to focus on nearby objects. Individuals usually begin to experience the effects of presbyopia in their early 40s.

The two primary categories of alternative premium IOLs are presbyopia-correcting IOLs, which include multifocal and EDOF lenses, and astigmatism-correcting, or toric, lenses. Each type of lens offers its own unique set of benefits but also trade-offs.

- ***Presbyopia-Correcting IOLs***
  - ***Multifocal Lenses.*** Multifocal lenses have two or more corrective zones, which allow the patient to receive focused light from different distances. Although multifocal lenses provide patients with a wider range of vision compared to the standard monofocal IOLs, multifocal lenses split light across the multiple corrective zones on the lens, sometimes impacting the patient's visual quality. For example, approximately 2-3 times as many patients who choose a multifocal lens over a monofocal lens experience side effects such as glare and halos, as well as reduced contrast vision, which are especially problematic in dim and low light situations such as driving at night. For some patients these become more pronounced and can lead to explantation (removal of the IOL and replacement with another type of IOL).
  - ***EDOF Lenses.*** Unlike multifocal lenses, EDOF lenses have only one corrective zone; however, they create an elongated focal point that allows for a broader range of vision, although patients will still often require glasses for distance and near vision. EDOF lenses will still typically result in glare and halos, as

well as reduced contrast vision, although generally less severe than those experienced with multifocal lenses.

- ***Astigmatism-Correcting or Toric Lenses.*** Toric lenses correct for astigmatism, a condition in which the cornea is not uniformly curved leading to distortion of near and distance vision. According to the Market Scope 2021 Premium Report, approximately 70% of the population has clinically significant astigmatism of 0.5 diopters or more. Corrective toric lenses can provide additional distance, intermediate or near vision correction depending on the power of the lens selected and if their optical design incorporates either multifocal or EDOF features. However, according to the same the Market Scope 2021 Premium Report, surgeons only attempt to correct astigmatism approximately 70% of the time and approximately 60% of cases use toric lenses. Survey results on the reason for the low adoption rate include poor precision in correcting astigmatism and the requirement of expensive diagnostic equipment.

On the two most recently published by the European Society of Cataract and Refractive Surgeons (the "ESCRS") clinical trend surveys, 44% of surgeons and 36% of surgeons reported factors that discourage them from offering premium IOLs due to concern over nighttime vision and loss of contrast sensitivity, respectively. A key limitation of alternative premium IOLs is that they cannot be adjusted after the surgery and, as such, require the patient to commit to a desired visual outcome prior to the procedure. However, in discussing vision optimization options with patients ahead of the procedure, it is not easy to demonstrate different visual outcomes to patients with cataracts. Once a premium IOL is selected, another key limitation is the ability of the surgeon to implant the IOL with the level of accuracy required to deliver the patient's expected outcome. Because the lens power of alternative premium IOLs cannot be changed after implantation, doctors typically spend a great deal of time on preoperative measurements to estimate the most suitable lens power for the patient; however, the same diagnostic tests and predictive formulae used for selecting the spherical power of the premium IOL are also used for conventional IOLs. Additionally, the incision made to remove the cloudy lens and insert the IOL along with the resultant healing process often results in the creation of additional levels of astigmatism, which cannot be predicted with precision before cataract surgery. A separate LASIK procedure is the most common surgical procedure to correct any residual visual errors following the cataract procedure.

We believe that the need to commit to a visual outcome before surgery combined with the limited ability to adjust following the procedure are key factors contributing to the low levels of penetration of premium cataract surgery. When expectations regarding postoperative visual acuity and spectacle independence are not met, patients are often disappointed. As a result, surgeons are often less willing to recommend existing premium IOLs to their patients.

Our solution

We designed our RxSight system to address the shortcomings of existing premium IOL technologies and provide a solution that doctors can trust to improve visual outcomes. We began commercializing our solution in the United States in the third quarter of 2019 and are focused on establishing the RxSight system as the standard of care for premium IOL procedures. As of December 31, 2021, we had an installed base of 206 LDDs in ophthalmology practices, and since our inception almost 17,000 surgeries have been performed with our system.

Overview of the RxSight system

Our RxSight system is the first and only FDA-approved IOL technology that enables doctors to customize and optimize visual acuity for patients after cataract surgery. With the RxSight system, the doctor performs a standard cataract procedure to implant the LAL, determines refractive error with patient input after healing is complete, then

uses the LDD to reshape the LAL to achieve the patients' desired vision outcomes. Our RxSight system is comprised of two key components, along with other intraoperative and postoperative accessories:

- **RxSight Light Adjustable Lens**: The LAL is our proprietary IOL that can be adjusted postoperatively to improve uncorrected visual acuity. Our novel IOL is made of special photosensitive material that changes shape and power when a specific pattern of UV light is delivered from the LDD.

- **RxSight Light Delivery Device**: The LDD is our proprietary office-based light treatment device that delivers UV light in a precisely programmed pattern to induce a predictable change in the shape and refractive properties of the LAL, enabling surgeons to precisely modify the LAL based on the visual correction needed to achieve the patient's desired vision after cataract surgery.

Our foundational technology

We have developed our RxSight system over the last 20 years and have incorporated expertise and proprietary technologies across multiple disciplines, including optics, material science, chemistry, software and hardware engineering. The proprietary RxSight technology that enables post-operative adjustability is based on the principles of photochemistry. The LAL is made of a photosensitive material that changes shape and power when a specific pattern of UV light is delivered to the LAL.

Our LAL, which we manufacture using our proprietary silicone formulation, leverages the unique material properties of silicone. A silicone molecule consists of an inorganic silicon-oxygen backbone, which is a chain of alternating silicon and oxygen atoms with an attached side group, which is a pair of organic molecules bonded to each silicon atom in the chain. Through a process called polymerization, silicone monomers (short chain molecules) are reacted together to form silicone polymers (long chain molecules), which may be cross-linked at multiple points resulting in three-dimensional, rather than linear, structures. By varying chain length, attached side group and cross-linking design, silicone polymers can be tailored to have unique properties, leading to their broad use across a wide array of applications. We have developed a novel application of silicone to optimize the mechanical and optical properties of IOLs in order to improve vision in patients following cataract surgery.

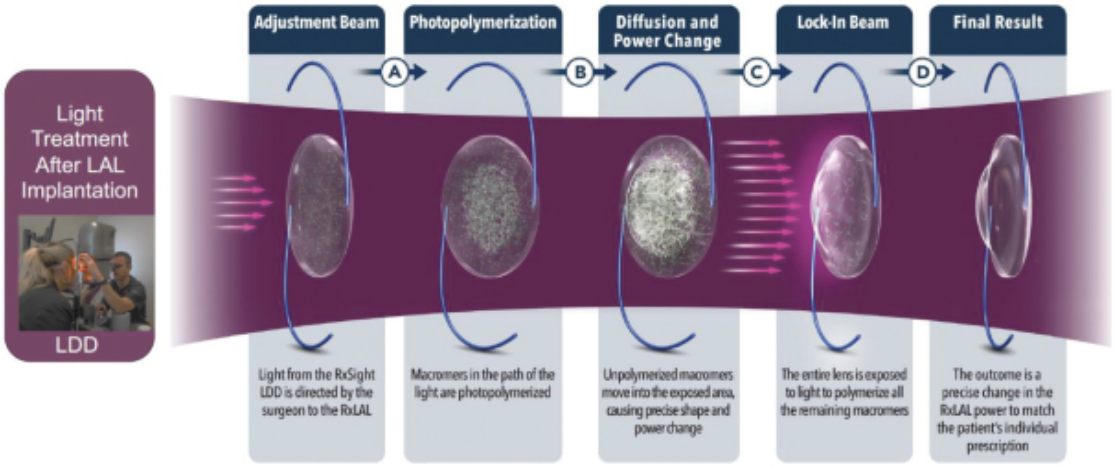
To create the LAL, we use a composition of silicone polymers and monomers, the latter which we call "macromers", mixed with photo-active molecules and other compounds. The initial composition of our lens material

is a viscous liquid that is thermally cured in a lens mold. Thermal curing and photopolymerization use temperature and ultraviolet light, respectively, to initiate and propagate a polymerization reaction. To avoid polymerizing the macromers in the composition, the thermal curing is performed at a low temperature. The partial polymerization of the LAL results in a solid but soft silicone lens, leaving the photosensitive macromers unpolymerized and distributed throughout the lens. While the resulting lens is optically clear, the macromers and photo-active molecules remain free to continuously move within the lens.

After packaging and sterilization, the LAL is ready to be implanted as part of a standard cataract surgical procedure to replace the patient's natural lens. Once wound healing is complete, a short exposure of UV light is applied to the LAL to adjust the refractive properties of the lens. When the UV light is directed to a specific portion of the lens, the exposed macromers in that portion of the lens are polymerized and become stationary. This creates an excess concentration of free macromers in the unexposed portion of the lens and sets up a diffusion gradient over which the unpolymerized macromers move from the concentrated area to the less concentrated area. Over the next one to two days, the unpolymerized macromers redistribute across the lens to achieve a uniform distribution. The redistribution of the macromers causes the exposed portion of the lens to swell relative to the unexposed portion of the lens, enabling refractive power change.

The movement of the macromers causes a highly predictable change in the curvature of the lens. If the central portion of the lens is exposed to UV light, unpolymerized macromers in the periphery of the lens move into the central portion. As a result, the central portion of the lens swells, creating a lens shape for correction of hyperopia. Conversely, if the periphery of the lens is exposed to UV light, unpolymerized macromers in the central portion of the lens migrate into the periphery. As a result, the periphery of the lens swells, creating a lens shape for correction of myopia. In addition to spherical correction for myopia or hyperopia, customized cylinder adjustments along any axis of the lens can be targeted to correct for astigmatism.

The table below illustrates the photopolymerization process that results in the change to the curvature of the lens:



To achieve the desired refractive change in the LAL, our LDD uses proprietary software and algorithms to deliver a short UV exposure treatment that polymerizes specific portions of the lens according to a predefined pattern of light, called a nomogram. Nomograms allow for adjustment of spherical and cylindrical refraction in 0.25 diopter increments, like the adjustment increments used to refract patients for glasses or contact lenses, as well as in other refractive procedures like LASIK, which has similar refractive accuracy. Designed for placement in the doctor's office, the LDD is a combination of a standard slit lamp and a digital light projector. The slit lamp portion allows the doctor to see inside the patient's eye and align the light beam with the LAL. The digital light projector portion projects an image onto the LAL using DLP technology that has approximately 250,000 micro mirrors that are electronically activated to represent an image stored in memory.

Each UV light treatment consumes only a portion of the macromers in the lens, allowing the LAL to be adjusted multiple times. This process can be repeated up to 3 times over a period of several weeks, until the patient and

doctor are satisfied. The entire lens is then polymerized to provide a stable correction. After adjustment light treatments are completed, one or two lock-in light treatments are applied to consume all remaining macromers and photo-active compounds. After the final lock-in treatment, the lens power can no longer be adjusted.

Our approach

With the RxSight system, the surgeon first performs a standard cataract implant procedure, replacing the patients' natural lens with the LAL. Following the surgery, after a healing period of 2 to 3 weeks, the patient returns to the doctor's office and undergoes a standard post-operative refraction. Using a traditional phoropter and vision chart, the clinician determines the refractive error and the prescription required to give the patient the best vision. However, rather than giving the patient a prescription for glasses, the clinician inputs the prescription into the LDD's graphical user interface. The patient's eye is then dilated, and a contact lens is applied to the eye when they are seated in front of the LDD for a light treatment. Based on the prescription input, the LDD generates a programmed, predetermined exposure of UV light. For a period of between 30 seconds and 2.5 minutes, the light painlessly and non-invasively re-shapes the LAL IOL in the eye, to correct the measured refractive error. The entire procedure takes approximately 3 to 5 minutes. The patient then returns approximately three to five days later for additional possible light treatments to adjust their vision as desired or to lock-in the lens. Although a patient can receive up to three adjustments, the average number of adjustments in our clinical trial was 1.6.

The RxSight system enables a fully interactive and iterative process to optimize visual acuity with patients able to compare possible vision outcomes based on their unique preferences and lifestyle requirements before selecting a final prescription for their adjustable lenses. In clinical practice since FDA approval, approximately two thirds of patients undergoing multiple adjustments have requested a change from their original spherical target highlighting the importance of adjustability and customization. From the time of surgery until 24 hours after the LAL is locked in, the patient is required to wear ultraviolet (UV) light protective glasses, as unprotected exposure to light can cause uncontrolled changes in the LAL. The patient may remove the glasses for sleeping, showering and applying eye drops as long as they are not exposed to sunlight.

Blended vision approach with RxSight

In clinical practice, doctors often use the enhanced accuracy and precision of the LAL, as well the ability to customize the correction in each eye after surgery, to improve upon the commonly used blended vision approach to presbyopia treatment. Blended vision (sometimes referred to as monovision or mini-monovision) is commonly selected by presbyopic patients without cataracts as a means to achieve spectacle independence. When used with contact lenses or LASIK, the vision in one eye is corrected more for far-distance, while the other eye is corrected more for near and intermediate distance. This approach is also commonly employed in conventional (monofocal) cataract surgery patients, with nearly 30% of patients receiving blended vision, about three times the rate for presbyopia correcting IOLs. While blended vision using conventional monofocal IOLs can provide improved near and intermediate vision for patients, it is susceptible to the same limitations of accuracy and precision as these IOLs have for distance vision, particularly for astigmatism correction. In addition, patients are very sensitive to which eye is used for near, as well as the difference in focusing power between the two eyes, neither of which can be fully evaluated prior to cataract surgery due to the presence of reduced vision (from the cataract). For all these reasons, doctors often stagger surgery in the two eyes to evaluate outcomes in the first before proceeding to the second.

We believe the LAL offers a number of potential advantages when taking a blended vision approach. First, because the LAL is going to be adjusted postoperatively, there is no refractive benefit to delaying surgery on the second eye. Doctors often choose to perform surgery in each eye within a week so that the LALs can be adjusted together to optimize vision with both eyes simultaneously. Additionally, the LAL reduces residual astigmatism more effectively (even for the most common low levels), which is known to improve blended vision performance. Finally, the LAL's spherical power can also be adjusted to customize the vision in both the near and distance eye, as well as to minimize the difference between the two. While this difference usually ends up being within a diopter or less, a level that is generally well accepted by patients, there is considerable variability between individuals. For all these reasons, approximately 80% of LAL patients in clinical practice receive some form of blended vision.

Key Benefits for Patients

We believe RxSight offers significant patient benefits relative to other commercially available premium IOLs:

- **Superior vision outcomes.** In the pivotal study that formed the basis for our FDA approval, the observed rate of eyes with 20/20 or better uncorrected distance visual acuity for our LAL was 70.1%. This compares favorably to the results of pivotal studies with similar study designs and patient populations that supported FDA approval of Alcon's Acrysof Toric (38.4%), and J&J's Tecnis Toric (43.6%).
- **Post-operative customization.** In contrast to alternative conventional and premium IOL solutions, our system enables patients to preview and compare possible vision outcomes after surgery based on their unique preferences and lifestyle requirements before they select a final prescription for their adjustable lens. With up to 3 possible light treatments, patients can dial-in their optimal visual acuity through an interactive and iterative process. After the initial light treatment, patients trial their vision for 3 to 5 days. Patients may then return for additional light treatments to adjust their vision as desired or to lock-in the lens.
- **No increase in glare and halo.** Our LALs do not induce higher rates of glare and halos compared to monofocal IOLs. In contrast, multifocal IOLs, generally relied upon to improve near vision, are associated with a higher incidence of unwanted side-effects including reduced contrast sensitivity and increased glare and halos around bright lights. This is true for both multifocal and EDOF IOLs resulting in a significant rate of lens removal of the IOL and replacement with another type of IOL. In FDA studies for the Alcon Panoptix, J&J Symfony and Alcon Vivity lenses, 48.8%, 59.2% and 17.0% of subjects, respectively, reported being bothered by halos postoperatively.
- **Minimally invasive procedure**. The RxSight system can reduce the potential for secondary surgical procedures by correcting residual refractive error after surgery using our office based LDD to shape the LAL. With other premium IOLs, a separate LASIK procedure is generally the only way to correct for residual visual errors following the primary cataract procedure.

Key benefits for doctors

We believe RxSight offers significant benefits to doctors relative to other commercially available premium IOLs, the primary benefits of which include the following:

- **Clear value proposition for patients, allowing doctors to build their premium cataract practices.** Rather than having to explain to patients the complicated trade-offs with respect to visual outcomes as well as predict refraction before surgery, the surgeon is able to simply tell the patient that their vision will be corrected post-operatively, similar to receiving a pair of glasses. The doctor can also share the clinical results with the patient, which we believe are compelling and give the patient reassurance that the procedure will provide them with the desired results.
- **Doctor confidence.** The clinical benefit of "dialing-in" to achieve superior visual outcomes after the procedure will give doctors more confidence to recommend a premium IOL solution that can meet patients' expectations. The doctor does not need to decide prior to surgery whether the patient will be particularly sensitive to sub-optimal visual outcomes or side effects (such as glare, halo and loss of contrast). The patient is also unlikely to need a post-operative adjustment such as LASIK to improve the patient's vision.
- **Fewer intraoperative measurements.** Doctors can spend a great deal of time on intraoperative measurements to better estimate the most suitable lens power to implant since the lens power of existing premium IOLs cannot be changed after implantation. With the RxSight system, surgeons are not as dependent on intraoperative equipment for measurements. Instead, the surgeon can focus on the surgical procedure as residual refractive error can be corrected post-operatively with the LDD adjustment.
- **Broad application across different patients' needs.** We offer a single IOL that can address a broad range of patient types and needs, while providing a solution that doctors can trust to improve visual outcomes. For example, according to the Market Scope 2021 Premium Report, surgeons only use Toric

lenses in approximately 44% of astigmatism cases, citing poor precision in correcting astigmatism and the requirement of expensive diagnostic equipment. With the ability to correct down to 0.5 diopters of astigmatism in 0.25 diopters steps, the LAL can address a much wider portion of the underserved astigmatic market.

- **Satisfied patients leading to potential referrals.** While patients need to wear UV protective glasses for a few weeks, and return for adjustment visits, patients ultimately have reduced dependence on glasses and few side effects. Improved visual outcomes can drive patient referrals and increase the number of premium IOL surgeries, which generally have higher revenue and profit margin than conventional procedures.

We believe these compelling points of differentiation relative to other commercially available premium IOLs offer key benefits for patients and doctors that will drive broad adoption of the RxSight system.

Clinical results and studies

The LAL has close to twenty years of clinical history, dating back to first human implantation in 2002. Prior to FDA approval at the end of 2017, most of the early clinical work was completed outside the United States. During this period, RxSight demonstrated the safety, long term stability and usability of this technology. These early clinical and commercial results led us to formally initiate US clinical studies. We have completed one phase 2 study and our phase 3 pivotal randomized clinical study.

Phase 2 study

In 2010, we completed an FDA Phase 2 study, where 74 subjects had one eye randomly mistargeted during cataract surgery to either -1.00, 0.00, or +1.00 D. Light treatments were performed to address spherical refractive error and 80.8% of the subject eyes achieved a manifest refraction spherical equivalent (MRSE) within 0.50 diopters of target. Three-year follow-up demonstrated excellent long-term safety of the LAL.

Phase 3 pivotal study

Based on these results and the development of light profiles that reduce residual astigmatism, a Phase 3 Pivotal randomized clinical study of 600 subjects was initiated to evaluate the safety and effectiveness of performing light treatments to correct postoperative spherical and cylindrical refractive error. One-year follow-up of subjects from 17 investigational sites was completed on July 20, 2016.

In this study, 391 subjects had the LAL implanted in one eye and the results were compared at the six-month post-operative visit against 193 subjects with a monofocal control IOL implanted in one eye. The LAL met all primary effectiveness endpoints and was approved by the FDA on November 22, 2017 as the first commercially available adjustable IOL. 70.1% of LAL subjects achieved monocular uncorrected distance visual acuity of 20/20 or better compared to 36.3% of the eyes implanted with the monofocal control IOL. In addition to being statistically significantly better than the control IOL, the observed rate of eyes with 20/20 or better uncorrected distance visual acuity was the highest reported for any approved intraocular lens and approximately twice what was observed by the two most popular astigmatism correcting IOLs (38.4% by Alcon’s Acrysof Toric, and 43.6% by J&J’s Tecnis Toric) in similar patient populations in the pivotal studies that led to their approvals by the FDA.

Residual astigmatism was dramatically reduced in the LAL subjects, with 82.4% of LAL subjects having 0.50 diopters or less of manifest astigmatism 6 months after cataract surgery compared to 51.3% of eyes with the monofocal control IOL. This is also significantly better than the performance of both the Acrysof Toric (61.6%) and Tecnis Toric (72.3%) IOLs in similar patient populations in the pivotal studies that led to their approvals by the FDA.

In addition to correcting residual astigmatism, LAL subjects received a correction of residual error in MRSE. 92.1% of LAL subjects were within 0.50 diopters of target (compared to 83.4% observed in the control group). In 2018, the European Database of Cataract Surgery (EUROQUO) showed that of 175,503 subjects, 74.0% of eyes were within 0.50 diopters of target. A survey of 97 LASIK research papers published between 2008 and 2015 showed that out of 65,974 subjects, 90.9% were within 0.50 diopters of target. Thus, the LAL demonstrated superior accuracy to conventional cataract surgery and equivalent performance to LASIK.

During the pivotal study, the residual astigmatism was treated using light treatments that corrected between 0.75 and 2.00 diopters per treatment. After completion of this study, a low astigmatism treatment of 0.50 diopters was developed. Under FDA guidance, we conducted a clinical study of 25 subjects who had exactly 0.50 diopters of residual astigmatism 3 weeks after implantation of the LAL. These subjects were treated with the new light treatment and effectiveness was evaluated 3 months after cataract surgery. On August 7, 2020, the FDA granted us approval to distribute this device improvement based on a mean manifest astigmatism of 0.14 diopters compared to a historical control of 0.40 diopters from a monofocal control IOL.

Reduction in "Outliers"

We believe it is important to interpret the results of clinical studies in the context of the premium lens market. Typically, customers will receive conventional monofocal IOL implantation with a relatively small out of pocket expense. For all premium lenses, however, the patient incurs a significant additional cost, with the expectation of an improved outcome. Therefore, when a patient receives a mediocre or poor outcome (i.e., "outlier" patients), they can be especially disappointed. The three FDA studies presented in Table 1 were conducted to support FDA approval of the listed IOL. While these studies were conducted independently of each other and not as a head-to head comparison, we believe a comparison of the results of these studies is meaningful as they included similar patient populations, study design, follow-up period and study endpoints, as shown in Table 1 below. Importantly, the proportion of these "outlier" patients in the studies was reduced with the LAL with the chance of having significant residual astigmatism (> 1.00 D) or degraded visual acuity (worse than 20/32) ranging from 1.3%-1.5% for the LAL compared to 5.9-16.6% for the other toric IOLs.

Study Lens	LAL	Tecnis Toric	Acrysof Toric
Number of Clinical Sites	17	14	11
Control Lens	Monofocal IOL	Monofocal IOL	Monofocal IOL
Study Lens Sample Size	391	174	244
Control Arm Sample Size	193	95	250
Study Arm Subject Age: Mean [Min, Max]	65.6 [41,80]	69.4 [41,87]	71.2 (N/A)
Study Outcomes	Statistical comparison of means and proportions	Statistical comparison of means and proportions	Statistical comparison of means and proportions
Range of Pre-operative Cylinder	0.75 - 3.50	0.75 - 3.62	0.75 – >2.00
Follow-Up Period for Primary Endpoints (months)	6 M	6 M	6M
Range of Lens Cylinder Refractive Correction	0.75 - 2.00 (per adjustment)	1.03 - 2.74	1.03 - 2.06
Residual astigmatism worse than 1.00 D (%)	**1.5%**	**5.9%**	**12.3%**
UCDVA worse than 20/32 (%)	**1.3%**	**10.9%**	**16.6%**
Study Lens Total Adverse Events	6.4%	6.9%	3.3%
Device Related Study Lens Surgical Re-interventions	1.7%	2.3%	1.6%

Table 1. Comparison of Toric IOL Studies using publicly available data for LAL(P160055), Tecnis Toric (P980040/S039) and Acrysof Toric (P930014/Sl5) IOLs.

Application to blended vision

Light treatment data from the first 2,325 commercially treated LAL's indicated that nearly 80% of commercial patients received some form of blended vision with a mean target of 1.00 diopters of add in their "near" eye. One of the unique aspects of the LAL is that patients undergo post cataract surgery light treatments during which they can provide feedback to their doctor about their visual preferences as the amount of refractive difference that is well tolerated between the two eyes is very patient dependent. Importantly, LDD data indicates that nearly two thirds of LAL patients elect to change the target refraction in either the near or distance eye compared to the originally selected target treatment, something that would not be possible with a conventional IOL (except through a second

surgical procedure such as LASIK). The graph below shows a histogram of initial and final near add targets in LAL subjects.

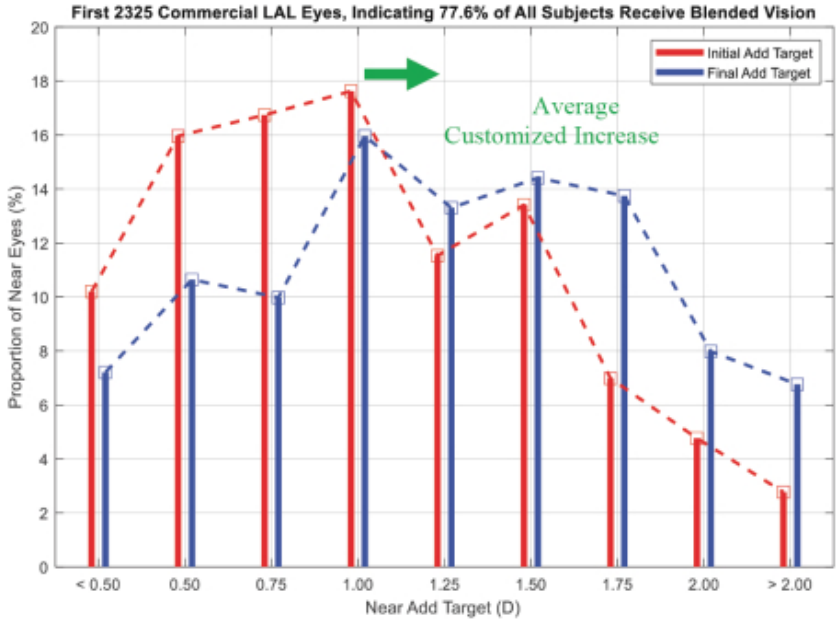


Figure 1: Distribution of initial and final Near Add of over 2,000 commercial LAL eyes.

Sales and marketing

We sell our RxSight system to cataract doctors and are initially focused on establishing commercial adoption in the United States. We commenced a limited launch in the third quarter of 2019 and full commercial launch in the first quarter of 2020 and are initially focused on surgeons that perform a high volume of premium cataract surgery procedures. The market is relatively concentrated as there are as many as 3,000 cataract surgeons that performed approximately 70% to 80% of the premium cataract procedures in the United States in 2021. These surgeons are typically part of larger ophthalmology practices with multiple cataract surgeons. According to Market Scope, there are approximately 10,000 surgeons that perform cataract surgery in the United States. These surgeons typically have refractive surgery practices offering LASIK and are skilled at selling premium procedures to patients on the basis that they offer better vision outcomes. When establishing new customer relationships with cataract surgeons, we typically enter into a sales contract for our LDD for approximately $120,000 and the LAL for approximately $1,000 and a consignment agreement for our LALs. We are initially focused on selling in the United States, we have also received the CE Mark and regulatory approval in Mexico for improving uncorrected visual acuity by adjusting the LAL power to correct residual postoperative refractive error and may selectively pursue future commercial expansion in Europe or other geographies that represent significant volume opportunity, including key markets in Asia. Market Scope estimates that the United States represents approximately 26% of the global premium IOL procedures and 39% of the global premium IOL market value.

We commercialize our products in the United States through our direct sales team which as of December 31, 2021 includes 18 LDD sales personnel, 14 LAL sales personnel, and a group of over 55 clinical specialists, field service, customer service, and marketing personnel. Our sales personnel generally have relevant experience selling cataract surgery products, as well as medical device service and clinical experience. Our commercial strategy involves a “razor and razor blade” sales model, through which we aim to drive adoption of our RxSight system by increasing our installed base of LDDs, which enable consumable revenues from the sale of our LALs. Our LDD sales personnel, all of whom have previous experience selling IOLs and capital equipment to cataract and refractive surgery practices, are responsible for establishing relationships with doctors and winning new customers. After training at our facility in California our sales personnel are generally proficient to sell the LDD after two to three weeks, assisted, if necessary, by our clinical applications specialists. Our LAL sales personnel are focused on

driving utilization of our LALs by helping customers succeed with our products and build their premium procedure practices. These team members are responsible for educating doctors, training the clinic staff, ophthalmologists and surgeon on selling the benefits of our RxSight system to patients, assisting with patient flow processes for our light adjustable lens system, and providing ongoing customer support. Our clinical specialists will train customers on the use of the LDD and follow initial patients at new customers from implant to completion of LDD treatments, ensuring the surgery center, clinic, ophthalmologists, and surgeons are comfortable with the benefits of our RxSight system. While we believe we can cover this concentrated market with a focused sales force, we plan to continue to add highly qualified personnel to our commercial organization, with a strategic mix of sales personnel and clinical specialists, to drive further awareness and penetration with cataract surgeons.

In addition to efforts focused on the high-volume cataract surgeons, we also aim to drive broad adoption with cataract surgeons and to make the RxSight system the standard of care for premium cataract surgery. To achieve this, our commercial organization is focused on driving awareness of the RxSight system through marketing efforts which include promotions at industry and society conferences, podium presentations, publications, social media, and educational webinars focused on highlighting the differentiated benefits of our system. While we believe that most doctors who are experienced with premium IOLs require minimal training to utilize our system, we have also developed a robust education capability for doctors, including tools, training programs and peer-to-peer support to facilitate adoption across doctors with all levels of experience. Because cataract surgery using LALs is largely equivalent to the same surgery used for other IOL products, surgeons only require a one-time training on implantation of our LAL. The surgeon, optometrist and technicians are trained on the use of the LDD. Our clinical training specialist attends the first day the staff conducts the LDD treatments to answer questions and direct the process. The clinical training function is an essential component to properly onboard new customers in the United States and to help existing customers utilize the technology to its full potential. For this reason, all customer operations team functions are fully integrated with our sales team and collaborate on new customer onboarding as well as supporting customers with training of their new personnel, upgrades and new indications for use and on-call questions.

We believe providing ongoing support post-installation is critical to our success in commercializing the RxSight system. We maintain a team of field service engineers, distributed amongst our three core regions, who are responsible for the LDD installation, preventive maintenance and repairs when needed. This team is also responsible for conducting site surveys and ensuring a smooth installation process, typically over a four to five-hour window. The LDD's reliability has an MTBF (Mean-time-between-failure) of over 215 days, providing a stable uptime. In addition to our field service team, we have an internal customer experience department that directly supports the customer, clinical training specialists and the field service team. We measure our customers' onboarding satisfaction with an automated customer survey to all participants in the on-boarding training, after the surgeon has completed their first LAL surgery. The survey asks the customer to rate their satisfaction with the overall support and guidance provided by us during the product integration period. Our cumulative surveys, with 268 respondents, compiled as of Q4 2021 indicated 82.5% "Strongly Agree," and 16.0% "Agree" and 1.5% "not sure" that they were satisfied with the overall support and guidance provided by us during the product integration period. We also elicit, in an open-ended question, suggestions for improvement, with no comments noting a material dissatisfaction with the RxSight system or training. In addition, we conduct a customer satisfaction survey of all customers approximately every 12 months.

Research and development

Our research and development activities are focused on improving clinical outcomes, improving customer experience, expanding our indications for use, reducing manufacturing costs and lifecycle management. Since our initial FDA approval in November 2017, we have received fifteen supplemental approvals including:

- increasing range of available LAL powers (4.0 — 30.0 diopters from a previous range of 10.0 — 30.0 diopters);
- corrections of 0.50 diopters of residual refractive error (initial capability was for correction down to 0.75 diopters of residual refractive error);
- new LAL injector and cartridge for customer ease of use and smaller cataract incision size (less likely to induce corneal astigmatism);

- new UV spectacles with improved aesthetics and usability;
- addition of a photosensitive anterior layer that protects the lens from unwanted UV exposure (ActivShield); and
- Various manufacturing improvements for the LAL and LDD.

Ongoing future development activities are expected to include:

- reduced dependence on UV protective glasses and patient visits;
- cost reductions to the LDD; and manufacturing and supply;
- continued LAL injector and cartridge improvement for surgeon and technician ease of use.

Research and development expenses were $24.5 million and $21.9 million for the year ended December 31, 2021 and 2020, respectively.

Manufacturing and supply

We currently manufacture, assemble, test, and ship our LAL and LDD, and various accessory products including a custom injector system for use with our LAL at our campus of four facilities and approximately 121,000 square feet total in Aliso Viejo, California. We have intentionally pursued a vertically integrated manufacturing strategy offering critical advantages, including control over our product quality and rapid product iteration using strong R&D and quality groups. We believe our current manufacturing capacity is sufficient to meet our current expected demand for at least the next 12 months.

We are registered with the FDA as a medical device manufacturer and are licensed by the State of California to manufacture and distribute our medical devices. We are required to manufacture our products in compliance with the FDA's Quality System Regulation, or QSR (21 CFR 820). The FDA enforces the QSR through periodic inspections and may also inspect the facilities of our suppliers. We moved to our current Aliso Viejo, California facilities starting in April 2016, all of which have been registered with the FDA, the State of California, and the European Notified Body (British Standards Institution) for the manufacture and distribution of medical devices. The FDA conducted its most recent inspection of our facilities in December 2021.

We have received International Organization for Standardization, or ISO, 13485:2016 certification for our quality management system. ISO certification generally includes recertification audits every third year, scheduled annual surveillance audits and periodic unannounced audits. The most recent recertification and surveillance audit was conducted in December 2021. The last unannounced audit on our facilities was performed in May 2018. We have also received quality system certification to the Medical Device Single Audit Program (MDSAP) to cover the jurisdictions of United States, Canada, Brazil, Japan, and Australia from the British Standards Institution. The MDSAP certification follows the ISO 13485:2016 certification schedule.

The LAL is a silicone intraocular lens made from a proprietary blend of custom chemical components. Chemical component vendors produce the raw materials, which we inspect, blend, further purify, and process, and formulate into uncured silicone blend. Using this uncured silicone, we mold the lens in one of our two Class 7 clean rooms. After curing, the molded lens is inspected and packaged and then sent to a third-party ethylene oxide sterilization vendor. After sterilization, the lens is returned to us for final inspection, packaging, and shipment to customers.

Our LDD is a UV projector medical device, which consists of an anterior segment biomicroscope, computer controllers for performing light treatments, and a biometrically designed patient interface and table. The optics are bonded into their mounts using epoxies, which are then oven cured, assembled into the main optical housing and optimized on a proprietary precision alignment station. The completed optical head is integrated into the table, along with a computer, power supplies and other electro-mechanical parts. We outsource the cables and circuit boards used in the LDD to certified specialty contract manufacturers. The fully assembled LDD is put through an electrical safety and final acceptance test process, and then reviewed by quality control, packaged and shipped directly to our customers for installation.

In addition, to aid the doctor in implanting the LAL, we provide several accessories including a custom insertion system and a contact lens. The insertion system consists of a disposable cartridge and a reusable injector handpiece. The disposable cartridge is processed, inspected, and packaged by us while having ethylene oxide sterilization performed by a third-party vendor. The reusable injector handpiece is manufactured by a third-party vendor and is inspected and packaged by us. We also manufacture, inspect, and package a reusable contact lens for administering UV light treatments. The end user is responsible for performing cleaning and sterilization of the injector handpiece and the contact lens following directions for use and hands on training provided by us. We also provide custom UV glasses that are manufactured by third party vendors, and then inspected and shipped by us from our facilities to our customers.

We use a combination of internally manufactured and externally sourced components to produce the LAL, LDD, custom insertion system, and other accessory products. Externally sourced components include off-the-shelf chemical, materials, microchips integrated into printed circuit boards and cables, sub-assemblies, and custom parts that are provided by qualified and approved suppliers. We also employ a third-party sterilization vendor. Some components are provided by single-source or sole source suppliers. While there are other suppliers that could make or provide any one of our single sourced components, we seek to manage single-source supplier risk by regularly assessing the quality and capacity of our suppliers, implementing supply and quality agreements where appropriate and actively managing lead times and inventory levels of sourced components. In addition, we are currently in the process of identifying and approving alternative suppliers to dual or multi-source certain of our LAL raw materials and LDD components. We generally seek to maintain sufficient supply levels to help mitigate any supply interruptions and enable us to find and qualify another source of supply. Order quantities and lead times for externally sourced components are based on our forecasts, which are derived from historical demand and anticipated future demand. Lead times for components may vary depending on the size of the order, time required to fabricate and test the components, specific supplier requirements and current market demand for the materials, sub-assemblies, and parts. In addition, COVID-19 has resulted in manufacturing interruptions at single and sole source suppliers in the United States, European Union, the U.K. and China, which we have been able to mitigate, to date, with selected pre-payment for product, expedite fees, sourcing from alternative suppliers, placing orders for specific chip sets separate from third party suppliers to ensure supply and longer-term orders.

Our suppliers are evaluated, qualified, and approved as part of our supplier quality program, which includes verification and monitoring procedures to ensure that our suppliers comply with FDA and ISO standards, as well as our own specifications and requirements. We inspect and verify externally sourced components under strict processes supported by internal policies and procedures. We maintain a rigorous change control policy to assure that no product or process changes are implemented without our prior review and approval.

Third-party reimbursement and patient billing

Dual aspect payment model

In the United States, the CMS has determined that the additional refractive correction provided by astigmatism correcting and presbyopia correcting (premium) IOLs is not a covered benefit. As described in two CMS rulings (CMS 05-01 and CMS 1536-R), premium IOLs have both a covered and non-covered aspect, providing the framework for the “dual-aspect payment model”. In effect since 2005, this model means that CMS does not reimburse the physician or the facility for the additional costs associated with a premium IOL, while still covering the cost of the conventional IOL procedure. Instead, the patient selecting a premium IOL is responsible for the additional charges from the physician and from the facility that exceed the regular charges for insertion of a conventional IOL that are submitted to CMS by each of these providers. As of 2017, CMS has recognized the LAL as an astigmatism correcting (premium) IOL, making it eligible for the dual aspect payment model. Most commercial payers mirror the Medicare rulings, but this can vary by payer.

Procedure coding and payment

In the United States, we primarily sell our LAL products to ambulatory surgical centers (“ASC’s”) and occasionally to hospitals. These customers in turn bill various third-party payors, such as commercial payors and state and government payors, as well as patients directly for the services provided to each patient.

Third-party payors require physicians and hospitals to identify the service for which they are seeking reimbursement by using Current Procedural Terminology, or CPT, codes, which are created and maintained by the American Medical Association, or AMA. For cataract surgery, the most common specific CPT codes are 66984

(Cataract surgery with IOL, on stage) and 66982 (Cataract surgery, complex). The facility fees associated with these codes include payment for a conventional IOL, up to $150. A specific HCPCS code is listed on the CMS claim by the facility to indicate use of premium IOL for tracking purposes only (V2787 or V2788 for astigmatism-correcting or presbyopia-correction function of IOL respectively). Similarly, the physician includes HCPCS code A9270 (non-covered item or service) on their claim to Medicare (or another third party) to indicate charges for extended care related to the correction of refractive error.

While an Advanced Beneficiary Notice ("ABN") or Notice of Exclusion from Medicare Benefits ("NEMB") is not required, most providers issue an ABN or NEMB to alert patients that CMS (or non-Medicare payers) do not cover the additional charges associated with a premium IOL and to get the patient's agreement to pay these charges. Patients are then billed directly by the physician and the ASC for these charges. In some cases, the physician bills the patient exclusively and then reimburses the ASC for the additional cost of the Premium IOL.

Commercial payor and government program coverage

While the dual aspect payment model has been in use for over 15 years, the extent to which this model will be used by non-government third-party payors, such as commercial insurance, and managed healthcare organizations may vary. One third-party payor's decision does not ensure that other payors will also follow this model. As a result, the coverage determination process can require manufacturers to provide additional support for the use of a product to each payor separately. This can be a time-consuming process, with no assurance that the dual aspect model will be applied consistently.

Reimbursement outside of the United States

In international markets, reimbursement and healthcare payment systems also vary significantly by country, and many countries have instituted price ceilings on specific products and therapies. In many countries, analogous determinations to the dual aspect CMS ruling have been made, allowing for partial coverage of the cataract procedure by national health systems, with patients paying out of pocket for refractive services associated with the premium IOL. In other countries, such dual billing is not allowed, forcing patients to pay for the entire cost of the cataract surgery and IOL when a premium IOL is used. In such markets, it may be possible for doctors to charge separately for the cost of light treatments, which are not part of the cataract procedure. This method would require a different billing methodology by us than is currently used in the United States, where light treatments are included with the purchase of the LAL. There is no assurance that these methodologies will be allowed or that an adequate level of payment will be established, or that the third-party payors' reimbursement policies will not adversely affect the ability for manufacturers to sell products profitably.

Intellectual Property, License Agreements, and Other Material Agreements

Our success depends in part on our ability to obtain, maintain, protect, and enforce our intellectual property rights, including our patent rights, preserve the confidentiality of our trade secrets, operate without infringing, misappropriating or otherwise violating the intellectual property rights of others and prevent others from infringing, misappropriating or otherwise violating our intellectual property rights. We rely on a combination of patent, trademark, trade secret, copyright and other intellectual property rights and measures to protect the products and technology that we consider important to our business. We also rely on know-how and continuing technological innovation to develop and maintain our competitive position.

Our policy is to seek to protect our proprietary position by, among other methods, pursuing and obtaining patent protection in the United States and in jurisdictions outside of the United States related to our technology, inventions, improvements and products that are important to the development and implementation of our business. Our patent portfolio covers various aspects of our LDD, LAL and related devices and methods.

The term of individual patents depends upon the legal term of the patents in the countries in which they are obtained. Generally, in the United States, issued patents are granted a term of 20 years from the earliest claimed non-provisional or Patent Cooperation Treaty ("PCT") filing date. In certain instances, a patent term can be adjusted to recapture a portion of delay by the U.S. Patent and Trademark Office ("USPTO"), in examining the patent application (patent term adjustment, or PTA) or extended to account for term effectively lost as a result of the FDA regulatory review period (patent term extension, or PTE), or both. Additionally, a patent term may be shortened if a patent is terminally disclaimed over an earlier filed patent. However, the life of the patent, and the protection it affords, is limited. In addition, we cannot provide any assurance that any patents will be issued from our pending or

future applications or that any issued patents will adequately protect our current and future products. We also cannot predict the breadth of claims that may be allowed or enforced in our owned or in-licensed patents or whether such claims, if issued, will cover our products, provide sufficient protection from competitors or otherwise provide any competitive advantage. Any issued patents that we may own or in-license in the future may be challenged, invalidated, narrowed, held unenforceable, infringed or circumvented.

Our patent portfolio as of January 31, 2022, includes approximately 24 owned issued and non-expired United States patents, 10 pending U.S. non-provisional patent applications, four pending PCT applications, 19 issued and non-expired foreign patents, and 20 pending foreign patent applications. These owned patents, and the patents, if any, that issue from these patent applications are projected to expire between 2022 and 2041, in each case without taking into account any possible PTA or PTE and assuming payment of all appropriate maintenance, renewal, annuity, or other governmental fees.

As of January 31, 2022, we also have exclusively in-licensed approximately five issued and non-expired United States patents and 10 issued and non-expired foreign patents, which patents are projected to expire between 2031 and 2036, in each case without taking into account any possible PTA or PTE and assuming payment of all appropriate maintenance, renewal, annuity, or other governmental fees. These in-licensed patents are owned by the California Institute of Technology, or Caltech, and licensed to us, along with certain related technology, pursuant to our license agreement with Caltech effective as of July 28, 2015, or the Caltech Agreement.

Our patent portfolio, including our owned and exclusively in-licensed issued patents and patent applications, is generally directed to:

- Our current LAL: Some of the patents directed to our current LAL include, for example, U.S. Pat. No. 9,119,710, which is expected to expire in 2026, U.S. Pat. No. 10,470,874, which is expected to expire in 2026, and U.S. Pat. No. 10,874,505, which is expected to expire in 2033.
- Our future LAL as contemplated or in development: Some of the patents directed to our future LAL include, for example, U.S. Pat. No. 10,433,951, which is expected to expire in 2037, and U.S. Pat. No. 10,966,819, which is expected to expire in 2037.
- Our LDD: Some of the patents directed to our LDD include, for example, U.S. Pat. No. 10,864,075, which is expected to expire in 2038, and U.S. Pat. No. 10,932,864, which is expected to expire in 2039.
- Our lens adjustment procedure: Some of the patents directed to our lens adjustment procedure include, for example, U.S. Pat. No. 10,010,406, which is expected to expire in 2032, and U.S. Pat. No. 10,166,731, which is expected to expire in 2036.
- Our system accessories: A patent directed to our system accessories includes, for example, U.S. Pat. No. 10,456,240, which is expected to expire in 2038.

Pursuant to the Caltech agreement, we received an exclusive, royalty-bearing, nontransferable, worldwide license under such patent rights and technology to manufacture, use and commercialize, in all fields, products covered by the licensed patents or that utilize the licensed technology. The licenses granted to us by Caltech are subject to certain retained rights of Caltech for educational and research purposes and certain retained rights of the U.S. government. We are subject to certain diligence obligations under the Caltech Agreement with respect to the commercialization of the licensed products. Pursuant to our license agreement with Caltech, we paid a $50,000 non-refundable license issue fee upon the execution of the agreement and agreed to reimburse Caltech approximately $64,680 for past patent prosecution and maintenance expenses. Further, we have an obligation to pay an annual license maintenance fee of $10,000. We are also obligated to pay (i) a low-single-digit royalty based on net sales of products covered by the licensed patents, which royalty obligation expires, on a country-by-country and product-by-product basis, upon the last-to-expire valid claim of a licensed patent covering such product in such country and (ii) a fraction of a single-digit royalty based on net sales of products covered only by the licensed technology, which royalty obligation expires, on a country-by-country-basis, seven years following the first commercial sale of such product in such country. Following the first commercial sale of a licensed product, we are required to pay a minimum annual royalty to Caltech of $50,000 on each anniversary of the effective date of the Caltech Agreement. We are also obligated to pay Caltech a mid-teen royalty on any applicable sublicensing revenue. Unless earlier terminated, the term of the Caltech Agreement continues until the later of the expiration, revocation, invalidation or

unenforceability of the licensed patents or the expiration of our royalty obligations under the agreement. Caltech may terminate the Caltech Agreement for our insolvency, failure to maintain required insurance coverage levels, or if we materially breach the agreement, including our payment or diligence obligations thereunder, and do not cure such breach within specified time periods. Currently, we do not sell any licensed products under the agreement, and therefore we have no current royalty obligation to Caltech. We are considering the development of future products to which the intellectual property in-licensed from Caltech may be directed, however we do not believe these are material at this time.

Pursuant to the agreement with the Regents of the University of California ("Regents") dated March 1, 2000 (the "Regents Agreement"), we received an exclusive, royalty bearing, sublicensable, worldwide license under certain Regents' patent rights to make, have made, use, sell, offer to sell and import products and to practice methods in the research, development, and commercialization of products for commercial applications. This license was subject to certain retained rights of the Regents and Caltech for educational and research purposes and certain retained rights of the U.S. government. We were subject to certain diligence obligations under the Regents Agreement with respect to the commercialization of the licensed products. Pursuant to our license agreement with the Regents, we paid a $10,000 non-refundable license issue fee upon the execution of the Regents Agreement and agreed to reimburse the Regents approximately $57,000 for past patent prosecution and maintenance expenses. Further, we had an obligation to pay, and paid, an annual license maintenance fee of $5,000. We were also obligated to pay a low-single digit royalty based on net sales of products covered by the licensed patents, which royalty obligation expires, upon the last-to-expire valid claim of a licensed patent covering such product. Following the first commercial sale of a licensed product, we were required to pay, and paid, a minimum annual royalty to the Regents of $10,000 by February 28th for the calendar year in which the minimum payment is due. Upon a filing of an Investigational Device Exemption by us with the FDA for a trial involving more than 20 persons, or other equivalent applications, we paid $20,000 to the Regents. Following the first use of a licensed product in a patient as part of a Phase II or Phase III clinical trial, we paid $30,000 and $50,000, respectively to the Regents. Upon an approval by the FDA of a Pre-Marketing Approval Application or equivalent application submitted by us, we paid $175,000 to the Regents. We were also obligated to pay the Regents a percentage of all compensation received by us from sublicensees other than royalties on sales of the licensed products, not to exceed $500,000, for which there were no payments as we did not sublicense the licensed patents. In aggregate, since inception, we have paid approximately $525,000 in patent prosecution and maintenance fees, license fees, minimum royalties and milestone fees pursuant to the Regents Agreement. Unless earlier terminated, the term of the Regents Agreement continued until the expiration of the last-to-expire patent included in Regents' patent rights licensed under the Regents Agreement. The Regents had the right to terminate the agreement if we materially breached the agreement, including our payment or diligence obligations thereunder, and did not cure such breach within specified time periods. We had the right to terminate the agreement at will in whole or as to any portion of the Regents' patent rights by giving notice in writing to Regents. We terminated the Regents Agreement in March of 2021, as the last licensed patent covering our product expired. In connection with the closing of our initial public offering we paid the Regents $25,000, which survived the termination of the Regents Agreement.

Pursuant to the agreement with QAD, Inc. ("QAD") dated October 29, 2015 (the "QAD Agreement"), we received a nonexclusive, non-transferable, perpetual license to use certain QAD software at the physical location where we install the software. Under the agreement, we purchase such QAD software through individual orders ("Purchase Orders"), and each Purchase Order has a respective payment fee and maintenance fee. We use the software licensed under the QAD agreement for inventory, shipping / receiving, sales order, work order, planning and financial transactions for the business. Maintenance for the software is offered by QAD and available for purchase by us on an annual basis, and such purchase was compulsory for the first year of the agreement. After the first year, maintenance purchased under the agreement automatically renews for successive one-year periods unless terminated by us or QAD 60 days prior to the effective date of any renewal term. Further, we grant QAD audit rights to verify our usage of QAD software, and if following such audit our use of the QAD software is in excess of our license, we are obligated to pay to QAD the amounts necessary to become compliant. QAD provides limited warranties to the software and retains all intellectual property ownership rights in the QAD software including any modifications made by us, however we receive a license to use any modifications made by us. Unless earlier terminated, the term of the QAD agreement is perpetual. Both parties have the right to terminate the agreement for convenience by giving the other party 90 days prior written notice and such termination does not affect the license granted. Either party to the agreement may terminate the agreement with notice, if the other materially breaches the agreement, and the breach is not cured within specified time periods. In addition, either party may terminate if the

other party is adjudicated bankrupt or an official is appointed to manage its financial affairs. Upon termination for cause, we must immediately discontinue all use of the software.

We believe that we have certain know-how and trade secrets relating to our technology and current and future products. We rely on trade secrets to protect certain aspects of our technology related to our current and future products. However, trade secrets and know-how can be difficult to protect. We seek to protect our trade secrets and know-how, in part, by entering into confidentiality agreements with our employees, consultants, scientific advisors, service providers, and contractors but these agreements may not provide meaningful protection, and we cannot guarantee that we have executed such agreements with all applicable counterparties. These agreements may also be breached, and we may not have an adequate remedy for any such breach. We also seek to preserve the integrity and confidentiality of our data and trade secrets by maintaining physical security of our premises and physical and electronic security of our information technology systems. Although we take steps to protect our trade secrets and know-how, third parties may independently develop or otherwise gain access to our trade secrets and know-how.

For more information, please see “Risk Factors-Risks related to Intellectual Property” in Part I, Item 1A of this Annual Report.

Competition

Competition in the surgical ophthalmology market is intense and is primarily driven by technological innovation and the regulatory approval required to commercialize products in the key markets around the world. The development of new or improved products may make existing products less attractive, reduce them to commodity status or even make them obsolete. We believe the principal competitive factors in our markets include:

- the quality of patient outcomes, oftentimes measured by visual acuity, and adverse event rates;
- patient experience, including patient recovery time and level of discomfort;
- acceptance by treating doctors and referral sources;
- doctor learning curves and willingness to adopt new technologies;
- ease-of-use and reliability;
- economic benefits and cost savings;
- strength of clinical evidence;
- effective distribution and marketing to surgeons and potential patients; and
- product price and qualification for coverage and reimbursement.

From a commercial perspective, we believe our primary competitors in the cataract IOL market are alternative premium IOL providers, including Alcon, Johnson & Johnson, Bausch + Lomb, BVI, Hoya, and Carl Zeiss Meditec. According to Market Scope, the global cataract IOL market is highly concentrated, with these top five players accounting for approximately 74% of total market revenue. Our competitors are significantly larger than us with greater financial, marketing, sales and personnel resources, greater brand recognition and longer operating histories. We believe our ability to compete effectively will be dependent on our ability to build the commercial infrastructure necessary to effectively and cost-efficiently drive awareness of the unique value of our system.

In addition, patients who receive an LAL will be required to wear UV protective spectacles until final lock-in which is approximately 4-5 weeks after surgery. They will also be required to return for an additional 2-3 clinic visits compared to traditional cataract surgery. The additional clinic visits are non-surgical but do require the patient’s eyes to be dilated. Due to these additional requirements, market acceptance of the LAL may be impacted.

The two most popular premium IOLs approved for cataract treatment are PanOptix by Alcon and Tecnis by Johnson & Johnson. According to the Market Scope 2021 Premium Report Alcon, Johnson & Johnson and Carl Zeiss Meditec are the three largest IOL manufacturers, with an estimated 2021 revenue share of the premium IOL market of 51.3%, 23.2%, and 8.1% respectively. The PanOptix and Tecnis families of IOLs are available in a monofocal Toric, multifocal Toric and EDOF Toric versions. The Toric versions of these lenses represent

approximately 54% of all premium multifocal IOLs sold in 2021. The rest of the market is shared between several smaller companies each with under 5% market share. From a technology perspective, we believe the LAL competes with nearly all of the existing IOLs, including conventional, premium astigmatism correcting and premium presbyopia correcting lenses.

Government regulation

Our products and operations are subject to extensive and ongoing regulation by the FDA under the Federal Food, Drug, and Cosmetic Act, or FDCA, and its implementing regulations, as well as other federal, state and local regulatory authorities in the United States, as well as foreign regulatory authorities. The FDA regulates, among other things, product design and development, pre-clinical and clinical testing, manufacturing, packaging, labeling, storage, record keeping and reporting, clearance or approval, marketing, distribution, promotion, import and export, and post-marketing surveillance in the United States to assure the safety and effectiveness of medical products for their intended use.

FDA regulation of medical devices

Unless an exemption applies, each new or significantly modified medical device we seek to commercially distribute in the United States will require either a premarket notification to the FDA requesting permission for commercial distribution under Section 510(k) of the Federal Food, Drug and Cosmetic Act, or FDCA, also referred to as a 510(k) clearance, or approval from the FDA of a PMA application. Both the 510(k) clearance and PMA processes can be resource intensive, expensive, and lengthy, and require payment of significant user fees, unless an exemption is available.

FDA classifies medical devices into one of three classes – Class I, Class II or Class III – depending on the degree of risk associated with each medical device and the extent of control needed to provide reasonable assurances with respect to safety and effectiveness.

Class I devices are those for which safety and effectiveness can be reasonably assured by adherence to the FDA's general controls for medical devices, which include compliance with the applicable portions of FDA's current good manufacturing practices for devices, as reflected in of the Quality System Regulation, or QSR, establishment registration and device listing, reporting of adverse events and malfunctions, and appropriate, truthful and non-misleading labeling and promotional materials. Some Class I devices, also called Class I reserved devices, also require premarket clearance by the FDA through the 510(k) premarket notification process described below. Most Class I products are exempt from the premarket notification requirements.

Class II devices are those that are subject to the FDA's general controls and any other special controls deemed necessary by the FDA to ensure the safety and effectiveness of the device. These special controls can include performance standards, patient registries, product-specific FDA guidance documents, special labeling requirements and post-market surveillance. Most Class II devices are subject to premarket review and clearance by the FDA through the 510(k) premarket notification process.

Class III devices include devices deemed by the FDA to pose the greatest risk such as life-supporting or life-sustaining devices, or implantable devices, in addition to those deemed novel and not substantially equivalent following the 510(k) process. Due to the level of risk associated with Class III devices, the FDA's general controls and special controls alone are insufficient to assure their safety and effectiveness. Devices placed in Class III generally require the submission of a PMA application, demonstrating the safety and effectiveness of the device which must be approved by the FDA prior to marketing, or the receipt of a 510(k) de novo classification, which provides for the reclassification of the device into Class I or II. The PMA approval process is generally more costly and time consuming than the 510(k) process. Through the PMA application process, the applicant must submit data and information demonstrating reasonable assurance of the safety and effectiveness of the device for its intended use to the FDA's satisfaction. Accordingly, a PMA application typically includes, but is not limited to, extensive technical information regarding device design and development, pre-clinical and clinical trial data, manufacturing information, labeling and financial disclosure information for the clinical investigators in device studies. The PMA application must provide valid scientific evidence that demonstrates to the FDA's satisfaction a reasonable assurance of the safety and effectiveness of the device for its intended use.

If a new medical device does not qualify for the 510(k) premarket notification process because no predicate device to which it is substantially equivalent can be identified, the device is automatically classified into Class III.

The Food and Drug Administration Modernization Act of 1997 established a new route to market for low to moderate risk medical devices that are automatically placed into Class III due to the absence of a predicate device, called the "Request for Evaluation of Automatic Class III Designation," or the de novo classification process. This process allows a manufacturer whose novel device is automatically classified into Class III to request down-classification of its medical device into Class I or Class II on the basis that the device presents low or moderate risk, rather than requiring the submission and approval of a PMA. If the manufacturer seeks reclassification into Class II, the manufacturer must include a draft proposal for special controls that are necessary to provide a reasonable assurance of the safety and effectiveness of the medical device. The FDA may reject the reclassification petition if it identifies a legally marketed predicate device that would be appropriate for a 510(k) or determines that the device is not low to moderate risk and requires PMA or that general controls would be inadequate to control the risks and special controls cannot be developed.

Obtaining FDA marketing authorization, de novo down-classification, or approval for medical devices is expensive and uncertain, and may take several years, and generally requires significant scientific and clinical data.

Investigational device process

In the United States, absent certain limited exceptions, human clinical trials intended to support medical device clearance or approval require an IDE application. Some types of studies deemed to present "non-significant risk" are deemed to have an approved IDE once certain requirements are addressed, and IRB approval is obtained. If the device presents a "significant risk" to human health, as defined by the FDA, the sponsor must submit an IDE application to the FDA and obtain IDE approval prior to commencing the human clinical trials. The IDE application must be supported by appropriate data, such as animal and laboratory testing results, showing that it is safe to test the device in humans and that the testing protocol is scientifically sound. The IDE application must be approved in advance by the FDA for a specified number of subjects. Generally, clinical trials for a significant risk device may begin once the IDE application is approved by the FDA and the study protocol and informed consent are approved by appropriate institutional review boards at the clinical trial sites. There can be no assurance that submission of an IDE will result in the ability to commence clinical trials, and although the FDA's approval of an IDE allows clinical testing to go forward for a specified number of subjects, it does not bind the FDA to accept the results of the trial as sufficient to prove the product's safety and effectiveness, even if the trial meets its intended success criteria.

All clinical trials must be conducted in accordance with the FDA's IDE regulations that govern investigational device labeling, prohibit promotion and specify an array of recordkeeping, reporting and monitoring responsibilities of study sponsors and study investigators. Clinical trials must further comply with the FDA's good clinical practice regulations for institutional review board approval and for informed consent and other human subject protections. Required records and reports are subject to inspection by the FDA.

The results of clinical testing may be unfavorable, or, even if the intended safety and effectiveness success criteria are achieved, may not be considered sufficient for the FDA to grant marketing approval or clearance of a product. The commencement or completion of any clinical trial may be delayed or halted, or be inadequate to support approval of a PMA application, for numerous reasons, including, but not limited to, the following:

- The FDA or other regulatory authorities do not approve a clinical trial protocol or a clinical trial, or place a clinical trial on hold;
- Patients do not enroll in clinical trials at the rate expected;
- Patients do not comply with trial protocols;
- Patient follow-up is not at the rate expected;
- Patients experience adverse events;
- Patients die during a clinical trial, even though their death may not be related to the products that are part of the trial;
- Device malfunctions occur with unexpected frequency or potential adverse consequences;

- Side effects or device malfunctions of similar products already in the market that change the FDA's view toward approval of new or similar PMAs or result in the imposition of new requirements or testing;
- Institutional review boards and third-party clinical investigators may delay or reject the trial protocol;
- Third-party clinical investigators decline to participate in a trial or do not perform a trial on the anticipated schedule or consistent with the clinical trial protocol, investigator agreement, investigational plan, good clinical practices, the IDE regulations, or other FDA or IRB requirements;
- Third-party investigators are disqualified by the FDA;
- We or third-party organizations do not perform data collection, monitoring and analysis in a timely or accurate manner or consistent with the clinical trial protocol or investigational or statistical plans, or otherwise fail to comply with the IDE regulations governing responsibilities, records, and reports of sponsors of clinical investigations;
- Third-party clinical investigators have significant financial interests related to us or our study such that the FDA deems the study results unreliable, or we or investigators fail to disclose such interests;
- Regulatory inspections of our clinical trials or manufacturing facilities, which may, among other things, require us to undertake corrective action or suspend or terminate our clinical trials;
- Changes in government regulations or administrative actions;
- The interim or final results of the clinical trial are inconclusive or unfavorable as to safety or effectiveness; or
- The FDA concludes that our trial design is unreliable or inadequate to demonstrate safety and effectiveness.

The 510(k) clearance process

Under the 510(k) process, the manufacturer must submit to the FDA a premarket notification, demonstrating that the device is "substantially equivalent," as defined in the statute, to a legally marketed predicate device.

A predicate device is a legally marketed device that is not subject to premarket approval, i.e., a device that was legally marketed prior to May 28, 1976 (pre-amendments device) and for which a PMA is not required, a device that has been reclassified from Class III to Class II or I, or a device that was previously found substantially equivalent through the 510(k) process. A device is considered to be substantially equivalent if, with respect to the predicate device, it has the same intended use, and has either (i) the same technological characteristics; or (ii) different technological characteristics, but the information provided in the 510(k) submission demonstrates that the device does not raise different questions of safety or effectiveness than the predicate device. Clinical data is sometimes, but not always, required to support substantial equivalence.

Before the FDA will accept a 510(k) premarket notification for substantive review, the FDA will first assess whether the submission satisfies a minimum threshold of acceptability. If the FDA determines that the 510(k) submission lacks necessary information for substantive review, the FDA will issue a "Refuse to Accept" letter which generally outlines the information the FDA believes is necessary to permit a substantive review and to reach a determination regarding substantial equivalence. An applicant must submit the requested information before the FDA will proceed with additional review of the submission. If a 510(k) submission is accepted for substantive review, the Medical Device User Fee Amendments sets a performance goal of 90 days for FDA review of a 510(k) submission, but the review time can be delayed if FDA raises questions or requests additional information during the review process. As a practical matter, clearance often takes longer, and clearance is never assured. Thus, as a practical matter, clearance often takes longer than 90 days. Although many 510(k) premarket notifications are cleared without clinical data, the FDA may require further information, including clinical data, to make a determination regarding substantial equivalence, which may significantly prolong the review process. If the FDA agrees that the device is substantially equivalent, it will grant clearance to commercially market the device.

If the FDA determines that the device is not "substantially equivalent" to a predicate device, or if the device is automatically classified into Class III, the device sponsor must then fulfill the much more rigorous premarketing requirements of the PMA approval process, or seek reclassification of the device through the de novo process. A manufacturer can also submit a petition for direct de novo review if the manufacturer is unable to identify an appropriate predicate device and the new device or new use of the device presents a moderate or low risk.

Medical devices can only be marketed for the indications for which they are cleared or approved. After a device receives 510(k) clearance, any modification that could significantly affect its safety or effectiveness, or that would constitute a new or major change in its intended use, will require a new 510(k) clearance or, depending on the modification, could require a PMA application or de novo classification. The determination as to whether or not a modification constitutes such a change is initially left to the manufacturer using available FDA guidance; however, the FDA may review this determination to evaluate the regulatory status of the modified product at any time and may require the manufacturer to cease marketing and recall the modified device until new 510(k) clearance or PMA approval is obtained. If the FDA disagrees with a manufacturer's determination regarding whether a new premarket submission is required for the modification of an existing device, the FDA can require the manufacturer to cease marketing and/or recall the modified device until 510(k) clearance or approval of a PMA application is obtained. The manufacturer may also be subject to significant regulatory fines or penalties.

The PMA approval process

Following receipt of a PMA application, the FDA conducts an administrative review to determine whether the application is sufficiently complete to permit a substantive review. If it is not, the agency will refuse to file the PMA. If it is, the FDA will accept the application for filing and begin the substantive review. The FDA, by statute and by regulation, has 180 days to review a filed PMA application, although the review of an application more often occurs over a significantly longer period of time. During this review period, the FDA may request additional information or clarification of information already provided, and the FDA may issue a major deficiency letter to the applicant, requesting the applicant's response to deficiencies communicated by the FDA. The FDA considers a PMA or PMA supplement to have been voluntarily withdrawn if an applicant fails to respond to an FDA request for information (e.g., major deficiency letter) within a total of 360 days. Before approving or denying a PMA, an FDA advisory committee may review the PMA at a public meeting and provide the FDA with the committee's recommendation on whether the FDA should approve the submission, approve it with specific conditions, or not approve it. The FDA is not bound by the recommendations of an advisory committee, but it considers such recommendations carefully when making decisions.

Prior to approval of a PMA, the FDA may conduct inspections of the clinical trial data and clinical trial sites, as well as inspections of the manufacturing facility and processes. Overall, the FDA review of a PMA application generally takes between one and three years but may take significantly longer. The FDA can delay, limit or deny approval of a PMA application for many reasons, including:

- The device may not be shown safe or effective to the FDA's satisfaction;
- The data from pre-clinical studies and/or clinical trials may be found unreliable or insufficient to support approval;
- The manufacturing process or facilities may not meet applicable requirements; and
- Changes in FDA approval policies or adoption of new regulations may require additional data.

If the FDA evaluation of a PMA is favorable, the FDA will issue either an approval letter, or an approvable letter, the latter of which usually contains a number of conditions that must be met in order to secure final approval of the PMA. When and if those conditions have been fulfilled to the satisfaction of the FDA, the agency will issue a PMA approval letter authorizing commercial marketing of the device, subject to the conditions of approval and the limitations established in the approval letter. If the FDA's evaluation of a PMA application or manufacturing facilities is not favorable, the FDA will deny approval of the PMA or issue a not approvable letter. The FDA also may determine that additional tests or clinical trials are necessary, in which case the PMA approval may be delayed for several months or years while the trials are conducted and data is submitted in an amendment to the PMA, or the PMA is withdrawn and resubmitted when the data are available. The PMA process can be expensive, uncertain and lengthy and a number of devices for which the FDA approval has been sought by other companies have never been approved by the FDA for marketing.

New PMA applications or PMA supplements are required for modification to the manufacturing process, equipment or facility, quality control procedures, sterilization, packaging, expiration date, labeling, device specifications, ingredients, materials or design of a device that has been approved through the PMA process. PMA supplements often require submission of the same type of information as an initial PMA application, except that the supplement is limited to information needed to support any changes from the device covered by the approved PMA application and may or may not require as extensive technical or clinical data or the convening of an advisory panel, depending on the nature of the proposed change.

In approving a PMA application, as a condition of approval, the FDA may also require some form of post-approval study or post-market surveillance, whereby the applicant conducts a follow-up study or follows certain patient groups for a number of years and makes periodic reports to the FDA on the clinical status of those patients when necessary to protect the public health or to provide additional or longer term safety and effectiveness data for the device. The FDA may also require post-market surveillance for certain devices cleared under a 510(k) notification, such as implants or life-supporting or life-sustaining devices used outside a device user facility. The FDA may also approve a PMA application with other post-approval conditions intended to ensure the safety and effectiveness of the device, such as, among other things, restrictions on labeling, promotion, sale, distribution and use. Significant modifications to the manufacturing process, labeling and design for a device which has received approval through the PMA process may require submission of a new PMA application or PMA supplement prior to marketing.

Ongoing regulation by the FDA

Even after the FDA permits a device to be marketed, numerous regulatory requirements apply, including but not limited to:

- establishment registration and device listing;
- the QSR, which requires manufacturers, including third-party manufacturers, to follow stringent design, testing, production, control, supplier/contractor selection, complaint handling, documentation, and other quality assurance procedures during the manufacturing process;
- labeling regulations, advertising and promotion requirements, restrictions on sale distribution or use of a device, each including the FDA general prohibition against the promotion of products for any uses other than those authorized by the FDA, which are commonly known as “off label” uses;
- the Medical Device Reporting, or MDR regulation, which requires that manufactures report to the FDA if their device may have caused or contributed to a death or serious injury or if their device malfunctioned and the device or a similar device marketed by the manufacturer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur;
- medical device corrections and removal reporting regulations, which require that manufactures report to the FDA field corrections or removals if undertaken to reduce a risk to health posed by a device or to remedy a violation of the FD&C Act that may present a risk to health;
- recall requirements, including a mandatory recall if there is a reasonable probability that the device would cause serious adverse health consequences or death;
- an order of repair, replacement or refund;
- device tracking requirements; and
- post market study and surveillance requirements.

After a device receives 510(k) clearance, any modification that could significantly affect its safety or effectiveness, or that would constitute a major change in its intended use, will require a new 510(k) or possibly a PMA. The FDA requires each manufacturer to make this determination initially, but the FDA can review any such decision and can disagree with a manufacturer’s determination. If the FDA disagrees with our determination not to seek a new 510(k) clearance, the FDA may retroactively require us to seek 510(k) clearance or possibly a PMA. The FDA could also require us to cease marketing and distribution and/or recall the modified device until 510(k)

clearance or a PMA is obtained. Also, in these circumstances, we may be subject to significant regulatory fines and penalties.

Some changes to an approved PMA device, including changes in indications, labeling, or manufacturing processes or facilities, require submission and FDA approval of a new PMA application or PMA supplement, as appropriate, before the change can be implemented. Supplements to a PMA often require the submission of the same type of information required for an original PMA application, except that the supplement is generally limited to that information needed to support the proposed change from the device covered by the original PMA. The FDA uses the same procedures and actions in reviewing PMA supplements as it does in reviewing original PMA applications.

FDA regulations require us to register as a medical device manufacturer with the FDA. Additionally, some states also require medical device manufacturers and/or distributors doing business within the state to register with the state or apply for a state license, which could subject our facility to state inspection as well as FDA inspection on a routine basis for compliance with the QSR and any applicable state requirements. These regulations require that we manufacture our products and maintain related documentation in a prescribed manner with respect to manufacturing, testing and control activities. Further, the FDA requires us to comply with various FDA regulations regarding labeling. Failure by us or by our suppliers to comply with applicable regulatory requirements can result in enforcement action by the FDA or state authorities, which may include any of the following sanctions:

- warning or untitled letters, fines, injunctions, consent decrees and civil penalties;
- customer notifications, voluntary or mandatory recall or seizure of our products;
- operating restrictions, partial suspension or total shutdown of production;
- delay in processing, clearing or approving submissions or applications for new products or modifications to existing products;
- FDA refusal to issue certificates to foreign governments needed to export products for sale in other countries;
- suspension or withdrawal of FDA approvals or clearances that have already been granted; and
- criminal prosecution.

Newly discovered or developed safety or effectiveness data may require changes to a product's labeling, including the addition of new warnings and contraindications, and also may require the implementation of other risk management measures. Also, new government requirements, including those resulting from new legislation, may be established, or the FDA's policies may change, which could delay or prevent regulatory clearance or approval of our products under development.

Our facilities, records and manufacturing processes are subject to periodic unscheduled inspections by the FDA. Failure to comply with the applicable United States medical device regulatory requirements could result in, among other things, warning letters, untitled letters, fines, injunctions, consent decrees, civil penalties, unanticipated expenditures, repairs, replacements, refunds, recalls or seizures of products, operating restrictions, total or partial suspension of production, the FDA's refusal to issue certificates to foreign governments needed to export products for sale in other countries, the FDA's refusal to grant future premarket clearances or approvals, withdrawals or suspensions of current product clearances or approvals and criminal prosecution.

When the FDA conducts an inspection, the inspectors will identify any deficiencies they believe exist in the form of a notice of inspectional observations, or Form FDA 483. If we receive a notice of inspectional observations or deficiencies from the FDA following an inspection, we would be required to respond in writing, and would be required to undertake corrective and/or preventive or other actions in order to address the FDA's or other regulators' concerns. Failure to address the FDA's concerns may result in the issuance of a warning letter or other enforcement or administrative actions.

International medical device premarket authorization process

The European Union has adopted numerous directives and standards regulating the design, manufacture, clinical trials, labeling and adverse event reporting for medical devices. Our products are regulated in the European

Union as medical devices per European Union Directive 93/42/EEC, also known as the Medical Device Directive, or MDD. The MDD sets out the basic regulatory framework for medical devices in the European Union. The system of regulating medical devices operates by way of a certification for each medical device. Each certified device is marked with the CE mark which shows that the device has a Certificat de Conformité. There are national bodies known as Competent Authorities in each member state which oversee the implementation of the MDD within their jurisdiction. The means for achieving the requirements for the CE mark vary according to the nature of the device. Devices are classified in accordance with their perceived risks, similarly to the U.S. system. The class of a product determines the conformity assessment required before the CE mark can be placed on a product. Conformity assessments for our products are carried out as required by the MDD. Each member state can appoint Notified Bodies within its jurisdiction. If a Notified Body of a one-member state has issued a Certificat de Conformité, the device can be sold throughout the European Union without further conformance tests being required in other member states. The CE mark is contingent upon continued compliance with the applicable regulations and the quality system requirements of the ISO 13485 standard.

The new European Union Medical Devices Regulation 2017/745, or EU MDR, which was published in May 2017 with a transition period of three years, replaces the MDD and will expand and modify the pre-market and post-market obligations of the MDD. The date of application of the EU MDR has been postponed to May 26, 2021 with implementation dates based off of risk classification of the medical device. The EU MDR will impose additional requirements on clinical evaluation process, safety, classification and performance of medical device products. The EU MDR will have no impact on our current and future products as registrations to the EU MDR are in process and are scheduled for completion prior to the implementation dates. The company has passed the MDR upgrade assessment with no observations and a recommendation for certification by the European Notified Body in December 2021. In addition to inspections by the FDA and other regulatory entities, we are also subject to periodic inspections by applicable European Notified Body with respect to regulatory requirements that apply to medical devices designed and manufactured by us and clinical trials sponsored by us. We are also certified to the Medical Device Single Audit Program (“MDSAP”) for the jurisdictions of the United States, Canada, Japan, Brazil, and Australia which allows for one single audit performed by Notified Body to cover those jurisdictions with respect to quality systems. All registrations and certifications due to Great Britain leaving the European Union (Brexit) and Switzerland ending a joint agreement with the European Union (Swexit) have been done to the timelines as required for these countries and will continue to be performed to the updated timelines as published during these processes.

Other U.S. regulatory matters

Medical device companies are subject to additional healthcare regulation and enforcement by the federal government and by authorities in the states and foreign jurisdictions in which they conduct their business. Manufacturing, sales, promotion and other activities following product clearance or approval are subject to regulation by numerous regulatory authorities in the United States in addition to the FDA, including the CMS, other divisions of the Department of Health and Human Services, the Department of Justice, the Consumer Product Safety Commission, the Federal Trade Commission, the Occupational Safety & Health Administration, the Environmental Protection Agency, and state and local governments. For example, in the United States, sales, marketing and scientific and educational programs also must comply with state and federal fraud and abuse, anti-kickback false claims, transparency, government price reporting, anti-corruption, and health information privacy and security laws and regulations. Internationally, other governments also impose regulations in connection with their healthcare reimbursement programs and the delivery of healthcare items and services. These laws include the following:

- U.S. federal healthcare fraud and abuse laws generally apply to our activities because our products are covered under federal healthcare programs such as Medicare and Medicaid. The Anti-Kickback Statute is particularly relevant because of its broad applicability. The federal Anti-Kickback Statute makes it illegal for any person, including a prescription medical device manufacturer (or a party acting on its behalf), to knowingly and willfully solicit, receive, offer or pay any remuneration that is intended to induce or reward referrals, including the purchase, recommendation, order or prescription of a particular medical device, for which payment may be made under a federal healthcare program, such as Medicare or Medicaid. Almost any financial arrangement with a healthcare provider, patient or customer could implicate the Anti-Kickback Statute. Statutory exceptions and regulatory safe harbors protect certain arrangements if specific requirements are met. The government can exercise enforcement discretion in taking action against arrangements that do not fit within a safe harbor. Further, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it. Moreover, the

government may assert that a claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the civil False Claims Act. Penalties for violations of the Anti- Kickback Statute include, but are not limited to, criminal, civil and/or administrative penalties, damages, fines, disgorgement, individual imprisonment, possible exclusion from Medicare, Medicaid and other federal healthcare programs. Our exclusion would mean that procedures using our products would no longer be eligible for reimbursement under federal healthcare programs;

- Another development affecting the healthcare industry is the increased use of the federal Civil False Claims Act and, in particular, actions brought pursuant to the False Claims Act's "whistleblower" or "qui tam" provisions. In recent years, the number of suits brought against healthcare companies by private individuals has increased dramatically. The federal civil and criminal false claims acts, including the civil FCA, prohibit individuals or entities from, among other things, knowingly presenting, or causing to be presented, to the federal government, claims for payment that are false or fraudulent or making a false statement to avoid, decrease or conceal an obligation to pay money to the federal government. No specific intent to defraud is required under the civil FCA. The criminal FCA provides for criminal penalties for submitting false claims, including imprisonment and criminal fines;

- The Civil Monetary Penalty Act of 1981 and implementing regulations impose penalties against any person or entity that, among other things, is determined to have presented or caused to be presented a claim to a federal healthcare program that the person knows or should know is for an item or service that was not provided as claimed or is false or fraudulent, or offering or transferring remuneration to a federal healthcare beneficiary that a person knows or should know is likely to influence the beneficiary's decision to order or receive items or services reimbursable by the government from a particular provider or supplier;

- HIPAA prohibits, among other things, executing or attempting to execute a scheme to defraud any healthcare benefit program or making false statements relating to healthcare matters. HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act and their implementing regulations, also imposes obligations, including mandatory contractual terms, with respect to safeguarding the privacy, security and transmission of individually identifiable health information;

- Federal consumer protection and unfair competition laws, which broadly regulate marketplace activities and activities that potentially harm consumers;

- The FDCA, which prohibits, among other things, the adulteration or misbranding of medical devices;

- Additionally, there has been a recent trend of increased federal and state regulation of payments made to doctors. The federal Physician Payments Sunshine Act requires applicable manufacturers of covered drugs, medical devices, biologics and medical supplies for which payment is available under Medicare, Medicaid, or the Children's Health Insurance Program, with specific exceptions, to annually report to CMS information regarding payments and other transfers of value to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors), certain non-physician healthcare professionals (such as physician assistants and nurse practitioners, among others) and teaching hospitals, as well as information regarding ownership and investment interests held by physicians and their immediate family members;

- The Foreign Corrupt Practices Act ("FCPA") prohibits any U.S. individual or business from paying, offering, or authorizing payment or offering of anything of value, directly or indirectly, to any foreign official, political party or candidate for the purpose of influencing any act or decision of the foreign entity in order to assist the individual or business in obtaining or retaining business. The FCPA also obligates companies whose securities are listed in the United States to comply with accounting provisions requiring us to maintain books and records that accurately and fairly reflect all transactions of the corporation, including international subsidiaries, if any, and to devise and maintain an adequate system of internal accounting controls for international operations;

- Analogous state and foreign laws and regulations, such as state anti-kickback, anti-referral, and false claims laws, which may apply to sales or marketing arrangements and claims involving healthcare items or services reimbursed by non-governmental third-party payors, including private insurers; state laws that require certain biotechnology, pharmaceutical, and medical device companies to comply with the industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government and may require applicable manufacturers to disclose or report certain information related to payments and other transfers of value to doctors and entities or sales, marketing, pricing, clinical trials, marketing expenditures and activities, and state and foreign laws that govern the privacy and security of health information in some circumstances, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts; and state laws related to insurance fraud in the case of claims involving private insurers.

Because of the breadth of these laws and the narrowness of available statutory and regulatory exemptions or safe harbors, it is possible that some of our activities, such as stock-option compensation paid to doctors that have entered into consulting agreements with us, could be subject to challenge under one or more of such laws. The growth of our business and sales organization and our expansion outside of the United States may increase the potential of violating these laws or our internal policies and procedures. The risk of our being found in violation of these or other laws and regulations is further increased by the fact that many have not been fully interpreted by the regulatory authorities or the courts, and their provisions are open to various interpretations. Any action brought against us for violations of these laws or regulations, even successfully defended, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. Also, we may be subject to private "qui tam" actions brought by individual whistleblowers on behalf of the federal or state governments. If our operations are found to be in violation of any of the federal, state and foreign laws described above or any other current or future fraud and abuse or other healthcare laws and regulations that apply to us, we may be subject to penalties, including significant civil, criminal and administrative penalties, including damages, fines, disgorgement, individual imprisonment, exclusion from participation in government funded healthcare programs, such as Medicare and Medicaid, integrity oversight and reporting obligations, contractual damages, reputational harm, diminished profits and future earnings, injunctions, requests for recall, seizure of products, total or partial suspension of production, denial or withdrawal of product approvals or refusal to allow a firm to enter into supply contracts, including government contracts, and we could be required to curtail or cease our operations. Any of the foregoing consequences could seriously harm our business and our financial results.

United States health care reform

Changes in healthcare policy could increase our costs and subject us to additional regulatory requirements that may interrupt commercialization of our current and future solutions. Current and future legislative proposals to further reform healthcare or reduce healthcare costs may limit coverage for the procedures associated with the use of our products or result in lower reimbursement for those procedures. The cost containment measures that payers and providers are instituting and the effect of any healthcare reform initiative implemented in the future could significantly reduce our revenues from the sale of our products. Changes in healthcare policy, including changes in the implementation or the repeal of the ACA in the United States, could increase our costs, decrease our revenue and impact sales of and reimbursement and coverage for our current and future products. Since its enactment, there have been judicial and Congressional challenges to certain aspects of the ACA. In particular, on December 14, 2018, a Texas U.S. District Court Judge ruled that the ACA is unconstitutional in its entirety because the "individual mandate" was repealed by Congress as part of the Tax Act. Additionally, on December 18, 2019, the U.S. Court of Appeals for the 5th Circuit upheld the District Court ruling that the individual mandate was unconstitutional and remanded the case back to the District Court to determine whether the remaining provisions of the ACA are invalid as well. On March 2, 2020, the United States Supreme Court granted the petitions for writs of certiorari to review this case and held oral arguments in November 2020. In June 2021, the United States Supreme Court held that Texas and other challengers had no legal standing to challenge the ACA, dismissing the case on procedural grounds without specifically ruling on the constitutionality of the ACA. Thus, the ACA will remain in effect in its current form. It is unclear how this Supreme Court decision, future litigation, and healthcare measures of the Biden administration will impact the ACA and our business. Other legislative changes have been proposed and adopted since the ACA was enacted, including aggregate reductions of Medicare payments to providers of 2% per fiscal year and reduced payments to several types of Medicare providers, which will remain in effect through 2031 absent additional congressional action, with the exception of a temporary suspension from May 1, 2020 through March 31, 2022 due to the COVID-19 pandemic, unless additional action is taken by Congress. Under current legislation, the

actual reduction in Medicare payments will vary from 1% in 2022 to up to 4% in the final fiscal year of this sequester. Moreover, there recently has been heightened governmental scrutiny over the manner in which manufacturers set prices for their marketed products, which has resulted in several Congressional inquiries and proposed and enacted legislation designed, among other things, to bring more transparency to product pricing. Complying with any new legislation or reversing changes implemented under the ACA could be time-intensive and expensive, resulting in a material adverse effect on our business.

The United States and some foreign jurisdictions are considering or have enacted a number of legislative and regulatory proposals to change the healthcare system in ways that could affect our ability to sell our products profitably. Among policy makers and payors in the United States and elsewhere, there is significant interest in promoting changes in healthcare systems with the stated goals of containing healthcare costs, improving quality or expanding access. Current and future legislative proposals to further reform healthcare or reduce healthcare costs may limit coverage of or lower reimbursement for the procedures associated with the use of our products. The cost containment measures that payors and providers are instituting and the effect of any healthcare reform initiative implemented in the future could impact our revenue from the sale of our products.

We believe that there will continue to be proposals by legislators at both the federal and state levels, regulators and third-party payors to reduce costs while expanding individual healthcare benefits. Certain of these changes could impose additional limitations on the rates we will be able to charge for our current and future products or the amounts of reimbursement available for our current and future products from governmental agencies or third-party payors. Current and future healthcare reform legislation and policies could have a material adverse effect on our business and financial condition.

Data privacy and security

Medical device companies may be subject to U.S. federal and state health information privacy, security and data breach notification laws, which may govern the collection, use, disclosure and protection of health-related and other personal information.

The Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), imposes privacy, security and breach reporting obligations with respect to individually identifiable health information upon “covered entities” (health plans, health care clearinghouses and certain health care providers), and their respective business associates, individuals or entities that create, received, maintain or transmit protected health information in connection with providing a service for or on behalf of a covered entity. HIPAA mandates the reporting of certain breaches of health information to the United States Department of Health and Human Services, (“HHS”), affected individuals and if the breach is large enough, the media. Entities that are found to be in violation of HIPAA as the result of a breach of unsecured protected health information, or PHI, a complaint about privacy practices or an audit by HHS, may be subject to significant civil, criminal and administrative fines and penalties and/or additional reporting and oversight obligations if required to enter into a resolution agreement and corrective action plan with HHS to settle allegations of HIPAA non-compliance.

Even when HIPAA does not apply, failing to take appropriate steps to keep consumers’ personal information secure may constitute unfair acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C § 45(a). The FTC expects a company’s data security measures to be reasonable and appropriate in light of the sensitivity and volume of consumer information it holds, the size and complexity of its business, and the cost of available tools to improve security and reduce vulnerabilities. Personally identifiable health information is considered sensitive data that merits stronger safeguards. The FTC’s guidance for appropriately securing consumers’ personal information is similar to what is required by the HIPAA Security Rule.

In addition, certain state laws govern the privacy and security of health information in certain circumstances, some of which are more stringent than HIPAA and many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts. Failure to comply with these laws, where applicable, can result in the imposition of significant civil and/or criminal penalties and private litigation. For example, California enacted the California Consumer Privacy Act, or CCPA, which went into effect January 1, 2020. The CCPA, among other things, created new data privacy obligations for covered companies and provided new privacy rights to California residents, including the right to opt out of certain disclosures of their information. The CCPA also created a private right of action with statutory damages for certain data breaches, thereby potentially increasing risks associated with a data breach.

Additionally, in November 2020, California voters passed the California Privacy Rights Act of 2020 ("CPRA"). The CPRA, which is expected to take effect on January 1, 2023 and create additional obligations with respect to certain data relating to consumers, significantly expands the CCPA, including by introducing additional obligations such as data minimization and storage limitations, granting additional rights to consumers, such as correction of personal information and additional opt-out rights, and creates a new entity, the California Privacy Protection Agency, to implement and enforce the law. The CCPA and CPRA may increase our compliance costs and potential liability. In addition to the CCPA, numerous other states' legislatures have passed or are considering similar laws that will require ongoing compliance efforts and investment.

The EU also has laws and regulations dealing with the collection, use and processing of personal data obtained from individuals in the EU, namely the EU General Data Protection Regulation, or GDPR. These regulations are often more restrictive than those in the United States and may restrict transfers of personal data to the United States unless certain requirements are met. The GDPR provides that EU member states may make their own further laws and regulations limiting the processing of genetic, biometric or health data, which could limit our ability to use and share personal data or could cause our costs to increase, and harm our business and financial condition. Further, the United Kingdom's decision to leave the European Union has created uncertainty with regard to data protection regulation in the United Kingdom. As of January 1, 2021, we are also subject to the UK General Data Protection Regulation and UK Data Protection Act of 2018, which retains the GDPR in the United Kingdom's national law. Failure to comply with any of these obligations could expose us to significant fines.

Employees and human capital

As of December 31, 2021, we had 221 full-time employees, including 87 employees in sales & marketing, 22 in general and administrative functions, 57 in research and development and 55 in manufacturing. All of our employees are full-time and none of our employees are represented by a labor union or covered under a collective bargaining agreement.

Our human capital resources objectives include, as applicable, identifying, recruiting, retaining, incentivizing and integrating our existing and new employees, advisors and consultants. The principal purposes of our equity and cash incentive plans are to attract, retain and reward personnel through the granting of stock-based and cash-based compensation awards, in order to increase stockholder value and the success of our company by motivating such individuals to perform to the best of their abilities and achieve our objectives.

Facilities

Our corporate headquarters is in Aliso Viejo, California where we lease four facilities housing our headquarters, manufacturing, research and development and administrative offices. The facility leases are for approximately 121,000 square feet in the aggregate. The leases terminate on (a) September 30, 2024, with one option to extend for five years; (b) January 31, 2026, with three options to extend for five years each; (c) March 31, 2023 with two options to extend for five years each; and (d) August 31, 2024, with one option to extend for five years. We believe that our existing facilities are adequate for our near-term needs but expect to need additional space as we grow. We believe that suitable additional or alternative space would be available in the future as required on commercially reasonable terms.

Legal proceedings

From time to time, we may become involved in litigation or other legal proceedings. We are not currently a party to any litigation or legal proceedings that, in the opinion of our management, are likely to have a material adverse effect on our business. Regardless of outcome, litigation can have an adverse impact on us because of defense and settlement costs, diversion of management resources, and other factors.

Corporate information

We were incorporated in California on March 5, 1997 as Calhoun Vision, Inc. and changed our name to RxSight, Inc. in October 2016. We reincorporated in Delaware on July 6, 2021.

Item 1A. Risk Factors

We operate in a rapidly changing environment that involves numerous uncertainties and risks. In addition to the other information included in this Annual Report on Form 10-K, the following risks and uncertainties may have a material and adverse effect on our business, financial condition, results of operations, or stock price. You should consider these risks and uncertainties carefully, together with all of the other information included or incorporated by reference in this Annual Report on Form 10-K. The risks and uncertainties described below may not be the only ones we face. If any of the risks or uncertainties we face were to occur, the trading price of our securities could decline, and you may lose all or part of your investment. This Annual Report on Form 10-K also contains forward-looking statements that involve risks and uncertainties. See the section titled "Special Note Regarding Forward-Looking Statements" appearing elsewhere in this Annual Report. Our actual results could differ materially from those anticipated in the forward-looking statements as a result of factors that are described below and elsewhere in this report.

Summary Risk Factors

Our following risks and uncertainties are among the most significant we face. However, the risks and uncertainties identified in this subsection are not the only ones we face and are qualified in their entirety by reference to all of the risk factors described herein:

Risks related to our business and products:

- We have a limited operating history, and if we fail to effectively train our sales force, increase our sales and marketing capabilities, or develop broad brand awareness in a cost-effective manner, our growth will be impeded, and our business will suffer.
- We have a history of net operating losses, and we expect to continue to incur losses for the foreseeable future. If we ever achieve profitability, we may not be able to sustain it.
- Our success depends in large part on our RxSight system. If we are unable to successfully market and sell our RxSight system, our business prospects will be significantly harmed, and we may be unable to achieve revenue growth.
- We face significant competition, and if we are unable to compete effectively, we may not be able to achieve or maintain significant market penetration or improve our results of operations.

Risks related to intellectual property:

- If we are unable to obtain, maintain, protect and enforce patent and other intellectual property protection for our technology and products, or if the scope of the patent and other intellectual property protection obtained is not sufficiently broad, we may not be able to compete effectively in our markets.
- If we are unable to protect the confidentiality of our trade secrets and other proprietary information, our business and competitive position may be harmed.
- We may not be able to protect our intellectual property rights throughout the world, which could impair our business.

Risks related to government regulation:

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

Risks related to reliance on third parties:

- We depend on third parties, including single and sole source suppliers, to manufacture certain components and subcomponents of the RxSight system, making us vulnerable to supply disruptions and price fluctuations.

Risks related to our common stock:

- The price of our stock may be volatile, and you could lose all or part of your investment.
- Our principal stockholders and management own a significant percentage of our stock and will be able to exert significant control over matters subject to stockholder approval.

Risks related to COVID-19:

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

General risk factors:

- We must recruit, retain, manage and motivate qualified executives as we build out the management team, and we are highly dependent on our management team.
- Future litigation proceedings may adversely affect our business.

Risks related to our business and products

We have a limited operating history and if we fail to effectively train our sales force, increase our sales and marketing capabilities or develop broad brand awareness in a cost-effective manner, our growth will be impeded, and our business will suffer.

We were incorporated in March 1997 and began commercializing our products in the second half of 2019, when we initiated a full launch of our light adjustable lenses and light delivery devices. Accordingly, our limited commercialization experience and limited number of approved or cleared products make it difficult to evaluate our current business and assess our prospects. We also currently have limited sales and marketing experience. If we are unable to establish or scale effective sales and marketing capabilities, or if we are unable to commercialize any of our products, we may not be able to generate sufficient product revenue, sustain revenue growth and compete effectively. In order to generate future growth, we plan to continue to expand and leverage our sales and marketing infrastructure to increase our customer base and grow our business.

Identifying and recruiting qualified sales and marketing personnel and training them on our product, applicable federal and state laws and regulations, and on our internal policies and procedures requires significant time, expense and attention. It often takes several months or more before a sales representative is fully trained and productive. Our business may be harmed if our efforts to expand and train our sales force do not generate a corresponding increase in revenue, or in the event we are unable to reduce costs in the face of an unexpected decline in demand for our products. Any failure to hire, develop and retain talented sales and marketing personnel, to achieve desired productivity levels in a reasonable timeframe or timely leverage our fixed costs could have a material adverse effect on our business, financial condition and results of operations. Moreover, the members of our direct sales force are at-will employees. The loss of these personnel to competitors or otherwise could materially harm our business. If we are unable to retain our direct sales force personnel or replace them with individuals of equivalent technical expertise and qualifications, or if we are unable to successfully instill technical expertise in replacement personnel, our revenue and results of operations could be materially harmed.

Our ability to increase our customer base and achieve broader market acceptance of our products will also depend to a significant extent on our ability to expand our marketing efforts. Our business may be harmed if our marketing efforts and expenditures do not generate a corresponding increase in revenue. In addition, we believe that developing and maintaining broad awareness of our brand in a cost-effective manner is critical to achieving broad

acceptance of our products and penetrating new customer accounts. Brand promotion activities may not generate patient or doctor awareness or increased revenue, and even if they do, any increase in revenue may not offset the costs and expenses we incur in building our brand. If we fail to successfully promote, maintain and protect our brand, we may fail to attract or retain the doctor acceptance necessary to realize a sufficient return on our brand building efforts, or to achieve the level of brand awareness that is critical for broad adoption of our products.

These factors also make it difficult for us to forecast our financial performance and growth, and such forecasts are subject to a number of uncertainties, including our ability to successfully develop additional products that add functionality, reduce the cost of products sold, and broaden our commercial portfolio offerings and our ability to obtain the required regulatory approvals and clearances under applicable law both domestically and internationally, including FDA 510(k) clearance or pre-market approval, or PMA, for, and successfully commercialize, market and sell, our planned or future products in the United States or in international markets. If our assumptions regarding the risks and uncertainties we face, which we use to plan our business, are incorrect or change due to circumstances in our business or our markets, or if we do not address these risks successfully, our operating and financial results could differ materially from our expectations and our business could suffer.

We have a history of net losses, and we expect to continue to incur losses for the foreseeable future. If we ever achieve profitability, we may not be able to sustain it.

We have incurred losses from operations since our inception and expect to continue to incur losses from operations for the foreseeable future. We reported losses from operations of $52.8 million and $35.4 million for the years ended December 31, 2021 and 2020. As a result of these losses, as of December 31, 2021, we had an accumulated deficit of $479.3 million. We expect to continue to incur significant sales and marketing, research and development, regulatory and other expenses as we expand our marketing efforts to increase adoption of our products, expand existing relationships with our customers, obtain regulatory clearances or approvals for our planned or future products, conduct clinical trials on our existing and planned or future products and develop new products or add new features to our existing products. In addition, we expect our general and administrative expenses to increase due to the additional costs associated with being a public company.

The net losses that we incur may fluctuate significantly from period to period. We will need to generate significant additional revenue in order to achieve and sustain profitability. Even if we achieve profitability, we cannot be sure that we will remain profitable for any substantial period of time.

In order to support our continued operations and the growth of our business, we may seek to raise additional capital, which may not be available to us on acceptable terms, or at all.

We expect capital expenditures and operating expenses to increase over the next several years as we continue to operate our business and expand our infrastructure, commercial operations and research and development activities. Our primary uses of capital are, and we expect will continue to be, investment in our commercial organization and related expenses, clinical research and development services, laboratory and related supplies, legal and other regulatory expenses, general administrative costs and working capital. In addition, we may in the future seek to acquire or invest in additional businesses, products, services or technologies that we believe could complement or expand our product portfolio, enhance our technical capabilities or otherwise offer growth opportunities.

Because of these and other factors, we expect to continue to incur substantial net losses and negative cash flows from operations for at least the next several years. Our future liquidity and capital funding requirements will depend on numerous factors, including:

- our revenue growth;
- our research and development efforts;
- our sales and marketing activities;
- our success in leveraging future strategic partnerships;

- our ability to raise additional funds to finance our operations;
- the outcome, costs and timing of any clinical trial results for our current or future products;
- the emergence and effect of competing or complementary products;
- the availability and amount of reimbursement for procedures using our products;
- our ability to maintain, expand, enforce and defend our intellectual property portfolio, including the amount and timing of any payments we may be required to make, or that we may receive, in connection with the licensing, filing, prosecution, maintenance, defense and enforcement of any patents or other intellectual property rights;
- our ability to retain our employees and the need and ability to hire additional management and sales, scientific and medical personnel;
- the terms and timing of any collaborative, licensing or other arrangements that we have or may establish;
- debt service requirements;
- the extent to which we acquire or invest in businesses, products or technologies; and
- the impact of the COVID-19 pandemic.

If we determine that we need to raise additional funds, we may do so through equity or debt financings, which may not be available to us when needed or on terms that we deem to be favorable. To the extent that we raise additional capital through the sale of equity or convertible debt securities, the ownership interests of our stockholders will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect the rights of common stockholders. Debt financing and preferred equity financing, if available, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making acquisitions or capital expenditures or declaring dividends. If we are unable to maintain sufficient financial resources, our business, financial condition and results of operations will be materially and adversely affected, including potentially requiring us to delay, limit, reduce or terminate certain of our product discovery and development activities or future commercialization efforts.

Moreover, in the event that we enter into collaborations or licensing arrangements to raise capital, we may be required to accept unfavorable terms. These agreements may require that we relinquish or license to a third party on unfavorable terms our rights to products or technologies we otherwise would seek to develop or commercialize ourselves, or reserve certain opportunities for future potential arrangements when we might be able to achieve more favorable terms.

As of December 31, 2021 and 2020, we had $159.3 million and $69.0 million, respectively, in cash, cash equivalents and short-term investments. While we believe that our existing cash, cash equivalents and short-term investments and anticipated cash generated from sales of our products will be sufficient to meet our anticipated cash needs for at least 12 months following the date of this Annual Report on Form 10-K, we cannot assure you that we will be able to generate sufficient liquidity as and when needed. We have based this estimate on assumptions that may prove to be wrong, and we could use our capital resources sooner than we currently expect. Changing circumstances, some of which may be beyond our control, could cause us to consume capital significantly faster than we currently anticipate, and we may need to seek additional funds sooner than planned.

The terms of our term loan place restrictions on our operating and financial flexibility, and failure to comply with covenants or to satisfy certain conditions of the agreement governing the term loan may result in acceleration of our repayment obligations and foreclosure on our pledged assets, which could significantly harm our liquidity, financial condition, operating results, business and prospects and cause the price of our securities to decline.

Our loan facility ("Term Loan") with Oxford Finance, provided for a five-year $60.0 million term-loan facility, of which $40.0 million has been drawn as of December 31, 2021. Another $10.0 million of the term-loan facility was available for additional draws during 2021, which was not borrowed and $10.0 million was to be available in the first quarter of 2022 which we do not intend to borrow.

Our payment obligations under the Term Loan reduce cash available to fund working capital, capital expenditures, research and development and general corporate needs. In addition, indebtedness under the Term Loan bears interest at a variable rate, making us vulnerable to increases in market interest rates. If market rates increase, we will have to pay additional interest on this indebtedness, which would further reduce cash available for our other business needs.

Our obligations under the Term Loan are secured by substantially all of our assets, excluding intellectual property. The security interest granted over our assets could limit our ability to obtain additional debt financing. The Term Loan also requires us to comply with a number of other covenants (affirmative and negative), including restrictive covenants that limit our ability to: incur additional indebtedness; encumber the collateral securing the loan; acquire, own or make investments; repurchase or redeem any class of stock or other equity interest; declare or pay any cash dividend or make a cash distribution on any class of stock or other equity interest; dispose of a portion of our assets; acquire other businesses; and merge or consolidate with or into any other organization or otherwise suffer a change in control, in each case subject to exceptions.

In addition to other specified events of default, the lenders could declare an event of default upon the occurrence of any event that they interpret as having a material impairment on their lien on the collateral under the agreement, a material adverse change in our business, operations or condition (financial or otherwise) or a material impairment in the prospect of repayment of our obligations under the agreement. If we default under the credit facility, the lenders may accelerate all of our repayment obligations and, if we are unable to access funds to meet those obligations or to renegotiate our agreement, the lenders could take control of our pledged assets and we would have to immediately cease operations. During the continuance of an event of default, the then-applicable interest rate on the then-outstanding principal balance will increase by 5.0%. Upon an event of default, the lenders could also require us to repay the loan immediately, together with a final payment charge of 5.0% of the total term loan advances we borrowed, together with other fees. If we were to renegotiate the agreement under such circumstances, the terms may be significantly less favorable to us. If we were liquidated, the lenders' right to repayment would be senior to the rights of our stockholders to receive any proceeds from the liquidation. Any declaration by the lenders of an event of default could significantly harm our liquidity, financial condition, operating results, business, and prospects and cause the price of our securities to decline.

We may incur additional indebtedness in the future. The debt instruments governing such indebtedness may contain provisions that are as, or more, restrictive than the provisions governing our existing indebtedness. If we are unable to repay, refinance or restructure our indebtedness when payment is due, the lenders could proceed against the collateral or force us into bankruptcy or liquidation.

Our success depends in large part on our RxSight system. If we are unable to successfully market and sell our RxSight system, our business prospects will be significantly harmed, and we may be unable to achieve revenue growth.

Our future financial success will depend substantially on our ability to effectively and profitably market and sell our RxSight system to ophthalmic practices. The commercial success of our RxSight system and any of our planned or future products will depend on a number of factors, including the following:

- the actual and perceived effectiveness and reliability of our RxSight system, especially relative to alternative products;
- the prevalence and severity of any adverse patient events involving our RxSight system;
- the results of clinical trials relating to our RxSight system;
- our ability to sustain meaningful clinical benefits for our patients;

- our ability to obtain regulatory approval to market our planned or future products for use in the United States or internationally;
- the availability, relative cost and perceived advantages and disadvantages of alternative technologies or treatment methods for conditions treated by our products;
- the degree to which treatments using our products are covered and receive adequate reimbursement from third-party payors, including governmental and private insurers, as well as patient willingness to pay for the additional costs associated with our premium intraocular lens out of pocket;
- the degree to which doctors adopt our RxSight system;
- the fact that governmental and private health care providers and payors around the world are increasingly utilizing managed care for the delivery of health care services, centralizing purchasing, limiting the number of vendors that may participate in purchasing programs, forming group purchasing organizations and integrated health delivery networks and pursuing consolidation to improve their purchasing leverage and using competitive bid processes to procure health care products and services;
- our ability to obtain, maintain, protect and enforce our intellectual property rights in and to our RxSight system;
- the degree to which patients value the customized vision delivered by the RxSight system and are satisfied with their results;
- achieving and maintaining compliance with regulatory requirements applicable to our products;
- the extent to which we are successful in educating doctors about IOLs in general, and the benefits of our RxSight system;
- our reputation among doctors;
- the strength of our marketing and commercial organization;
- the effectiveness of our marketing and sales efforts in the United States, including our efforts to build out our sales team;
- our ability to expand the commercialization of our products into international markets;
- our ability to continue to develop, validate and maintain a commercially viable manufacturing process that is compliant with the Quality Systems Regulations ("QSR"), and other applicable foreign, federal and state regulatory requirements;
- the success of our ongoing or future clinical trials; and
- whether we are required by the FDA or comparable non-U.S. regulatory authorities to conduct additional clinical trials for current or future indications.

If we fail to successfully market and sell our products, we will not be able to grow our revenue or achieve profitability, which will have a material adverse effect on our business, financial condition and results of operations. Our ability to grow our revenue in future periods will depend on our ability to successfully penetrate our target markets and increase sales of our RxSight system and any new product or product indications that we introduce, which will, in turn, depend in part on our success in growing our user base and driving increased use of our products. New products or product indications will also need to be approved or cleared by the FDA and comparable non-U.S. regulatory agencies in any international markets we target in order to commercialize them. If we cannot achieve revenue growth or achieve or sustain profitability, it could have a material adverse effect on our business, financial condition and results of operations.

Adoption of our products depends upon appropriate training for doctors, and inadequate training may lead to negative patient outcomes, affect adoption of our products and adversely affect our business.

The success of our products depends in part on our customers' adherence to appropriate patient selection and proper techniques provided in training sessions conducted by our training faculty. For example, we train our customers to ensure correct use of our RxSight system. However, doctors rely on their previous medical training and experience, and we cannot guarantee that all such doctors will have the necessary skills or training to effectively utilize our products. We do not control which doctors use our products or how much training they receive, and doctors who have not completed our training sessions may nonetheless attempt to use our products. In addition, doctors may use our products in a manner that is not consistent with their labeled indications for which no training is available. If doctors use our products in a manner that is inconsistent with their labeled indications, with components that are not compatible with our products or otherwise without adhering to or completing our training sessions, their patient outcomes may not be consistent with the outcomes achieved by other doctors or in our clinical trials. This result may negatively impact the perception of patient benefit and safety and limit adoption of our products, which would have a material adverse effect on our business, financial condition and results of operations.

We currently require limited training in the use of our products because we market primarily to doctors who are experienced in the specific techniques required to use our devices. If demand for our products continues to grow, less experienced doctors will likely use our products, potentially leading to more injury and an increased risk of product liability claims. The use or misuse of our products may in the future result in complications and potentially lead to product liability claims.

The commercial success of our RxSight system will depend upon attaining significant market acceptance of these products among patients and doctors.

Our success will depend, in part, on the acceptance of our RxSight system as safe, effective and, with respect to doctors, cost-effective. We cannot predict how quickly, if at all, patients, doctors, or payors will accept our RxSight system or, if accepted, how frequently it will be used. Our RxSight system and planned or future products we may develop or market may never gain broad market acceptance for some or all of our targeted indications. Patients and doctors must believe that our products offer benefits over alternative treatment methods. To date, a substantial majority of our product sales and revenue have been derived from a limited number of customers who have adopted our RxSight system. Our future growth and profitability largely depend on our ability to increase doctors' awareness of our system and our products and on the willingness of patients and doctors to adopt them. These parties may not adopt our products unless they are able to determine, based on experience, clinical data, medical society recommendations and other analyses, that our products are safe, effective and, with respect to providers, cost-effective, on a stand-alone basis and relative to competitors' products. Patients and doctors must believe that our products offer benefits over alternative treatment methods. Even if we are able to raise awareness, doctors tend to be slow in changing their medical treatment practices and may be hesitant to select our products for recommendation to their patients for a variety of reasons, including:

- long-standing relationships with competing companies and distributors that sell other products;
- competitive response and negative selling efforts from providers of alternative products;
- lack of experience with our products and concerns that we are relatively new to market;
- lack or perceived lack of sufficient clinical evidence, including long-term data, supporting safety or clinical benefits;
- time commitment and skill development that may be required to gain familiarity and proficiency with our products;
- patient confusion regarding the wide range of commercially available premium IOL offerings and their ability to deliver promised results at near, middle and far distances without reliance on spectacles;
- patient reticence to select a premium IOL due to nonperformance and adverse side effects associated with competing products in the market;

- patient non-compliance with the RxSight system requirement to wear protective glasses following surgery until the LAL is locked to avoid UV exposure and an unintended change to the LAL, resulting in patient dissatisfaction with the results and possible need to remove the LAL; and

- an inability to generate patient referral due to dissatisfaction with results obtained through treatment with our products, the out-of-pocket cost of treatments using our products or otherwise.

In order for doctors to use our RxSight system, they must make a significant up-front investment to purchase the LDD. This can result in a lengthy sales cycle and require extensive negotiations and management time. If we are unsuccessful in placing LDDs with providers, our sales may decrease, and our operating results may be harmed.

Doctors play a significant role in determining the course of a patient's treatment, and, as a result, the type of treatment that will be utilized and provided to a patient. We focus our sales, marketing and education efforts primarily on doctors, and aim to educate referring doctors on the patient population that would benefit from our products. However, we cannot assure you that we will achieve broad market acceptance among doctors.

For example, some doctors may choose to utilize our RxSight system on only a subset of their total patient population or may not adopt our RxSight system at all. If we are not able to effectively demonstrate that the use of our RxSight system is beneficial in a broad range of patients, adoption of our product will be limited and may not occur as rapidly as we anticipate or at all, which would have a material adverse effect on our business, financial condition and results of operations. We cannot assure you that our products will achieve broad market acceptance among doctors. Additionally, even if our products achieve market acceptance, they may not maintain that market acceptance over time if competing products, procedures or technologies are considered safer or more cost-effective or otherwise superior. Any failure of our products to generate sufficient demand or to achieve meaningful market acceptance and penetration will harm our future prospects and have a material adverse effect on our business, financial condition and results of operations.

Our reputation among our current or potential customers, as well as among doctors, could also be negatively affected by safety or customer satisfaction issues involving us or our products, including product recalls. Future product recalls or other safety or customer satisfaction issues relating to our reputation could negatively affect our ability to establish or maintain broad adoption of our products, which would harm our future prospects and have a material adverse effect on our business, financial condition and results of operations.

Our RxSight system involves surgical risks and is contraindicated in certain patients, which may limit adoption.

Risks of using our products include those associated with cataract surgery and IOL implantation. There are also possible, but rare, complications due to the use of UV light from the LDD, including a temporary or long-lasting change to vision. We are aware of certain characteristics and features of our RxSight system that may prevent widespread market adoption, including the fact that doctors would need to adopt a new procedure, and training for doctors will be required to enable them to effectively operate our products.

We face significant competition, and if we are unable to compete effectively, we may not be able to achieve or maintain significant market penetration or improve our results of operations.

The medical device industry is intensely competitive, subject to rapid change and significantly affected by new product introductions and other market activities of industry participants. We compete with manufacturers and distributors of premium and conventional IOLs. Our most significant competitors in the IOL field include Alcon, Johnson & Johnson Vision, Carl Zeiss Meditec, Bausch + Lomb, and Hoya Corporation. Many of our competitors are large, well-capitalized companies with significantly greater market share and resources than we have. Therefore, they can spend more on product development, marketing, sales and other product initiatives than we can. We also compete with smaller medical device companies that have a single product or a limited range of products. In addition, patients who receive an LAL will be required to wear UV protective spectacles until final lock-in which is approximately 4-5 weeks after surgery. They will also be required to return for an additional 2-3 clinic visits compared to traditional monofocal cataract surgery. The additional clinic visits are non-surgical but do require the patient's eyes to be dilated. Due to these additional requirements, market acceptance of the LAL may be impacted. We believe the principal competitive factors in our markets include:

- The quality of patient outcomes, oftentimes measured by visual acuity, and adverse event rates;

- Patient experience, including patient recovery time and level of discomfort;
- Acceptance by treating doctors and referral sources;
- Doctor learning curves and willingness to adopt new technologies;
- Ease-of-use and reliability;
- Economic benefits and cost savings;
- Strength of clinical evidence;
- Effective distribution and marketing to surgeons and potential patients; and
- Product price and qualification for coverage and reimbursement.

We compete primarily on the basis that our products are designed to enable more doctors to treat more patients more efficiently and effectively. Our continued success depends on our ability to:

- continue to develop innovative, proprietary products that address significant clinical needs in a manner that is safe and effective for patients and easy-to-use for doctors;
- obtain and maintain regulatory clearances or approvals;
- demonstrate safety and effectiveness in our sponsored and third-party clinical trials;
- expand our sales force across key markets to increase doctors' awareness;
- obtain and maintain coverage and adequate reimbursement for procedures using our products;
- attract and retain skilled research, development, sales and clinical personnel;
- cost-effectively manufacture, market and sell our products;
- provide doctors with a sufficient return on investment as compared to alternative premium IOL procedures that justifies the upfront cost of our LDD; and
- obtain, maintain, enforce and defend our intellectual property rights and operate our business without infringing, misappropriating or otherwise violating the intellectual property rights of others.

We can provide no assurance that we will be successful in developing new products or commercializing them in ways that achieve market acceptance. If we develop new products, sales of those products may reduce revenue generated from our existing products. Moreover, any significant delays in our product launches may significantly impede our ability to enter or compete in a given market and may reduce the sales that we are able to generate from these products. We may experience delays in any phase of a product development, including during research and development, clinical trials, regulatory review, manufacturing and marketing. Delays in product introductions could have a material adverse effect on our business, financial condition and results of operations.

In addition, many medical device companies are consolidating to create new companies with greater market power. As the medical device industry consolidates, competition to provide goods and services to industry participants will become more intense. These industry participants may try to use their market power to negotiate price concessions or reductions for our products. If we reduce our prices because of consolidation in the healthcare industry, our revenue may decrease, which could have a material adverse effect on our business, financial condition and results of operations.

If our facilities become damaged or inoperable, or if we are required to vacate a facility, we may be unable to manufacture our products or we may experience delays in production or an increase in costs, which could adversely affect our results of operations.

We currently maintain our research and development, manufacturing and administrative operations in Aliso Viejo, California, and we do not have redundant facilities. We operate a single manufacturing facility, and should

this facility be significantly damaged or destroyed by natural or man-made disasters, such as earthquakes, fires (both of which are prevalent in California) or other events, it could take months to relocate or rebuild, during which time our employees may seek other positions, our research, development and manufacturing would cease or be delayed and our products may be unavailable. A major interruption in the manufacturing operations at this facility would materially impact our ability to operate. Because of the time required to authorize manufacturing in a new facility under federal, state and non-U.S. regulatory requirements, we may not be able to resume production on a timely basis even if we are able to replace production capacity. While we maintain property and business interruption insurance, such insurance has limits and would not cover all damages, including losses caused by earthquakes or losses we may suffer due to our products being replaced by competitors' products. The inability to perform our research, development and manufacturing activities if our facilities become inoperable, combined with our limited inventory of materials and components and manufactured products, may cause doctors to discontinue using our products or harm our reputation, and we may be unable to re-establish relationships with such doctors in the future. Consequently, a catastrophic event at our current facility or any future facilities could have a material adverse effect on our business, financial condition and results of operations.

Furthermore, the current leases on our four facilities expire at the end of September 30, 2029 (including a five year option to extend), January 31, 2041 (including three-five year options to extend), June 30, 2033 (including two extensions to extend for 5 years each) and August 31, 2024 (including a five year option to extend), and we may be unable to renew our leases or find a new facility on commercially reasonable terms, or at all. If we were unable or unwilling to renew at the proposed rates, relocating our manufacturing facility would involve significant expense in connection with the movement and installation of key manufacturing equipment and any necessary recertification with regulatory bodies, and we cannot assure you that such a move would not delay or otherwise adversely affect our manufacturing activities or operating results. If our manufacturing capabilities were impaired by any such move, we may not be able to manufacture and ship our products in a timely manner, which would adversely impact our business.

Technological change may adversely affect sales of our products and may cause our products to become obsolete.

The medical device market is characterized by extensive research and development and rapid technological change. There can be no assurance that other companies, including current competitors or new entrants, will not succeed in developing or marketing products that are more effective than our products or that would render our products obsolete or noncompetitive. Additionally, new surgical procedures, medications and other therapies could be developed that replace or reduce the importance of our products. If we are unable to innovate successfully, our products could become obsolete and our revenue would decline as our customers purchase our competitors' products. Our failure to develop new products, applications or features could result from insufficient cash resources, high employee turnover, inability to hire personnel with sufficient technical skills, a lack of other research and development resources or other constraints. Our failure or inability to devote adequate research and development resources or compete effectively with the research and development programs of our current or future competitors could have a material adverse effect on our business, financial condition and results of operations.

We have limited data and experience regarding the safety and efficacy of our RxSight system. Results of earlier studies may not be predictive of future clinical trial results, and planned studies may not establish an adequate safety or efficacy profile for our RxSight system and other planned or future products, which would affect market acceptance of our RxSight system.

Because our RxSight system technology is a relatively new treatment to optimize vision after cataract surgery, we have performed clinical trials only with limited patient populations. The long-term effects of using our products in a large number of patients have not been studied and the results of short-term clinical use of such products do not necessarily predict long-term clinical benefits or reveal long-term adverse effects. The results of preclinical studies and clinical trials of our products conducted to date and ongoing or future studies and trials of our current, planned or future products may not be predictive of the results of later clinical trials, and interim results of a clinical trial do not necessarily predict final results. Our interpretation of data and results from our clinical trials do not ensure that we will achieve similar results in future clinical trials in other patient populations. In addition, preclinical and clinical data are often susceptible to various interpretations and analyses, and many companies that have believed their products performed satisfactorily in preclinical studies and earlier clinical trials have nonetheless failed to replicate results in later clinical trials and subsequently failed to obtain marketing approval. Products in later stages

of clinical trials may fail to show the desired safety and efficacy despite having progressed through nonclinical studies and earlier clinical trials.

If our clinical trials are unsuccessful or significantly delayed, or if we do not complete our clinical trials, our business may be harmed.

Clinical development is a long, expensive and uncertain process and is subject to delays and the risk that products may ultimately prove unsafe or ineffective in treating the indications for which they are designed. We are currently engaged in post-market clinical trials of our RxSight system. Completion of clinical trials may take several years or more. Clinical trials can be delayed for a variety of reasons, including delays in obtaining regulatory approval to commence a trial, in reaching an agreement on acceptable clinical trial terms with prospective sites, in obtaining institutional review board approval at each site, in recruiting patients to participate in a trial or in obtaining sufficient supplies of clinical trial materials. We cannot provide any assurance that we will successfully, or in a timely manner, enroll our clinical trials, that our clinical trials will meet their primary endpoints or that such trials or their results will be accepted by the FDA or foreign regulatory authorities.

We may experience numerous unforeseen events during, or because of, the clinical trial process that could delay or prevent us from receiving regulatory clearance or approval for new products, modifications of existing products, or new indications for existing products, including:

- successful and timely completion of nonclinical studies or clinical development of our products, as well as the associated costs, including any unforeseen costs we may incur as a result of clinical trial delays due to the COVID-19 pandemic or other causes;
- enrollment in our clinical trials may be slower than we anticipate, or we may experience high screen failure rates in our clinical trials, resulting in significant delays;
- our clinical trials may produce negative or inconclusive results, and we may decide, or regulators may require us, to conduct additional clinical and/or preclinical testing which may be expensive and time-consuming;
- trial results may not meet the level of statistical significance required by the FDA or other regulatory authorities;
- the FDA or similar foreign regulatory authorities may find that one or more of our products is not sufficiently safe for investigational use in humans;
- the FDA or similar foreign regulatory authorities may interpret data from preclinical testing and clinical trials in different ways than we do;
- there may be delays or failure in obtaining approval of our clinical trial protocols from the FDA or other regulatory authorities;
- there may be delays in obtaining institutional review board approvals or governmental approvals to conduct clinical trials at prospective sites;
- the FDA or similar foreign regulatory authorities may find our or our suppliers' manufacturing processes or facilities unsatisfactory;
- the FDA or similar foreign regulatory authorities may change their review policies or adopt new regulations that may negatively affect or delay our ability to bring a product to market or receive approvals or clearances to treat new indications;
- we may have trouble in managing multiple clinical sites;
- we may have trouble finding patients to enroll in our trials;
- we may experience delays in agreeing on acceptable terms with third-party research organizations and trial sites that may help us conduct the clinical trials; and

- we, or regulators, may suspend or terminate our clinical trials because the participating patients are being exposed to unacceptable health risks.

Failures or perceived failures in our clinical trials will delay and may prevent our product development and regulatory approval process, damage our business prospects and negatively affect our reputation and competitive position.

Unauthorized third parties may seek to access our devices or other products and services, or related devices, products, and services, and modify or use them in a way inconsistent with our FDA clearances and approvals, which may create risks to users.

Medical devices are increasingly connected to the internet, hospital networks, and other medical devices to provide features that improve healthcare and increase the ability of healthcare providers to treat patients and patients to manage their conditions. While currently bidirectional connectivity and interoperability of our RxSight system with other devices, local networks and the internet is not enabled, this may change in the future. Enablement of such features may increase cybersecurity risks and the risks of unauthorized access and use by third parties. For example, unauthorized third parties may seek to access our devices or other products and services, or related devices, products, and services, and modify or use them in a way inconsistent with our FDA clearances and approvals, which may create risks to users and potential exposure to the company.

We may expend our limited resources to pursue a particular product or indication and fail to capitalize on products or indications that may be more profitable or for which there is a greater likelihood of success.

Because we have limited financial and managerial resources, we focus on specific products and indications. As a result, we may forgo or delay pursuit of other opportunities with others that could have had greater commercial potential. Our resource allocation decisions may cause us to fail to capitalize on viable commercial products or profitable market opportunities. Our spending on current and future research and development programs for specific indications or enhancements may not yield any commercially viable products. If we do not accurately evaluate the commercial potential or target market for a particular potential product, we may relinquish valuable rights to that potential product through future collaborations, licenses and other similar arrangements in cases in which it would have been more advantageous for us to retain sole development and commercialization rights to such potential product.

We may not be able to develop, license or acquire new products, enhance the capabilities of our existing products to keep pace with rapidly changing technology and customer requirements or successfully manage the transition to new product offerings, any of which could have a material adverse effect on our business, financial condition and results of operations.

Our success depends on our ability to develop, license or acquire and commercialize additional products and to develop new applications for our technologies in existing and new markets, while improving the performance and cost-effectiveness of our existing products, in each case in ways that address current and anticipated customer requirements. We intend to develop and commercialize additional products through our research and development program and by licensing or acquiring additional products and technologies from third parties. Our success is dependent upon several factors, including functionality, competitive pricing, ease of use, the safety and efficacy of our products and our ability to identify, select and acquire the rights to products and technologies on terms that are acceptable to us.

The medical device industry is characterized by rapid technological change and innovation. New technologies, techniques or products could emerge that might offer better combinations of price and performance or better address customer requirements as compared to our current or future products. Competitors, who may have greater financial, marketing and sales resources than we do, may be able to respond more quickly and effectively than we can to new or changing opportunities, technologies, standards or customer requirements. Any new product we identify for internal development, licensing or acquisition may require additional development efforts prior to commercial sale, including extensive clinical testing and approval or clearance by the FDA and applicable foreign regulatory authorities. Due to the significant lead time and complexity involved in bringing a new product to market, we are required to make a number of assumptions and estimates regarding the commercial feasibility of a new product. These assumptions and estimates may prove incorrect, resulting in our introduction of a product that is not competitive at the time of launch. We anticipate that we will face increased competition in the future as existing

companies and competitors develop new or improved products and as new companies enter the market with new technologies. Our ability to mitigate downward pressure on our selling prices will be dependent upon our ability to maintain or increase the value we offer to doctors as well as payors. All new products are prone to the risks of failure inherent in medical device product development, including the possibility that the product will not be shown to be sufficiently safe and effective for approval or clearance by regulatory authorities. In addition, we cannot assure you that any such products that are approved or cleared will be manufactured or produced economically, successfully commercialized or widely accepted in the marketplace. The expenses or losses associated with unsuccessful product development or launch activities, or a lack of market acceptance of our new products, could adversely affect our business, financial condition and results of operations.

Our ability to attract new customer accounts depends in large part on our ability to enhance and improve our existing products and to introduce compelling new products. The success of any enhancement to our products depends on several factors, including adoption and continued use by doctors, competitive pricing and overall market acceptance. Any new product that we develop may not be introduced in a timely or cost-effective manner, may contain defects or may not achieve the market acceptance necessary to generate significant revenue. If we are unable to successfully develop, license or acquire new products, enhance our existing products to meet customer requirements or otherwise gain market acceptance, our business, financial condition and results of operations would be harmed.

The typical development cycle of new medical device products can be lengthy and complicated and may require complex technology and engineering. Such developments may involve external suppliers and service providers, making the management of development projects complex and subject to risks and uncertainties regarding timing, timely delivery of required components or services and satisfactory technical performance of such components or assembled products. If we do not achieve the required technical specifications or successfully manage new product development processes, or if development work is not performed according to schedule, then such new technologies or products may be adversely impacted, and our business and operating results may be harmed.

If we fail to identify, acquire and develop other products, we may be unable to grow our business.

As a significant part of our growth strategy, we intend to develop and commercialize additional products through our research and development program or by licensing or acquiring additional products and technologies from third parties. The success of this strategy depends upon our ability to identify, select and acquire the right to products and technologies on terms that are acceptable to us.

Any product we identify, license or acquire may require additional development efforts prior to commercial sale, including extensive clinical testing and approval or clearance by the FDA and applicable foreign regulatory authorities. All products are prone to the risks of failure inherent in medical device product development, including the possibility that the product will not be shown to be sufficiently safe and effective for approval or clearance by regulatory authorities. In addition, we cannot assure you that any such products that are approved or cleared will be manufactured or produced economically, successfully commercialized or widely accepted in the marketplace.

Proposing, negotiating and implementing an economically viable product or technology acquisition or license is a lengthy and complex process. Other companies, including those with substantially greater financial, marketing and sales resources, may compete with us for the acquisition or license of approved or cleared products. We may not be able to acquire or license the rights to additional approved or cleared products on terms that we find acceptable, or at all.

If we are unable to develop suitable potential products through internal research programs or by obtaining rights from third parties, it could have a material adverse effect on our business, financial condition and results of operations.

We may acquire other companies or technologies, which could fail to result in a commercial product or increased revenue, divert our management's attention, result in additional dilution to our stockholders and otherwise disrupt our operations and harm our operating results.

Although we currently have no agreements or commitments to complete any such transactions, we may in the future seek to acquire or invest in businesses, applications or technologies that we believe could complement or expand our portfolio, enhance our technical capabilities or otherwise offer growth opportunities. However, we cannot assure you that we would be able to successfully complete any acquisition we choose to pursue, or that we

would be able to successfully integrate any acquired business, product or technology in a cost-effective and non-disruptive manner. The pursuit of potential acquisitions may divert the attention of management and cause us to incur various costs and expenses in identifying, investigating and pursuing suitable acquisitions, whether or not they are consummated. We may not be able to identify desirable acquisition targets or be successful in entering into an agreement with any particular target or obtain the expected benefits of any acquisition or investment.

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

Coverage and adequate reimbursement and/or the ability of patients to pay for the difference between the price charged by practices and the reimbursement amount may not be available for our products in sufficient markets, which could diminish our sales or affect our ability to sell our products.

In both U.S. and non-U.S. markets, our ability to successfully commercialize and achieve market acceptance of our products depends, in significant part, on the availability of adequate financial remuneration to doctor practices and surgical centers. This remuneration can come from a combination of sources, including third-party payors, such as Medicare and Medicaid programs in the United States, managed care organizations and private health insurers. Third-party payors decide which treatments they will cover and establish reimbursement rates for those treatments. They also can preclude patients from paying extra to receive additional services, such as those associated with placement of premium IOLs. Our products are purchased by doctors who will then seek reimbursement from third-party payors and patients for the procedures performed using our products. Reimbursement systems and patient billing rules in international markets vary significantly by country and by region within some countries, and reimbursement and/or non-reimbursement approvals must be obtained on a country-by-country basis. In certain international markets, a product must be approved for reimbursement before it can be approved for sale in that country. Furthermore, many international markets have government-managed healthcare systems that control reimbursement for new devices and procedures, as well as the ability to charge patients directly for non-reimbursed devices and procedures. In most markets there are private insurance systems as well as government-managed systems.

While third-party payors currently cover and provide reimbursement for a portion of the cost of the procedures performed using our currently cleared or approved products, we can give no assurance that these third-party payors will continue to provide coverage and adequate reimbursement or permit patient payment for the non-reimbursed portion sufficient to permit doctors to offer procedures using our products to patients requiring treatment. If sufficient coverage and reimbursement or flexibility to enable patient payment is not available for the procedures performed using our products, in either the United States or any international markets we enter, the demand for our products and our revenue will be adversely affected.

Furthermore, although we believe there is potential to improve on the current reimbursement profile for our products in the future, the overall amount of reimbursement available for products and procedures intended to treat cataract and refractive conditions of the eye could remain at current levels or decrease in the future. Failure by doctors to obtain and maintain coverage and adequate reimbursement as well as patient charges for the procedures performed using our products would materially adversely affect our business, financial condition and results of operations.

Third-party payors are also increasingly examining the cost effectiveness of products, in addition to their safety and efficacy, when making coverage and payment decisions. Third-party payors have also instituted initiatives to limit the growth of healthcare costs using, for example, price regulation or controls and competitive pricing programs. Some third-party payors also require demonstrated superiority, on the basis of randomized clinical trials, or pre-approval of coverage, for new or innovative devices or procedures before they will reimburse healthcare providers who use such devices or procedures. Additionally, no uniform policy for coverage and reimbursement exists in the United States, and coverage and reimbursement can differ significantly from payor to payor. Third-party payors often rely upon Medicare coverage policy and payment limitations in setting their own reimbursement rates, but also have their own methods and approval process apart from Medicare determinations. It is uncertain whether our current products or any planned or future products will be viewed (or continue to be viewed) as

sufficiently cost effective to warrant coverage and adequate reimbursement levels for procedures using such products in any given jurisdiction.

If product liability lawsuits are brought against us, we may incur substantial liabilities and may be required to limit or halt the marketing and sale of our products. The expense and potential unavailability of insurance coverage for liabilities resulting from our products could harm us and our ability to sell our products.

We face an inherent risk of product liability as a result of the marketing and sale of our products. For example, we may be sued if our products cause or are perceived to cause injury or are found to be otherwise unsuitable during manufacturing, marketing or sale. Any such product liability claim may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the product, negligence, strict liability or a breach of warranties. In addition, we may be subject to claims against us even if the apparent injury is due to the actions of others or the pre-existing health of the patient. For example, we rely on doctors in connection with the use of our products on patients. If these doctors are not properly trained or are negligent, the capabilities of our products may be diminished, or the patient may suffer critical injury. We may also be subject to claims that are caused by the activities of our suppliers, such as those who provide us with components and sub-assemblies.

If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities or be required to limit or halt commercialization of our products. Even successful defense would require significant financial and management resources. Regardless of the merits or eventual outcome, liability claims may result in:

- decreased demand for our products;
- injury to our reputation;
- initiation of investigations by regulators;
- costs to defend the related litigation;
- a diversion of management’s time and our resources;
- substantial monetary awards to trial participants or patients;
- product recalls, withdrawals or labeling, marketing or promotional restrictions;
- loss of revenue;
- exhaustion of any available insurance and our capital resources; and
- the inability to market and sell our products.

We believe we have adequate product liability insurance, but it may not prove to be adequate to cover all liabilities that we may incur. Insurance coverage is increasingly expensive. We may not be able to maintain or obtain insurance at a reasonable cost or in an amount adequate to satisfy any liability that may arise. Our insurance policy contains various exclusions, and we may be subject to a product liability claim for which we have no coverage. The potential inability to obtain sufficient product liability insurance at an acceptable cost to protect against product liability claims could prevent or inhibit the marketing and sale of products we develop. We may have to pay any amounts awarded by a court or negotiated in a settlement that exceed our coverage limitations or that are not covered by our insurance, and we may not have, or be able to obtain, sufficient capital to pay such amounts, which would have a material adverse effect on our business, financial condition and results of operations. In addition, any product liability claims brought against us, with or without merit, could increase our product liability insurance rates or prevent us from securing continuing coverage, harm our reputation in the industry, significantly increase our expenses and reduce product sales.

Some of our customers and prospective customers may also have difficulty in procuring or maintaining liability insurance to cover their operations and use of our products. Medical malpractice carriers are withdrawing coverage in certain states or substantially increasing premiums. If this trend continues or worsens, our customers may discontinue using our products and potential customers may opt against purchasing our products due to the cost or inability to procure insurance coverage.

We intend to expand sales of our products internationally in the future, but we may experience difficulties in obtaining regulatory clearance or approval or in successfully marketing our products internationally even if approved. A variety of risks associated with marketing our products internationally could materially adversely affect our business.

Sales of our products outside of the United States would be subject to foreign regulatory requirements governing clinical trials and marketing approval. We will incur substantial expenses in connection with our international expansion. Additional risks related to operating in foreign countries include:

- differing regulatory requirements and reimbursement regimes in foreign countries;
- unexpected changes in tariffs, trade barriers, price and exchange controls and other regulatory requirements;
- economic weakness, including inflation, or political instability in particular foreign economies and markets;
- compliance with tax, employment, immigration and labor laws for employees living or traveling abroad;
- foreign taxes, including withholding of payroll taxes;
- foreign currency fluctuations, which could result in increased operating expenses and reduced revenue, and other obligations incident to doing business in another country;
- difficulties staffing and managing foreign operations;
- workforce uncertainty in countries where labor unrest is more common than in the United States;
- potential liability under the U.S. Foreign Corrupt Practices Act (“FCPA”) or comparable foreign regulations;
- challenges enforcing our contractual and intellectual property rights, especially in those foreign countries that do not respect and protect intellectual property rights to the same extent as the United States;
- production shortages resulting from any events affecting raw material supply or manufacturing capabilities abroad; and
- business interruptions resulting from geo-political actions, including war and terrorism.

These and other risks associated with international operations may materially adversely affect our ability to attain or maintain profitable operations in international markets, which would have a material adverse effect on our business, financial condition and results of operations.

In addition, there can be no guarantee that we will receive approval to sell our products in the international markets we target, nor can there be any guarantee that any sales would result even if such approval is received. Even if the FDA grants marketing approval for a product, comparable regulatory authorities of foreign countries must also approve the manufacturing or marketing of the product in those countries. Approval in the United States, or in any other jurisdiction, does not ensure approval in other jurisdictions. Obtaining foreign approvals could result in significant delays, difficulties and costs for us and require additional trials and additional expenses. Regulatory requirements can vary widely from country to country and could delay the introduction of our products in those countries. Clinical trials conducted in one country may not be accepted by other countries, and regulatory approval in one country does not mean that regulatory approval will be obtained in any other country. If we fail to comply with these regulatory requirements or to obtain and maintain required approvals, our target market will be reduced and our ability to generate revenue will be diminished. Our inability to successfully enter all our desired international markets and manage business on a global scale could negatively affect our business, financial results and results of operations.

We may not be able to achieve or maintain satisfactory pricing and margins for our products.

Manufacturers of medical devices have a history of price competition, and we can give no assurance that we will be able to achieve satisfactory prices for our products or maintain prices at the levels we have historically achieved. Any decline in the amount that payors reimburse doctors performing cataract procedures, or any reduction in the flexibility to charge patients for non-reimbursed procedures could make it difficult for us to convince our customers to make the up-front investment in our LDD and could create additional pricing pressure with respect to the patient's decision to pay the additional cost associated with our LALs and potentially a reduction in the number of procedures performed using the RxSight system and corresponding sales of LDDs, LALs, accessories and services. If we are forced to lower the price we charge for our products, our revenue and gross margins will decrease, which will adversely affect our ability to invest in and grow our business. If we are unable to maintain our prices, or if our costs increase and we are unable to offset such increase with an increase in our prices, our margins could erode. We will continue to be subject to significant pricing pressure, which could harm our business, financial condition and results of operations.

The sizes of the markets for our current and future products have not been established with precision and may be smaller than we estimate.

Our estimates of the annual total addressable markets for our current products and products under development are based on a number of internal and third-party estimates, including, without limitation, the number of patients who have undergone cataract surgery, and the assumed prices at which we can sell our RxSight system. While we believe our assumptions and the data underlying our estimates are reasonable, these assumptions and estimates may not be correct and the conditions supporting our assumptions or estimates may change at any time, thereby reducing the predictive accuracy of these underlying factors. In addition, our estimates of the sizes of the cataract surgery patient population include patients who might never be likely candidates for treatment with our products. As a result, our estimates of the annual total addressable market for our current or future products may prove to be incorrect. If the actual number of patients who would benefit from our products, the price at which we can sell future products, or the annual total addressable market for our products is smaller than we have estimated, it may impair our sales growth and have an adverse impact on our business.

Changes in public health insurance coverage and government reimbursement rates for our products could affect the adoption of our products and our future revenue.

The federal government is considering ways to change, and has changed, the manner in which healthcare services are paid for in the United States. Individual states may also enact legislation that impacts Medicaid payments to doctors. In addition, CMS establishes Medicare payment levels for doctors on an annual basis, which can increase or decrease payment to such entities. Internationally, medical reimbursement systems vary significantly from country to country, with some countries limiting medical centers' spending through fixed budgets, regardless of levels of patient treatment, and other countries requiring application for, and approval of, government or third-party reimbursement. In addition, the ability to charge patients directly for premium IOLs and associated services also varies widely across different countries and could become more restricted. Even if we succeed in bringing our products to market internationally, uncertainties regarding future healthcare policy, legislation and regulation, as well as private market practices, could affect our ability to sell our products in commercially acceptable quantities at acceptable prices.

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

Our quarterly and annual results of operations, including our revenue, profitability and cash flow, may vary significantly in the future, and period-to-period comparisons of our operating results may not be meaningful. Accordingly, the results of any one quarter or period should not be relied upon as an indication of future performance. Our quarterly and annual financial results may fluctuate as a result of a variety of factors, many of which are outside our control and, as a result, may not fully reflect the underlying performance of our business. Fluctuations in quarterly and annual results may decrease the value of our common stock. Because our quarterly results may fluctuate, period-to-period comparisons may not be the best indication of the underlying results of our business and should only be relied upon as one factor in determining how our business is performing.

We expect to significantly expand our organization, including expanding our sales and marketing capability and creating additional infrastructure to support our operations as a public company, and as a result, we may encounter difficulties in managing our growth, which could disrupt our operations.

We expect to experience significant growth in the number of our employees and the scope of our operations, particularly in the areas of sales and marketing and finance and accounting. To manage our anticipated future growth, we must continue to implement and improve our managerial, operational and financial systems, expand our facilities and continue to recruit and train additional qualified personnel. Due to our limited financial resources and our limited experience in managing such anticipated growth, we may not be able to effectively manage the expansion of our operations or recruit and train additional qualified personnel. The expansion of our operations may lead to significant costs and may divert or stretch our management and business development resources in a way that we may not anticipate. Any inability to manage growth could delay the execution of our business plans or disrupt our operations.

Certain of our operating results and financial metrics may be difficult to predict as a result of seasonality.

While we have not yet experienced significant seasonality in our results, it is not uncommon in our industry to experience seasonally weaker revenue during the summer months and end-of-year holiday season. We may be affected by other seasonal trends in the future, including severe weather (which can impact the number of elective procedures performed), particularly as our business matures. Additionally, this seasonality may be reflected to a much lesser extent, and sometimes may not be immediately apparent, in our revenue. To the extent we experience this seasonality, it may cause fluctuations in our operating results and financial metrics and make forecasting our future operating results and financial metrics more difficult.

Our ability to use our net operating loss carryforwards and certain other tax attributes to offset future taxable income may be subject to certain limitations.

As of December 31, 2021, we had federal net operating loss carryforwards (“NOLs”) of approximately $270.4 million, which will begin to expire in various years ranging from 2022 to 2037. Our NOLs could expire unused and be unavailable to offset future income tax liabilities because of their limited duration or because of restrictions under U.S. tax law. Under the Tax Act, as modified by the Coronavirus Aid, Relief, and Economic Security Act, or the CARES Act, our federal NOLs generated in tax years ending after December 31, 2017 may be carried forward indefinitely, but the deductibility of such federal net NOLs in tax years beginning after December 31, 2020 is limited to 80% of taxable income. It is uncertain if and to what extent various states will conform to the Tax Act, as modified by the CARES Act. Additionally, California recently enacted legislation limiting our ability to use our state NOLs for taxable years 2021 and 2022.

In addition, under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended (Code), if a corporation undergoes an “ownership change” (generally defined as a cumulative change in our ownership by “5-percent shareholders” that exceeds 50 percentage points over a rolling three-year period), the corporation’s ability to use its pre-change NOLs and certain other pre-change tax attributes to offset its post-change income and taxes may be limited. Similar rules may apply under state tax laws. We may have experienced such ownership changes in the past, and we may experience an ownership change in the future as a result of subsequent shifts in our stock ownership, some of which are outside our control. We have not conducted any studies to determine annual limitations, if any, that could result from such changes in our stock ownership. Our ability to utilize those NOLs could be limited by an “ownership change” as described above and consequently, we may not be able to utilize a material portion of our NOLs and certain other tax attributes, which could have a material adverse effect on our cash flows and results of operations.

Risks related to intellectual property

If we are unable to obtain, maintain, protect and enforce patent and other intellectual property protection for our technology and products, or if the scope of the patent and other intellectual property protection obtained is not sufficiently broad, we may not be able to compete effectively in our markets.

Our success depends in large part on our ability to obtain, maintain, protect and enforce patent and other intellectual property protection in the United States and other countries with respect to our products and technology we develop. If we fail to obtain, maintain, protect and enforce our intellectual property, third parties may be able to compete more effectively against us, we may lose our technological or competitive advantage, or we may incur substantial litigation costs in our attempts to recover or restrict use of our intellectual property.

We seek to protect our position by in-licensing intellectual property relating to our products and filing patent applications in the United States and abroad related to our technologies and products that are important to our business. We also rely on a combination of contractual provisions, confidentiality procedures and copyright, trademark, trade secret and other intellectual property rights to protect the proprietary aspects of our brands, products, technologies and data. These legal measures afford only limited protection, and competitors or others may gain access to or use our intellectual property and proprietary information. Our success will depend, in part, on obtaining and maintaining patents, copyrights, trademarks, trade secrets, data and know-how and other intellectual property rights.

We may not be able to obtain and maintain intellectual property or other proprietary rights necessary to our business or in a form that provides us with a competitive advantage. For example, our trade secrets, data and know-how could be subject to unauthorized use, misappropriation or disclosure to unauthorized parties, despite our efforts to enter into confidentiality agreements with our employees, consultants, contractors, clients and other vendors who have access to such information, and could otherwise become known or be independently discovered by third parties. In addition, the patent prosecution process is expensive, time-consuming and complex, and we may not be able to file, prosecute, maintain, enforce or license all necessary or desirable patent applications at a reasonable cost, in a timely manner, or in all jurisdictions where protection may be commercially advantageous, or we may not be able to protect our intellectual property at all. Despite our efforts to protect our intellectual property, unauthorized parties may be able to obtain and use information that we regard as proprietary.

The issuance of a patent is not conclusive as to its inventorship, scope, validity or enforceability and our owned and in-licensed issued patents may be challenged in courts or patent offices in the United States and abroad. For example, we may be subject to a third-party submission of prior art to the USPTO, challenging the validity of one or more claims of our owned or in-licensed issued patents. Such submissions may also be made prior to a patent's issuance, precluding the granting of a patent based on one of our owned or in-licensed pending patent applications.

It is also possible that we will fail to identify patentable aspects of our research and development output in time to obtain patent protection. Although we enter into non-disclosure and confidentiality agreements with parties who have access to confidential or patentable aspects of our research and development output, such as our employees, consultants, contractors, collaborators, vendors and other third parties, any of these parties may breach the agreements and disclose such output before a patent application is filed, thereby jeopardizing our ability to seek patent protection. We may not be able to obtain or maintain patent applications and issued patents due to the subject matter claimed in such patent applications and issued patents being in disclosures in the public domain, and we may not be able to prevent any third party from using any of our technology that is in the public domain to compete with our technologies. In addition, publications of discoveries in the scientific literature often lag behind the actual discoveries, and patent applications in the United States and other jurisdictions are typically not published until 18 months after filing, or in some cases not at all. Therefore, we cannot be certain that we were the first to make the inventions claimed in our owned or in-licensed issued patents or pending patent applications, or that we were the first to file for patent protection of such inventions. If a third party can establish that we or our licensors were not the first to make or the first to file for patent protection of such inventions, our owned or in-licensed patent applications may not issue as patents and even if issued, may be challenged and invalidated or rendered unenforceable.

The patent position of medical device companies generally is highly uncertain, involves complex legal and factual questions, and has been the subject of much litigation in recent years. Changes in either the patent laws or their interpretation in the United States and other countries may diminish our ability to protect our inventions, obtain, maintain, and enforce our intellectual property rights and, more generally, could affect the value of our intellectual property or narrow the scope of our owned and in-licensed patents. With respect to both in-licensed and owned intellectual property, we cannot predict whether the patent applications we and our licensors are currently pursuing will issue as patents in any particular jurisdiction or whether the claims of any issued patents will provide sufficient protection from competitors. As a result, the issuance, scope, validity, enforceability and commercial value of our patent rights are highly uncertain.

Moreover, the coverage claimed in a patent application can be significantly reduced before a patent is issued, and its scope can be reinterpreted after issuance. Even if patent applications we license or own currently or in the future issue as patents, they may not issue in a form that will provide us with any meaningful protection, prevent competitors or other third parties from competing with us, or otherwise provide us with any competitive advantage. Any patents that we hold or in-license may be challenged, narrowed or invalidated by third parties. Additionally, our competitors or other third parties may be able to circumvent our patents by developing similar or alternative technologies or products in a non-infringing manner. Third parties may also have blocking patents that could prevent us from marketing our own products and practicing our own technology. Alternatively, third parties may seek approval to market their own products similar to or otherwise competitive with our products. In these circumstances, we may need to defend and/or assert our patents, including by filing lawsuits alleging patent infringement. In any of these types of proceedings, a court or agency with jurisdiction may find our patents invalid, unenforceable or not infringed, in which case, our competitors and other third parties may then be able to market products and use manufacturing and analytical processes that are substantially similar to ours. Even if we have valid and enforceable patents, these patents still may not provide protection against competing products or processes sufficient to achieve our business objectives.

Given that patent applications are confidential for a period of time after filing, we cannot be certain that we were the first to file any patent application related to our products. Competitors may also contest our patents, if issued, by showing the USPTO, or the applicable other foreign patent agency that the invention was not original, was not novel or was obvious. In litigation, a competitor could claim that our patents, if issued, are not valid for a number of reasons. If a court agrees, we would lose our rights to those challenged patents.

In addition, given the amount of time required for the development, testing and regulatory review of new products, patents protecting such products might expire before or shortly after such products are commercialized. As a result, our intellectual property may not provide us with sufficient rights to exclude others from commercializing products similar or identical to ours. Moreover, some of our owned and in-licensed patents and patent applications may in the future be co-owned with third parties. If we are unable to obtain an exclusive license to any such third-party co-owners' interest in such patents or patent applications, such co-owners may be able to license their rights to other third parties, including our competitors, and our competitors could market competing products and technology. In addition, we may need the cooperation of any such co-owners of our patents in order to enforce such patents against third parties, and such cooperation may not be provided to us.

Our other intellectual property, including our trademarks, could also be challenged, invalidated, infringed and circumvented by third parties, and our trademarks could also be diluted, declared generic or found to be infringing on other marks, in which case we could be forced to re-brand our products, resulting in loss of brand recognition and requiring us to devote resources to advertising and marketing new brands, and suffer other competitive harm. Third parties may also adopt trademarks similar to ours, which could harm our brand identity and lead to market confusion.

We may in the future also be subject to claims by our former employees, consultants or contractors asserting an ownership right in our patents or patent applications, as a result of the work they performed on our behalf. Although we generally require all of our employees, consultants, contractors and any other partners or collaborators who have access to our proprietary know-how, information or technology to assign or grant similar rights to their inventions to us, we cannot be certain that we have executed such agreements with all parties who may have contributed to our

intellectual property, nor can we be certain that our agreements with such parties will be upheld in the face of a potential challenge, or that they will not be breached, for which we may not have an adequate remedy.

Failure to obtain and maintain patents, trademarks and other intellectual property rights necessary to our business and failure to protect, monitor and control the use of our intellectual property rights could negatively impact our ability to compete and cause us to incur significant expenses. The intellectual property laws and other statutory and contractual arrangements in the United States and other jurisdictions we depend upon may not provide sufficient protection in the future to prevent the infringement, use, violation or misappropriation of our patents, trademarks, data, technology and other intellectual property, and may not provide an adequate remedy if our intellectual property rights are infringed, misappropriated or otherwise violated. Any of the foregoing could have a material adverse effect on our competitive position, business, financial conditions, results of operations and prospects.

Furthermore, our owned and in-licensed patents may be subject to a reservation of rights by one or more third parties. For example, this could arise if the research resulting in certain of our owned or in-licensed patent rights and technology was funded in part by the United States government. As a result, the government may have certain rights, or march-in rights, to such patent rights and technology. When new technologies are developed with government funding, the government generally obtains certain rights in any resulting patents, including a non-exclusive license authorizing the government to use the invention for non-commercial purposes. These rights may permit the government to disclose our confidential information to third parties and to exercise march-in rights to use or allow third parties to use our licensed technology. The government can exercise its march-in rights if it determines that action is necessary because we fail to achieve practical application of the government-funded technology, because action is necessary to alleviate health or safety needs, to meet requirements of federal regulations, or to give preference to United States industry. In addition, our rights in such inventions may be subject to certain requirements to manufacture products embodying such inventions in the United States. Any exercise by the government of such rights could harm our competitive position, business, financial condition, results of operations and prospects.

Moreover, a portion of our intellectual property has been acquired from one or more third parties. While we have conducted diligence with respect to such acquisitions, because we did not participate in the development or prosecution of much of the acquired intellectual property, we cannot guarantee that our diligence efforts identified and/or remedied all issues related to such intellectual property, including potential ownership errors, potential errors during prosecution of such intellectual property, and potential encumbrances that could limit our ability to enforce such intellectual property rights.

Patent terms may be inadequate to protect our competitive position on technology for an adequate amount of time.

Patents have a limited lifespan. In the United States, if all maintenance fees are timely paid, the natural expiration of a patent is generally 20 years from its earliest claimed U.S. non-provisional or Patent Cooperation Treaty application filing date. Various extensions may be available, but the life of a patent, and the protection it affords, is limited. Even if patents covering our products are obtained, once the patent life has expired for a product, we may be open to competition. Given the amount of time required for the development, testing and regulatory review of new products, patents protecting such products might expire before or shortly after such products are commercialized. As a result, our patent portfolio may not provide us with sufficient rights to exclude others from commercializing products similar or identical to ours for a meaningful amount of time, or at all.

Obtaining and maintaining our patent protection depends on compliance with various procedural, document submission, fee payment, and other requirements imposed by governmental patent agencies, and our patent protection could be reduced or eliminated for noncompliance with these requirements.

Periodic maintenance fees, renewal fees, annuity fees and various other government fees on any issued patents and patent applications are due to be paid to the USPTO and other foreign patent agencies in several stages over the lifetime of such issued patents and patent applications. The USPTO and various foreign national or international patent agencies require compliance with a number of procedural, documentary, fee payment, and other similar

provisions during the patent application process. While an inadvertent lapse can in many cases be cured by payment of a late fee or by other means in accordance with the applicable rules, there are situations in which noncompliance can result in abandonment or lapse of the patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. Noncompliance events that could result in abandonment or lapse of patent rights include, but are not limited to, failure to timely file national and regional stage patent applications based on our international patent application, failure to respond to official actions within prescribed time limits, non-payment of fees, and failure to properly legalize and submit formal documents. We are dependent on our licensors to take the necessary action to comply with these requirements with respect to certain of our in-licensed intellectual property, and if we or any of our current or future licensors fail to maintain the patents and patent applications covering our RxSight system or any future products, our competitors may be able to enter the market, which would have a material adverse effect on our business, financial condition, results of operations and prospects.

We may not identify relevant third-party patents or may incorrectly interpret the relevance, scope or expiration of a third-party patent, which might adversely affect our ability to develop and market our products.

We cannot guarantee that any of our patent searches or analyses, including the identification of relevant patents, the scope of patent claims or the expiration of relevant patents, are complete or thorough, nor can we be certain that we have identified each and every third-party patent and pending application in the United States and abroad that is relevant to or necessary for the commercialization of our current and future products in any jurisdiction.

The scope of a patent claim is determined by an interpretation of the law, the written disclosure in a patent and the patent's prosecution history. Our interpretation of the relevance or the scope of a patent or a pending application may be incorrect, which may negatively impact our ability to market our products. We may incorrectly determine that our products are not covered by a third-party patent or may incorrectly predict whether a third party's pending application will issue with claims of relevant scope. Our determination of the expiration date of any patent in the United States or abroad that we consider relevant may be incorrect, and our failure to identify and correctly interpret relevant patents may negatively impact our ability to develop and market our products.

Our future reliance on third parties may require us to share our trade secrets, which increases the possibility that a competitor will discover them or that our trade secrets will be misappropriated or disclosed.

Because we expect to rely on a third party to manufacture our RxSight system, and any future products, and we expect to collaborate with third parties on the continuing development of our RxSight system, and any future products, we must, at times, share trade secrets with them. We also expect to conduct R&D programs that may require us to share trade secrets under the terms of our partnerships or agreements with CROs. We seek to protect our proprietary technology in part by entering into agreements containing confidentiality and use restrictions and obligations with our advisors, employees, contractors, CMOs, CROs, other service providers and consultants prior to disclosing proprietary information. These agreements typically limit the rights of the third parties to use or disclose our confidential information, including our trade secrets. Despite the contractual provisions employed when working with third parties, the need to share trade secrets and other confidential information increases the risk that such trade secrets become known by our competitors, are inadvertently incorporated into the technology of others, or are disclosed or used in violation of these agreements. Given that our proprietary position is based, in part, on our know-how and trade secrets, a competitor's discovery of our trade secrets or other unauthorized use or disclosure would impair our competitive position and may have an adverse effect on our business and results of operations.

In addition, these agreements typically restrict the ability of our advisors, employees, third-party contractors, CMOs, CROs, other service providers and consultants to publish data potentially relating to our trade secrets, although our agreements may contain certain limited publication rights. Despite our efforts to protect our trade secrets, our competitors may discover our trade secrets, either through breach of our agreements with third parties, independent development or publication of information by any of our third-party collaborators. A competitor's discovery of our trade secrets would impair our competitive position and have an adverse impact on our business.

We may be subject to claims that we or our employees have misappropriated the intellectual property of a third party, including trade secrets or know-how, or are in breach of non-competition or non-solicitation agreements with our competitors and third parties may claim an ownership interest in intellectual property we regard as our own.

Many of our employees and consultants were previously employed at or engaged by other medical device, biotechnology or pharmaceutical companies, including our competitors or potential competitors. Some of these employees, consultants and contractors, may have executed proprietary rights, non-disclosure and non-competition agreements in connection with such previous employment. Although we try to ensure that our employees and consultants do not use the intellectual property, proprietary information, know-how or trade secrets of others in their work for us, we may be subject to claims that we or these individuals have, inadvertently or otherwise, misappropriated the intellectual property or disclosed the alleged trade secrets or other proprietary information, of these former employers or competitors. Litigation may be necessary to defend against these claims, and if we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights. In addition, we may lose personnel as a result of such claims. Any such litigation, or the threat thereof, may adversely affect our ability to hire employees or contract with independent contractors. A loss of key personnel or their work product could hamper or prevent our ability to commercialize our products, which would have a material adverse effect on our business, results of operations, financial condition and prospects.

Additionally, we may be subject to claims from third parties challenging our ownership interest in intellectual property we regard as our own, based on claims that our employees or consultants have breached an obligation to assign inventions to another employer, to a former employer, or to another person or entity. Litigation may be necessary to defend against any other claims, and it may be necessary or we may desire to enter into a license to settle any such claim; however, there can be no assurance that we would be able to obtain a license on commercially reasonable terms, if at all. If our defense to those claims fails, in addition to paying monetary damages, a court could prohibit us from using technologies or features that are essential to our products, if such technologies or features are found to incorporate or be derived from the trade secrets or other proprietary information of the former employers.

In addition, we or our licensors may in the future be subject to claims by former employees, consultants or other third parties asserting an ownership right in our owned or in-licensed issued patents or patent applications. An adverse determination in any such submission or proceeding may result in loss of exclusivity or freedom to operate or in patent claims being narrowed, invalidated or held unenforceable, in whole or in part, which could limit our ability to stop others from using or commercializing similar technology and therapeutics, without payment to us, or could limit the duration of the patent protection covering our technology. Such challenges may also result in our inability to develop, manufacture or commercialize our technology without infringing third-party patent rights. In addition, if the breadth or strength of protection provided by our owned or in-licensed issued patents and patent applications is threatened, it could dissuade companies from collaborating with us to license, develop or commercialize current or future products. Any of the foregoing could have a material adverse effect on our business, financial condition, results of operations and prospects.

An inability to incorporate technologies or features that are important or essential to our products could have a material adverse effect on our business, financial condition and results of operations, and may prevent us from selling our products. In addition, we may lose valuable intellectual property rights or personnel. Even if we are successful in defending against these claims, litigation could result in substantial costs and could be a distraction to management. Any litigation or the threat thereof may adversely affect our ability to hire employees or contract with independent sales representatives. A loss of key personnel or their work product could hamper or prevent our ability to commercialize our products, which could have an adverse effect on our business, financial condition and results of operations.

We may become a party to intellectual property litigation or administrative proceedings that could be costly and could interfere with our ability to sell and market our products.

The medical device industry has been characterized by extensive litigation regarding patents, trademarks, trade secrets and other intellectual property rights, and companies in the industry have used intellectual property litigation

to gain a competitive advantage. It is possible that U.S. and foreign patents and pending patent applications, copyrights, or trademarks controlled by third parties may be alleged to cover our products, or that we may be accused of misappropriating third parties' trade secrets. Additionally, our products include components that we purchase from vendors, and may include design components that are outside of our direct control. Our competitors, many of which have substantially greater resources and have made substantial investments in patent portfolios, trade secrets, copyrights, trademarks and competing technologies, may have applied for or obtained, or may in the future apply for or obtain, patents, copyrights, or trademarks that will prevent, limit or otherwise interfere with our ability to make, use, sell and/or export our products or to use product names. Because patent applications can take years to issue and are often afforded confidentiality for some period of time, there may currently be pending applications, unknown to us, that later result in issued patents that could cover one or more of our products. Moreover, in recent years, individuals and groups that are non-practicing entities, commonly referred to as "patent trolls," have purchased patents and other intellectual property assets for the purpose of making claims of infringement in order to extract settlements. From time to time, we may receive threatening letters, notices or "invitations to license," or may be the subject of claims that our products and business operations infringe or violate the intellectual property rights of others. We may face patent infringement claims from non-practicing entities that have no relevant product revenue and against whom our owned or in-licensed patent portfolio may therefore have no deterrent effect. We may in the future become party to adversarial proceedings or litigation where our competitors or other third parties may assert claims against us, alleging that our products or services infringe, misappropriate or otherwise violate their intellectual property rights, including patents and trade secrets. The defense of these matters can be time consuming, costly to defend in litigation, divert management's attention and resources, damage our reputation and brand and cause us to incur significant expenses or make substantial payments. Vendors from whom we purchase hardware or software may not indemnify us in the event that such hardware or software is accused of infringing a third party's patent or trademark or of misappropriating a third party's trade secret, or any indemnification granted by such vendors may not be sufficient to address any liability and costs we incur as a result of such claims. Additionally, we may be obligated to indemnify our customers or business partners in connection with litigation and to obtain licenses or refund subscription fees, which could further exhaust our resources.

Even if we believe a third party's intellectual property claims are without merit, there is no assurance that a court would find in our favor, including on questions of infringement, validity, enforceability or priority of patents. The strength of our defenses will depend on the patents asserted, the interpretation of these patents, and our ability to invalidate the asserted patents. A court of competent jurisdiction could hold that these third-party patents are valid, enforceable and infringed, which could materially and adversely affect our ability to commercialize any products or technology we may develop, and any other products or technologies covered by the asserted third-party patents. In order to successfully challenge the validity of any such United States patent in federal court, we would need to overcome a presumption of validity. As this burden is a high one requiring us to present clear and convincing evidence as to the invalidity of any such United States patent claim, there is no assurance that a court of competent jurisdiction would invalidate the claims of any such United States patent. Conversely, the patent owner need only prove infringement by a preponderance of the evidence, which is a lower burden of proof.

Further, if patents, trademarks, copyrights, or trade secrets are successfully asserted against us, this may harm our business and result in injunctions preventing us from developing, manufacturing, marketing or selling our products, or result in obligations to pay license fees, damages, attorney fees and court costs, which could be significant. In addition, if we are found to willfully infringe third-party patents or trademarks or to have misappropriated trade secrets, we could be required to pay treble damages in addition to other penalties.

Although patent, copyright, trademark, trade secret and other intellectual property disputes in the medical device area have often been settled through licensing or similar arrangements, costs associated with such arrangements may be substantial and could include ongoing royalties. We may be unable to obtain necessary licenses on satisfactory terms, if at all. In addition, if any license we obtain is non-exclusive, we may not be able to prevent our competitors and other third parties from using the intellectual property or technology covered by such license to compete with us. If we do not obtain necessary licenses, we may not be able to redesign our products to avoid infringement. Any of these events could materially and adversely affect our business, financial condition and results of operations.

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

Additionally, we may file lawsuits or initiate other proceedings to protect or enforce our patents or other intellectual property rights, which could be expensive, time consuming and unsuccessful. Competitors may infringe our issued patents or other intellectual property, which we may not always be able to detect. To counter infringement or unauthorized use, we may be required to file infringement claims, which can be expensive and time-consuming. Any claims we assert against perceived infringers could provoke these parties to assert counterclaims against us alleging that we infringe their intellectual property or alleging that our intellectual property is invalid or unenforceable. Grounds for a validity challenge could be an alleged failure to meet any of several statutory requirements, including lack of novelty, obviousness or non-enablement. Grounds for an unenforceability assertion could be an allegation that someone connected with prosecution of the patent withheld relevant information from the USPTO, or made a misleading statement, during prosecution. Third parties may raise challenges to the validity of certain of our owned or in-licensed patent claims before administrative bodies in the United States or abroad, even outside the context of litigation. Such mechanisms include re-examination, post-grant review, inter partes review, interference proceedings, derivation proceedings and equivalent proceedings in foreign jurisdictions (e.g., opposition proceedings). In any such lawsuit or other proceedings, a court or other administrative body may decide that a patent of ours is invalid or unenforceable, in whole or in part, construe the patent's claims narrowly or refuse to stop the other party from using the technology at issue on the grounds that our patents do not cover the technology in question.

The outcome following legal assertions of invalidity and unenforceability is unpredictable. If a third party were to prevail on a legal assertion of invalidity or unenforceability, we would lose at least part, and perhaps all, of the patent protection on our products or products that we may develop. If our patents are found to be valid and infringed, a court may refuse to grant injunctive relief against the infringer and instead grant us monetary damages and/or ongoing royalties. Such monetary compensation may be insufficient to adequately offset the damage to our business caused by the infringer's competition in the market. An adverse result in any litigation or other proceeding could put one or more of our patents at risk of being invalidated or interpreted narrowly. Any of these events could materially and adversely affect our business, financial condition and results of operations.

Even if resolved in our favor, litigation or other proceedings relating to intellectual property claims may cause us to incur significant expenses and could distract our personnel from their normal responsibilities. In addition, there could be public announcements of the results of hearings, motions or other interim proceedings or developments, and if securities analysts or investors perceive these results to be negative, it could have a substantial adverse effect on the price of our common stock. Such litigation or proceedings could substantially increase our operating losses and reduce the resources available for development activities or any future sales, marketing or distribution activities. We may not have sufficient financial or other resources to conduct such litigation or proceedings adequately. Some of our competitors may be able to sustain the costs of such litigation or proceedings more effectively than we can because of their greater financial resources and more mature and developed intellectual property portfolios. Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential or sensitive information could be compromised by disclosure in the event of litigation. Uncertainties resulting from the initiation and continuation of patent and other intellectual property litigation or other proceedings could have a material adverse effect on our business, financial condition and results of operations.

Because of the expense and uncertainty of litigation, we may not be in a position to enforce our intellectual property rights against third parties.

Because of the expense and uncertainty of litigation, we may conclude that even if a third party is infringing, misappropriating or otherwise violating our owned or in-licensed patents, any patents that may be issued as a result of our future patent applications, or other intellectual property rights, the risk-adjusted cost of bringing and enforcing such a claim or action may be too high or not in the best interest of our company or our shareholders. In such cases, we may decide that the more prudent course of action is to simply monitor the situation or initiate or seek some other non-litigious action or solution.

Our rights to develop and commercialize our products are subject, in part, to the terms and conditions of licenses granted to us by others.

We rely, in part, upon licenses to certain patent rights, proprietary technology and other intellectual property from third parties that are important or necessary to the development of our products and technology. Further development and commercialization of our current products, and development of any future products, may require us to enter into additional license or collaboration agreements. These and other licenses may not provide exclusive rights to use such intellectual property and technology in all relevant fields of use and in all territories in which we may wish to develop or commercialize our technology and products in the future. As a result, we may not be able to prevent competitors from developing and commercializing competitive products in territories included in all of our licenses.

In addition, we may not have the right to control the preparation, filing, prosecution, maintenance, enforcement and defense of patents and patent applications covering the technology that we license from third parties. Therefore, we cannot be certain that these patents and patent applications will be prepared, filed, prosecuted, maintained, enforced and defended in a manner consistent with the best interests of our business. Additionally, patents licensed to us could be put at risk of being invalidated or interpreted narrowly in litigation filed by or against our licensors or another licensee or in administrative proceedings brought by or against our licensors or another licensee in response to such litigation or for other reasons. If our licensors fail to prosecute, maintain, enforce and defend such patents, or lose rights to those patents or patent applications, the rights we have licensed may be reduced or eliminated, and our right to develop and commercialize any of our products that are subject of such licensed rights could be adversely affected.

Our licensors may have relied on third-party consultants or collaborators or on funds from third parties such that our licensors are not the sole and exclusive owners of the patents we in-license. This could materially and adversely affect our business, financial condition and results of operations.

The agreements under which we currently license intellectual property or technology from third parties are complex, and certain provisions in such agreements may be susceptible to multiple interpretations. The resolution of any contract interpretation disagreement that may arise could narrow what we believe to be the scope of our rights to the relevant intellectual property or technology or increase what we believe to be our financial or other obligations under the relevant agreement. In spite of our best efforts, our licensors might also conclude that we have materially breached our license agreements and terminate the license agreements, thereby removing our ability to develop and commercialize products and technology covered by these license agreements. If these in-licenses are terminated, or if the underlying patents fail to provide the intended exclusivity, competitors would have the freedom to seek regulatory approval of, and to market, products identical to ours. In addition, we may seek to obtain additional licenses from our licensors and, in connection with obtaining such licenses, we may agree to amend our existing licenses in a manner that may be more favorable to the licensors, including by agreeing to terms that could enable third parties (potentially including our competitors) to receive licenses to a portion of the intellectual property that is subject to our existing licenses. Moreover, if disputes over intellectual property that we license prevent or impair our ability to maintain other licensing arrangements on commercially acceptable terms, we may be unable to successfully develop and commercialize the affected products. Any of these events could materially and adversely affect our business, financial condition and results of operations.

In the future, we may enter agreements involving licenses or collaborations that provide for access or sharing of intellectual property. If we fail to comply with our obligations under any license, collaboration or other agreements, we may be required to pay damages and could lose intellectual property rights that are necessary for developing and protecting our current and future products.

We currently, and in the future may continue to, license from third parties certain intellectual property relating to our current and future products. In the event we do so, we may have certain obligations to such licensors. If we breach any material obligations, or use the intellectual property licensed to us in an unauthorized manner, we may be required to pay damages and the licensor may have the right to terminate the license, which could result in us being unable to develop, manufacture, and sell products that are covered by the licensed technology or enable a competitor to gain access to the licensed technology.

Disputes may arise between us and our future licensors regarding intellectual property subject to a license agreement, including:

- the scope of rights granted under the license agreement and other interpretation-related issues;
- whether and the extent to which our technology and processes infringe on intellectual property of the licensor that is not subject to the licensing agreement;
- our right to sublicense patents and other rights to third parties;
- our diligence obligations with respect to the use of the licensed technology in relation to our development and commercialization of our products, and what activities satisfy those diligence obligations;
- our right to transfer or assign the license; and
- the ownership of inventions and know-how resulting from the joint creation or use of intellectual property by any of our future licensors and us and our partners.

If disputes over intellectual property that we license in the future prevent or impair our ability to maintain our licensing arrangements on acceptable terms, we may not be able to successfully develop and commercialize the affected products, which would have a material adverse effect on our business.

In addition, certain of our future agreements with third parties may limit or delay our ability to consummate certain transactions, may impact the value of those transactions, or may limit our ability to pursue certain activities. For example, we may in the future enter into license agreements that are not assignable or transferable, or that require the licensor's express consent in order for an assignment or transfer to take place.

Further, we or our future licensors, if any, may fail to identify patentable aspects of inventions made in the course of development and commercialization activities before it is too late to obtain patent protection on them. Therefore, we may miss potential opportunities to strengthen our patent position. It is possible that defects of form in the preparation or filing of our patents or patent applications may exist, or may arise in the future, for example with respect to proper priority claims, inventorship, claim scope, or requests for patent term adjustments. If we or our future licensors fail to establish, maintain or protect such patents and other intellectual property rights, such rights may be reduced or eliminated. If our future licensors are not fully cooperative or disagree with us as to the prosecution, maintenance or enforcement of any patent rights, such patent rights could be compromised. If there are material defects in the form, preparation, prosecution, or enforcement of our patents or patent applications, such patents may be invalid and/or unenforceable, and such applications may never result in valid, enforceable patents. Any of these outcomes could impair our ability to prevent competition from third parties, which may have an adverse impact on our business.

In addition, even where we have the right to control patent prosecution of patents and patent applications under future license from third parties, we may still be adversely affected or prejudiced by actions or inactions of our predecessors or licensors and their counsel that took place prior to us assuming control over patent prosecution.

Our technology acquired or licensed in the future from various third parties may be subject to retained rights. Our predecessors or licensors may retain certain rights under their agreements with us, including the right to use the underlying technology for noncommercial academic and research use, to publish general scientific findings from research related to the technology, and to make customary scientific and scholarly disclosures of information relating to the technology. It is difficult to monitor whether our predecessors or future licensors limit their use of the technology to these uses, and we could incur substantial expenses to enforce our rights to our licensed technology in the event of misuse.

If we are limited in our ability to utilize acquired or future licensed technologies, or if we lose our rights to critical future in-licensed technology, we may be unable to successfully develop, out-license, market and sell our products, which could prevent or delay new product introductions. Our business strategy depends on the successful development of acquired technologies, and possibly in the future licensed technology, into commercial products. Therefore, any limitations on our ability to utilize these technologies may impair our ability to develop, out-license or market and sell our products.

We may not be successful in obtaining necessary rights to any products we may develop through acquisitions and in-licenses.

We may need to obtain additional licenses from our existing licensors or otherwise acquire or in-license any intellectual property rights from third parties that we identify as necessary for our products. It is possible that we may be unable to obtain any additional licenses or acquire such intellectual property rights at a reasonable cost or on reasonable terms, if at all. The licensing or acquisition of third-party intellectual property rights is a competitive area, and several more established companies may pursue strategies to license or acquire third-party intellectual property rights that we may consider attractive or necessary. These established companies may have a competitive advantage over us due to their size, capital resources and greater clinical development and commercialization capabilities. In addition, companies that perceive us to be a competitor may be unwilling to assign or license rights to us. We also may be unable to license or acquire third-party intellectual property rights on terms that would allow us to make an appropriate return on our investment or at all. In that event, we may be required to expend significant time and resources to redesign our technology, products, or the methods for manufacturing them or to develop or license replacement technology, all of which may not be feasible on a technical or commercial basis. If we are unable to do so, we may be unable to develop or commercialize the affected products, which could materially and adversely affect our business, financial condition and results of operations.

Any collaboration or partnership arrangements that we may enter into in the future may not be successful, which could adversely affect our ability to develop and commercialize our products.

Any future collaborations that we enter into may not be successful. The success of our collaboration arrangements will depend heavily on the efforts and activities of our collaborators. Collaborations are subject to numerous risks, which may include that:

- collaborators have significant discretion in determining the efforts and resources that they will apply to collaborations;
- collaborators may not pursue development and commercialization of our products or may elect not to continue or renew development or commercialization programs based on trial or test results, changes in their strategic focus due to the acquisition of competitive products, availability of funding or other external factors, such as a business combination that diverts resources or creates competing priorities;
- collaborators could independently develop, or develop with third parties, products that compete directly or indirectly with our current and future products;
- a collaborator with marketing, manufacturing and distribution rights to one or more products may not commit sufficient resources to or otherwise not perform satisfactorily in carrying out these activities;
- we could grant exclusive rights to our collaborators that would prevent us from collaborating with others;

- collaborators may not properly maintain or defend our intellectual property rights or may use our intellectual property or proprietary information in a way that gives rise to actual or threatened litigation that could jeopardize or invalidate our intellectual property or proprietary information or expose us to potential liability;
- disputes may arise between us and a collaborator that causes the delay or termination of the research, development or commercialization of our current or future products or that results in costly litigation or arbitration that diverts management attention and resources;
- collaborations may be terminated, and, if terminated, may result in a need for additional capital to pursue further development or commercialization of the applicable current or future products;
- collaborators may own or co-own intellectual property covering our products that results from our collaborating with them, and in such cases, we would not have the exclusive right to develop or commercialize such intellectual property; and
- a collaborator's sales and marketing activities or other operations may not be in compliance with applicable laws resulting in civil or criminal proceedings.

We may be subject to claims challenging the inventorship of our patents and other intellectual property.

We or our licensors may be subject to claims that former consultants, contractors or other third parties have an interest in our owned or in-licensed patents, trade secrets or other intellectual property as an inventor or co-inventor. While it is our policy to require our employees, consultants and contractors who may be involved in the conception or development of intellectual property to execute agreements assigning such intellectual property to us, we may be unsuccessful in executing such an agreement with each party who, in fact, conceives or develops intellectual property that we regard as our own. The assignment of intellectual property rights may not be self-executing, or the assignment agreements may be breached, and we may be forced to bring claims against third parties, or defend claims that they may bring against us, to determine the ownership of what we regard as our intellectual property. If we or our licensors fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights, such as exclusive ownership of, or right to use, intellectual property that is important to our products. Furthermore, individuals executing invention assignment agreements with us may have preexisting or competing obligations to a third party, such as an academic institution, and thus an agreement with us may be ineffective in perfecting ownership of inventions developed by that individual. Any such events could have a material adverse effect on our business, financial condition and results of operations.

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

In addition to patent protection, we also rely on other proprietary rights, including protection of trade secrets, and other proprietary information that is not patentable or that we elect not to patent. However, trade secrets can be difficult to protect and some courts inside and outside the United States are less willing or unwilling to protect trade secrets. To maintain the confidentiality of our trade secrets and proprietary information, we rely heavily on confidentiality provisions that we have in contracts with our employees, consultants, collaborators and others upon the commencement of their relationship with us. We cannot guarantee that we have entered into such agreements with each party that may have or have had access to our trade secrets or proprietary technology and processes. We may not be able to prevent the unauthorized disclosure or use of our technical knowledge or other trade secrets by such third parties, despite the existence generally of these confidentiality restrictions. These contracts may not provide meaningful protection for our trade secrets, know-how, or other proprietary information in the event of any unauthorized use, misappropriation, or disclosure of such trade secrets, know-how, or other proprietary information. There can be no assurance that such third parties will not breach their agreements with us, that we will have adequate remedies for any breach, or that our trade secrets will not otherwise become known or independently developed by competitors. Despite the protections we do place on our intellectual property or other proprietary rights, monitoring unauthorized use and disclosure of our intellectual property is difficult, and we do not know whether the steps we have taken to protect our intellectual property or other proprietary rights will be adequate. In addition, the laws of many foreign countries will not protect our intellectual property or other proprietary rights to

the same extent as the laws of the United States. Consequently, we may be unable to prevent our proprietary technology from being exploited abroad, which could affect our ability to expand to international markets or require costly efforts to protect our technology.

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

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

We also seek to preserve the integrity and confidentiality of our data and other confidential information by maintaining physical security of our premises and physical and electronic security of our information technology systems. While we have confidence in these individuals, organizations and systems, agreements or security measures may be breached and detecting the disclosure or misappropriation of confidential information and enforcing a claim that a party illegally disclosed or misappropriated confidential information is difficult, expensive and time-consuming, and the outcome is unpredictable. Further, we may not be able to obtain adequate remedies for any breach.

Changes in United States patent law or the patent law of other countries or jurisdictions could diminish the value of patents in general, thereby impairing our ability to protect our products.

Changes in either the patent laws or interpretation of the patent laws in the United States could increase the uncertainties and costs surrounding the prosecution of patent applications and the enforcement or defense of issued patents. The United States has enacted and implemented wide-ranging patent reform legislation. Assuming that other requirements for patentability are met, prior to March 2013, in the United States, the first to invent the claimed invention was entitled to the patent, while outside the United States, the first to file a patent application was entitled to the patent. After March 2013, under the Leahy-Smith America Invents Act, or the America Invents Act, enacted in September 2011, the United States transitioned to a first inventor to file system in which, assuming that other requirements for patentability are met, the first inventor to file a patent application will be entitled to the patent on an invention regardless of whether a third party was the first to invent the claimed invention. The America Invents Act also includes a number of significant changes that affect the way patent applications are prosecuted and also may affect patent litigation. These include allowing third-party submission of prior art to the USPTO during patent prosecution and additional procedures to challenge the validity of a patent by USPTO administered post-grant proceedings, including post-grant review, inter partes review and derivation proceedings. The America Invents Act and its implementation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents, all of which could have a material adverse effect on our business, financial condition, results of operations and prospects.

In addition, the U.S. Supreme Court has ruled on several patent cases in recent years, either narrowing the scope of patent protection available in certain circumstances or weakening the rights of patent owners in certain situations. In addition to increasing uncertainty with regard to our ability to obtain patents in the future, this combination of events has created uncertainty with respect to the value of patents, once obtained. We cannot predict how decisions or actions by the courts, the U.S. Congress or the USPTO may impact the value of our patents. Depending on actions by Congress, the federal courts, and the USPTO, the laws and regulations governing patents could change in unpredictable ways that would weaken our ability to obtain new patents or to enforce patents that we have licensed or that we might obtain in the future. Similarly, changes in patent law and regulations in other countries or jurisdictions or changes in the governmental bodies that enforce them or changes in how the relevant governmental authority enforces patent laws or regulations may weaken our ability to obtain new patents or to enforce patents that we have licensed or that we may obtain in the future. Any of the foregoing could have a material adverse effect on our business, financial condition, results of operations and prospects.

We may not be able to protect our intellectual property rights throughout the world, which could impair our business.

Filing, prosecuting, and defending patents covering our RxSight system, and any of our future products throughout the world would be prohibitively expensive, and our intellectual property rights in some countries outside the United States are less extensive than those in the United States. In some cases, we or our licensors may not be able to obtain patent protection for certain technology outside the United States. In addition, the laws of some foreign countries do not protect intellectual property rights to the same extent as federal and state laws in the United States. Consequently, we may not be able to prevent third parties from practicing our or our licensors' inventions in all countries outside the United States, even in jurisdictions where we or our licensors do pursue patent protection, or from selling or importing products made using our or our licensors' inventions in and into the United States or other jurisdictions. Competitors may use our technologies in jurisdictions where we or our licensors have not obtained patent protection to develop their own products and, further, may export otherwise infringing products to territories where we may have or obtain patent protection, but where patent enforcement is not as strong as that in the United States. These unauthorized products may compete with our products in such jurisdictions and take away our market share where we do not have any issued or in-licensed patents and any future patent claims or other intellectual property rights may not be effective or sufficient to prevent them from so competing.

Many companies have encountered significant problems in enforcing and defending intellectual property rights in foreign jurisdictions. The legal systems of certain countries, particularly certain developing countries, do not favor the enforcement of patents, trade secrets and other intellectual property protection, which could make it difficult for us to stop the infringement of our patents, if pursued and obtained, or marketing of competing products in violation of our proprietary rights generally. Proceedings to enforce our or our licensors' patent rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business, could put our patents at risk of being invalidated or interpreted narrowly and our patent applications at risk of not issuing and could provoke third parties to assert claims against us. We or our licensors may not prevail in any lawsuits that we or our licensors initiate, and the damages or other remedies awarded, if any, may not be commercially meaningful. Accordingly, our efforts to enforce our intellectual property rights around the world may be inadequate to obtain a significant commercial advantage from the intellectual property that we develop or license.

Many countries have compulsory licensing laws under which a patent owner may be compelled to grant licenses to third parties. In addition, many countries limit the enforceability of patents against government agencies or government contractors. In these countries, the patent owner may have limited remedies, which could materially diminish the value of such patent. If we or any of our licensors is forced to grant a license to third parties with respect to any patents relevant to our business, our business, financial condition, results of operations and prospects could be materially and adversely affected.

Intellectual property rights do not necessarily address all potential threats to our competitive advantage.

The degree of future protection afforded by our intellectual property rights is uncertain because intellectual property rights have limitations, and may not adequately protect our business, or permit us to maintain our competitive advantage. The following examples are illustrative:

- others may be able to make a product that is similar to our current products and future products we intend to commercialize and that is not covered by the patents that we own or exclusively in-license and have the right to enforce;
- we and any of our current or future licensors or collaborators might not have been the first to make the inventions covered by the issued patents or pending patent applications that we own, license or may own or license in the future;
- we or any of our current or future licensors or collaborators might not have been the first to file patent applications covering certain of our inventions;
- others may independently develop similar or alternative technologies or duplicate any of our technologies without infringing, misappropriating or otherwise violating our intellectual property rights;
- it is possible that our current or future owned or in-licensed patent applications will not lead to issued patents;
- issued patents that we own or in-license may not provide us with any competitive advantages, or may be held invalid or unenforceable as a result of legal challenges, including as a result of legal challenges by our competitors;
- our competitors might conduct research and development activities in the United States and other countries that provide a safe harbor from patent infringement claims for certain research and development activities, as well as in countries where we do not have patent rights, and then use the information learned from such activities to develop competitive products for sale in our major commercial markets;
- we may not develop additional proprietary technologies that are patentable; and
- we may choose not to file a patent for certain trade secrets or know-how, and a third party may subsequently file a patent covering such intellectual property.

Our future use of "open source" software could subject our proprietary software to general release, adversely affect our ability to sell our products and subject us to possible litigation.

We intend to incorporate open source software in future products or technologies licensed, developed and/or distributed by us. Open source software is generally licensed by its authors or other third parties under open source licenses. Some open source licenses contain requirements that we disclose source code for modifications we make to the open source software and that we license such modifications to third parties at no cost. In some circumstances, distribution of our software in connection with open source software could require that we disclose and license some or all of our proprietary source code in that software, as well as distribute our products that use particular open source software at no cost to the user. We intend to monitor our use of open source software in an effort to avoid uses in a manner that would require us to disclose or grant licenses under our proprietary source code; however, there can be no assurance that such efforts will be successful. Open source license terms are often ambiguous and such use could inadvertently occur. There is little legal precedent governing the interpretation of many of the terms of these licenses, and the potential impact of these terms on our business may result in unanticipated obligations regarding our products and technologies. Companies that incorporate open source software into their products have, in the past, faced claims seeking enforcement of open source license provisions and claims asserting ownership of open source software incorporated into their product. If an author or other third party that distributes such open source software were to allege that we had not complied with the conditions of an open source license, we could incur significant legal costs defending ourselves against such allegations. In the event such claims were successful, we could be subject to significant damages or be enjoined from the distribution of our products. In addition, if we

combine our proprietary software with open source software in certain ways, under some open source licenses, we could be required to release the source code of our proprietary software, which could substantially help our competitors develop products that are similar to or better than ours and otherwise adversely affect our business. These risks could be difficult to eliminate or manage, and, if not addressed, could harm our business, financial condition and results of operations.

If our trademarks, service marks and tradenames are not adequately protected, then we may not be able to build name recognition in our markets and our business may be adversely affected.

We rely on trademarks, service marks, tradenames and brand names to distinguish our products from the products of our competitors and have registered or applied to register these trademarks. We cannot assure you that our trademark and service mark applications will be approved. During trademark and service mark registration proceedings, we may receive rejections. Although we are given an opportunity to respond to those rejections, we may be unable to overcome such rejections. In addition, in proceedings before the USPTO and comparable agencies in many foreign jurisdictions, third parties are given an opportunity to oppose pending trademark and service mark applications and to seek to cancel registered trademarks and service marks. Opposition or cancellation proceedings may be filed against our trademarks and service marks, and our trademarks and service marks may not survive such proceedings. In the event that our trademarks and service marks are successfully challenged, we could be forced to rebrand our products, which could result in loss of brand recognition and could require us to devote resources towards advertising and marketing new brands. At times, competitors may adopt trade names, trademarks or service marks similar to ours, thereby impeding our ability to build brand identity and possibly leading to market confusion. As a means to enforce our trademark and service mark rights and prevent infringement and other violations, we may be required to file claims against third parties or initiate opposition proceedings. This can be expensive and time-consuming. In addition, there could be potential trademark or service mark infringement claims brought by owners of other registered trademarks, service marks, or trademarks or service marks that incorporate variations of our registered or unregistered trademarks or service marks. Certain of our current or future trademarks or service marks may become so well known by the public that their use becomes generic and they lose trademark or service mark protection. Over the long term, if we are unable to establish name recognition based on our trademarks, service marks and trade names, then we may not be able to compete effectively and our business, financial condition and results of operations may be adversely affected.

Risks related to government regulation

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

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

- product design, development and manufacture;
- laboratory, preclinical and clinical testing, labeling, packaging, storage and distribution;
- premarketing clearance or approval;
- record keeping;
- product safety and effective;
- product changes;
- product marketing, promotion and advertising, sales and distribution; and
- post marketing surveillance, including reporting of deaths or serious injuries and recalls and correction and removals.

Before a new medical device, or a new intended use for an existing product, can be marketed in the United States, a company must first submit and receive either 510(k) clearance pursuant to Section 510(k) of the Food,

Drug and Cosmetic Act, or the ("FDCA"), or approval of a premarket approval, or PMA, application from the FDA, unless an exemption applies.

In many cases, the process of obtaining PMA approval is much more rigorous, costly, lengthy and uncertain than the 510(k) clearance process. In the 510(k) clearance process, the FDA must determine that a proposed device is "substantially equivalent" to a device legally on the market, known as a "predicate" device, in order to clear the proposed device for marketing. To be "substantially equivalent," the proposed device must have the same intended use as the predicate device, and either have the same technological characteristics as the predicate device or have different technological characteristics and not raise different questions of safety or effectiveness than the predicate device. Clinical data is sometimes required to support substantial equivalence. In the PMA approval process, the FDA must determine that a proposed device is safe and effective for its intended use based on extensive data, including technical, pre-clinical, clinical trial, manufacturing and labeling data. The PMA process is typically required for devices for which the 510(k) process cannot be used and that are deemed to pose the greatest risk. Modifications to products that are approved through a PMA application generally need prior FDA approval of a PMA supplement. Similarly, some modifications made to products cleared through a 510(k) may require a new 510(k), or such modification may put the device into class III and require PMA approval. The FDA's 510(k) clearance process usually takes from three to 12 months but may last longer. The process of obtaining a PMA generally takes from one to three years, or even longer, from the time the PMA is submitted to the FDA until an approval is obtained. Any delay or failure to obtain necessary regulatory approvals or clearances would have a material adverse effect on our business, financial condition and results of operations.

The FDA can delay, limit or deny clearance or approval of a device for many reasons, including:

- our inability to demonstrate to the satisfaction of the FDA or the applicable regulatory entity or notified body that our products are safe or effective for their intended uses;
- the disagreement of the FDA or the applicable foreign regulatory body with the design, conduct or implementation of our clinical trials or the analyses or interpretation of data from pre-clinical studies or clinical trials;
- serious and unexpected adverse device effects experienced by participants in our clinical trials;
- the data from our pre-clinical studies and clinical trials may be insufficient to support clearance or approval, where required;
- our inability to demonstrate that the clinical and other benefits of the device outweigh the risks;
- an advisory committee, if convened by the applicable regulatory authority, may recommend against approval of our application or may recommend that the applicable regulatory authority require, as a condition of approval, additional preclinical studies or clinical trials, limitations on approved labeling or distribution and use restrictions, or even if an advisory committee, if convened, makes a favorable recommendation, the respective regulatory authority may still not approve the product;
- the applicable regulatory authority may identify significant deficiencies in our manufacturing processes, facilities or analytical methods or those of our third-party contract manufacturers;
- the potential for approval policies or regulations of the FDA or applicable foreign regulatory bodies to change significantly in a manner rendering our clinical data or regulatory filings insufficient for clearance or approval; and
- the FDA or foreign regulatory authorities may audit our clinical trial data and conclude that the data is not sufficiently reliable to support approval or clearance.

Similarly, regulators may determine that our financial relationships with our principal investigators resulted in a perceived or actual conflict of interest that may have affected the interpretation of a study, the integrity of the data generated at the applicable clinical trial site or the utility of the clinical trial itself. Even if we are granted regulatory clearances or approvals, they may include significant limitations on the indicated uses for the product, which may limit the market for the product. Moreover, the FDA and European Union regulatory authorities strictly regulate the

labeling, promotion and advertising of medical devices, including comparative and superiority claims vis a vis competitors' products, that may be made about products.

As a condition of approving a PMA application, the FDA may also require some form of post-approval study or post-market surveillance, whereby the applicant conducts a follow-up study or follows certain patient groups for a number of years and makes periodic reports to the FDA on the clinical status of those patients when necessary to protect the public health or to provide additional safety and effectiveness data for the device. Failure to conduct the post-approval study in compliance with applicable regulations or to timely complete required post-approval studies or comply with other post-approval requirements could result in withdrawal of approval of the PMA, which would harm our business.

In addition, we are required to timely file various reports with the FDA, including MDR, that requires that we report to the regulatory authorities if our products may have caused or contributed to a death or serious injury or malfunctioned in a way that would likely cause or contribute to a death or serious injury if the malfunction were to recur. If these reports are not filed in a timely manner, regulators may impose sanctions and we may be subject to product liability or regulatory enforcement actions, all of which could harm our business.

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

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

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

- adverse publicity, warning letters, fines, injunctions, consent decrees and civil penalties;
- repair, replacement, refunds, recalls, termination of distribution, administrative detention or seizure of our products;
- operating restrictions, partial suspension or total shutdown of production;
- denial of our requests for 510(k) clearance or PMA of new products, new intended uses or modifications to existing products;
- withdrawal of 510(k) clearance or PMAs that have already been granted; and
- criminal prosecution.

If any of these events were to occur, our business and financial condition could be harmed. In addition, the FDA's and other regulatory authorities' policies may change and additional government regulations may be enacted that could prevent, limit or delay regulatory approval of our products. If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we are not able to maintain regulatory compliance, we may lose any marketing approval that we may have obtained and we may not achieve or sustain profitability, which would adversely affect our business, financial condition and results of operations.

Our products and operations are subject to extensive government regulation and oversight in the United States.

Medical devices regulated by the FDA are subject to "general controls" which include: registration with the FDA; listing commercially distributed products with the FDA; complying with all applicable requirements under the QSR; filing reports with the FDA of and keeping records relative to certain types of adverse events associated with devices under the medical device reporting regulation; assuring that device labeling complies with device labeling requirements; reporting certain device field removals and corrections to the FDA; and obtaining pre-market notification 510(k) clearance for devices prior to marketing. Some devices known as "510(k)-exempt" devices can be marketed without prior marketing-clearance or approval from the FDA. In addition to the "general controls," some Class II medical devices are also subject to "special controls," including adherence to a particular guidance document and compliance with the performance standard. Instead of obtaining 510(k) clearance, most Class III devices are subject to PMA.

Although our products have received regulatory approval or clearance from FDA in the United States for a particular patient population, they will be subject to ongoing regulatory requirements for manufacturing, labeling, packaging, storage, advertising, promotion, sampling, record-keeping, conduct of post-marketing studies and submission of safety, effectiveness and other post-market information, including both federal and state requirements in the United States and requirements of comparable non-U.S. regulatory authorities in any international markets we choose to enter.

Any regulatory clearances or approvals that we have received for our products will be subject to limitations on the cleared or approved indicated uses for which the product may be marketed and promoted, will be subject to the conditions of approval, or will contain requirements for potentially costly post-marketing testing. We are required to report certain adverse events and production problems, if any, to the FDA and comparable foreign regulatory authorities. Any new legislation addressing product safety issues could result in increased costs to assure compliance. The FDA and other agencies, including the DOJ, closely regulate and monitor the post-clearance or approval marketing and promotion of products to ensure that they are marketed and distributed only for the cleared or approved indications and in accordance with the provisions of the cleared or approved labeling. We have to comply with requirements concerning advertising and promotion for our products.

Promotional communications with respect to devices are subject to a variety of legal and regulatory restrictions and must be consistent with the information in the products' cleared or approved labeling. As such, we may not promote our products for indications or uses for which they do not have clearance or approval. We received a PMA for the LAL and LDD, which is indicated for the reduction of residual astigmatism to improve uncorrected visual acuity after removal of the cataractous natural lens by phacoemulsification and implantation of the intraocular lens in the capsular bag, in adult patients with pre-existing corneal astigmatism of > 0.75 diopters and without pre-existing macular disease. We also received a 510(k) clearance for our contact lens, which is indicated for visualization and treatment in the anterior segment of the eye. We train our marketing and sales force against promoting our products for uses outside of the cleared or approved indications for use, known as "off-label uses." However, doctors may use our products for off-label purposes and are allowed to do so when in the doctor's independent professional medical judgment he or she deems it appropriate. If the FDA determines that our promotional materials or training constitute promotion of an off-label or other improper use, or that our internal policies and procedures are inadequate to prevent such off-label uses, it could subject us to regulatory or enforcement actions as discussed below.

In addition, we cannot make comparative claims regarding the use of our products against any alternative treatments without conducting head-to-head comparative clinical studies, which would be expensive and time-consuming. If the FDA determines that our promotional, reimbursement or training materials for sales representatives or doctors constitute promotion of an off-label use, the FDA could request that we modify our training, promotional or reimbursement materials and/or subject us to regulatory or enforcement actions, including the issuance of an untitled letter, a warning letter, injunction, seizure, disgorgement of profits, significant penalties, including civil fines and criminal penalties. Other federal, state or foreign governmental authorities also might take action if they consider our promotion, reimbursement or training materials to constitute promotion of an off-label use, which could result in significant fines or penalties under other statutory authorities, such as laws prohibiting

false claims for reimbursement. Although we train our sales force not to promote our products for off-label uses, and our instructions for use in all markets specify that our products are not intended for use outside of those indications cleared or approved for use, the FDA or another regulatory agency could conclude that we have engaged in off-label promotion. For example, the government may take the position that off-label promotion resulted in inappropriate reimbursement for an off-label use in violation of the federal civil False Claims Act for which it might impose significant civil fines and even pursue criminal action. In those possible events, our reputation could be damaged, and adoption of the products would be impaired.

If a regulatory agency discovers previously unknown problems with a product, such as adverse events of unanticipated severity or frequency, or problems with our facility where the product is manufactured or disagrees with the promotion, marketing or labeling of a product, such regulatory agency may impose restrictions on that product or us, including requiring withdrawal of the product from the market.

If we fail to comply with applicable regulatory requirements, a regulatory agency or enforcement authority may, among other things:

- subject our facility to an adverse inspectional finding or Form 483, or other compliance or enforcement notice, communication or correspondence;
- issue warning or untitled letters that would result in adverse publicity or may require corrective advertising;
- impose civil or criminal penalties;
- suspend or withdraw regulatory clearances or approvals;
- refuse to clear or approve pending applications or supplements to approved applications submitted by us;
- impose restrictions on our operations, including closing our sub-assembly suppliers' facilities;
- seize or detain products; or
- require a product recall.

In addition, violations of the FDCA relating to the promotion of approved products may lead to investigations alleging violations of federal and state healthcare fraud and abuse and other laws, as well as state consumer protection laws.

Any government investigation of alleged violations of law could require us to expend significant time and resources in response and could generate negative publicity. Any failure to comply with ongoing regulatory requirements may significantly and adversely affect our ability to commercialize and generate revenue from our products. If regulatory sanctions are applied or if regulatory clearance or approval is withdrawn, it would have a material adverse effect on our business, financial condition and results of operations.

Material modifications to our products may require new 510(k) clearances or pre-market approvals or may require us to recall or cease marketing our products until clearances or approvals are obtained.

Modifications that could significantly affect the safety and effectiveness of our approved or cleared products, such as changes to the intended use or technological characteristics of our products, will require new 510(k) clearances or PMAs or require us to recall or cease marketing the modified devices until these clearances or approvals are obtained. Based on FDA published guidelines, the FDA requires device manufacturers to initially make and document a determination of whether or not a modification requires a new approval, supplemental approval or clearance; however, the FDA can review a manufacturer's decision. Any modification to an FDA-cleared device that could significantly affect its safety or efficacy or that would constitute a major change in its intended use would require a new 510(k) clearance or possibly a PMA. We may not be able to obtain the required 510(k) clearances or PMAs, or PMA supplements, or similar marketing authorization in applicable foreign

jurisdictions, for new products or for modifications to, or additional indications for, our products in a timely fashion, or at all. Delays in obtaining required future clearances or approvals would adversely affect our ability to introduce new or enhanced products in a timely manner, which in turn would harm our future growth. We have made modifications to our products in the past and expect to make additional modifications in the future that we believe do not or will not require additional clearances or approvals. If the FDA or a comparable foreign regulatory authority disagrees and requires new clearances or approvals for these modifications, we may be required to recall and to stop selling or marketing such products as modified, which could harm our operating results and require us to redesign such products. In these circumstances, we may be subject to significant enforcement actions.

Obtaining and maintaining regulatory approval of our current and future products in one jurisdiction does not mean that we will be successful in obtaining regulatory approval of our current and future products in other jurisdictions. The FDA and other comparable foreign regulatory authorities may not accept data from trials conducted in locations outside of their jurisdiction.

Obtaining and maintaining regulatory approvals or clearances of our current and future products in one jurisdiction does not guarantee that we will be able to obtain or maintain regulatory approval in any other jurisdiction. For example, even if the FDA grants marketing approval or clearance of a current or future product, comparable regulatory authorities in foreign jurisdictions must also approve or clear the manufacturing, marketing and promotion and reimbursement of a current or future product in those countries. However, a failure or delay in obtaining regulatory approval in one jurisdiction may have a negative effect on the regulatory approval process in others. Approval procedures vary among jurisdictions and can involve requirements and administrative review periods different from those in the United States, including additional preclinical studies or clinical trials as clinical trials conducted in one jurisdiction may not be accepted by regulatory authorities in other jurisdictions. In many jurisdictions outside the United States, a product must be approved for reimbursement before it can be approved for sale in that jurisdiction. In some cases, the price that we intend to charge for our products is also subject to approval.

The RxSight system has a CE Mark for improving uncorrected visual acuity by adjusting the LAL power to correct residual postoperative refractive error, including for -2.0 to + 2.0 diopters of sphere and -3.0 to -0.50 diopters of cylinder and by changing lens curvature to introduce controlled amounts of spherical aberration (+/- 1 micron) and center near add (up to 2.0 diopters) which is also registered with the MHRA in the United Kingdom and in Mexico. Obtaining additional foreign regulatory approvals and establishing and maintaining compliance with foreign regulatory requirements in jurisdictions where we conduct business currently or in the future, such as requirements under the EU MDR, could result in significant delays, difficulties and costs for us and could delay or prevent the introduction of our products in certain countries. If we or any future collaborator fail to comply with the regulatory requirements in international markets or fail to receive applicable marketing approvals or clearances, our target market will be reduced and our ability to realize the full market potential of our current and future products will be harmed.

In addition, we have conducted clinical trials in Mexico and may choose to conduct further international clinical trials. The acceptance of study data by the FDA or other comparable foreign regulatory authority from clinical trials conducted outside of their respective jurisdictions may be subject to certain conditions. In cases where data from foreign clinical trials are intended to serve as the basis for marketing approval in the United States, the FDA will generally not approve the application on the basis of foreign data alone unless (1) the data are applicable to the U.S. population and U.S. medical practice; (2) the trials are performed by clinical investigators of recognized competence and pursuant to current good clinical practices regulations; and (3) audits by regulatory authorities of the clinical data do not identify significant data integrity issues. Additionally, the FDA's clinical trial requirements, including the adequacy of the patient population studied and statistical powering, must be met. In addition, such foreign trials are subject to the applicable local laws of the foreign jurisdictions where the trials are conducted. There can be no assurance that the FDA or any applicable foreign regulatory authority will accept data from trials conducted outside of its applicable jurisdiction. If the FDA or any applicable foreign regulatory authority does not accept such data, it would result in the need for additional trials, which would be costly and time-consuming and delay aspects of our business plan, and which may result in our products not receiving approval or clearance for commercialization in the applicable jurisdiction.

Our products may be subject to recalls after receiving FDA or foreign approval or clearance, which could divert managerial and financial resources, harm our reputation and adversely affect our business.

The FDA and similar foreign governmental authorities have the authority to require the recall of our products because of any failure to comply with applicable laws and regulations, or defects in design or manufacture. A government mandated or voluntary product recall by us could occur because of, for example, component failures, device malfunctions or other adverse events, such as serious injuries or deaths, or quality-related issues, such as manufacturing errors or design or labeling defects. Any future recalls of our products could divert managerial and financial resources, harm our reputation and adversely affect our business.

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

In addition, we are subject to medical device reporting regulations that require us to report to the FDA or similar foreign governmental authorities if one of our products may have caused or contributed to a death or serious injury or if we become aware that it has malfunctioned in a way that would likely cause or contribute to a death or serious injury if the malfunction recurred. Failures to properly identify reportable events or to file timely reports, as well as failure to address each of the observations to the FDA's satisfaction, can subject us to sanctions and penalties, including warning letters and recalls.

Doctors may make similar reports to regulatory authorities. Any such reports may trigger an investigation by the FDA or similar foreign regulatory bodies, which could divert managerial and financial resources, harm our reputation and have a material adverse effect on our business, financial condition and results of operations.

If we, or our suppliers, fail to comply with the FDA's QSR or applicable foreign regulations, our manufacturing or distribution operations could be delayed or shut down and our revenue could suffer.

Our manufacturing and design processes and those of our third-party component suppliers are required to comply with the FDA's Quality System Regulation ("QSR"), which covers procedures and documentation of the design, testing, production, control, quality assurance, labeling, packaging, storage and shipping of our products in the United States. We are also subject to similar state requirements and licenses, and to ongoing ISO 13485 compliance in our operations, including design, manufacturing, and service, to maintain our CE Mark in Europe. In addition, we must engage in extensive recordkeeping and reporting and must make available our facilities and records for periodic unannounced inspections by governmental agencies, including the FDA, state authorities, EU Notified Bodies, and comparable agencies in other countries. If we fail a regulatory inspection, our operations could be disrupted and our manufacturing interrupted. Failure to take timely and adequate corrective action in response to an adverse regulatory inspection could result in, among other things, a shutdown of our manufacturing or product distribution operations, significant fines, suspension of marketing clearances and approvals, seizures or recalls of our device, operating restrictions and criminal prosecutions, any of which would cause our business to suffer. Furthermore, our key component suppliers may not currently be or may not continue to be in compliance with applicable regulatory requirements, which may result in manufacturing delays for our products and cause our revenue to decline.

The FDA has broad post-market and regulatory enforcement powers. We are subject to unannounced inspections by the FDA and the Food and Drug Branch of the California Department of Public Health ("CDPH"), and our Notified Body to determine our compliance with the QSR and other regulations at both our design and manufacturing facilities, and these inspections may include the manufacturing facilities of our suppliers.

We can provide no assurance that we will continue to remain in material compliance with the QSR. If the FDA, CDPH, or any applicable notified body in the European Union or United Kingdom inspects any of our facilities and

discover compliance problems, we may have to cease manufacturing and product distribution until we can take the appropriate remedial steps to correct the audit findings. Taking corrective action may be expensive, time consuming and a distraction for management and if we experience a delay at our manufacturing facility, we may be unable to produce our products, which would harm our business.

Healthcare reform initiatives and other administrative and legislative proposals may adversely affect our business, financial condition, results of operations and cash flows in our key markets.

There have been and continue to be proposals by the federal government, state governments, regulators and third-party payors to control or manage the increased costs of healthcare and, more generally, to reform the U.S. healthcare system. Certain of these proposals could limit the prices we are able to charge for our products or the coverage and reimbursement available for our products and could limit the acceptance and availability of our products. The adoption of proposals to control costs could have a material adverse effect on our business, financial condition and results of operations.

For example, in the United States, in March 2010, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, together, the Affordable Care Act ("ACA"), was enacted. The ACA is a sweeping measure intended to expand healthcare coverage within the United States, primarily through the imposition of health insurance mandates on employers and individuals, the provision of subsidies to eligible individuals enrolled in plans offered on the health insurance exchanges and the expansion of the Medicaid program. The ACA has impacted existing government healthcare programs and has resulted in the development of new programs.

Certain provisions of the ACA have been subject to judicial and Congressional challenges. For example, various portions of the ACA have been the subject of legal and constitutional challenges, including legal proceedings in the Fifth Circuit Court of Appeals. In June 2021, the United States Supreme Court held that Texas and other challengers had no legal standing to challenge the ACA, dismissing the case on procedural grounds without specifically ruling on the constitutionality of the ACA. Thus, the ACA will remain in effect in its current form. It is unclear how this Supreme Court decision, future litigation, and healthcare measures promulgated by the Biden administration will impact the ACA, our business, financial condition and results of operations. Complying with any new legislation or reversing changes implemented under the ACA could be time-intensive and expensive, resulting in a material adverse effect on our business.

In addition, other legislative changes have been proposed and adopted since the ACA was enacted. On August 2, 2011, the Budget Control Act of 2011 was signed into law, which, among other things, includes reductions to Medicare payments to providers of, on average, 2% per fiscal year, which went into effect on April 1, 2013, which, due to subsequent legislative amendments, will stay in effect through 2031, with the exception of a temporary suspension implemented under various COVID-19 relief legislation from May 1, 2020 through March 31, 2022, unless additional congressional action is taken. Under current legislation, the actual reduction in Medicare payments will vary from 1% in 2022 to up to 4% in the final fiscal year of this sequester. In January 2013, President Obama signed into law the American Taxpayer Relief Act of 2012, which, among other things, reduced Medicare payments to several providers, and increased the statute of limitations period for the government to recover overpayments to providers from three to five years. These new laws may result in additional reductions in Medicare and other healthcare funding, which could have a material adverse effect on customers for our products, if approved, and accordingly, our financial operations. We cannot assure you that the ACA, as currently enacted or as amended in the future, will not harm our business and financial results, and we cannot predict how future federal or state legislative or administrative changes relating to healthcare reform will affect our business.

There likely will continue to be legislative and regulatory proposals at the federal and state levels directed at containing or lowering the cost of healthcare. We cannot predict the initiatives that may be adopted in the future or their full impact. The continuing efforts of the government, insurance companies, managed care organizations and other payors of healthcare services to contain or reduce costs of healthcare may harm:

- our ability to set a price that we believe is fair for our products;

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

Further, recently there has been heightened governmental scrutiny over the manner in which manufacturers set prices for their marketed products, which has resulted in several United States Congressional inquiries and proposed and enacted federal legislation designed to bring transparency to product pricing and reduce the cost of products and services under government healthcare programs. While some of these measures may require additional authorization to become effective, Congress and the federal administration have each indicated that it will continue to seek new legislative and/or administrative measures to control healthcare costs. Additionally, individual states in the United States have also increasingly passed legislation and implemented regulations designed to control product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access and marketing cost disclosure and transparency measures. Moreover, regional healthcare authorities and individual hospitals are increasingly using bidding procedures to determine what products to purchase and which suppliers will be included in their healthcare programs. Adoption of price controls and other cost-containment measures, and adoption of more restrictive policies in jurisdictions with existing controls and measures may prevent or limit our ability to generate revenue and attain profitability. Various new healthcare reform proposals are emerging at the federal and state level. Any new federal and state healthcare initiatives that may be adopted could limit the amounts that federal and state governments will pay for healthcare products and services and could have a material adverse effect on our business, financial condition and results of operations.

If we fail to comply with United States federal and state fraud and abuse and other healthcare laws and regulations, we could face substantial penalties and our business operations and financial condition could be adversely affected.

Healthcare providers and third-party payors play a primary role in the distribution, recommendation, ordering and purchasing of any medical device for which we have or obtain marketing clearance or approval. Through our arrangements with principal investigators, healthcare professionals, third-party payors and customers, we are exposed to broadly applicable anti-fraud and abuse, anti-kickback, false claims and other healthcare laws and regulations that may constrain our business, our arrangements and relationships with customers, and how we market, sell and distribute our marketed medical devices. We have a compliance program, a Code of Conduct and associated policies and procedures, but it is not always possible to identify and deter misconduct by our employees and other third parties, and the precautions we take to detect and prevent noncompliance may not be effective in protecting us from governmental investigations for failure to comply with applicable fraud and abuse or other healthcare laws and regulations.

In the United States, we are subject to various state and federal anti-fraud and abuse laws, including, without limitation, the federal healthcare Anti-Kickback Statute and federal civil False Claims Act. There are similar laws in other countries. Our current and future arrangements with healthcare providers, third-party payors, customers, and others may expose us to broadly applicable fraud and abuse and other healthcare laws and regulations, which may constrain the business or financial arrangements and relationships through which we research, as well as, sell, market, and distribute any products for which we obtain marketing approval. Healthcare fraud and abuse laws and related regulations are complex, and even minor irregularities can potentially give rise to claims that a statute or prohibition has been violated. The laws that may affect our ability to operate include:

- the federal Anti-Kickback Statute, which makes it illegal for any person, including a prescription drug or medical device manufacturer (or a party acting on its behalf), to knowingly and willfully solicit, receive, offer or pay any remuneration that is intended to induce or reward referrals, including the purchase, recommendation, or order of, items or services for which payment may be made, in whole or in part, under a federal healthcare program, such as Medicare or Medicaid. Moreover, the ACA provides that the government may assert that a claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the civil False Claims Act;
- the Federal False Claims Act, including its civil provisions that can be enforced by private citizens through civil whistleblower or qui tam actions, and civil monetary penalties prohibiting individuals or entities from, among other things, knowingly presenting, or causing to be presented, to the federal government, claims for payment that are false or fraudulent or making a false statement to avoid,

decrease or conceal an obligation to pay money to the federal government, and/or impose exclusions from federal health care programs and/or penalties for parties who engage in such prohibited conduct;

- the Federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), which prohibits, among other things, executing or attempting to execute a scheme to defraud any healthcare benefit program or making false statements relating to healthcare matters;
- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, and their implementing regulations also impose obligations on covered entities such as health insurance plans, healthcare clearinghouses, and certain health care providers and their respective business associates and their covered subcontractors, including mandatory contractual terms, with respect to safeguarding the privacy, security and transmission of individually identifiable health information;
- the federal Physician Payments Sunshine Act, also referred to as the CMS Open Payments, which requires applicable manufacturers of covered drugs, devices, biologics and medical supplies for which payment is available under Medicare, Medicaid or the Children's Health Insurance Program, with specific exceptions, to annually report to CMS information regarding certain payments and other transfers of value to covered recipients, including physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors), certain non-physician healthcare professionals (such as physician assistants and nurse practitioners, among others) and teaching hospitals, as well as information regarding ownership and investment interests held by physicians and their immediate family members; and
- analogous state and foreign laws and regulations, such as state anti-kickback and false claims laws which may apply to sales or marketing arrangements and claims involving healthcare items or services reimbursed by non-governmental third-party payors, including private insurers, state laws that require biotechnology companies to comply with the biotechnology industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government; state and local laws that require medical device manufacturers to report information related to payments and other transfers of value to doctors or marketing expenditures and require the registration of their sales representatives; state laws that require medical device companies to report information on the pricing of certain medical device products; and state and foreign laws that govern the privacy and security of health information in some circumstances, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts.

State and federal regulatory and enforcement agencies continue to actively investigate violations of healthcare laws and regulations, and the U.S. Congress continues to strengthen the arsenal of enforcement tools. Most recently, the Bipartisan Budget Act of 2018 ("BBA"), increased the criminal and civil penalties that can be imposed for violating certain federal health care laws, including the Anti-Kickback Statute. Enforcement agencies also continue to pursue novel theories of liability under these laws. In particular, government agencies recently have increased regulatory scrutiny and enforcement activity with respect to manufacturer reimbursement support activities and patient support programs, including bringing criminal charges or civil enforcement actions under the Anti-Kickback Statute, federal civil False Claims Act and HIPAA's healthcare fraud and privacy provisions.

Because of the breadth of these laws and the narrowness of available statutory and regulatory exemptions or safe harbors, it is possible that some of our activities, such as stock-option compensation paid to doctors that have entered into consulting agreements with us, could be subject to challenge under one or more of such laws. Any action brought against us for violations of these laws or regulations, even successfully defended, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. We may be subject to private "qui tam" actions brought by individual whistleblowers on behalf of the federal or state governments.

The growth of our business and sales organization and our expansion outside of the United States may increase the potential of violating these laws or our internal policies and procedures. The risk of our being found in violation of these or other laws and regulations is further increased by the fact that many have not been fully interpreted by the regulatory authorities or the courts, and their provisions are open to a variety of interpretations. Any action brought against us for violation of these or other laws or regulations, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management's attention from the operation of our

business. If our operations are found to be in violation of any of the federal, state and foreign laws described above or any other current or future fraud and abuse or other healthcare laws and regulations that apply to us, we may be subject to penalties, including significant criminal, civil, and administrative penalties, damages, fines, imprisonment of individuals, exclusion from participation in government programs, such as Medicare and Medicaid, and we could be required to curtail or cease our operations. Any of the foregoing consequences could seriously harm our business and our financial results.

Achieving and sustaining compliance with applicable federal and state anti-fraud and abuse laws may prove costly. If we or our employees are found to have violated any of the above laws we may be subjected to substantial criminal, civil and administrative penalties, including imprisonment, exclusion from participation in federal healthcare programs, such as Medicare and Medicaid, and significant fines, monetary penalties, forfeiture, disgorgement and damages, contractual damages, reputational harm, administrative burdens, diminished profits and future earnings and the curtailment or restructuring of our operations, any of which could adversely affect our ability to operate our business and our financial results. Any action or investigation against us for the violation of these healthcare fraud and abuse laws, even if successfully defended, could result in significant legal expenses and could divert our management's attention from the operation of our business. Companies settling federal civil False Claims Act, Anti-Kickback Statute or civil monetary penalties law cases also may be required to enter into a Corporate Integrity Agreement with the OIG in order to avoid exclusion from participation (i.e., loss of coverage for their products) in federal healthcare programs such as Medicare and Medicaid. Corporate Integrity Agreements typically impose substantial costs on companies to ensure compliance. Defending against any such actions can be costly, time-consuming and may require significant personnel resources, and may have a material adverse effect on our business, financial condition and results of operations.

Changes in the CMS fee schedules may harm our revenue and operating results.

Government payers, such as CMS as well as insurers, have increased their efforts to control the cost, utilization and delivery of healthcare services. From time to time, the United States Congress has considered and implemented changes in the CMS fee schedules in conjunction with budgetary legislation. Reductions of reimbursement by Medicare or Medicaid for procedures that use our products or changes in policy regarding coverage of these procedures, such as adding requirements for payment, or prior authorizations, may be implemented from time to time. Reductions in the reimbursement rates and changes in payment policies of other third-party payers may occur as well. Similar changes in the past have resulted in reduced payments for procedures that use medical device products as well as added costs and have added more complex regulatory and administrative requirements. Further changes in federal, state, local and third-party payer regulations or policies may have a material adverse impact on the demand for our products and on our business. Actions by agencies regulating insurance or changes in other laws, regulations, or policies may also have a material adverse effect on our business, financial condition and results of operations.

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

From time to time, legislation is drafted and introduced in Congress that could significantly change the statutory provisions governing the regulatory approval, manufacture and marketing of regulated products or the reimbursement thereof. In addition, FDA regulations and guidance are often revised or reinterpreted by the FDA in ways that may significantly affect our business and our products. Any new regulations or revisions or reinterpretations of existing regulations may impose additional costs or lengthen review times of planned or future products. It is impossible to predict whether legislative changes will be enacted, or FDA regulations, guidance or interpretations changed, and what the impact of such changes, if any, may be.

Any change in the laws or regulations that govern the clearance and approval processes relating to our current, planned and future products could make it more difficult and costly to obtain clearance or approval for new products or to produce, market and distribute existing products. Significant delays in receiving clearance or approval or the failure to receive clearance or approval for our new products would have an adverse effect on our ability to expand our business.

Compliance with the EU Medical Device Regulation, applicable regulations in the United Kingdom, and other applicable foreign regulations, as well as any changes to existing regulations, may be costly and disruptive to our business, and expose us to increased liability.

In 2017, the European Union ("EU") published the new EU Medical Device Regulation ("MDR") (2017/745), the application of which was postponed until May 26, 2021 for class I devices (lowest risk) and May 26, 2024 for all other class devices (higher risk devices). The new regulations replace predecessor directives and emphasize a global convergence of regulations. With the transition from the Medical Devices Directive ("MDD"), to the MDR, notified bodies are required to seek designation to operate as conformity assessment authorities under the new law. While we are currently in compliance with the MDR and in process of transferring certification from MDD to MDR, compliance with any new or changing regulations in the EU or other jurisdictions where we currently commercialize our products or intend to commercialize in the future is a time consuming process that may require comprehensive quality system audits and new conformity assessment certifications for our products. Major changes include:

- reclassification of some products;
- greater emphasis on clinical data;
- data transparency, including publication of clinical trial data and safety summaries;
- defined content and structure for technical files to support registration;
- unique device identification system;
- greater burden on post-market surveillance and clinical follow-up;
- reduction of adverse event reporting time from 30 to 15 days after the event; and
- more power to notified bodies.

Implementation of the Medical Device Regulations introduces substantial changes to the obligations with which medical device manufacturers must comply in the EU. High risk medical devices will be subject to additional scrutiny during the conformity assessment procedure. For any products that we may develop in the future, complying with these new regulations may result in Europe being less attractive as a "first market" destination. Marketing authorization timelines will become more protracted and the costs of operating in Europe will increase. A significantly more costly path to regulatory compliance is anticipated.

Our clinical trials may fail to demonstrate competent and reliable evidence of the safety and effectiveness of our products, which would prevent or delay commercialization of our products in development.

We may be required to conduct clinical studies that demonstrate competent and reliable evidence that our products are safe and effective before we can commercialize our products. Clinical testing is expensive and can take many years to complete, and its outcome is inherently uncertain. We cannot be certain that our planned clinical trials or any other future clinical trials will be successful. In addition, even if such clinical trials are successfully completed, we cannot guarantee that the FDA or foreign regulatory authorities will interpret the results as we do, and more trials could be required before we submit our products for approval. To the extent that the results of the trials are not satisfactory to the FDA or foreign regulatory authorities for support of a marketing application, we may be required to expend significant resources, which may not be available to us, to conduct additional trials in support of potential approval of our products. Even if regulatory approval is secured for any of our products, the terms of such approval may limit the scope and use of our products, which may also limit their commercial potential.

Defects or failures associated with our products could lead to recalls, safety alerts or litigation, as well as significant costs and negative publicity.

Our business is subject to significant risks associated with manufacture, distribution and use of medical devices that are placed inside the human body, including the risk that patients may be severely injured by or even die from the misuse or malfunction of our products caused by design flaws or manufacturing defects. In addition, component failures, design defects, off-label uses, or inadequate disclosure of product-related information could also result in an unsafe condition or the injury or death of a patient. These problems could lead to a recall or market withdrawal of, or issuance of a safety alert relating to, our products and result in significant costs, negative publicity and adverse

competitive pressure. The circumstances giving rise to recalls are unpredictable, and any recalls of existing or future products could have a material adverse effect on our business, financial condition and results of operations.

We provide a limited warranty that our products are free of material defects and conform to specifications and offer to repair the LDD in the event of a defect and replace or refund the purchase price of a defective LAL. As a result, we bear the risk of potential warranty claims on our products. In the event that we attempt to recover some or all of the expenses associated with a warranty claim against us from our suppliers or vendors, we may not be successful in claiming such recovery, or any recovery from such vendor or supplier may be inadequate or unavailable.

The medical device industry has historically been subject to extensive litigation over product liability claims. We may be subject to product liability claims if our products cause, or merely appear to have caused, an injury or death, even if due to doctor error. In addition, an injury or death that is caused by the activities of our suppliers, such as those that provide us with components and raw materials, or by an aspect of a treatment used in combination with our products, such as a complementary drug or anesthesia, may be the basis for a claim against us by patients, doctors or others purchasing or using our products, even if our products were not the actual cause of such injury or death. We may choose to settle any claims to avoid a determination of fault, even if we believe fault was not due to failure of our products. An adverse outcome involving one of our products could result in reduced market acceptance and demand for such products or any or all of our other products and could harm our brand and reputation and our ability to market our products in the future. In some circumstances, adverse events arising from or associated with the design, manufacture or marketing of our products could result in the suspension or delay of regulatory reviews of our premarket notifications or applications for marketing. Any of the foregoing problems could disrupt our business and have a material adverse effect on our business, financial condition and results of operations.

Although we carry product liability insurance in the United States and in other countries in which we conduct business, including for clinical trials and product marketing, we can give no assurance that such coverage will be available or adequate to satisfy any claims. Product liability insurance is expensive, subject to significant deductibles and exclusions, and may not be available on acceptable terms, if at all. If we are unable to obtain or maintain insurance at an acceptable cost or on acceptable terms with adequate coverage or otherwise protect against potential product liability claims, we could be exposed to significant liabilities. A product liability claim recall or other claim with respect to uninsured liabilities or for amounts in excess of insured liabilities could have a material adverse effect on our business, financial condition and results of operations. Defending a suit, regardless of its merit or eventual outcome, could be costly, could divert management's attention from our business and might result in adverse publicity, which could result in reduced acceptance of our products in the market, product recalls or market withdrawals.

We are required to file adverse event reports under Medical Device Reporting, or MDR, regulations with the FDA that are publicly available on the FDA's website. We are required to file MDRs if our products may have caused or contributed to a serious injury or death or malfunctioned in a way that could likely cause or contribute to a serious injury or death if it were to recur. Any such MDR that reports a significant adverse event could result in negative publicity, which could harm our reputation and future sales. If we fail to report events required to be reported to the FDA within the required timeframes, or at all, the FDA could take enforcement action and impose sanctions against us. Any such adverse event involving our products also could result in future voluntary corrective actions, such as recalls or customer notifications, or agency action, such as inspection or enforcement action. Any corrective action, whether voluntary or involuntary, as well as defending ourselves in a lawsuit, would require our time and capital, distract management from operating our business and may harm our reputation and have a material adverse effect on our business, financial condition and results of operations.

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

We are exposed to the risk that our employees, independent contractors, consultants, commercial partners, distributors and vendors may engage in fraudulent or illegal activity. Misconduct by these parties could include intentional, reckless and/or negligent conduct or disclosure of unauthorized activities to us that violates: (i) the laws of the FDA and other similar foreign regulatory bodies, including those laws requiring the reporting of true, complete and accurate information to such regulators; (ii) manufacturing standards; (iii) healthcare fraud and abuse

laws in the United States and similar foreign fraudulent misconduct laws; or (iv) laws that require the true, complete and accurate reporting of financial information or data. These laws may impact, among other things, future sales, marketing and education programs. In particular, the promotion, sales and marketing of healthcare items and services, as well as certain business arrangements in the healthcare industry, are subject to extensive laws designed to prevent fraud, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, structuring and commissions, certain customer incentive programs and other business arrangements generally. Activities subject to these laws also involve the improper use of information obtained in the course of patient recruitment for clinical trials.

We have adopted a code of business conduct and ethics, but it is not always possible to identify and deter misconduct by our employees and other third parties, and the precautions we take to detect and prevent these activities may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. If any such actions are instituted against us and we are not successful in defending ourselves or asserting our rights, those actions could result in the imposition of significant fines or other sanctions, including the imposition of civil, criminal and administrative penalties, damages, monetary fines, disgorgement, individual imprisonment, additional integrity reporting and oversight obligations, possible exclusion from participation in Medicare, Medicaid and other federal healthcare programs, contractual damages, reputational harm, diminished profits and future earnings and curtailment of operations, any of which could adversely affect our ability to operate our business and our results of operations. Whether or not we are successful in defending against any such actions or investigations, we could incur substantial costs, including legal fees, and divert the attention of management in defending ourselves against any of these claims or investigations, which could have a material adverse effect on our business, financial condition and results of operations.

Environmental health and safety laws may result in liabilities, expenses and restrictions on our operations. Failure to comply with environmental laws and regulations could subject us to significant liability.

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

Federal, state, local and foreign laws regarding environmental protection, hazardous substances and human health and safety may adversely affect our business. Our research and development and manufacturing operations involve the use of hazardous substances and are subject to a variety of federal, state, local and foreign environmental laws and regulations relating to the storage, use, discharge, disposal and remediation of, as well as human exposure to, hazardous substances and the sale, labeling, collection, recycling, treatment and disposal of products containing hazardous substances. These operations are permitted by regulatory authorities, and the resultant waste materials are disposed of in material compliance with environmental laws and regulations. Using hazardous substances in our operations exposes us to the risk of accidental injury, contamination or other liability from the use, storage, importation, handling or disposal of hazardous materials. If our or our suppliers' operations result in the contamination of the environment or expose individuals to hazardous substances, we could be liable for damages and fines, and any liability could significantly exceed our insurance coverage and have a material adverse effect on our on our business, financial condition and results of operations. Liability under environmental laws and regulations can be joint and several and without regard to fault or negligence. Compliance with environmental laws and regulations may be expensive, and non-compliance could result in substantial liabilities, fines and penalties, personal injury and third-party property damage claims and substantial investigation and remediation costs. Environmental laws and regulations could become more stringent over time, imposing greater compliance costs and increasing risks and penalties associated with violations. We cannot assure you that violations of these laws and

regulations will not occur in the future or have not occurred in the past as a result of human error, accidents, equipment failure or other causes. The expense associated with environmental regulation and remediation could harm our business, financial condition and results of operation.

We face risks related to our collection and use of data, which could result in investigations, inquiries, litigation, fines, legislative and regulatory action and negative press about our privacy and data protection practices.

Our business processes personal data, including some data related to health. When conducting clinical trials, we face risks associated with collecting trial participants' data, especially health data, in a manner consistent with applicable laws and regulations, such as the Common Rule ("GCP") guidelines, or FDA human subject protection regulations. We also face risks inherent in handling large volumes of data and in protecting the security of such data. We could be subject to attacks on our systems by outside parties or fraudulent or inappropriate behavior by our service providers or employees. Third parties may also gain access to users' accounts using stolen or inferred credentials, computer malware, viruses, spamming, phishing attacks or other means, and may use such access to obtain users' personal data or prevent use of their accounts. Data breaches could result in a violation of applicable United States and international privacy, data protection and other laws, and subject us to individual or consumer class action litigation and governmental investigations and proceedings by federal, state and local regulatory entities in the United States and by international regulatory entities, resulting in exposure to material civil and/or criminal liability. Further, our general liability insurance and corporate risk program may not cover all potential claims to which we are exposed and may not be adequate to indemnify us for all liability that may be imposed.

This risk is enhanced in certain jurisdictions and, as we expand our operations domestically and internationally, we may be subject to additional laws in other jurisdictions. Any failure, or perceived failure, by us to comply with privacy and data protection laws, rules and regulations could result in proceedings or actions against us by governmental entities or others. These proceedings or actions may subject us to significant penalties and negative publicity, require us to change our business practices, increase our costs and severely disrupt our business. In the United States, various federal and state regulators, including governmental agencies like the Consumer Financial Protection Bureau and the Federal Trade Commission, have adopted, or are considering adopting, laws and regulations concerning personal information and data security and have prioritized privacy and information security violations for enforcement actions. Additionally, in the United States, California adopted the California Consumer Privacy Act ("CCPA"), in January 2020 which requires certain companies that process information on California consumers to, among other things, provide new disclosures to California consumers and afford such consumers new abilities to exercise certain rights with respect to their personal information and opt out of certain sales of personal information, in addition to severely limiting our ability to use their information. The CCPA provides for civil penalties for violations, as well as a private right of action for certain data breaches that result in the loss of personal information. It remains unclear how various provisions of the CCPA will be interpreted and enforced. Furthermore, in November 2020, California voters passed the California Privacy Rights Act of 2020 ("CPRA"). Effective beginning January 1, 2023, the CPRA imposes additional obligations on companies covered by the legislation and will significantly modify the CCPA, including by expanding California residents' rights with respect to certain sensitive personal information. Other states have passed, or plan to pass, data privacy laws that are similar to the CCPA and CPRA, further complicating the legal landscape. In addition, laws in all 50 states require businesses to provide notice to consumers whose personal information has been accessed or acquired as a result of a data breach (and, in some cases, to regulators). The effects of the CCPA, CPRA and other such privacy laws are potentially significant, and may require us to modify our data processing practices and policies and to incur substantial costs and expenses in an effort to comply.

In addition, we are subject to international laws, regulations and standards in many jurisdictions, which apply broadly to the collection, use, retention, security, disclosure, transfer and other processing of personal information. For example, the General Data Protection Regulation ("GDPR"), which was adopted by the EU and became effective in May 2018, applies extraterritorially and imposes several stringent requirements for controllers and processors of personal data, including, for example, higher standards for obtaining consent from individuals to process their personal data, more robust disclosures to individuals and a strengthened individual data rights regime, shortened timelines for data breach notifications, limitations on retention of information, increased requirements pertaining to special categories of personal data and pseudonymized (i.e., key-coded) data and additional obligations when we contract third-party processors in connection with the processing of the personal data.

The GDPR provides that EU member states may make their own laws and regulations limiting the (i) processing of personal data, including special categories of data (e.g., racial or ethnic origin, political opinions,

religious or philosophical beliefs) and (ii) profiling and automated individual decision-making of individuals, which could limit our ability to use and share personal data or other data and could cause our costs to increase, harming our business and financial condition. Non-compliance with GDPR is subject to significant penalties, including fines of up to €20 million or 4% of total worldwide revenue, whichever is greater. The interpretations of the GDPR by local data protection authorities in EU member states, along with the complexity of the new data protection regime itself, will leave the interpretation and enforcement of the law unclear in the near term, with potential inconsistencies across the EU member states. The implementation and enforcement of the GDPR may subject us to enforcement risk and requirements to change certain of our data collection, processing and other policies and practices. We could incur significant costs investigating and defending such claims and, if we are found liable, significant damages. If any of these events were to occur, our business and financial results could be adversely affected. Other jurisdictions outside the EU are similarly introducing or enhancing laws and regulations relating to privacy and data security, which enhances risks relating to compliance with such laws. Further, the United Kingdom's decision to leave the European Union has created uncertainty with regard to data protection regulation in the United Kingdom. As of January 1, 2021, we are also subject to the UK General Data Protection Regulation and UK Data Protection Act of 2018, which retains the GDPR in the United Kingdom's national law. These recent developments will require us to review and amend the legal mechanisms by which we make and/or receive personal data transfers.

Additionally, we are subject to laws and regulations regarding cross-border transfers of personal data, including laws relating to transfer of personal data outside of the European Economic Area ("EEA"). We rely on transfer mechanisms permitted under these laws, including EU Standard Contract Clauses. Such mechanisms have received heightened regulatory and judicial scrutiny in recent years. If we cannot rely on existing mechanisms for transferring personal data from the EEA, the United Kingdom or other jurisdictions, we could be prevented from transferring personal data of users or employees in those regions. This could adversely affect the manner in which we provide our services and thus materially affect our operations and financial results.

Because the interpretation and application of laws, regulations, standards and other obligations relating to data privacy and security are still uncertain, it is possible that these laws, regulations, standards and other obligations may be interpreted and applied in a manner that is inconsistent with our data processing practices and policies. If our practices are not consistent, or are viewed as not consistent, with changes in laws, regulations and standards or new interpretations or applications of existing laws, regulations and standards, we may also become subject to fines, audits, inquiries, whistleblower complaints, adverse media coverage, investigations, lawsuits, loss of export privileges, severe criminal or civil sanction or other penalties. Although we endeavor to comply with our public statements and documentation, we may at times fail to do so or be alleged to have failed to do so. The publication of our privacy policies and other statements that provide promises and assurances about data privacy and security can subject us to potential government or legal action if they are found to be deceptive, unfair or misrepresentative of our actual practices. Any concerns about our data privacy and security practices, even if unfounded, could damage the reputation of our businesses and discourage potential users from our products and services. Any of the foregoing could have an adverse effect on our business, financial condition, results of operations and prospects.

Inadequate funding for the FDA and other government agencies could hinder their ability to hire and retain key leadership and other personnel, prevent new products and services from being developed or commercialized in a timely manner or otherwise prevent those agencies from performing normal business functions on which the operation of our business may rely, which could negatively impact our business.

The ability of the FDA to review and approve new products can be affected by a variety of factors, including government budget and funding levels, ability to hire and retain key personnel and accept the payment of user fees, and statutory, regulatory, and policy changes. Average review times at the agency have fluctuated in recent years as a result.

Disruptions at the FDA and other agencies may also slow the time necessary for new medical devices to be reviewed and/or approved by necessary government agencies, which would adversely affect our business. For example, in recent years, including in 2018 and 2019, the U.S. government shut down several times and certain regulatory agencies such as the FDA had to furlough critical employees and stop critical activities. Separately, in response to the COVID-19 pandemic, since March 2020 when foreign and domestic inspections of facilities were largely placed on hold, the FDA has been working to resume routine surveillance, bioresearch monitoring and pre-approval inspections on a prioritized basis. In 2020 and 2021, a number of companies announced receipt of complete response letters due to the FDA's inability to complete required inspections for their applications. The FDA continues to ensure timely reviews of applications for medical products during the ongoing COVID-19 pandemic in

line with its user fee performance goals and conducting mission critical domestic and foreign inspections to ensure compliance of manufacturing facilities. However, the FDA may not be able to continue its current inspection pace or may be unable to complete required inspections during the review period, which can delay clinical development and result in a complete response letter. Regulatory authorities outside the U.S. may adopt similar restrictions or other policy measures in response to the COVID-19 pandemic and may experience delays in their regulatory activities. If a prolonged government shutdown or other disruption occurs, it could significantly impact the ability of the FDA to timely review and process our regulatory submissions, which could have a material adverse effect on our business. Further, future government shutdowns could impact our ability to access the public markets and obtain necessary capital in order to properly capitalize and continue our operations.

Our global operations can expose us to numerous and sometimes conflicting legal and regulatory requirements, including to anti-bribery and anti-corruption laws, such as the FCPA and the U.K. Bribery Act, and violation of these requirements could result in substantial penalties and prosecution and harm our business.

We have commercialized the RxSight system outside of the United States, each component of which has received a CE mark and is registered with the MHRA in the United Kingdom. We are subject to numerous, and sometimes conflicting, legal regimes in the countries in which we operate, including on matters as diverse as health and safety standards, marketing and promotional activities, anticorruption, import/export controls, content requirements, trade restrictions, tariffs, taxation, sanctions, immigration, internal and disclosure control obligations, securities regulation, anti-competition, data privacy and labor relations. This includes in emerging markets where legal systems may be less familiar to us. We strive to abide by and maintain compliance with these laws and regulations. Compliance with diverse legal requirements is costly, time-consuming and requires significant resources. Violations of one or more of these regulations in the conduct of our business could result in significant fines, criminal sanctions against us or our officers, prohibitions on doing business and damage to our reputation. Violations of these regulations in connection with the performance of our obligations to our customers also could result in liability for significant monetary damages, fines and/or criminal prosecution, unfavorable publicity and other reputational damage, restrictions on our ability to process information and allegations by our customers or distributors that we have not performed our contractual obligations. Due to the varying degrees of development of the legal systems of the countries in which we operate, local laws might be insufficient to protect our rights.

Our operations outside of the United States are subject to various heavily enforced anti-bribery and anti-corruption laws, such as the FCPA, U.K. Bribery Act and similar laws around the world. These laws generally prohibit U.S. companies and their employees and intermediaries from offering, promising, authorizing or making improper payments to foreign government officials for the purpose of obtaining or retaining business or gaining any advantage. We face significant risks if we, which includes our third-party business partners and intermediaries, fail to comply with the FCPA or other anti-corruption and anti-bribery laws. Responding to any enforcement action or related investigation may result in a materially significant diversion of management’s attention and resources and significant defense costs and other professional fees. Any violation of the FCPA or other applicable anti-bribery, anti-corruption or anti-money laundering laws could result in whistleblower complaints, adverse media coverage, investigations, loss of export privileges, severe criminal or civil sanctions and, in the case of the FCPA, suspension or debarment from U.S. government contracts, which could have a material and adverse effect on our business, financial condition and results of operations.

Our international operations could be affected by changes in laws, trade regulations, labor and employment regulations, and procedures and actions affecting approval, products and solutions, pricing, reimbursement and marketing of our products and solutions, as well as by inter-governmental disputes. Any of these changes could adversely affect our business. The imposition of new laws or regulations, including potential trade barriers, may increase our operating costs, impose restrictions on our operations or require us to spend additional funds to gain compliance with the new rules, if possible, which could have an adverse impact on our financial condition and results of operations.

Risks related to reliance on third parties

From time to time, we engage outside parties to perform services related to certain of our clinical studies and trials. If these third parties do not successfully carry out their contractual duties or meet expected deadlines, we may not be able to obtain regulatory approval for or commercialize our products.

From time to time, we engage consultants to help design, monitor and analyze the results of certain of our clinical studies and trials. The consultants we engage interact with clinical investigators to enroll patients in our clinical trials. We depend on these consultants and clinical investigators to conduct clinical studies and trials and monitor and analyze data from these studies and trials under the investigational plan and protocol for the study or trial and in compliance with applicable regulations and standards, such as GCP guidelines, the Common Rule, and FDA human subject protection regulations. We may face delays in our regulatory approval process if these parties do not perform their obligations in a timely, compliant or competent manner. If these third parties do not successfully carry out their duties or meet expected deadlines, or if the quality, completeness or accuracy of the data they obtain is compromised due to the failure to adhere to our clinical trial protocols or for other reasons, our clinical studies or trials may be extended, delayed or terminated or may otherwise prove to be unsuccessful, and we may have to conduct additional studies, which would significantly increase our costs, in order to obtain the regulatory clearances or approvals that we need to commercialize our products.

We and our component suppliers may not meet regulatory quality standards applicable to our manufacturing processes, which could have an adverse effect on our business, financial condition and results of operations.

As a medical device manufacturer, we must register with the FDA and non-U.S. regulatory agencies in jurisdictions where we commercialize our products, and we are subject to periodic inspection by the FDA and foreign regulatory agencies, for compliance with certain good manufacturing practices, including design controls, product validation and verification, in process testing, quality control and documentation procedures. Compliance with applicable regulatory requirements is subject to continual review and is rigorously monitored through periodic inspections by the FDA and foreign regulatory agencies. Our manufacturer, component, and sub-component suppliers are also required to meet certain standards applicable to their manufacturing processes.

We cannot assure you that we or our component suppliers comply or can continue to comply with all regulatory requirements. The failure by us or one of our component suppliers to achieve or maintain compliance with these requirements or quality standards may disrupt our ability to supply products sufficient to meet demand until compliance is achieved or, with a component supplier, until a new supplier has been identified and evaluated. Our or any of our component supplier's failure to comply with applicable regulations could cause sanctions to be imposed on us, including warning letters, fines, injunctions, civil penalties, failure of regulatory authorities to grant marketing approval of our products, delays, suspension or withdrawal of approvals or clearances, license revocation, seizures or recalls of products, operating restrictions and criminal prosecutions, which could harm our business. We cannot assure you that if we need to engage new suppliers to satisfy our business requirements, we can locate new suppliers in compliance with regulatory requirements at a reasonable cost and in an acceptable timeframe. Our failure to do so could have a material adverse effect on our business, financial condition and results of operations.

For products that we currently distribute or market in the EU and the United Kingdom, as well as future products for which we obtain the applicable marketing authorization, we must maintain certain International Organization for Standardization ("ISO"), certifications to sell our products and must undergo periodic inspections by notified bodies, such as BSI, to obtain and maintain these certifications. If we fail these inspections or fail to meet these regulatory standards, it could have a material adverse effect on our business, financial condition and results of operations.

We depend upon third parties, including single and sole source suppliers, to manufacture certain components and subcomponents of the RxSight system making us vulnerable to supply disruptions and price fluctuations.

We rely on third parties, including single and sole source suppliers, to manufacture certain components and subcomponents of our products. We do not have long-term supply agreements with, or guaranteed commitments from our suppliers, including single and sole source suppliers. We utilize blanket orders covering the medium term of 18–24 months for the majority of our supplier base. We depend on our suppliers to provide us and our customers with materials in a timely manner that meet our and their quality, quantity and cost requirements. These suppliers may encounter problems during manufacturing for a variety of reasons, any of which could delay or impede their ability to meet our demand. The expansion of global lead times, particularly in Europe and Asia, related to the

COVID-19 pandemic, has resulted in the lack of availability of raw materials, including semiconductors, computers, monitors electronic parts, metals, packaging, adhesives, resins and subcontract painted components. Certain suppliers have passed on higher prices, surcharges and expedited shipping fees to defray the higher commodity prices they are paying due to short supply. While we have taken measures to mitigate business continuity risk, including increasing standard lead times, payment of expedite fees, issuance of non-cancelable purchase orders, advance delivery of critical components ahead of normal delivery dates and second sourcing, our suppliers may cease producing the components we purchase from them or otherwise decide to cease doing business with us. Any supply interruption from our suppliers or failure to obtain additional suppliers for any of the components or subcomponents used in our products would limit our ability to manufacture our current and new products and could have a material adverse effect on our business, financial condition and results of operations.

The failure of third parties to meet their contractual, regulatory, and other obligations could adversely affect our business.

We rely on suppliers, vendors, outsourcing partners, consultants, and other third parties to research, develop, manufacture and commercialize our products. Using these third parties poses a number of risks, such as: (i) they may not perform to our standards or legal requirements; (ii) they may not produce reliable results; (iii) they may not perform in a timely manner; (iv) they may not maintain confidentiality of our proprietary information; (v) disputes may arise with respect to ownership of rights to technology developed with our partners; and (vi) disagreements could cause delays in, or termination of, the research, development or commercialization of our products or result in litigation or arbitration. Moreover, some third parties are located in markets subject to political and social risk, corruption, infrastructure problems and natural disasters, in addition to country-specific privacy and data security risk given current legal and regulatory environments. Failure of third parties to meet their contractual, regulatory and other obligations may have a material adverse effect on our business, financial condition and results of operations.

Risks related to our common stock

The price of our stock may be volatile, and you could lose all or part of your investment.

The trading price of our common stock has been and may continue to be highly volatile and could be subject to wide fluctuations in response to various factors, some of which we cannot control. From the date of our initial public offering through March 1, 2022, our common stock has traded at a low of $8.80 and a high of $19.67 on the Nasdaq Global Market. The stock market in general has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of these companies. Broad market and industry factors may negatively affect the market price of our common stock, regardless of our actual operating performance. In addition to the factors discussed in this “Part I, Item 1A and elsewhere in this Annual Report on Form 10-K, these factors include:

- the timing and results of preclinical studies and clinical trials of our current and future products or those of our competitors;
- the success of competitive products or announcements by potential competitors of their product development efforts;
- regulatory actions with respect to our products or our competitors’ products;
- actual or anticipated changes in our growth rate relative to our competitors;
- regulatory or legal developments in the United States and other countries;
- developments or disputes concerning patent applications, issued patents or other intellectual property or proprietary rights;
- the recruitment or departure of key personnel;
- announcements by us or our competitors of significant acquisitions, strategic collaborations, joint ventures, collaborations or capital commitments;
- actual or anticipated changes in estimates as to financial results, development timelines or recommendations by securities analysts;

- fluctuations in the valuation of companies perceived by investors to be comparable to us;
- market conditions in the medical device sector;
- changes in the structure of healthcare payment systems;
- share price and volume fluctuations attributable to inconsistent trading volume levels of our shares;
- announcement or expectation of additional financing efforts;
- sales of our common stock by us, our insiders or our other stockholders;
- expiration of market stand-off or lock-up agreements;
- general economic, industry and market conditions; and
- the impact of the COVID-19 pandemic.

The realization of any of the above risks or any of a broad range of other risks, including those described in this Part I, Item1A, could have a dramatic and adverse impact on the market price of our common stock.

In addition, companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. We may be the target of this type of litigation in the future. Securities litigation against us could result in substantial costs and divert our management's attention from other business concerns, which could seriously harm our business.

If securities or industry analysts do not publish research or publish unfavorable research about our business, our stock price and trading volume could decline.

The trading market for our common stock will rely in part on the research and reports that equity research analysts publish about us and our business. We will not have any control of the analysts or the content and opinions included in their reports. The price of our stock could decline if one or more equity research analysts downgrade our stock or issue other unfavorable commentary or research. If one or more equity research analysts ceases coverage of our company or fails to publish reports on us regularly, demand for our stock could decrease, which in turn could cause our stock price or trading volume to decline.

We do not know whether an active, liquid and orderly trading market will exist for our common stock or what the market price of our common stock will be and as a result it may be difficult for you to sell your shares of our common stock.

Our common stock is currently traded on Nasdaq, but we can provide no assurance that we will be able to maintain an active trading market on Nasdaq or any other exchange in the future. If an active trading market does not develop is not maintained, or if we fail to satisfy the continued listing standards of Nasdaq or applicable SEC rules for any reason and our securities are delisted, you may have difficulty selling any of our shares of common stock that you buy. The lack of an active trading market may impair your ability to sell your shares at the time you wish to sell them or at a price that you consider reasonable. The lack of an active trading market may also reduce the fair market value of your shares. Furthermore, an inactive trading market may also impair our ability to raise capital by selling shares of our common stock and may impair our ability to enter into strategic collaborations or acquire companies, technologies or other assets by using our shares of common stock as consideration.

Sales of a substantial number of shares of our common stock in the public market could cause our stock price to fall.

Sales of a substantial number of shares of our common stock in the public market could occur at any time. These sales, or the perception in the market that the holders of a large number of shares intend to sell shares, could reduce the market price of our common stock.

As of December 31, 2021, we had 27,366,746 shares of common stock issued and outstanding. Of these shares approximately 7,300,000 shares became available for sale in the public market on January 26, 2022, following the scheduled expiration of lock-up agreements that certain of our stockholders and the underwriters entered into in connection with our Initial Public Offering, or ("IPO").

In addition, we have filed a registration statement on Form S-8 under the Securities Act registering the issuance of 7,473,839 shares of common stock subject to options or other equity awards issued or reserved for future issuance under our equity incentive plans. Shares registered under the registration statement on Form S-8 can be freely sold in the public market upon issuance, subject to volume limitations applicable to affiliates.

Further, concurrent with the filing of this Form 10-K, we will file on Form S-8 under the Securities Act to register the issuance of 1,368,337 shares of common stock subject to options or other equity awards issued or future issuance under our equity incentive plans. The number of shares to be registered represent the annual increase commencing on the first day of each fiscal year beginning with the 2022 fiscal year calculated as 4% of the outstanding shares of our common stock on the last day of our immediately preceding fiscal year under our 2021 Equity Incentive Plan and 1% of the outstanding shares f our common stock as of the last day of the immediately preceding fiscal year under our 2021 Employee Stock Purchase Plan.

Moreover, holders of an aggregate of 14,651,254 shares of our common stock have rights, subject to certain conditions, to require us to file registration statements covering their shares or to include their shares in registration statements that we may file for ourselves or other stockholders. If we were to register the resale of these shares, they could be freely sold in the public market upon issuance, subject to volume limitations applicable to affiliates under applicable rules. If these additional shares are sold, or if it is perceived that they will be sold, in the public market, the trading price of our common stock could decline.

In addition, in the future, we may issue additional shares of common stock or other equity or debt securities convertible into common stock in connection with a financing, acquisition, litigation settlement, and employee arrangements or otherwise. Any such issuance could result in substantial dilution to our existing stockholders and could cause our stock price to decline.

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

As of December 31, 2021, our executive officers, directors, holders of 5% or more of our common stock and their respective affiliates beneficially owned approximately 51% of our voting common stock. As a result, this group of stockholders will have the ability to control us through this ownership position. These stockholders may be able to determine all matters requiring stockholder approval. For example, these stockholders may be able to control elections of directors, amendments of our organizational documents or approval of any merger, sale of assets or other major corporate transaction. This may prevent or discourage unsolicited acquisition proposals or offers for our common stock that you may feel are in your best interest as one of our stockholders. The interests of this group of stockholders may not always coincide with your interests or the interests of other stockholders and they may act in a manner that advances their best interests and not necessarily those of other stockholders, including seeking a premium value for their common stock, and might affect the prevailing market price for our common stock.

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

We are an "emerging growth company," as defined in the Jumpstart Our Business Startups Act of 2012 (JOBS Act). For as long as we continue to be an emerging growth company, we intend to take advantage of exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies, including:

- being permitted to provide only two years of audited financial statements, in addition to any required unaudited interim financial statements, with correspondingly reduced "Management's Discussion and Analysis of Financial Condition and Results of Operations" disclosure in this Annual Report on Form 10-K;
- not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act;
- not being required to comply with any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation or a supplement to the auditor's report providing additional information about the audit and the financial statements;

- reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements; and
- exemptions from the requirements of holding nonbinding advisory stockholder votes on executive compensation and stockholder approval of any golden parachute payments not previously approved.

We cannot predict if investors will find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.

We will remain an emerging growth company until the earliest to occur of: (1) the last day of the fiscal year in which we have more than $1.07 billion in annual revenue; (2) the date we qualify as a "large accelerated filer," with at least $700 million of equity securities held by non-affiliates; (3) the date on which we have issued more than $1.0 billion in non-convertible debt securities during the prior three-year period; and (4) the last day of the fiscal year ending after the fifth anniversary of our initial public offering. (i.e., December 31, 2026).

Under the JOBS Act, emerging growth companies can also delay adopting new or revised accounting standards until such time as those standards apply to private companies. We have irrevocably elected not to avail ourselves of this exemption from new or revised accounting standards and, therefore, will be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies. As a result, changes in rules of U.S. generally accepted accounting principles or their interpretation, the adoption of new guidance or the application of existing guidance to changes in our business could significantly affect our financial position and results of operations.

We are also a "smaller reporting company" as defined in the Exchange Act. We may continue to be a smaller reporting company even after we are no longer an emerging growth company. We may take advantage of certain of the scaled disclosures available to smaller reporting companies and will be able to take advantage of these scaled disclosures for so long as our voting and non-voting common stock held by non-affiliates is less than $250.0 million measured on the last business day of our second fiscal quarter, or our annual revenue is less than $100.0 million during the most recently completed fiscal year and our voting and non-voting common stock held by non-affiliates is less than $700.0 million measured on the last business day of our second fiscal quarter.

We have incurred increased costs as a result of operating as a public company, and our management devotes substantial time to new compliance initiatives and corporate governance practices. Additionally, if we fail to maintain proper and effective internal controls, our ability to produce accurate financial statements on a timely basis could be impaired.

As a public company we incur significant legal, accounting and other expenses and these expenses may increase even more after we are no longer an "emerging growth company." We will be subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Protection Act, as well as rules adopted, and to be adopted, by the SEC and Nasdaq. Our management and other personnel will need to devote a substantial amount of time to these compliance initiatives. Moreover, we expect these rules and regulations to substantially increase our legal and financial compliance costs and to make some activities more time-consuming and costly, which will increase our operating expenses. For example, we expect these rules and regulations to make it more difficult and more expensive for us to obtain director and officer liability insurance and we may be required to incur substantial costs to maintain sufficient coverage. We cannot accurately predict or estimate the amount or timing of additional costs we may incur to respond to these requirements. The impact of these requirements could also make it more difficult for us to attract and retain qualified persons to serve on our Board of Directors, our board committees or as executive officers.

In addition, as a public company we will be required to incur additional costs and obligations in order to comply with SEC rules that implement Section 404 of the Sarbanes-Oxley Act. Under these rules, beginning with our second annual report on Form 10-K after we become a public company, we will be required to make a formal assessment of the effectiveness of our internal control over financial reporting, and once we cease to be an emerging growth company, we will be required to include an attestation report on internal control over financial reporting issued by our independent registered public accounting firm if we are an accelerated filer or large accelerated filer. To achieve compliance with Section 404 within the prescribed period, we will be engaging in a process to document and evaluate our internal control over financial reporting, which is both costly and challenging. In this regard, we

will need to continue to dedicate internal resources, potentially engage outside consultants and adopt a detailed work plan to assess and document the adequacy of our internal control over financial reporting, continue steps to improve control processes as appropriate, validate through testing that controls are designed and operating effectively, and implement a continuous reporting and improvement process for internal control over financial reporting.

The rules governing the standards that must be met for management to assess our internal control over financial reporting are complex and require significant documentation, testing and possible remediation to meet the detailed standards under the rules. During the course of its testing, our management may identify material weaknesses or deficiencies which may not be remedied in time to meet the deadline imposed by the Sarbanes-Oxley Act. Our internal control over financial reporting will not prevent or detect all errors and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud will be detected.

If we are not able to comply with the requirements of Section 404 of the Sarbanes-Oxley Act in a timely manner, or if we are unable to maintain proper and effective internal controls, we may not be able to produce timely and accurate financial statements. If that were to happen, the market price of our stock could decline and we could be subject to sanctions or investigations by the stock exchange on which our common stock is listed, the SEC or other regulatory authorities.

We have broad discretion in the use of the net proceeds from our IPO and may not use them effectively.

Our management has broad discretion in the application of the net proceeds from our IPO, and you will be relying on the judgment of our management regarding the application of these proceeds. You will not have the opportunity to assess whether we are using the proceeds appropriately. Our management might not apply the net proceeds in ways that ultimately increase stockholder value. If we do not invest or apply the net proceeds from our IPO in ways that enhance stockholder value, we may fail to achieve expected financial results, which could cause our stock price to decline.

We do not intend to pay dividends on our common stock so any returns will be limited to the value of our stock.

We have never declared or paid any cash dividends on our common stock. We currently anticipate that we will retain future earnings for the development, operation and expansion of our business and do not anticipate declaring or paying any cash dividends for the foreseeable future. Any return to stockholders will therefore be limited to any appreciation in the value of their stock.

Provisions in our certificate of incorporation, bylaws and Delaware law might discourage, delay or prevent a change in control of our company or changes in our management and, therefore, depress the market price of our common stock.

Our certificate of incorporation and bylaws contain provisions that could depress the market price of our common stock by acting to discourage, delay or prevent a change in control of our company or changes in our management that the stockholders of our company may deem advantageous. These provisions, among other things:

- establish a classified Board of Directors so that not all members of our board are elected at one time;
- permit only the Board of Directors to establish the number of directors and fill vacancies on the board;
- provide that directors may only be removed "for cause" and only with the approval of two-thirds of our stockholders;
- authorize the issuance of "blank check" preferred stock that our board could use to implement a stockholder rights plan (also known as a poison pill);
- eliminate the ability of our stockholders to call special meetings of stockholders;
- prohibit stockholder action by written consent, which requires all stockholder actions to be taken at a meeting of our stockholders;
- prohibit cumulative voting;

- authorize our Board of Directors to amend the bylaws;
- establish advance notice requirements for nominations for election to our board or for proposing matters that can be acted upon by stockholders at annual stockholder meetings; and
- require a super-majority vote of stockholders to amend some provisions described above.

In addition, Section 203 of the General Corporation Law of the State of Delaware, ("DGCL"), prohibits a publicly-held Delaware corporation from engaging in a business combination with an interested stockholder, generally a person which together with its affiliates owns, or within the last three years has owned, 15% of our voting stock, for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner.

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

Our bylaws provide that, unless the company consents in writing to an alternative forum, the Court of Chancery of the State of Delaware will be the exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees.

Our bylaws provide that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware is the exclusive forum for:

- any derivative action or proceeding brought on our behalf;
- any action asserting a claim of breach of fiduciary duty;
- any action asserting a claim against us arising under the DGCL, our amended and restated certificate of incorporation or our amended and restated bylaws; and
- any action asserting a claim against us that is governed by the internal-affairs doctrine.

This Delaware forum provision may limit a stockholder's ability to bring a claim in a judicial forum that the stockholder finds favorable for disputes with us or our directors, officers or other employees, which may discourage lawsuits against us and our directors, officers and other employees. Any person or entity purchasing or otherwise acquiring any interest in any of our securities shall be deemed to have notice of and consented to this provision. If a court were to find this Delaware forum provision to be inapplicable or unenforceable in an action, we may incur additional costs associated with litigating such disputes in multiple and/or other jurisdictions, which could seriously harm our business.

Our bylaws provide that, unless we consent in writing to the selection of an alternative forum, the federal district courts of the United States of America will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act of 1933 against any person in connection with any offering of the Company's securities, including but not limited to any auditor, underwriter, selling shareholder, expert, control person, or other defendant. This federal forum provision may limit a stockholder's ability to bring a Securities Act claim in a judicial forum that the stockholder finds favorable, which may discourage lawsuits against us and our directors, officers and other employees. Any person purchasing or otherwise acquiring any interest in any of our securities shall be deemed to have notice of and consented to this provision. While the Delaware Supreme Court has held such provisions to be facially valid as a matter of Delaware law and several state trial courts have enforced such provisions and required that suits asserting Securities Act claims be filed in federal court, there is no guarantee that courts of appeal will affirm the enforceability of such provisions. If a court were to find this federal forum provision to be inapplicable or unenforceable in an action, we may incur additional costs associated with litigating Securities Act claims in state court, or both state and federal court, which could seriously harm our business.

This Delaware forum provision does not apply to actions arising under the Securities Exchange Act of 1934 because the federal courts have exclusive jurisdiction over such claims.

Taxing authorities may successfully assert that we should have collected or in the future should collect sales and use, value added or similar taxes, and we could be subject to liability with respect to past or future sales, which could adversely affect our results of operations.

We rely on third party software for state and local tax rates, updated whenever tax rates change. We also rely on state exemptions, when applicable, for medical devices and services, which are determined by management's review of each state's sales tax laws and regulations concerning prescribed medical treatments. However, as laws and regulations change from time to time, these exemptions may or may not continue to apply to our products in the various taxing jurisdictions. Certain jurisdictions in which we do not collect such taxes on sales of our products may later assert that such taxes are applicable, which could result in tax assessments, penalties and interest, and we may be required to collect such taxes in the future. Such tax assessments, penalties and interest or future requirements may adversely affect the results of our operations.

Our Board of Directors are authorized to issue and designate shares of our preferred stock in additional series without stockholder approval.

Our certificate of incorporation authorizes our Board of Directors, without the approval of our stockholders, to issue shares of our preferred stock, subject to limitations prescribed by applicable law, rules and regulations and the provisions of our amended and restated certificate of incorporation, as shares of preferred stock in series, to establish from time to time the number of shares to be included in each such series and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions thereof. The powers, preferences and rights of these additional series of preferred stock may be senior to or on parity with our common stock, which may reduce its value.

Changes in tax laws or regulations that are applied adversely to us or our customers may have a material adverse effect on our business, cash flow, financial condition or results of operations.

The Tax Act enacted many significant changes to the U.S. tax laws, the consequences of which have not yet been fully determined. Changes in corporate tax rates, the realization of net deferred tax assets relating to our U.S. operations, the taxation of foreign earnings and the deductibility of expenses contained in the Tax Act or other tax reform legislation could have a material impact on the value of our deferred tax assets, could result in significant one-time charges in the current or future taxable years and could increase our future U.S. tax expense. The foregoing items, as well as any future changes in tax laws, could have a material adverse effect on our business, cash flow, financial condition or results of operations. In addition, it is uncertain if and to what extent various states will conform to the newly enacted federal tax legislation.

Risks related to COVID-19

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

We are subject to risks related to public health crises such as the global pandemic associated with COVID-19. In December 2019, a novel strain of coronavirus, SARS-CoV-2, was reported to have surfaced in Wuhan, China. Since then, SARS-CoV-2, and the resulting disease COVID-19, has spread to most countries, and all 50 states within the United States. The COVID-19 outbreak has negatively impacted and may continue to negatively impact our operations and revenues and overall financial condition by decreasing the number of our RxSight systems sold. The number of our RxSight systems sold, similar to other ophthalmic procedures, has decreased as health care organizations globally have prioritized the treatment of patients with COVID-19. For example, in the United States, governmental authorities have recommended, and in certain cases required, that elective, specialty and other procedures and appointments, including those related to cataract treatments, be suspended or canceled to avoid non-essential patient exposure to medical environments and potential infection with COVID-19 and to focus limited resources and personnel capacity toward the treatment of COVID-19. These measures and challenges may continue for the duration of the pandemic, which is uncertain, and will reduce our revenue and continue to interrupt the commercialization of our products while the pandemic continues. Further, once the pandemic subsides, we anticipate there will be a substantial backlog of patients seeking appointments with doctors and surgeries to be performed at ophthalmic practices and ambulatory surgery centers relating to a variety of medical conditions, and as a result, patients seeking to receive, or who have received, our LAL will have to navigate limited provider capacity. We believe this limited provider capacity could have an adverse effect on our sales following the end of the pandemic.

Numerous state and local jurisdictions have imposed, and others in the future may impose, "shelter-in-place" orders, quarantines, executive orders and similar government orders and restrictions for their residents to control the spread of COVID-19. Starting in mid-March 2020, the governor of California, where our headquarters is located, issued "shelter-in-place" or "stay at home" orders restricting non-essential activities, travel and business operations for an indefinite period of time, subject to certain exceptions for necessary activities. Such orders or restrictions have resulted in the temporary closing of our headquarters, slowdowns and delays, travel restrictions and cancellation of events, among other effects, thereby negatively impacting our operations. Other disruptions or potential disruptions include restrictions on our personnel and personnel of partners to travel and access customers for training and case support; delays in approvals by regulatory bodies; delays in product development efforts; and additional government requirements or other incremental mitigation efforts that may further impact our capacity to manufacture, sell and support the use of our RxSight system. In addition, even after the "shelter-in-place" orders, quarantines, executive orders and similar government orders and restrictions for their residents to control the spread of COVID-19 are lifted, we may continue to experience disruptions to our business, including as a result of patients and customers continuing to be cautious in restarting elective procedures in light of the continued risk posed by the virus.

As we continue to actively advance our clinical programs and discovery and research programs, we are in close contact with the third parties we engage with and are assessing the impact of the COVID-19 pandemic on each of our programs, expected timelines and costs on an ongoing basis. In light of ongoing developments relating to the COVID-19 pandemic, the focus of healthcare providers on fighting the virus, and consistent with the FDA's industry guidance for conducting clinical trials issued in March 2020, updated subsequently, we and our contract research organizations have made certain adjustments to the operation of our clinical trials in an effort to ensure the monitoring and safety of patients and minimize risk to trial integrity during the pandemic and generally. Other COVID-related guidance recently released by FDA includes statistical considerations for clinical trials during the COVID-19 public health emergency and post-marketing adverse event reporting for medical products during a pandemic. We may need to make further adjustments in the future, including implementation of new policies and procedures.

Further, the expansion of global lead times, particularly in Europe and Asia, related to the COVID-19 pandemic, has resulted in the lack of availability of raw materials, including semiconductors, computers, monitors electronic parts, metals, packaging, adhesives, resins and subcontract painted components. Certain suppliers have passed on higher prices, surcharges and expedited shipping fees to defray the higher commodity prices they are paying due to short supply. Our suppliers may cease producing the components we purchase from them or otherwise decide to cease doing business with us. Any supply interruption from our suppliers or failure to obtain additional suppliers for any of the components or subcomponents used in our products would limit our ability to manufacture our current and new products and could have a material adverse effect on our business, financial condition and results of operations.

While the potential economic impact brought by and the duration of COVID-19 may be difficult to assess or predict, the widespread pandemic has resulted in, and may continue to result in, significant disruption of global financial markets, reducing our ability to access capital, which could in the future negatively affect our liquidity. We expect any further shelter-in-place policies and restrictions on elective surgical procedures worldwide to have a substantial near-term impact on our revenue. During the COVID-19 pandemic, our customers, including doctors, have experienced financial hardship and some of them may not fully recover. This could lead to some of these customers temporarily or permanently shutting down, filing for bankruptcy or being acquired by larger health systems, leading to reduced procedures and/or additional pricing pressure on our products. The COVID-19 pandemic has also resulted in a significant increase in unemployment in the United States which may continue even after the pandemic. The occurrence of any such events may lead to reduced disposable income and access to health insurance which could adversely affect the number of RxSight systems sold after the pandemic has ended.

General risk factors

Our success is highly dependent on our ability to attract and retain highly skilled executive officers and employees.

To succeed, we must recruit, retain, manage and motivate qualified executives as we build out the management team, and we face significant competition for experienced personnel. We are highly dependent on the principal members of our management and need to add executives with operational and commercialization experience as we plan for commercialization of our current and future products and build out a leadership team that can manage our

operations as a public company. If we do not succeed in attracting and retaining qualified personnel, particularly at the management level, it could adversely affect our ability to execute our business plan and harm our operating results. In particular, the loss of one or more of our executive officers could be detrimental to us if we cannot recruit suitable replacements in a timely manner. The competition for qualified personnel in the medical device and ophthalmology field is intense and as a result, we may be unable to continue to attract and retain qualified personnel necessary for the future success of our business. We could in the future have difficulty attracting experienced personnel to our company and may be required to expend significant financial resources in our employee recruitment and retention efforts.

Many of the other medical device and biotechnology companies that we compete against for qualified personnel have greater financial and other resources, different risk profiles and a longer history in the industry than we do. They also may provide more diverse opportunities and better prospects for career advancement. Some of these characteristics may be more appealing to high-quality candidates than what we have to offer. If we are unable to continue to attract and retain high-quality personnel, the rate and success at which we can discover, develop and commercialize our current and future products will be limited and the potential for successfully growing our business will be harmed.

Our business and operations would suffer in the event of system failures or security breaches.

Our computer systems, as well as those of our contractors and consultants, are vulnerable to damage from computer viruses, unauthorized access, natural disasters (including hurricanes), terrorism, war and telecommunication and electrical failures. If such an event were to occur and cause interruptions in our operations, it could result in a material disruption of the commercialization of our RxSight system and our future products. For example, the loss of preclinical study or clinical trial data from completed, ongoing or planned trials could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. To the extent that any disruption or security breach were to result in a loss of or damage to our data or applications, or inappropriate disclosure of personal, confidential or proprietary information, we could incur liability and the commercialization of our RxSight system and the further development of our current and future products could be delayed.

The secure processing, maintenance and transmission of this information is critical to our operations. Despite our security measures, our information technology and infrastructure may be vulnerable to attacks by hackers or internal bad actors, or breached due to employee error, a technical vulnerability, malfeasance or other disruptions. Although, to our knowledge, we have not experienced such material security breach to date, any such breach could compromise our networks and the information stored there could be accessed, publicly disclosed, lost or stolen. Any such actual or perceived access, disclosure or other security breach or loss of information (whether affecting us or one of our third-party service providers) could result in legal claims proceedings, regulatory investigations, liability under laws that protect the privacy of personal information, significant regulatory penalties or other fines, and such an event could disrupt our operations, damage our reputation, and cause a loss of confidence in us and our ability to commercialize our products and conduct clinical trials, which could adversely affect our reputation and delay the commercialization of our RxSight system and clinical development of our current and future products.

The techniques and sophistication used to conduct cyber-attacks and breaches of information technology systems, as well as the sources and targets of these attacks, may take many forms (including phishing, social engineering, denial or degradation of service attacks, malware or ransomware), change frequently and are often not recognized until such attacks are launched or have been in place for a period of time. In addition, our employees, contractors, or third parties with whom we do business or to whom we outsource business operations may attempt to circumvent our security measures in order to misappropriate regulated, protected, or personally identifiable information, and may purposefully or inadvertently cause a breach involving or compromise of such information. Third parties may have the technology or know-how to breach the security of the information collected, stored, or transmitted by us, and our respective security measures, as well as those of our third-party service providers, may not effectively prohibit others from obtaining improper access to this information. Advances in computer and software capabilities and encryption technology, new tools, and other developments may increase the risk of such a breach or compromise. There is no assurance that any security procedures or controls that we or our third-party providers have implemented will be sufficient to prevent data-security related incidents from occurring.

We may be required to expend significant capital and other resources to protect against, respond to, and recover from any potential, attempted or existing security breaches or failures and their consequences. As data

security-related threats continue to evolve, we may be required to expend significant additional resources to continue to modify or enhance our protective measures or to investigate and remediate any information security vulnerabilities. We could be forced to expend significant financial and operational resources in responding to a security breach, including investigating and remediating any information security vulnerabilities, defending against and resolving legal and regulatory claims and complying with notification obligations, all of which could divert resources and the attention of our management and key personnel away from our business operations and adversely affect our business, financial condition and results of operations. In addition, our remediation efforts may not be successful, and we could be unable to implement, maintain and upgrade adequate safeguards.

Economic conditions may adversely affect our business.

Adverse worldwide economic conditions, including those related to the COVID-19 pandemic, may negatively impact our business. A significant change in the liquidity or financial condition of our customers could cause unfavorable trends in their purchases and also in our receivable collections, and additional allowances may be required, which could adversely affect our business, financial condition and results of operations. Adverse worldwide economic conditions may also adversely impact our suppliers' ability to provide us with materials and components, which could have a material adverse effect on our business, financial condition and results of operations.

Litigation and other legal proceedings may adversely affect our business.

From time to time we may become involved in legal proceedings relating to patent and other intellectual property matters, product liability claims, employee claims, tort or contract claims, federal regulatory investigations, securities class action and other legal proceedings or investigations, which could have an adverse impact on our reputation, business and financial condition and divert the attention of our management from the operation of our business. Litigation is inherently unpredictable and can result in excessive or unanticipated verdicts and/or injunctive relief that affect how we operate our business. We could incur judgments or enter into settlements of claims for monetary damages or for agreements to change the way we operate our business, or both. There may be an increase in the scope of these matters or there may be additional lawsuits, claims, proceedings or investigations in the future, which could have a material adverse effect on our business, financial condition and results of operations. Adverse publicity about regulatory or legal action against us could damage our reputation and brand image, undermine our customers' confidence and reduce long-term demand for our products, even if the regulatory or legal action is unfounded or not material to our operations.

Business disruptions could seriously harm our future revenue and financial condition and increase our costs and expenses.

Our operations could be subject to earthquakes, power shortages, telecommunications failures, water shortages, floods, hurricanes, typhoons, fires, severe weather conditions, medical epidemics and other natural or man-made disasters or business interruptions, for which we are predominantly self-insured. We rely on third-party manufacturers to produce our products. Our ability to obtain clinical supplies of our products could be disrupted if the operations of these suppliers were affected by a man-made or natural disaster or other business interruption. In addition, our corporate headquarters is located in Aliso Viejo, California, near major earthquake faults and fire zones, and the ultimate impact on us for being located near major earthquake faults and fire zones and being consolidated in a certain geographical area is unknown. The occurrence of any of these business disruptions could seriously harm our operations and financial condition and increase our costs and expenses.

Our results of operations could be materially harmed if we are unable to accurately forecast customer demand for our products and manage our inventory.

We seek to maintain sufficient levels of inventory in order to protect ourselves from supply interruptions, but due to the expansion of global lead times, particularly in Europe and Asia, related to the COVID-19 pandemic, has resulted in the lack of availability of raw materials, including semiconductors, computers, monitors electronic parts, metals, packaging, adhesives, resins and subcontract painted components, limiting our ability to maintain as much inventory of components, sub-assemblies, materials and finished products on hand as would be ideal under normal circumstances. To ensure adequate inventory supply and manage our operations with our third-party manufacturers and suppliers, we forecast anticipated materials requirements and demand for our products in order to predict inventory needs and then place orders with our suppliers based on these predictions. Our ability to accurately forecast demand for our products could be negatively affected by many factors, including our limited historical

commercial experience, rapid growth, failure to accurately manage our expansion strategy, the expansion of global lead times, product introductions by competitors, an increase or decrease in customer demand for our products, our failure to accurately forecast customer acceptance of new products, unanticipated changes in general market conditions or regulatory matters and weakening of economic conditions or consumer confidence in future economic conditions.

Inventory levels in excess of customer demand, including as a result of our introduction of product enhancements, may result in a portion of our inventory becoming obsolete or expiring, as well as inventory write-downs or write-offs, which could have a material adverse effect on our business, financial condition and results of operations. Conversely, if we underestimate customer demand for our products or our own requirements for components, subassemblies and materials, our third-party manufacturers and suppliers may not be able to deliver components, sub-assemblies and materials to meet our requirements, which could result in inadequate inventory levels or interruptions, delays or cancellations of deliveries to our customers, any of which would damage our reputation, customer relationships and business. In addition, several components, sub-assemblies and materials incorporated into our products require lengthy order lead times, and additional supplies or materials may not be available when required on terms that are acceptable to us, or at all, and our third-party manufacturers and suppliers may not be able to allocate sufficient capacity in order to meet our increased requirements, any of which could have an adverse effect on our ability to meet customer demand for our products and our business, financial condition and results of operations.

Item 1B. Unresolved Staff Comments.

None

Item 2. Properties.

We currently lease four facilities housing our headquarters, manufacturing, research and development and administrative offices in Aliso Viejo, California. The facility leases are for approximately 121,000 square feet in the aggregate. The leases terminate, respectively, on (i) September 30, 2024, with one option to extend for five years; (ii) January 31, 2026, with three options to extend for five years each; (iii) March 31, 2023 with two options to extend for five years each; and (iv) August 31, 2024, with one option to extend for five years. We believe that our facilities are adequate to meet our current needs.

Item 3. Legal Proceedings.

From time to time, we may become involved in litigation or other legal proceedings. Except as indicated above, we are not currently a party to any litigation or legal proceedings that, in the opinion of our management, are likely to have a material adverse effect on our business. Regardless of outcome, litigation can have an adverse impact on us because of defense and settlement costs, diversion of management resources, and other factors.

Item 4. Mine Safety Disclosures.

None

PART II

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

Market information and holders

Our common stock has been publicly traded on the Nasdaq Global Market under the symbol "RXST" since July 30, 2021. Prior to that time, there was no public market for our common stock.

Stockholders

As of February 15, 2022, there were approximately 372 registered stockholders of record for our common stock. The actual number of stockholders is greater than this number of record holders and includes stockholders who are beneficial owners but whose shares are held in street name by brokers and other nominees. This number of holders of record also does not include stockholders whose shares may be held in trust by other entities.

Dividend policy

We have never declared or paid any cash dividends on our common stock or any other securities. We anticipate that we will retain all available funds and any future earnings, if any, for use in the operation of our business and do not anticipate paying cash dividends in the foreseeable future. In addition, future debt instruments we issue may materially restrict our ability to pay dividends on our common stock. Payment of future cash dividends, if any, will be at the discretion of our Board of Directors after taking into account various factors, including our financial condition, operating results, current and anticipated cash needs, the requirements of then-existing debt instruments and other factors our Board of Directors deems relevant.

Unregistered sales of equity securities

None.

Issuer purchases of equity securities

None.

Use of proceeds from public offering of common stock

On August 3, 2021, we completed our IPO, with a subsequent partial exercise of the underwriter's over-allotment option to purchase additional shares. We issued and sold an aggregate of 8,248,549 shares of common stock, par value $0.001 per share, at an offering price of $16.00 per share. We received aggregate net proceeds of approximately $119.6 million, after deducting underwriters' discounts and commissions of $9.2 million and offering expenses of $3.2 million.

There has been no material change in the planned use of the IPO proceeds as described in our prospectus dated July 29, 2021, as filed with the SEC pursuant to Rule 424(b) under the Securities Act (File No. 333-257790). From the effective date of the IPO registration statement through December 31, 2021, we have used the net proceeds of the offering to expand our sales force, customer support and operations and increase our research and development activities.

Item 6. [Reserved]

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our consolidated financial statements and the related notes to those statements included elsewhere in this Annual Report on Form 10-K. In addition to historical financial information, the following discussion and analysis contains forward-looking statements that involve risks, uncertainties and assumptions. Our actual results and timing of selected events may differ materially from those anticipated in these forward-looking statements as a result of many factors, including those discussed under "Risk Factors" in Part I, Item 1A and elsewhere in this Annual Report on Form 10-K. See "Special Note Regarding Forward-Looking Statements."

Overview

We are a commercial-stage medical technology company dedicated to improving the vision of patients following cataract surgery. Our proprietary RxSight system, comprised of our LAL, LDD and accessories, is the first and only commercially available IOL technology that enables doctors to customize and optimize visual acuity for patients after cataract surgery. Our LAL is made of proprietary photosensitive material that changes shape in response to specific patterns of ultraviolet light generated by our LDD. With the RxSight system, the surgeon performs a standard cataract procedure to implant the LAL, determines refractive error with patient input after healing is complete, and then uses the LDD to modify the lens with the exact amount of visual correction needed to achieve the patient's desired vision outcomes. Alternative IOL technologies, in contrast, are not adjustable following the procedure and therefore require patients to make pre-operative choices about their visual preferences, which can often result in patient dissatisfaction when visual outcomes fail to meet expectations. We designed our RxSight system to maximize patient and doctor satisfaction through superior visual outcomes. In the pivotal study that formed the basis for our FDA approval, the observed rate of eyes with 20/20 or better uncorrected distance visual acuity for our LAL was 70.1%. This compares favorably to the results of pivotal studies with similar study designs and patient populations that supported FDA approval of Alcon's Acrysof Toric (38.4%), and J&J's Tecnis Toric (43.6%). We began commercializing our solution in the United States in the third quarter of 2019 and are focused on establishing the RxSight system as the standard of care for premium IOL procedures. As of December 31, 2021, we had an installed base of 206 LDDs in ophthalmology practices, and since our inception, surgeons have performed almost 17,000 surgeries with our RxSight system.

We compete in the IOL market in the U.S. The LAL is a premium IOL which is partially reimbursable under Medicare, and in some cases by private payors. Premium IOLs are sold at a higher price point than conventional IOLs, as they provide refractive correction of vision unlike a conventional IOL that only replaces the natural lens with a clear lens (which is the standard for Medicare reimbursement). Our products are also approved for sale in Europe and Mexico. We are not actively marketing our products for sale in Europe or Mexico; however, we have approval in both for improving uncorrected visual acuity by adjusting the LAL power to correct residual postoperative refractive error. We have one customer in Germany and one in Mexico, both of which have participated in our clinical studies and perform commercial cases. We are a Delaware corporation, headquartered in Aliso Viejo, California, and have one wholly owned subsidiary. Our subsidiary is located in Amsterdam, Netherlands, which itself has one wholly owned subsidiary in Germany and a registered branch in the United Kingdom.

Our commercial strategy is focused on a "razor and razor blade" model through which we aim to drive new customer adoption, which generally begins with the sale of an LDD, and then helps the customer incorporate the LAL into their practice to drive utilization and premium procedure growth. We believe this commercial strategy over time may provide a degree of predictability in terms of our commercial growth and a consumable revenue stream from sales of our LALs. We are currently focused on driving adoption with surgeons performing a high volume of premium cataract procedures. MarketScope estimates that there are approximately 10,000 surgeons that perform cataract surgeries in the United States as of 2021, and we estimate that as many as 3,000 surgeons performed approximately 70% to 80% of the premium procedures in the United States in 2021. We believe this provides an attractive and concentrated market opportunity addressable with a focused sales force. We currently employ a sales team that, as of December 31, 2021 includes 18 LDD sales personnel, 14 LAL sales personnel, and a group of over 55 clinical specialists, field service, customer service, and marketing personnel. We intend to continue to make significant investments in our sales and marketing organization. We believe increasing the number of sales representatives, practice development personnel and clinical trainers will help facilitate further adoption of our products among existing customer accounts as well as broaden awareness of our products to new accounts. While we intend to initially focus our growing commercial efforts in the U.S., in the future, we may selectively pursue

commercial expansion in Asia, Europe, Australia or other geographies with significant market opportunity for premium IOLs, leveraging our CE and FDA approvals.

Our near-term research and development activities are focused on enhancements to the RxSight system to improve the patient and doctor experience, expand the range of patients that can be treated, as well as expand its indications and drive adoption. We believe that over time, our adjustable lens solution can be used to address a broad range of cataract surgery patients, including those that would otherwise elect for a conventional cataract procedure today. Additional development and clinical studies that are designed to provide clinical evidence of the safety and effectiveness of our existing and future generations of products are also anticipated. Finally, we may in the future seek to acquire or invest in additional businesses, products or technologies that we believe could complement or expand our portfolio, enhance our technical capabilities or otherwise offer growth opportunities.

On July 29, 2021, we completed our IPO, which resulted in the issuance and sale of 8,248,549 shares of common stock, including 898,549 shares sold pursuant to the exercise of the underwriters' over-allotment option at the IPO price of $16.00 per share. We received net proceeds of approximately $119.6 million from the IPO, after deducting underwriters' discounts and commissions of $9.2 million and offering costs of $3.2 million.

Prior to our IPO, our primary sources of capital have been private placements of preferred stock, a structured transaction with a strategic partner, debt financing and revenue from sales of our products. Since inception, we have raised a total of $191.3 million in net proceeds from private placements of preferred stock, $120 million from a strategic partner, approximately $40.0 million in net proceeds from a credit facility, and approximately $11.0 million from issuance of common stock primarily from stock option exercises. As of December 31, 2021, we had cash and cash equivalents of $24.4 million, short-term investments of $135.0 million, long-term debt of $39.8 million and accumulated deficit of $479.3 million. We generated sales of $22.6 million and had a net loss of $48.7 million for the year ended December 31, 2021, compared to sales of $14.7 million and net income of $27.6 million for the year ended December 31, 2020.

We intend to continue to make significant investments in our sales and marketing organization, primarily sales representatives, clinical applications specialists and technical service personnel to support new customers and upgrades and practice development personnel to facilitate adoption of use of our LALs among existing accounts. We will expand our marketing efforts with additional advertising and customer tools to expand their local advertising. We will also continue to make significant investments in research and development and clinical expenses to make enhancements in our current products. As a public company, we will incur costs that we have not previously incurred or have previously incurred at lower rates, including increased costs for employee-related expenses, director and officer insurance premiums, audit and legal fees, investor relations fees, fees to members of our Board of Directors and expenses for compliance with public-company reporting requirements. Because of these and other factors, we expect to continue to incur substantial net losses and negative cash flows from operations for at least the next several years.

We believe that our existing cash and cash equivalents and short-term investments, will enable us to fund our operating expenses and capital expenditure and meet our term loan covenant requirements for at least the next 12 months from the date of filing of this Annual Report on Form 10-K. We may also seek additional financing opportunistically. We may seek to raise any additional capital by entering into partnerships or through public or private equity offerings or debt financings, credit or loan facilities or a combination of one or more of these funding sources. If we raise additional funds by issuing equity securities, our stockholders may experience dilution.

Facility lease agreements

We currently lease four facilities housing our headquarters, manufacturing, research and development and administrative offices in Aliso Viejo, California. The facility leases are for approximately 121,000 square feet in the aggregate. The leases terminate, respectively, on (i) September 30, 2024, with one option to extend for five years; (ii) January 31, 2026, with three options to extend for five years each; (iii) March 31, 2023 with two options to extend for five years each; and (iv) August 31, 2024, with one option to extend for five years. See Note 15 - Leases and Note 18 - Subsequent Events in the "Notes to Consolidated Financial Statements" section in our consolidated financial statements included in Part II - Item 8 in this Annual Report on Form 10-K for additional information.

COVID-19 pandemic

We are subject to the continuing risks related to the public health crises, primarily the global pandemic associated with COVID-19. In December 2019, a novel strain of coronavirus, SARS-CoV-2, was reported to have surfaced in Wuhan, China. Since then, SARS-CoV-2, and the resulting disease COVID-19, has spread to most countries, and all 50 states within the United States. The COVID-19 outbreak has negatively impacted and may continue to negatively impact our operations and revenues and overall financial condition, similar to other medical device manufacturers, by decreasing the number of our products sold. RxSight has a limited commercial history, as all but eight months of commercial history has occurred during the COVID-19 crisis. Total IOL procedure volume dropped 17% in the US and 25% globally from 2019 to 2020 due principally to the COVID-19 pandemic, as health care organizations globally have prioritized the treatment of patients with COVID-19. In the United States, governmental authorities had recommended, and in certain cases required, that elective, specialty and other procedures and appointments, be suspended or canceled to avoid non-essential patient exposure to medical environments and potential infection with COVID-19 and to focus limited resources and personnel capacity toward the treatment of COVID-19. These measures and challenges may continue for the duration of the pandemic, which is uncertain, and will reduce our revenue while the pandemic continues.

Numerous state and local jurisdictions imposed, and in the future may impose, “shelter-in-place” orders, quarantines, executive orders and similar government orders and restrictions for their residents to control the spread of COVID-19. Starting in mid-March 2020, the governor of California, where our headquarters is located, issued “shelter-in-place” or “stay at home” orders restricting non-essential activities, travel and business operations for an indefinite period of time, subject to certain exceptions for necessary activities. Such orders or restrictions have resulted in our headquarters closing, work stoppages, slowdowns and delays, travel restrictions and cancellation of training and other events, among other effects, thereby negatively impacting our operations. Other disruptions or potential disruptions to our business and supply chain include restrictions on our personnel and personnel of partners to travel and access customers for training and case support; delays in approvals by regulatory bodies; delays in product development efforts; and additional government requirements or other incremental mitigation efforts that may further impact our capacity to manufacture, sell and support the use of our RxSight system. In addition, even after the “shelter-in-place” orders, quarantines, executive orders and similar government orders and restrictions for their residents to control the spread of COVID-19 were significantly reduced in the second quarter of 2021, we continue to experience disruptions to our business, including patients and customers continuing to be cautious in restarting elective procedures in light of the continued risk posed by the virus.

As we continue to actively advance our clinical, discovery and research programs, we are in close contact with the third parties we engage with, who are primarily located in the United States, and are assessing the impact of the COVID-19 pandemic on each of our programs, expected timelines and costs on an ongoing basis. In light of ongoing developments relating to the COVID-19 pandemic, the focus of healthcare providers on fighting the virus, and consistent with the FDA’s industry guidance for conducting clinical trials, we and our contract research organizations have made certain adjustments to the operation of our clinical trials in an effort to ensure the monitoring and safety of patients and minimize risk to trial integrity during the pandemic and generally. Other COVID-related guidance recently released by the FDA includes statistical considerations for clinical trials conducted during the COVID-19 public health emergency and post marketing adverse event reporting for medical products during a pandemic. We may need to make further adjustments in the future, including implementation of new policies and procedures.

While the potential economic impact brought by and the duration of COVID-19 may be difficult to assess or predict, the widespread pandemic has resulted in, and may continue to result in, significant disruption of global financial markets, reducing our ability to access capital, which could in the future negatively affect our liquidity. We expect any further shelter-in-place policies and restrictions on elective surgical procedures worldwide to have a substantial near-term impact on our revenue. During the COVID-19 pandemic, our customers, including doctors, have experienced financial hardship and some of them may not fully recover. This could lead to some of these customers temporarily or permanently shutting down, filing for bankruptcy or being acquired by larger health systems, leading to reduced procedures and/or additional pricing pressure on our products. The COVID-19 pandemic has also resulted in a significant increase in unemployment in the United States which may continue even after the pandemic. The occurrence of any such events may lead to reduced disposable income and access to health insurance which could adversely affect the number of our RxSight systems sold after the pandemic has ended.

Key business metrics

We regularly review several operating and financial metrics to evaluate our business, measure our performance, identify trends affecting our business, formulate our business plan and make strategic decisions. We believe the number of LDDs installed, LALs implanted and the number of doctors performing surgery with our products are indicators of our ability to drive adoption and generate revenue. We believe these are important metrics for our business. Due to our limited commercial history, all but eight months of which have occurred during the COVID-19 pandemic, we are not yet able to assess seasonality and other trends, and we will continue to evaluate our business in the future using these and other financial metrics as we observe trends in our business.

We believe the number of LDDs sold in each quarter and our LDD installed base at the end of each period are important metrics as they represent an installed base into which we can sell our LALs.

	2021				2020			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
LDDs Sold	13	25	31	45	15	15	20 *	23
Installed Base at End of Period	105	130	161	206	34	49	69	92

* One LDD converted from clinical to commercial use in Q3 2020.

We believe the number of LALs sold (reported as implanted in a patient) in each quarter is an important metric indicative of adoption and utilization of our RxSight system. While an important metric, the COVID-19 pandemic and severe weather periodically impacted trends in our business. In the second quarter of 2020, the number of our LALs sold decreased as compared to the first quarter of 2020 as ambulatory surgery centers (ASCs), where most cataract surgeries are performed, were closed for elective surgeries for six or more weeks. In the third quarter 2020, LALs sold increased as compared to the second quarter of 2020, reflecting, we believe, some resurgence of surgeries when ASCs re-opened, with sales of LALs in the fourth quarter of 2020 continuing to increase sequentially, despite seasonal holidays. During the first quarter of 2021, however, the U.S. saw a resurgence in COVID-19 cases attributed to holiday travel and gatherings and severe weather in Texas and other southern states, resulting in reduced LAL sales for such period. During 2021, we saw increased LDD sales of 41 and increased LAL sales of 3,857 from strong adoption of our RxSight technology by practices and doctors combined with an increased LDD installed base.

	2021				2020			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
LALs Sold	1,567	1,825	1,977	2,959	719	662	1,513	1,577

Components of results of operations

Sales

Our sales consists of the sale of LALs used in cataract surgeries, the LDDs for delivering light to the LALs to adjust the lens post-surgery, as needed, and service and accessories. Revenue is derived from sales of products primarily in the U.S. and sales to a single customer in each of Germany and Mexico. Customers are primarily comprised of ophthalmic practices (LDD sales) and ambulatory surgery centers (LAL sales). We expect revenue to increase in absolute dollars as we expand our sales organization and sales territories, add customers, expand the base of doctors that are trained to use our products, and expand awareness of our products with new and existing customers and as doctors perform more procedures using our products.

LALs are held at customer sites on consignment. The single performance obligation is satisfied, and revenue is recognized for LALs upon customer notification that the LALs have been implanted in a patient.

Our LDD contracts contain multiple performance obligations bundled into one transaction price, with all obligations generally satisfied within one year. The LDD capital asset and related components revenue is recognized upon installation and customer acceptance, training revenue is recognized upon completion of training by at least one doctor and the initial warranty and service agreement are recognized ratably over the service period. After the first year, service contracts can be purchased separately on a standalone basis. As of December 31, 2021, the Company recorded contract liabilities of $540,000 related to such service agreements and $345,000 as of December 31, 2020. Revenue for such service agreements will be recognized over the term of each contract.

For the year ended December 31, 2021 and 2020, revenue from contracts with customers consisted of the following:

	Year ended December 31,	
	2021	2020
LDD (including training)	$ 13,774	$ 10,159
LAL	8,163	4,256
Service warranty, service contracts, and accessories	656	263
	$ 22,593	$ 14,678

For the year ended December 31, 2021, we had no customers who individually accounted for more than 10% of revenue. For the year ended December 31, 2020, we had one customer who individually accounted for approximately 27% of revenue.

Cost of sales

Cost of sales consists of materials, labor and manufacturing overhead internally to produce the Company's products as well as the cost of shipping and handling. Overhead costs include the cost of quality assurance, material procurement, inventory control, facilities, equipment and operations supervision and management, including stock-based compensation. Cost of sales also includes depreciation expense for production equipment and certain direct costs such as shipping costs and royalty and license fee expense. Shipping costs billed to customers are included in sales. We expect cost of sales to increase in absolute dollars as our revenue grows and more of our products are sold.

We calculate gross margin as gross profit/loss divided by sales. Our gross margin has been and will continue to be affected by a variety of factors, including average selling prices, product sales mix, production and ordering volumes, manufacturing costs, product yields, headcount and cost-reduction strategies. Our gross margin could fluctuate from quarter to quarter as we introduce new products, and as we adopt new manufacturing processes and technologies.

Our LDD, as is typical of many medical device capital equipment products, has a low gross margin, as the material cost of the LDD is significant, representing close to 50% of the total cost to manufacture. In addition, we do not mark up our LDD substantially, as LDDs, as sold, generate LAL procedures. Our LAL gross margin is higher, with low material cost but high fixed overhead costs. As our manufacturing volume of the LAL increases, we expect the gross margin may improve significantly.

Operating expenses

Selling, general and administrative expenses

Selling, general and administrative, or SG&A, expenses consist primarily of personnel-related expenses, including wages, incentive bonuses, stock-based compensation and benefits related to administrative, selling and marketing functions, education programs for doctors, commercial operations and analytics, finance, information technology and human resource functions. Other SG&A expenses include sales commissions, travel expenses, promotional activities, marketing initiatives, market research and analysis, conferences and trade shows, training for doctors, professional services fees such as legal, patent registration costs, accounting, audit and tax fees, board of directors' expenses, insurance costs, general corporate expenses and facilities-related expenses. We expect SG&A expenses to continue to increase in absolute dollars as we expand our sales and marketing organization and infrastructure to both drive and support the anticipated growth in revenue and due to additional legal, accounting audit and tax fees, insurance and other expenses associated with being a public company.

Research and development expenses

Research and development expenses consist of expenses incurred in performing research and development and engineering activities for new products and technology, clinical studies and regulatory submissions and compliance. The expenses include personnel-related expenses, including wages, incentive bonuses, stock-based compensation and benefits, costs incurred at clinical trial sites, regulatory and manufacturing engineering costs, including those related to various laboratory and research equipment and supplies, expense of pre-approved inventory utilized for clinical trial and research purposes, costs incurred in the development of manufacturing processes in excess of

capitalizable value, fees paid to consultants and contract clinical organizations and direct FDA related costs and costs related to FDA premarket approval submission preparation. Research and development expenses are expensed as incurred. We expect R&D expenses as a percentage of revenue to vary over time depending on the level and timing of our new product development efforts, as well as our clinical development, clinical trials and registries and other related activities.

Change in fair value of warrants

Change in fair value of warrants consists of gains and losses resulting from the remeasurement of the fair value of our preferred stock warrant liabilities at each balance sheet date. We continued to record adjustments to the estimated fair value of the preferred stock warrants until the conversion of the underlying convertible preferred stock into common stock which occurred immediately prior to the completion of our IPO in July 2021.

Interest expense

Interest expense consists primarily of interest incurred on our outstanding indebtedness and non-cash interest related to the amortization of debt discount and issuance costs associated with our indebtedness.

Interest and other income, net

Interest and other income, net consists primarily of interest income earned on our cash and cash equivalents.

Accretion to redemption value of redeemable preferred stock and preferred stock options

Due to the Special Redemption provision in place in our Articles of Incorporation and until the unexercised Series W Warrant expiration on March 31, 2021, all equity instruments were redeemable and evaluated as probable of redemption through early December 2020. No accretion was calculated during the year ended December 31, 2021. For common and preferred stock, the value of the accretion was calculated as the estimated future redemption amount accreted to the estimated redemption date using the effective interest rate. For stock options the value of accretion was calculated at the estimated future redemption amount less the strike price, recognized over the same period as the corresponding service period for which stock-based compensation is recognized.

Earnings allocated to redeemable preferred stock

Prior to our IPO in July 2021, the Company had two classes of common stock and participating securities, which include convertible preferred stock. The Company's participating securities did not have a contractual obligation to share in the Company's losses. Basic and diluted net income (loss) per share attributable to common stockholders is presented in conformity with the two-class method required for participating securities. In periods of net income, after adjusting for accretion and dividends, net income is attributed to both common stockholders and participating security holders, as if all of the earnings for the period had been distributed. Diluted earnings per share under the two-class method is calculated using the more dilutive of the treasury stock or the two-class method.

Comprehensive (Loss) income

All components of comprehensive income, including net income (loss), are reported in the consolidated financial statements in the period in which they are recognized. Comprehensive income (loss) is defined as the change in equity during a period from transactions and other events and circumstances from non-owner sources, including unrealized gains and losses on short-term investments and foreign currency translation adjustments.

Results of operations

Comparison of the years ended December 31, 2021 and 2020

The following table summarizes our results of operations for the years ended December 31, 2021 and 2020, together with the dollar increase or decrease and percentage change in those items:

(in thousands, except share amounts, per-share data and percentages)	Year Ended December 31, 2021	Year Ended December 31, 2020	Change ($)	Change (%)
Sales	$ 22,593	$ 14,678	$ 7,915	53.9 %
Cost of sales	18,076	12,973	5,103	39.3
Gross profit	$ 4,517	$ 1,705	$ 2,812	164.9 %
Operating expenses:				
Selling, general and administrative	32,805	15,176	17,629	116.2
Research and development	24,499	21,934	2,565	11.7
Loss on sale of equipment	—	7	(7)	(100.0)%
Total operating expenses	57,304	37,117	20,187	54.4
Loss from operations	$ (52,787)	$ (35,412)	$ (17,375)	49.1 %
Other income (expense):				
Change in fair value of warrants	2,717	63,011	(60,294)	(95.7)
Expiration of warrants	5,018	—	5,018	—
Interest expense	(3,682)	(510)	(3,172)	621.9
Interest and other income	54	543	(489)	(90.1)
Total other income (expense), net:	4,107	63,044	(58,937)	(93.5)%
(Loss) income before income taxes	(48,680)	27,632	(76,312)	(276.2)
Income tax expense	8	57	(49)	(86.8)
Net (loss) income	$ (48,688)	$ 27,575	$ (76,263)	(276.6)%
Accretion to redemption value of redeemable preferred stock and redeemable stock options	—	(24,209)	24,209	(100.0)
Net (loss) income attributable to common stockholders	(48,688)	3,366	(52,054)	(1,546.3)
Other comprehensive (loss) income				
Unrealized loss on short-term investments	(7)	(49)	42	(85.6)
Foreign currency translation loss	(10)	—	(10)	—
Total other comprehensive (loss) income	(17)	(49)	32	(65.9)
Comprehensive (loss) income	$ (48,705)	$ 27,526	$ (76,231)	(276.9)%

Sales

Sales increased by $7.9 million to $22.6 million for the year ended December 31, 2021 from $14.7 million for the year ended December 31, 2020. The increase in sales was due to sales of 41 more LDDs and 3,857 more LALs.

Cost of sales

Cost of sales increased by $5.1 million, or 39.3%, to $18.1 million for the year ended December 31, 2021 from $13.0 million for the year ended December 31, 2020 due to the increase in the number of products sold and by the recording of a $2.4 million reserve for excess LAL inventory as a result of the recent introduction of an updated LAL including our ActivShield technology. Gross margin increased to 20.0% in the year ended December 31, 2021 from 11.6% due to improved operating leverage on a higher volume of units sold.

Selling, general and administrative expenses

Selling, general and administrative expenses increased by $17.6 million, or 116.2%, to $32.8 million for the year ended December 31, 2021, from $15.2 million for the year ended December 31, 2020. This increase was

primarily attributable to an increase in selling and marketing personnel costs of $9.3 million due mainly to additional headcount as well as increased travel costs of $1.0 million and increased trade show costs of $0.7 million when compared to the year ended December 31, 2020, due to temporary reduction in travel costs caused by COVID-19 for the year ended December 31, 2020. General and administrative personnel expenses increased by $6.6 million due primarily to $2.4 million of increased costs related to operating as a public company, and $3.6 million related to increased headcount, reinstatement of incentive bonuses and increased stock-based compensation. Selling, general and administrative expenses reflected temporary reductions in salaries that were in place for the year ended December 31, 2020.

Research and development expenses

Research and development expenses increased by $2.6 million to $24.5 million for the year ended December 31, 2021 from $21.9 million for the year ended December 31, 2020, an increase of 11.7%. This increase was primarily attributable to an increase of $2.4 million in personnel costs due primarily to increased personnel headcount and reinstatement of incentive bonuses and an increase in stock-based compensation expense of $0.7 million.

Loss on sale of equipment

Loss on sales of equipment was $0 for the year ended December 31, 2021 as compared to $7.0 thousand for the year ended December 31, 2020.

Other income (expense)

Other income, net, decreased by $58.9 million to $4.1 million for the year ended December 31, 2021 from $63.0 million for the year ended December 31, 2020 primarily due to the revaluation of the fair value of warrant liabilities of $63.0 million for the year ended December 31, 2020, and for the year ended December 31, 2021, an increase of interest expense of $3.2 million from increased borrowings partially offset by a gain on expiration of preferred stock warrants classified as liabilities of $5.0 million.

Accretion to redemption value of redeemable preferred stock and redeemable stock options

No accretion to redemption value of redeemable preferred stock and redeemable stock options was recorded during the year ended December 31, 2021 due the determination that the redemption of these equity instruments was no longer probable in December 2020 when accretion ceased and the expiration of the Common W warrant on March 31, 2021. Accretion to redemption value of redeemable preferred stock and redeemable stock options was $24.2 million for the year ended December 31, 2020.

Other comprehensive income (loss)

Other comprehensive loss decreased by $32.0 thousand to a loss of $17.0 thousand for the year ended December 31, 2021 from a loss of $49.0 thousand for the year ended December 31, 2020 due primarily to a decrease of $42.0 thousand in unrealized loss on short-term investments.

Liquidity and capital resources

Sources of liquidity

We have incurred significant operating losses and negative cash flows from operations since our inception, and we anticipate that we will incur significant losses for at least the next several years. As of December 31, 2021, we had cash, cash equivalents and short-term investments of $159.3 million. For the years ended December 31, 2021 and 2020, our net losses from operations were $52.8 and $35.4 million, respectively, and our net cash used in operating activities was $44.7 million and $35.2, respectively. We had an accumulated deficit of $479.3 million as of December 31, 2021.

Prior to our IPO, which we completed in July 2021, our primary sources of capital were private placements of preferred stock, a structured transaction with a strategic partner, debt financing and from sales of our products.

On July 29, 2021, the Company completed its IPO through an underwritten sale of 7,350,000 shares of its common stock at a price of $16.00 per share. The aggregate net proceeds from the offering, inclusive of an additional 898,549 common shares sold upon the partial exercise of the underwriters' over-allotment option, after deducting

underwriting discounts and commissions and other offering expenses, were approximately $120.0 million. On July 29, 2021, the Company restated its certificate of incorporation and bylaws which provide for, among other things, the Company's authorized capital stock to consist of 900,000,000 shares of common stock, par value $0.001 per share, and 100,000,000 shares of convertible preferred stock, par value $0.001 per share. The restated certificate define the voting rights, dividends, liquidation, rights and preferences of each class of stock.

Funding requirements

Our future liquidity and capital funding requirements will depend on numerous factors, including:

- our revenue growth;
- our research and development efforts;
- our sales and marketing activities;
- our ability to raise additional funds to finance our operations;
- the outcome, costs and timing of any clinical trial results for our current or future products;
- the emergence and effect of competing or complementary products;
- our ability to maintain, expand, enforce and defend our intellectual property portfolio, including the amount and timing of any payments we may be required to make, or that we may receive, in connection with the licensing, filing, prosecution, maintenance, defense and enforcement of any patents or other intellectual property rights;
- our ability to retain our current employees and the need and ability to hire additional management, sales, research and development, scientific and customer support personnel;
- the terms and timing of any collaborative, licensing or other arrangements that we have or may establish;
- debt service requirements;
- operating and finance lease payments for our facilities;
- the extent to which we acquire or invest in businesses, products or technologies; and
- the impact of the COVID-19 pandemic.

Based on our current planned operations, we expect that our current cash, cash equivalents and short-term investments will be sufficient to fund our operations for the next 12 months after the date our most recent financial statements were issued. Our ability to continue as a going concern is dependent upon our ability to successfully secure sources of financing from equity or debt securities, loans or collaborative agreements and ultimately achieve profitable operations. In the long-term it is likely we will require additional financing from debt or equity to satisfy our liquidity requirements, fund working capital and pay our obligations. There can be no assurance that we will be successful in acquiring additional funding at levels sufficient to fund our operations or on terms favorable to us, if at all. If adequate funds are not available on acceptable terms when needed, we may be required to significantly reduce operating activities, which may have a material adverse effect on our business and/or results of operations and financial condition. If we do raise additional capital through public or private equity or convertible debt offerings, the ownership interest of our existing stockholders will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect our existing stockholders' rights. If we raise additional capital through debt financing, we may be subject to covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends. Additional capital may not be available on reasonable terms, or at all.

See Part I, Item 1A (Risk Factors) of this Annual Report on Form 10-K for additional risks associated with our substantial capital requirements and .Note 15 - Leases and Note 18 - Subsequent Events in the "Notes to

Consolidated Financial Statements" section titled "Leases" in Note 15 to our consolidated financial statements included in Part II - Item 8 in this Annual Report on Form 10-K for additional information.

Summary statement of cash flows

The following table sets forth the primary sources and uses of cash, cash equivalents, and restricted cash for each of the periods presented below:

	Year Ended December 31,	
	2021	**2020**
Net cash (used in) provided by:		
Operating activities	$ (44,708)	$ (35,203)
Investing activities	(81,907)	15,591
Financing activities	137,342	25,237
Effect of foreign exchange rate on cash, cash equivalents and restricted cash	(10)	—
Net increase in cash, cash equivalents and restricted cash	$ 10,717	$ 5,625

Cash used in operating activities

Net cash used in operating activities for the year ended December 31, 2021 was $44.7 million, consisting primarily of a net loss of $48.7 million, a non-cash gain on expiration of an unexercised warrant of $5.0 million, an increase in operating assets and liabilities of $2.7 million, offset by non-cash stock-based compensation of $7.6 million and depreciation and amortization of $4.0 million and the provision for obsolete and excess inventory of $2.4 million.

Net cash used in operating activities for the year ended December 31, 2020 was $35.2 million, consisting primarily loss from operations of $35.4 million, an increase in operating assets and liabilities of $7.8 million and offset by non-cash stock-based compensation of $4.2 million and depreciation and amortization of $3.9 million.

Cash used in investing activities

Net cash used in investing activities for the year ended December 31, 2021 was $81.9 million, consisting of net purchases of short-term investments of $80.0 million and purchases of property and equipment of $1.9 million.

Net cash provided by investing activities for the year ended December 31, 2020 was $15.6 million, consisting of net maturities in short-term investments of $18.1 million, offset by net purchases of property and equipment of $2.5 million.

Cash from financing activities

Net cash from financing activities for the year ended December 31, 2021 was $137.3 million, consisting primarily of net proceeds from the IPO of $119.6 million and a draw on the Company's term loan of $15.0 million and proceeds from stock options exercised of $1.6 million.

Net cash from financing activities for the year ended December 31, 2020 was $25.2 million, consisting of a draw on the Company's term loan of $25.0 million, net, proceeds of stock options and warrants exercised of $1.1 million, offset in part by principal payments on finance lease liabilities of $0.1 million.

Term Loan

In October 2020, we entered into a loan and security agreement, or the ("Term Loan"), with Bank of America, as collateral agent, and Oxford Finance LLC, or Oxford Finance, as lender. The Term Loan provides for a tranche one loan advance in the amount of $25.0 million, which was fully funded on the closing date by the lender, a second tranche of $5.0 million in the first quarter of 2021, which was advanced on March 29, 2021, and a third tranche of $10.0 million in the second quarter of 2021, which was advanced on June 28, 2021. The Term Loan also provides for an additional two tranches in the amount of $5.0 million each in 2021, which were not advanced. A final tranche in an amount of $10.0 million is available in the first quarter of 2022, which we do not intend to borrow. We refer

to our tranche one loan advance, tranche two loan advance and tranche three loan advance collectively as our credit facility.

The Term Loan is secured by substantially all of our personal property other than our intellectual property, but includes any accounts receivable, other amounts owed and any proceeds of intellectual property. We also entered into a negative pledge arrangement with the collateral agent and lenders where we agreed not to encumber any of our intellectual property. Outstanding borrowings under the credit facility bear interest at an annual rate equal to the greater of (i) the Wall Street Journal 30-day LIBOR plus 9.09% and 0.16% or (ii) 9.25%. At our election, we may also switch to an interest rate equal to 10.25% plus the greater of (i) The Wall Street Journal Prime rate or (ii) 7%. The interest rate resets monthly on the last day of the month prior to the month in which interest accrues, and an actual/360-day convention applies. If we are considered to be in default, additional interest of 5% applies. Through December 1, 2023, which is the interest-only period, we are required to make interest-only payments. The interest- only period may be extended to December 1, 2024.

The Term Loan requires 36 months of interest-only payments, followed by 23-months of amortization. If the Company is in compliance with the Performance to Plan covenant through October 31, 2023, the interest-only period is extended by 12 months, and the amortization period is reduced by 11 months. Payments are due on the first day of each month in arrears. All unpaid amounts under the Term Loan mature on October 1, 2025.

Borrowings under the credit facility are pre-payable at any time without penalty; however, the loan must be prepaid in full or in part one time in an amount not less than $5.0 million and amounts prepaid may not be subsequently reborrowed. The Company did not fully prepay the loan by December 31, 2021, and accordingly became subject to an additional fee (the “Exit Fee”). The fee is 3% of the original loan amount if prepaid between January 1, 2022, and October 31, 2022 ($750 thousand); 4% if prepaid between November 1, 2022 and October 31, 2023 ($1.0 million); and 5% ($1.25 million) if paid subsequently, including at maturity. The loan may be accelerated by Oxford in the event of a default. The Term Loan also includes certain customary affirmative and negative covenants, including certain financial covenants if the lenders make us the additional tranche advances. We were in compliance with all covenants under the Term Loan as of December 31, 2021.

We also have a standby letter of credit, expiring September 30, 2024, issued by a financial institution as a required security for one operating lease. The aggregate amount of the letter of credit was $0.3 million and $0.4 million as of December 31, 2021 and 2020, respectively.

Critical accounting policies, significant judgments and use of estimates

Our management’s discussion and analysis of financial condition and results of operations is based on our financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America, (“GAAP”). The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported expenses incurred during the reporting periods. Our estimates are based on our historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions, which may affect our future financial statement presentation, financial condition, results of operations and cash flows. Our significant accounting policies are more fully described in the notes to our consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

There were no material changes to our critical accounting policies or in the methodology used for estimates from those described in “Management's Discussion and Analysis of Financial Condition and Results of Operations” included in our Prospectus filed with the SEC in accordance with Rule 424(b) of the Securities Act on July 29, 2021 in connection with our IPO. We believe that the assumptions and estimates associated with revenue recognition, stock-based compensation and determination of fair value of common stock have the most significant impact on our consolidated financial statements. We believe that the following accounting policies we use are the most critical to the process of making significant judgments and estimates in the preparation of our consolidated financial statements and understanding and evaluating our reported financial results.

Revenue recognition

Our revenues from sales are generated from the sale of light adjustable intraocular lenses, the LAL, used in cataract surgery along with a specifically designed machine for delivering light to the eye, the Light Delivery Device ("LDD"), to adjust the lens post-surgery, as needed. Revenue from sales is recognized from products sold in the U.S. and Europe. Customers are primarily comprised of ambulatory surgery centers, hospitals, and physician private practices.

We recognize revenue from sales when promised goods or services are transferred to customers at a transaction price that reflects the consideration to which we expect to be entitled in exchange for those goods and services. Specifically, we apply the following five steps to recognize revenue from sales: (i) identify the contract(s) with a customer; (ii) identify the performance obligations in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue from sales when, or as, we satisfy a performance obligation. We apply the five-step model to contracts when it is probable that it will collect the consideration to which it is entitled in exchange for the goods or services it transfers to the customer. At contract inception, we assess the goods promised within each customer contract to determine the individual deliverables in its product offerings as separate performance obligations and assesses whether each promised good or service is distinct. The transaction price is determined based on the consideration expected to be received, based either on the stated value in contractual arrangements or the estimated cash to be collected in non-contracted arrangements. We recognize revenue from sales as the amount of the transaction price that is allocated to the respective performance obligation when, or as, the performance obligation is satisfied, considering whether or not this occurs at a point in time or over time. We elected to account for shipping costs as fulfillment costs rather than a promised service and exclude from revenue any taxes collected from customers that are remitted to government authorities.

Our LDD contracts contain multiple performance obligations bundled for one transaction price, with all obligations generally satisfied within one year. For these bundled arrangements, we account for individual products and services as separate performance obligations if they are distinct, that is, if a product or service is separately identifiable from other items in the bundled package, and if a customer can benefit from it on its own or with other resources that are readily available to the customer. Our LDD contracts include a combination of the following performance obligations: (1) LDD capital asset and related components, (2) training and (3) device service (initial year). Each of these three performance obligations are considered distinct. The LDD capital asset is distinct because the customer can benefit from it together with other resources that are readily available to the customer. Training on the use of the machine is offered as a distinct activity after installation of the LDD to enhance the customer's ability to utilize the machine by having an industry professional provide best practices and customize training to the specific needs of the customer. Each LDD comes with a twelve-month manufacturer's warranty (service-type) that includes preventative maintenance, unscheduled service (labor and parts) and software updates. After the first year, service contracts can be purchased separately on a standalone basis. We recognize revenue as performance obligations are satisfied by transferring control of the product or service to a customer. Specifically, revenue for the LDD capital asset is recognized at a point in time at installation. Revenue for training is also recorded at a point in time, generally 30 days after installation. Revenue for the device service is recognized ratably over time after installation, generally 12 months. We have determined that the transaction price is the invoice price, net of adjustments, if any. The allocation to the separate performance obligations is based upon the relative standalone selling price. Standalone selling prices are based on observable prices at which we separately sell the products or services. We estimate the standalone selling price using the market assessment approach considering market conditions and entity-specific factors including, but not limited to, features and functionality of the products and services, geographies, type of customer and market conditions. The Company regularly reviews and updates standalone selling prices as necessary.

LALs are held at customer sites on consignment. The single performance obligation is satisfied, and revenue from sales is recognized for LALs upon customer notification that the LALs have been implanted in a patient. For the year ended December 31, 2021 and 2020, credits related to returns and rebates on list prices were not significant.

The Company adopted the practical expedient permitting the direct expensing of costs incurred to obtain contracts where the amortization of such costs would occur over one year or less, and it applied to substantially all the Company's contracts.

Stock-based compensation

We account for stock-based payments at fair value. For stock-based awards that vest subject to the satisfaction of a service requirement, the fair value measurement date for such awards is the date of grant and the expense is recognized on a straight-line basis, over the expected vesting period. For stock-based awards that vest subject to a performance condition, we recognize compensation cost for awards if and when we conclude that it is probable that the awards with a performance condition will be achieved on an accelerated attribution method. We account for forfeitures as they occur.

We calculate the fair value measurement of stock options using the Black-Scholes option pricing model and assumptions discussed below. Each of these inputs is complex, subjective and generally requires significant judgment.

Fair value of common stock—see the subsection titled "*Determination of fair value of common stock*" below.

Expected Term—The expected term represents the period that we expect our stock-based awards to be outstanding. We used the simplified method (based on the mid-point between the vesting date and the end of the contractual term) to determine the expected term.

Expected Volatility—Since we were privately held and did not have any trading history for our common stock, nor do we have a long trading history since the IPO in July of 2021, the expected volatility was estimated based on the average historical volatilities for comparable publicly traded medical device companies over a period equal to the expected term of the stock option grants. The comparable companies were chosen based on their similar size, stage in the life cycle and area of specialty. We will continue to apply this process until a sufficient amount of historical information regarding the volatility of our stock price becomes available.

Risk-Free Interest Rate—The risk-free interest rate is based on the U.S. Treasury zero coupon issues in effect at the time of grant for periods corresponding with the expected term of option.

Dividend Yield—We have never paid dividends on common stock and have no plans to pay dividends on our common stock. Therefore, we used an expected dividend yield of zero.

See Note 12 - Stock Based Compensation Expense to our audited consolidated financial statements included in this Annual Report on Form 10-K for more information concerning certain of the specific assumptions we used in applying the Black-Scholes option pricing model to determine the estimated fair value of our stock options. Certain of such assumptions involve inherent uncertainties and the application of significant judgment. As a result, if factors or expected outcomes change and we use significantly different assumptions or estimates, our stock-based compensation could be materially different.

Determination of fair value of common stock

We are required to estimate the fair value of the common stock underlying our stock-based awards. Prior to our IPO in July 2021, the fair value of our common stock underlying share-based awards was estimated on each grant date by our Board of Directors. In order to determine the fair value of our common stock underlying option grants, our Board of Directors considered, among other things, valuations of our common stock prepared by an unrelated third-party valuation firm in accordance with the guidance provided by the American Institute of Certified Public Accountants Practice Guide, Valuation of Privately-Held-Company Equity Securities Issued as Compensation. Prior to the IPO, we considered an input to the pricing models in determining the fair value of our common stock, a critical accounting estimate.

For all grants subsequent to our IPO in July 2021, the fair value of common stock was determined by using the closing price per share of common stock as reported on the Nasdaq Global Market.

Off-balance sheet arrangements

We do not have any off-balance sheet arrangements, as defined by applicable regulations of the SEC, that are reasonably likely to have a current or future material effect on our financial condition, results of operations, liquidity, capital expenditures or capital resources.

Indemnification agreements

We enter into standard indemnification arrangements in the ordinary course of business. Pursuant to these arrangements, we indemnify, hold harmless and agree to reimburse the indemnified parties for losses suffered or incurred by the indemnified party, in connection with any trade secret, copyright, patent or other intellectual property infringement, misappropriation or other violation claim by any third party with respect to its technology. The term of these indemnification agreements is generally perpetual any time after the execution of the agreement. The maximum potential amount of future payments we could be required to make under these arrangements is not determinable. We have never incurred costs to defend lawsuits or settle claims related to these indemnification agreements. As a result, we believe the fair value of these agreements is minimal.

Recent accounting pronouncements

See the section titled “Summary of Accounting Policies—Recent Accounting Pronouncements” in Note 2 to our consolidated financial statements included in Part II - Item 8 in this Annual Report on Form 10-K for additional information.

Emerging growth company and smaller reporting company status

We are an “emerging growth company,” as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act. As such, we are eligible for exemptions from various reporting requirements applicable to other public companies that are not emerging growth companies, including, but not limited to, presenting only two years of audited financial statements in addition to any required unaudited interim financial statements with correspondingly reduced “Management’s Discussion and Analysis of Financial Condition and Results of Operations” disclosure in this Annual Report, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation, and an exemption from the requirements to obtain a non-binding advisory vote on executive compensation or golden parachute arrangements. We have elected to take advantage of certain of the reduced disclosure obligations in this Annual Report and may elect to take advantage of other reduced reporting requirements in our future filings with the SEC. As a result, the information that we provide to our stockholders may be different than you might receive from other public reporting companies in which you hold equity interests.

The JOBS Act permits an “emerging growth company” such as us to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies. However, we have chosen to irrevocably “opt out” of such extended transition period, and as a result, we will comply with new or revised accounting standards on the relevant dates on which adoption of such standards is required for non-emerging growth companies.

We will remain an emerging growth company until the earliest of: (i) the last day of the fiscal year following the fifth anniversary of the consummation of our initial public offering (i.e. December 31, 2026); (ii) the last day of the fiscal year in which we have total annual gross revenue of at least $1.07 billion; (iii) the last day of the fiscal year in which we are deemed to be a “large accelerated filer” as defined in Rule 12b-2 under the Exchange Act, which would occur if the market value of our common stock held by non-affiliates exceeded $700.0 million as of the last business day of the second fiscal quarter of such year; or (iv) the date on which we have issued more than $1.0 billion in non-convertible debt securities during the prior three-year period.

We are also a “smaller reporting company” as defined in the Exchange Act. We may continue to be a smaller reporting company even after we are no longer an emerging growth company. We may take advantage of certain of the scaled disclosures available to smaller reporting companies and will be able to take advantage of these scaled disclosures for so long as our voting and non-voting common stock held by non-affiliates is less than $250.0 million measured on the last business day of our second fiscal quarter, or our annual revenue is less than $100.0 million during the most recently completed fiscal year and our voting and non-voting common stock held by non-affiliates is less than $700.0 million measured on the last business day of our second fiscal quarter.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk.

As a smaller reporting company, we are not required to provide disclosure under this item.

Item 8. Financial Statements and Supplementary Data.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of RxSight, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of RxSight, Inc. (the Company) as of December 31, 2021 and 2020, the related consolidated statements of operations and comprehensive income (loss), redeemable common stock, stock options, convertible preferred stock and stockholders' equity (deficit) and cash flows for each of the two years in the period ended December 31, 2021, and the related notes collectively referred to as the "consolidated financial statements". In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2021 and 2020, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2021, in conformity with U.S. generally accepted accounting principles.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Ernst & Young, LLP

We have served as the Company's auditor since 2015.

Irvine, California

March 8, 2022

RxSIGHT, INC.
CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share amounts)

	December 31, 2021	December 31, 2020
Assets		
Current assets:		
Cash and cash equivalents	$ 24,361	$ 13,994
Short-term investments	134,971	54,981
Accounts receivable	4,862	2,865
Inventories	8,032	8,288
Prepaid and other current assets	4,069	1,372
Total current assets	176,295	81,500
Property and equipment, net	11,217	13,287
Operating leases right-of-use assets	4,284	5,319
Restricted cash	811	461
Other assets	114	110
Total assets	$ 192,721	$ 100,677
Liabilities, redeemable common stock, stock options, convertible preferred stock and stockholders' equity (deficit)		
Current liabilities:		
Accounts payable	$ 1,689	$ 1,134
Accrued expenses and other current liabilities	7,859	4,174
Warrant liability	—	5,018
Lease liabilities	1,529	1,274
Total current liabilities	11,077	11,600
Long-term warrant liability	—	3,828
Long-term lease liabilities	3,642	5,079
Term loan, net	39,760	24,399
Total liabilities	54,479	44,906
Commitments and contingencies (*Note 16)*		
Redeemable common stock:		
Common stock, $0.001 par value, no shares authorized, issued or outstanding as of December 31, 2021 and 24,545,966 shares authorized, 3,813,450 shares issued and outstanding as of December 31, 2020	—	80,780
Notes receivable for common stock issued	—	(803)
Redeemable stock options	—	53,085
Convertible preferred stock:		
Preferred stock, $0.001 par value, no shares authorized, issued or outstanding as of December 31, 2021 and 16,572,792 shares authorized, 14,376,272 shares issued and outstanding as of December 31, 2020 (redeemable)	—	353,300
Stockholders' equity (deficit):		
Common stock, $0.001 par value, 900,000,000 shares authorized, 27,366,746 shares issued and outstanding as of December 31, 2021	27	—
Preferred stock, $0.001 par value, 100,000,000 shares authorized, no shares issued and outstanding	—	—
Additional paid-in capital	617,511	—
Series G common stock, $0.001 par value, no share authorized or outstanding as of December 31, 2021 and 1 share authorized, issued and outstanding as of December 31, 2020	—	—
Series W common stock, $0.001 par value, no share authorized, issued or outstanding as of December 31, 2021 and 1 share authorized and no share outstanding as of December 31, 2020	—	—
Accumulated other comprehensive loss	(20)	(3)
Accumulated deficit	(479,276)	(430,588)
Total stockholders' equity (deficit)	138,242	(430,591)
Total liabilities, redeemable common stock, stock options, convertible preferred stock and stockholders' equity (deficit)	$ 192,721	$ 100,677

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

RxSIGHT, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE (LOSS) INCOME
(In thousands, except share and per share amounts)

	Year Ended December 31,	
	2021	**2020**
Sales	$ 22,593	$ 14,678
Cost of sales	18,076	12,973
Gross profit	4,517	1,705
Operating expenses:		
Selling, general and administrative	32,805	15,176
Research and development	24,499	21,934
Loss on sale of equipment	—	7
Total operating expenses	57,304	37,117
Loss from operations	(52,787)	(35,412)
Other income (expense):		
Change in fair value of warrants	2,717	63,011
Expiration of warrant	5,018	—
Interest expense	(3,682)	(510)
Interest and other income, net	54	543
(Loss) income before income taxes	(48,680)	27,632
Income tax expense	8	57
Net (loss) income	(48,688)	27,575
Accretion to redemption value of redeemable preferred stock and redeemable stock options	—	(24,209)
Net (loss) income attributable to common stockholders	(48,688)	3,366
Other comprehensive loss		
Unrealized loss on short-term investments	(7)	(49)
Foreign currency translation loss	(10)	—
Total other comprehensive loss	(17)	(49)
Comprehensive loss (income)	$ (48,705)	$ 27,526
Net (loss) income per share:		
Attributable to common stock, basic	$ (3.57)	$ 0.91
Attributable to common stock, diluted	$ (3.57)	$ 0.15
Attributable to Series G common stock, basic	$ —	$ (0.39)
Attributable to Series G common stock, diluted	$ —	$ (0.62)
Weighted-average shares used in computing net income (loss) per share:		
Attributable to common stock, basic	13,625,044	3,707,207
Attributable to common stock, diluted	13,625,044	5,532,305
Attributable to Series G common stock, basic and diluted	—	1

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

RxSIGHT, INC.
CONSOLIDATED STATEMENTS OF REDEEMABLE COMMON STOCK, STOCK OPTIONS, CONVERTIBLE PREFERED STOCK AND STOCKHOLDERS' EQUITY (DEFICIT)
(In thousands, except number of shares)

	Redeemable common stock		Notes receivable for redeemable common stock issued	Redeemable stock options	Convertible preferred stock		Common stock		Additional paid-in capital	Notes receivable for common stock issued	Accumulated other comprehensive income (loss)	Accumulated deficit	Total stockholders' deficit
	Shares	Amount			Shares	Amount	Shares	Amount					
Balance at December 31, 2019	3,563,884	$ 56,422	$ (855)	$ 59,631	14,374,455	$ 327,581	1	$ -	$ -	$ -	$ 46	$ (419,855)	$ (419,809)
Exercise of stock options	249,566	6,075	-	(5,083)	-	-	-	-	-	-	-	-	-
Exercise of warrants	-	-	-	-	1,817	47	-	-		-	-	-	-
Stock-based compensation expense	-	-	-	-	-	-	-	-	4,185	-	-	-	4,185
Accretion to redemption value of redeemable stock options	-	-	-	(1,463)	-	-	-	-		-		1,461	1,461
Accretion to redemption value of redeemable stock	-	18,283	-		-	25,672	-	-	(4,185)	-	-	(39,769)	(43,954)
Change in notes receivable for common stock issued			52	-	-	-	-	-		-	-	-	-
Unrealized loss on short-term investments and cash equivalents, net of tax	-	-	-	-	-	-	-	-		-	(49)		(49)
Net income					-	-	-	-	-	-	-	27,575	27,575
Balance at December 31, 2020	3,813,450	$ 80,780	$ (803)	$ 53,085	14,376,272	$ 353,300	1	$ -	$ -	$ -	$ (3)	$ (430,588)	$ (430,591)
Exercise of stock options	280,545	6,922	-	(5,715)		-	83,958	-	347	-	-	-	347
Stock-based compensation expense	-	-	-	-	-	-	-	-	7,575	-	-	-	7,575
Proceeds from notes receivable	-	-	-	-	-	-	-	-		136	-	-	136
Surrender of common stock in exchange for cancellation of note receivable	-	-	-	-	-		(11,011)	-	(229)	229	-	-	-
Reclassification of 4,093,995 shares of redeemable common stock to 4,093,995 shares of common stock	(4,093,995)	(87,702)	817	-			4,093,995	4	87,698	(817)	-	-	86,885
Reclassification of redeemable common stock options to common stock options	-	-	-	(47,370)			-	-	47,370	-	-	-	47,370
Change in notes receivable for common stock issued	-	-	(14)	-	-	-				452	-	-	452
Exercise of preferred stock warrants, net of shares withheld for exercise price	-	-	-	-	100,261	3,912			(2,011)	-	-	-	(2,011)
Conversion of preferred stock to common stock upon initial public offering, net of fractional shares settled for $11	-	-	-	-	(14,476,533)	(357,212)	14,951,254	15	357,187	-	-	-	357,202
Issuance of common stock in connection with initial public offering, net of issuance costs of $12.4 million	-	-	-	-	-	-	8,248,549	8	119,574	-		-	119,582
Unrealized loss on short-term investments and cash equivalents, net of tax	-	-	-	-	-	-	-	-		-	(7)	-	(7)
Foreign currency translation adjustment	-	-	-	-	-	-	-	-		-	(10)	-	(10)
Net loss	-	-	-	-	-	-	-	-	-	-	-	(48,688)	(48,688)
Balance at December 31, 2021	-	$ -	$ -	$ -	-	$ -	27,366,746	$ 27	$ 617,511	$ -	$ (20)	$ (479,276)	$ 138,242

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

RxSIGHT, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Year Ended December 31,	
	2021	**2020**
Operating Activities:		
Net (loss) income	$ (48,688)	$ 27,575
Adjustments to reconcile net (loss) income to net cash used in operating activities:		
Depreciation and amortization	3,975	3,853
Amortization of right-of-use lease assets	13	159
Amortization of debt issuance costs and premium	493	85
Change in fair value of warrants	(2,717)	(63,011)
Gain on expiration of warrant	(5,018)	—
Amortization of discount on short-term investments	(30)	(446)
Stock-based compensation	7,575	4,185
Gain on sale of equipment	—	7
Provision for excess and obsolete inventory	2,367	238
Change in operating assets and liabilities:		
Accounts receivable	(1,996)	(2,076)
Inventories	(2,111)	(1,307)
Prepaid and other assets	(2,809)	180
Accounts payable	555	(954)
Accrued expenses and other liabilities	3,683	(3,691)
Net cash used in operating activities	(44,708)	(35,203)
Investing Activities:		
Purchases of property and equipment	(1,940)	(2,539)
Proceeds from sale of equipment	—	3
Maturity of short-term investments	80,000	116,000
Purchase of short-term investments	(159,967)	(97,873)
Net cash (used in) provided by investing activities	(81,907)	15,591
Financing Activities:		
Proceeds from term loan	15,000	25,000
Payments of debt issuance costs	(132)	(687)
Proceeds from exercise of preferred stock warrants	790	23
Proceeds from initial public offering, net of underwriting discounts and commissions and offering costs	119,582	—
Principal payments on finance lease liabilities	(27)	(142)
Change in notes receivables for redeemable common stock issued	575	51
Proceeds from exercise of stock options	1,554	992
Net cash provided by financing activities	137,342	25,237
Effect of foreign exchange rate on cash, cash equivalents and restricted cash	(10)	—
Net increase in cash, cash equivalents and restricted cash	10,717	5,625
Cash, cash equivalents and restricted cash - beginning of period	14,455	8,830
Cash, cash equivalents and restricted cash - end of period	$ 25,172	$ 14,455
Supplemental disclosure of cash flow information:		
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	$ 1,269	$ 987
Cash paid for income taxes	$ 20	$ 61
Cash paid for interest on financing leases	$ 5	$ 14
Cash paid for interest on term loan	$ 3,182	$ 411
Non-cash investing and financing activities:		
Right-of-use assets obtained in exchange for lease obligations:		
Operating lease	$ 126	$ 1,953
Finance lease	$ —	$ 48
Lease obligations recorded for right-of-use assets:		
Operating lease	$ 126	$ 1,953
Finance lease	$ —	$ 48
Acquisition of property and equipment included in accounts payable and accrued expenses and other current liabilities	$ 30	$ 40
Accretion to redemption value of redeemable stock and stock options	$ —	$ 38,308
Payment-in-kind interest income added to principal of notes receivable	$ 28	$ 54
Reclassification from warrant liability to additional paid-in capital for warrants exercised	$ 1,111	$ 24
Reclassification of 4,093,995 shares of redeemable common stock to 4,093,995 shares of common stock	$ 87,702	$ —
Reclassification of redeemable common stock options to common stock options	$ 47,370	$ —
Conversion of preferred stock to common stock upon initial public offering	$ 357,202	$ —
Deferred initial public offering costs recorded to additional paid in capital	$ 3,156	$ —

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

Note 1 – Organization and Basis of Presentation

Description of Business

RxSight®, Inc. (the "Company") is a Delaware corporation headquartered in Aliso Viejo, California with two wholly owned subsidiaries. One subsidiary is located in Amsterdam, Netherlands, with registered branches in the United Kingdom and Ireland. The Ireland registered branch was closed in 2020. The Netherlands entity also has a wholly owned subsidiary in Germany. A second subsidiary located in Tijuana, Mexico was also closed in 2020. The Company is engaged in the research and development, manufacture and sale of light adjustable intraocular lenses used in cataract surgery along with capital equipment used with the lenses.

The Company's products, which include the light adjustable lens ("LAL"®) and a specially designed machine for delivering light to the eye, the Light Delivery Device ("LDD™"), are approved by the United States ("U.S.") Food and Drug Administration ("FDA") for sale in the U.S. and have regulatory approval in the U.S and Europe. The Company began marketing its products in the U.S. during the second quarter of 2019 and in Europe during the third quarter of 2019. The LAL is a premium intraocular lens ("IOL") which is partially reimbursable under Medicare. The Company competes with other IOLs in the premium market in the U.S. and Europe.

Basis of Presentation and Principles of Consolidation

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") and include the accounts of RxSight, Inc. and its wholly-owned subsidiaries, RxSight, B.V., located in the Netherlands, and RxSight GmbH, located in Germany. The Company translates the financial statements of its foreign subsidiaries using end-of-period exchange rates for assets and liabilities and average exchange rates during each reporting period for results of operations. All significant inter-company balances and transactions have been eliminated in consolidation.

Initial Public Offering ("IPO") and Reverse Stock Split

On July 22, 2021, the Company's Board of Directors approved an amendment to the Company's certificate of incorporation to effect a reverse split of shares of the Company's common stock, excluding Series G and Series W common stock, and convertible preferred stock on a 1-for-10.33 basis (the "Reverse Stock Split"). The par values of the common stock and convertible preferred stock were not adjusted as a result of the Reverse Stock Split. The Reverse Stock Split was effected on July 23, 2021. Accordingly, all common stock, excluding Series G and Series W common stock, options to purchase common stock, convertible preferred stock, share data, per share data and related information contained in the accompanying condensed consolidated financial statements and notes have been retrospectively adjusted to reflect the effect of the Reverse Stock Split for all periods presented. Outstanding stock options were proportionately reduced and the respective exercise prices, if applicable, were proportionately increased. The Reverse Stock Split resulted in an adjustment to the convertible preferred stock conversion prices to reflect a proportional decrease in the number of shares of common stock to be issued upon conversion.

On July 29, 2021, the Company completed the IPO through an underwritten sale of 7,350,000 shares of its common stock at a price of $16.00 per share. The aggregate net proceeds from the offering, inclusive of an additional 898,549 common shares sold upon the partial exercise of the underwriters' over-allotment option, after deducting underwriting discounts and commissions of $9.2 million and other offering costs of $3.2 million, were approximately $120.0 million. On July 29, 2021, the Company restated its certificate of incorporation and bylaws which provide for, among other things, the Company's authorized capital stock to consist of 900,000,000 shares of common stock, par value $0.001 per share, and 100,000,000 shares of convertible preferred stock, par value $0.001 per share. The restated certificate defines the voting rights, dividends, liquidation, rights and preferences of each class of stock.

Immediately prior to the completion of the IPO, 14,376,272 outstanding shares of the Company's convertible preferred stock were converted into an aggregate of 14,725,309 shares of common stock and 225,945 warrants to purchase Series H convertible preferred stock were exercised and converted into 100,261 shares of common stock.

Liquidity and Financial Position

As of December 31, 2021, the Company has cash, cash equivalents and short-term investments of $159.3 million.

The Company began generating revenue from its principal operations in June 2019. The Company has a limited operating history, and the revenue and income potential of the Company's business and market are unproven. The Company has experienced recurring net losses and negative cash flows from operating activities since its inception. For the years ended December 31, 2021 and 2020, the Company incurred losses from operations of $52.8 million and $35.4 million, respectively. Due to the Company's continuing research and development activities and investment in sales and marketing activities to increase product market acceptance, the Company expects to continue to incur net operating losses into the foreseeable future. Successful transition to attaining profitable operations is dependent upon gaining market acceptance of the Company's products and achieving a level of revenues adequate to support the Company's cost structure.

The accompanying financial statements have been prepared assuming the Company will continue as a going concern. The Company believes that existing capital resources, including the net proceeds from the IPO in July 2021, will be sufficient to meet projected operating requirements for at least 12 months from the date of issuance of the accompanying consolidated financial statements, though the Company expects to continue to incur operating losses and negative cash flows. The Company plans to continue to fund its losses from operations using its cash, cash equivalents and short-term investments as of December 31, 2021 and meet its future capital funding needs through equity or debt financings, other third-party funding, collaborations, strategic alliances and licensing arrangements or a combination of these. If the Company raises additional funds by issuing equity securities, its stockholders may experience dilution. Any future debt financing into which the Company enters may impose additional covenants that restrict operations, including limitations on its ability to incur liens or additional debt, pay dividends, repurchase common stock, make certain investments or engage in certain merger, consolidation or asset sale transactions. Any debt financing or additional equity raise may contain terms that are not favorable to the Company or its stockholders. If the Company is required to enter into collaborations and other arrangements to address its liquidity needs, it may have to give up certain rights that limit its ability to develop and commercialize product candidates or may have other terms that are not favorable to the Company or its stockholders, which could materially and adversely affect its business and financial prospects. There can be no assurance that the Company will be able to obtain additional financing on acceptable terms, or at all. If the Company is not able to secure adequate additional funding, the Company may be forced to make reductions in spending, extend payment terms with suppliers, liquidate assets where possible and/or suspend or curtail planned programs. Any of these actions could materially harm the Company's business, results of operations and future prospects.

COVID-19

The Company has been actively monitoring the novel coronavirus, or COVID-19, situation and its impact. In response to the pandemic, numerous state and local jurisdictions imposed "shelter-in-place" orders, quarantines and other restrictions. Starting in March 2020 in the United States, governmental authorities recommended, and in certain cases required, that elective, specialty and other procedures and appointments be suspended or canceled. Similarly, in March 2020, the governor of California, where the Company's headquarters is located, issued "stay at home" orders limiting non-essential activities, travel and business operations. Such orders and restrictions resulted in reduced operations at the Company's headquarters, slowdowns and delays, travel restrictions and cancellation of events. These orders and restrictions significantly decreased the number of procedures performed using the Company's products starting in March of 2020 and continuing through 2021.

In response to the impact of COVID-19, the Company implemented a variety of measures to help manage through the impact and position it to resume operations quickly and efficiently once these restrictions were lifted. These measures included: remote work as needed, suspension of non-essential travel, restrictions on in-person work-related meetings, the wearing of personal protective equipment, social distancing, increased facility cleaning and air purification in all of the Company's buildings and daily health monitoring of all Company employees to prevent or contain COVID-19 exposure. In addition, the Company took steps to preserve liquidity, reduce expenses and monitor operations to mitigate the impact on its current and future financial condition. The impact of COVID-19 continues to evolve and its impact on the Company's business will depend on several factors that are highly uncertain and unpredictable, including, the efficacy and adoption of vaccines, future resurgences of the virus and its variants, the speed at which government restrictions are lifted, patient capacity at hospitals and healthcare systems,

the duration and severity of healthcare worker shortages, and the willingness and ability of patients to seek care and treatment due to safety concerns or financial hardship.

Note 2 – Summary of Accounting Policies

Use of Estimates

The preparation of consolidated financial statements in conformity with GAAP requires management to make informed estimates, judgments and assumptions that affect the reported amounts in the consolidated financial statements and disclosures in the accompanying notes as of the date of the accompanying consolidated financial statements. On an on-going basis, management evaluates the most critical estimates and assumptions for continued reasonableness. These estimates and assumptions involve judgments with respect to numerous factors that are difficult to predict. Actual results may differ materially from the estimates used in the preparation of the accompanying consolidated financial statements under different assumptions or conditions.

Significant accounting policies

There have been no significant changes to the accounting policies during the year ended December 31, 2021 as compared to the significant accounting policies described in Note 2 of the “Notes to Consolidated Financial Statements” in the Company’s audited consolidated financial statements included in the Company's prospectus filed with the Securities and Exchange Commission in accordance with Rule 424(b) of the Securities Act on July 29, 2021 in connection with our IPO.

Cash Equivalents

Cash equivalents consist of investments in money market accounts. The Company considers all highly liquid investments with original maturities of three months or less at the date of purchase that can be liquidated without prior notice or penalty to be cash equivalents.

Short-term Investments

Short-term investments are classified based on the maturity date of the related securities. Based on the nature of the assets, the Company’s short-term investments, which are government securities, are classified as available-for-sale and are recorded at their estimated fair value as determined by prices for identical or similar securities at the balance sheet date. The Company’s short-term investments consist of Level 1 and Level 2 financial instruments in the fair value hierarchy. Unrealized gains and losses are recorded as a component of other comprehensive loss within stockholders’ equity (deficit) on the consolidated balance sheets. Realized gains and losses are included as other income (expense) in the accompanying Consolidated Statements of Operations and Comprehensive (Loss) Income. The cost basis for realized gains and losses on available-for-sale securities is determined on a specific identification basis. Management determines the appropriate classification of its investments at the time of purchase and reevaluates such determination at each balance sheet date. The Company periodically reviews its investments for unrealized losses other than credit losses and whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable. In determining whether the carrying value is recoverable, management considers the following factors:

- whether the investment has been in a continuous realized loss position for over 12 months;
- the duration to maturity of investments;
- intention and ability to hold the investment to maturity and if it is not more likely than not that the investment will be required to sell the investment before recovery of the amortized cost bases;
- the credit rating, financial condition and near-term prospects of the issuer and
- the type of investments made.

The Company had $9,000 and $2,000 of unrealized losses related to short-term investments as of December 31, 2021 and 2020, respectively. The Company's short-term investments consist of Level 2 financial instruments in the fair value hierarchy.

Restricted Cash

Restricted cash consists of cash held as collateral for a letter of credit as security for future facility lease payments and corporate credit cards at the Company's bank. Restricted cash increased $350,000 during the year ended December 31, 2021 to $811,000 as required for these operating activities.

The following table provides a reconciliation of cash and cash equivalents and restricted cash reported within the consolidated balance sheets to the amount reported in the Consolidated Statement of Cash Flows for the years ended December 31, 2021 and 2020 (in thousands).

	Year ended December 31,	
	2021	**2020**
Cash and cash equivalents	$ 24,361	$ 13,994
Restricted cash	811	461
Cash, cash equivalents and restricted cash in the consolidated statements of cash flows	$ 25,172	$ 14,455

Concentration of Credit Risk and Other Risks and Uncertainties

Financial instruments which potentially subject the Company to concentration of credit risk consist primarily of cash, cash equivalents, short-term investments and accounts receivable. The Company's policy is to invest cash in institutional money market funds and marketable securities of the U.S. government to limit the amount of credit exposure. The Company currently maintains a portfolio of cash equivalents and short-term investments in money market funds and U.S. treasury bills. Additionally, the Company has established guidelines regarding diversification of its investments and their maturities, which are designed to maintain principal and maximize liquidity. The Company has not experienced material losses on cash equivalents and short-term investments.

The Company's products require approval from the FDA and foreign regulatory agencies before commercial sales can commence. There can be no assurance that the Company's products will receive any of these required approvals. The denial or delay of such approvals may have a material adverse impact on the Company's business and may impact business in the future. In addition, after approval by the FDA, there is still an ongoing risk of adverse events that did not appear during the device approval process.

The Company is subject to risks common to companies in the medical device industry, including, but not limited to, new technological innovations, clinical development risk, establishment of appropriate commercial partnerships, protection of proprietary technology, compliance with government and environmental regulations, uncertainty of market acceptance of our products, product liability and the need to obtain additional financing.

The Company is subject to the risks related to the global pandemic associated with COVID-19, including local, state, federal and other world-wide mandates imposed to reduce the spread of the virus which could interrupt or reduce the number of cataract surgeries, limit access to ambulatory surgery centers, doctors' offices and manufacturing facilities, and the expansion of global lead times, particularly in Europe and Asia, leading to a supply interruption from our suppliers. In addition, the Company is currently experiencing inflation and longer lead times and limited availability in its supply chain for certain components and has continued exposure to price and supply risk related to anticipated purchases of certain commodities, materials and products used in its business.

Accounts Receivable

Accounts receivable pertain to contracts with customers who are granted credit by the Company in the ordinary course of business and are presented net of allowances for credit losses. Accounts receivable are generally due 30 days after invoicing. The Company maintains an allowance for credit losses resulting from the inability of its customers, including ambulatory surgery centers, to make required payments. The allowance for credit losses is calculated quarterly and is developed using an aging of receivables where receivables are segregated into various categories based upon due date, and a historical loss percentage is applied to each category that is adjusted for

current receivable composition, counterparty and specific risk and prevailing economic condition and supportable forecasted economic conditions. Once a receivable is deemed uncollectible after collection efforts have been exhausted, it is written off against the allowance for credit losses. The Company closely monitors the credit quality of its customers and has yet to experience a write-off of a receivable or uncollected receivable. The Company does not generally require collateral or other security on receivables. The Company has a diverse customer base and as of December 31, 2021, the Company did not have any customer who individually accounted for greater than 10% of accounts receivable. As of December 31, 2020, the Company had one customer who individually accounted for 35% of accounts receivable. After evaluation of the collectability of accounts receivable, the Company did not record any significant allowance for credit losses as of December 31, 2021 and 2020.

Fair Value of Financial Instruments

The Company uses fair value measurements to record fair value adjustments to certain assets and liabilities and to determine fair value disclosures. The Company's financial instruments consist principally of cash, cash equivalents, short-term investments, accounts receivable, accounts payable, operating lease liabilities, warrant liabilities and a term loan. Fair value is measured as the price that would be received from the sale of an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques that are consistent with the market, income or cost approach are used to measure fair value. The fair value hierarchy prioritizes the inputs to valuation techniques used to measure fair value into three levels:

Level 1—Observable inputs such as unadjusted quoted prices in active markets that are accessible at the measurement date for identical unrestricted assets or liabilities.

Level 2—Inputs (other than quoted prices included in Level 1) that are either directly or indirectly observable for the asset or liability, for substantially the full term of the asset or liability, through correlation with market data. These include quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active and inputs to valuation models or other pricing methodologies that do not require significant judgment because the inputs used in the model, such as interest rates and volatility, can be corroborated by readily observable market data.

Level 3—One or more significant inputs that are unobservable and supported by little or no market activity and reflect the use of significant management judgment and assumptions. Level 3 assets and liabilities include those whose fair value measurements are determined using pricing models, discounted cash flow methodologies or similar valuation techniques and significant management judgment or estimation. These include the Black-Scholes option-pricing model which uses inputs such as expected volatility, risk-free interest rate and expected term to determine fair market valuation.

Assets and liabilities are classified based on the lowest level of input that is significant to the fair value measurements. The Company reviews the fair value hierarchy classification at each reporting date. Changes in the ability to observe valuation inputs may result in a reclassification of levels for certain assets or liabilities within the fair value hierarchy. The Company did not have any transfers of assets and liabilities between the levels of the fair value measurement hierarchy during the years presented.

Cash, cash equivalents, accounts receivable and accounts payable are carried at their estimated fair value because of the short-term nature of these assets and liabilities. The Company's short-term investments in government securities are carried at fair value, determined based on publicly available quoted market prices for identical securities at the measurement date. The Company believes the fair values of its operating lease liabilities and term loan at December 31, 2021 and 2020 approximated their carrying values, based on the borrowing rates that were available for loans with similar terms as of that date.

Inventories

Inventories consist of raw materials, work-in-process and finished goods. Raw materials are comprised of chemicals and parts used in the production of the Company's lenses, cartridges, and LDDs. Finished goods are comprised of lenses, cartridges, accessories and LDDs. Inventories are valued at the lower of cost or net realizable value. Cost is computed using standard cost, which approximates actual cost on a first-in, first-out basis. The carrying value of inventories is reviewed for potential impairment whenever indicators suggest that the cost of

inventories exceeds the carrying value and management adjusts the inventories to its net realizable value. The cost of finished goods and work-in-process is comprised of raw materials, direct labor, other direct costs and related production overhead to the extent that these costs do not exceed the net realizable value of the goods produced. The Company periodically reviews inventories for potential impairment, estimated losses from obsolescence, material expirations or unmarketable inventories or excess inventories and writes down the cost of inventories to net realizable value at the time such determinations are made. Net realizable value is determined using the estimated selling price, in the ordinary course of business, less estimated costs to complete and dispose.

Long-Lived Assets

Property and equipment and leasehold improvements are recorded at cost, net of accumulated depreciation and amortization. Property and equipment are depreciated over the estimated useful lives of the related assets, generally three to five years, using a straight-line method. Leasehold improvements are amortized on the straight-line method over the shorter of the lease term or their estimated economic lives. Repairs and maintenance costs are charged directly to operations as incurred, while renewals and betterments are capitalized.

All long-lived assets are reviewed for impairment whenever circumstances such as events or changes in the business indicate that an asset or asset group's carrying value may not be recoverable based on undiscounted future operating cash flows to be derived from their use. Factors that are considered important that could trigger an impairment review include a current period operating or cash flow loss or a history of operating or cash flow losses and a projection or forecast that demonstrates continuing losses or insufficient income associated with the use of a long-lived asset or asset group. Other factors include a significant change in the manner of the use of the asset or a significant negative industry or economic trend. This evaluation is performed based on estimated undiscounted future cash flows from operating activities compared with the carrying value of the related assets. If the undiscounted future cash flows are less than the carrying value, an impairment loss is recognized, measured by the difference between the carrying value and the estimated fair value of the assets. Fair value is determined primarily using the discounted cash flows expected to be generated from the use of assets. Significant management judgment is required in the forecast of future operating results that are used in the preparation of expected cash flows.

Leases

Lease right-of-use assets represent the Company's right to use an underlying asset for the lease term, and lease liabilities represent the Company's obligation to make lease payments arising from the lease. Operating lease right-of-use assets and liabilities are recognized when the Company takes possession of the leased property (the "Commencement Date") based on the present value of lease payments over the lease term. The Company estimates the incremental borrowing rate based upon the cost of its own debt financing, current market interest rates and quoted offerings or the rate implicit in the lease. Operating lease right-of-use assets also include any lease payments made at or before lease commencement and exclude any lease incentives received. The lease terms used to calculate the right-of-use asset and related lease liability include options to extend or terminate the lease when it is reasonably certain that the Company will exercise that option. Rent expense on noncancelable leases containing known future scheduled rent increases is recorded on a straight-line basis over the term of the respective leases beginning on the Commencement Date. The difference between rent expense and rent paid is accounted for as a component of operating lease right-of-use assets on the accompanying consolidated balance sheets. Landlord improvement allowances and other such lease incentives are recorded as property and equipment and as reduction of the right-of-use leased assets and are amortized on a straight-line basis as a reduction to operating lease costs. Leases with an initial term of 12 months or less are expensed as incurred and are not recorded as right-of-use assets on the consolidated balance sheets.

Warrants to Purchase Stock

The Company recognizes the freestanding warrants to purchase shares of convertible preferred stock as liabilities at fair value as these warrant instruments are embedded in contracts that may be cash settled. The convertible preferred stock warrants were issued for no cash consideration as detachable freestanding instruments but can be converted to convertible preferred stock at the holder's option based on the exercise price of the warrant. However, the deemed liquidation provisions of the convertible preferred stock are considered contingent redemption provisions that are not solely within the control of the Company. Therefore, the convertible preferred stock is classified in temporary equity on the accompanying condensed consolidated balance sheets, and the warrants to purchase the convertible preferred stock are classified as liabilities. The Company recognized a freestanding warrant

to purchase a share of Series W common stock as a liability at fair value because this instrument was not indexed to the Company's own stock as the settlement calculation incorporated variables other than those used to determine the fair value of a fixed-for-fixed forward or option on equity shares. The common stock warrant was issued for cash consideration as a freestanding instrument and could be converted to one share of common stock, Series W, at the holder's option based on the exercise price of the warrant and prior to the expiration date of March 31, 2021.

The warrants were recorded on the accompanying consolidated balance sheets at their fair value on the date of issuance and were subject to re-measurement to fair value at each balance sheet date. Changes in fair value were recognized as a component of other income (expense) in the accompanying Consolidated Statements of Operations and Comprehensive (Loss) Income. Upon issuance of the Series W common stock warrant, the Company engaged valuation specialists to assist with determining its fair value using a Monte Carlo simulation approach. In addition, the Company engaged the valuation specialists to derive an estimated fair value of the preferred stock warrants using a probability weighted expected return model/option pricing model ("PWERM/OPM") hybrid valuation model. Pursuant to the terms of the preferred stock warrants, upon the conversion of the class of preferred stock underlying the warrant, the warrants automatically become exercisable for shares of the Company's common stock based upon the conversion ratio of the underlying class of preferred stock. The exercise of either the common stock warrant or consummation of a qualified initial public offering would result in the automatic conversion of all classes of the Company's preferred stock into common stock. Upon such conversion of the underlying classes of preferred stock, the warrants would be classified as a component of equity and would no longer be subject to remeasurement. Accordingly, the Company continued to adjust the warrant liabilities for changes in fair value through the date of the conversion of the underlying convertible preferred stock into common stock which occurred upon the completion of the IPO in July 2021.

Deferred Offering Costs

The Company capitalized deferred offering costs consisting of all direct and incremental legal, professional, accounting and other third-party fees incurred in connection with the IPO. As of December 31, 2021, total deferred offering costs of $3.2 million were offset against IPO proceeds and reclassified to additional paid-in capital in the accompanying consolidated balance sheets.

Net (Loss) Income per Share

The Company computes basic net (loss) income per share for common stock using the two-class method required for companies with participating securities based upon the weighted-average number of common shares outstanding during the period. Diluted net (loss) income per share assumes the conversion, exercise or issuance of all potential common stock equivalents, unless the effect of inclusion would be anti-dilutive. For purposes of this calculation, common stock equivalents include the Company's stock options, warrants and the shares issuable upon the conversion of preferred stock. Prior to the lapse of redemption features, for redeemable stock options and redeemable preferred stock, the calculation of diluted (loss) income per share includes an adjustment for the additional share of undistributed earnings and accretion to redemption value for the period that the common stockholders are entitled to if exercise is assumed. For warrants that are recorded as a liability in the accompanying consolidated balance sheets, the calculation of diluted (loss) income per share requires that, to the extent the average market price of the underlying shares for the reporting period exceeded the exercise price of the warrants and the presumed exercise of the warrants was dilutive to (loss) income per share for the period, an adjustment was made to net (loss) income used in the calculation to remove the change in fair value of the warrants from the numerator for the period. Likewise, an adjustment to the denominator was required to reflect the related dilutive shares, if any, under the treasury stock method.

The following tables show the computation of basic and diluted net (loss) income per share for 2021 and 2020 (in thousands, except number of shares):

	Year Ended December 31,	
	2021	2020
Common Stock		
Numerator:		
Net (loss) income available to stockholders, basic	$ (48,688)	$ 3,366
Effect of dilutive securities:		
Redeemable stock options	—	(2,511)
Net (loss) income available to stockholders, diluted	$ (48,688)	$ 855
Denominator:		
Weighted-average shares outstanding, basic	13,625,044	3,707,207
Effect of dilutive securities:		
Redeemable stock options	—	1,825,098
Weighted-average shares, diluted	13,625,044	5,532,305
Net (loss) income per share:		
Attributable to common stock, basic	$ (3.57)	$ 0.91
Attributable to common stock, diluted	$ (3.57)	$ 0.15
Series G Common Stock		
Numerator:		
Net loss available to stockholder, basic	$ —	$ (0.39)
Effect of dilutive securities:		
Redeemable preferred stock and warrants	$ —	$ (0.23)
Net loss available to stockholder, diluted	$ —	$ (0.62)
Denominator:		
Weighted-average shares outstanding, basic and diluted	—	1
Basic net loss per share	$ —	$ (0.39)
Diluted net loss per share	$ —	$ (0.62)

The following weighted average outstanding potentially dilutive securities were excluded from the calculation of diluted net income (loss) per share attributable to common stockholders because their impact under the “treasury stock method” and “if-converted method” was anti-dilutive for the periods presented:

	Year Ended December 31,	
	2021	2020
Redeemable preferred stock and warrants	—	14,883,489
Stock options issued and outstanding under the 2006 Stock Plan, 2015 Equity Incentive Plan and 2021 Equity Incentive Plan	2,144,860	1,444,611
Restricted stock units	223,716	—
Stock issuable in offering period under the Employee Stock Purchase Plan	8,248	—

Revenue Recognition

The Company’s revenue is generated from the sale of light adjustable intraocular lenses (“LAL”) used in cataract surgery along with a specifically designed machine for delivering light to the eye, the Light Delivery Device

("LDD"), to adjust the lens post-surgery, as needed. Revenue is recognized from sales of products in the U.S. and Europe. Customers are primarily comprised of ambulatory surgery centers, hospitals, and physician private practices.

The Company recognizes revenues when promised goods or services are transferred to customers at a transaction price that reflects the consideration to which the Company expects to be entitled in exchange for those goods and services. Specifically, the Company applies the following five steps to recognize revenue: (i) identify the contract(s) with a customer; (ii) identify the performance obligations in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when, or as, the Company satisfies a performance obligation. The Company applies the five-step model to contracts when it is probable that it will collect the consideration to which it is entitled in exchange for the goods or services it transfers to the customer. At contract inception, the Company assesses the goods promised within each customer contract to determine the individual deliverables in its product offerings as separate performance obligations and assesses whether each promised good or service is distinct. The transaction price is determined based on the consideration expected to be received, based either on the stated value in contractual arrangements or the estimated cash to be collected in non-contracted arrangements. The Company recognizes revenue as the amount of the transaction price that is allocated to the respective performance obligation when, or as, the performance obligation is satisfied, considering whether or not this occurs at a point in time or over time. The Company elected to account for shipping costs as fulfillment costs rather than a promised service and excludes from revenue any taxes collected from customers that are remitted to government authorities.

The Company's LDD contracts contain multiple performance obligations bundled for one transaction price, with all obligations generally satisfied within one year. For these bundled arrangements the Company accounts for individual products and services as separate performance obligations if they are distinct; that is, if a product or service is separately identifiable from other items in the bundled package, and if a customer can benefit from it on its own or with other resources that are readily available to the customer. The Company's LDD contracts include a combination of the following performance obligations: (1) LDD capital asset and related components, (2) training and (3) device service (initial year). Each of these three performance obligations are considered distinct. The LDD capital asset is distinct because the customer can benefit from it together with other resources that are readily available to the customer. Training on the use of the machine is offered as a distinct activity after installation of the LDD to enhance the customer's ability to utilize the machine by having an industry professional provide best practices and customize training to the specific needs of the customer. Each LDD comes with a twelve-month manufacturer's warranty (service-type) that includes preventative maintenance, unscheduled service (labor and parts) and software updates. After the first year, service contracts can be purchased separately on a standalone basis. The Company recognizes revenue as performance obligations are satisfied by transferring control of the product or service to a customer. Specifically, revenue for the LDD capital asset is recognized at a point in time at installation. Revenue for training is also recorded at a point in time, generally 30 days after installation. Revenue for the device service is recognized ratably over time after installation, generally 12 months. The Company has determined that the transaction price is the invoice price, net of adjustments, if any. The allocation to the separate performance obligations is based upon the relative standalone selling price. Standalone selling prices are based on observable prices at which the Company separately sells the products or services. The Company estimates the standalone selling price using the market assessment approach considering market conditions and entity-specific factors including, but not limited to, features and functionality of the products and services, geographies, type of customer and market conditions. The Company regularly reviews and updates standalone selling prices as necessary.

LALs are held at customer sites on consignment. The single performance obligation is satisfied, and revenue is recognized for LALs upon customer notification that the LALs have been implanted in a patient. For the years ended December 31, 2021 and 2020, credits related to returns and rebates on list prices were not significant.

The Company has adopted the practical expedient permitting the direct expensing of costs incurred to obtain contracts where the amortization of such costs would occur over one year or less, and it applied to substantially all the Company's contracts.

For the years ended December 31, 2021 and 2020, revenue from contracts with customers consisted of the following (in thousands):

	Year ended December 31,	
	2021	2020
LDD (including training)	$ 13,774	$ 10,159
LAL	8,163	4,256
Service warranty, service contracts, and accessories	656	263
	$ 22,593	$ 14,678

As of December 31, 2021 and 2020, the Company recognized contract liabilities on its consolidated balance sheets of $540,000 and $345,000, respectively, related to the service agreement performance obligation. Revenue for service agreements is recognized ratably over the term of each contract.

For the year ended December 31, 2021, the Company did not have any customers who individually accounted for greater than 10% of revenue. For the year ended December 31, 2020, the Company had one customer who individually accounted for approximately 27% of revenue.

Cost of Sales

Cost of sales consists of materials, labor and manufacturing overhead incurred to produce the Company's products as well as the cost of shipping and handling. Overhead costs include the cost of quality assurance, material procurement, inventory control, facilities, equipment and operations supervision and management, including stock-based compensation. Cost of sales also includes depreciation expense for production equipment and certain direct costs such as royalty and license fee expenses.

Research and Development Expenses

Research and development expenses are expensed as incurred. Research and development expenses consist of upfront fees and milestones paid to collaborators and expenses incurred in performing research and development activities for new products and technology. The expenses include personnel-related costs, including compensation and benefits and stock-based compensation, consultants hired to perform research projects, costs incurred at clinical trial sites, regulatory and manufacturing engineering costs related to FDA premarket approval submission preparation, various laboratory and research supplies, write-off of pre-approved inventory utilized for clinical trial and research purposes, costs incurred in the development of manufacturing processes in excess of capitalizable value, fees paid to contract research organizations and direct FDA related costs. The Company also accrued the costs of ongoing clinical trials associated with programs that have been terminated or discontinued for which there is no future economic benefit at the time the decision is made to terminate or discontinue the program.

Stock-Based Compensation

The Company accounts for stock options on the date of grant to employees, directors and consultants based on the estimated fair value of the award, which requires the recognition of compensation expense for all equity-based payments, including stock options. The fair value of the awards is estimated using the Black-Scholes option-pricing model and recognized in expense in the consolidated statements of operations and comprehensive (loss) income over requisite service period, which is generally four years. The Company amortizes the stock-based compensation for equity awards with service conditions on a straight-line basis over the vesting period of the awards. Compensation cost for stock options with performance conditions is recognized based upon the probability of that performance condition being met. Forfeitures of unvested stock option awards are recognized as reductions of expense as they occur.

The Black-Scholes option-pricing model requires the use of assumptions about a number of variables, such as the fair market value of the Company's common stock, the risk-free interest rate, dividend yield, expected term and expected volatility:

- Prior to the Company's shares being traded on the Nasdaq Global Market, the fair value of the Company's common stock was determined by the Company's Board of Directors (the "Board") at the time of each option grant by considering a number of objective and subjective factors. These factors included the valuation of a select group of public peer group companies within the medical device industry that focus on technological advances and development that the Board believed were comparable to the Company's operations. Operating and financial performance, the lack of liquidity of the common stock and trends in the broader economy and medical device industry also impacted the determination of the fair value of the common stock. In addition, the Company regularly engaged a third-party valuation specialist to assist with estimates related to the valuation of the Company's common stock. For all grants subsequent to the IPO in July 2021, the fair value of common stock was determined by using the closing price per share of common stock as reported on the Nasdaq Global Market;
- The risk-free interest rate used is based on the published U.S. Department of Treasury interest rates in effect at the time of stock option grant for zero coupon U.S. Treasury notes with maturities approximating each grant's expected term;
- The dividend yield is zero as the Company has not paid dividends and does not anticipate paying a cash dividend in the foreseeable future;
- The expected term for options granted is calculated using the "simplified method" and represents the average time that options are expected to be outstanding based on the mid-point between the vesting date and the end of the contractual term of the award;
- Expected volatility is derived from the historical volatilities of a select group of comparable peer companies, for a look-back period commensurate with the expected term of the stock options, as the Company has limited trading history of common stock.

As a result of the Special Redemption provisions of the Company's Articles of Incorporation (adopted in October 2017), stock option awards were reflected in temporary equity in the accompanying consolidated balance sheets and statements of redeemable common stock, stock options, preferred stock and stockholders' equity (deficit) at their redemption value. The redemption value was calculated as the estimated redemption amount at the estimated date of redemption less the stock option award strike price, recognized over the same period as the grant date fair value share-based compensation expense recorded in the Consolidated Statements of Operations and Comprehensive (Loss) Income. Changes in the projected redemption value and redemption date were accounted for prospectively. The redemption value reflected in the accompanying financial statements was recorded as a reduction of permanent equity, and in the absence of retained earnings, first from additional paid-in capital and then from accumulated deficit.

Income Taxes

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The likelihood of realizing the tax benefits related to a potential deferred tax asset is evaluated, and a valuation allowance is recognized to reduce that deferred tax asset if it is more likely than not that all or some portion of the deferred tax asset will not be realized. Deferred tax assets and liabilities are calculated at the beginning and end of the year; the change in the sum of the deferred tax asset, valuation allowance and deferred tax liability during the year generally is recognized as a deferred tax expense or benefit. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the Consolidated Statements of Operations and Comprehensive (Loss) Income in the period that includes the enactment date.

Significant judgment is required in determining the Company's provision for income taxes, deferred tax assets and liabilities and the valuation allowance recorded against net deferred tax assets. The Company assesses the likelihood that deferred tax assets will be recovered as deductions from future taxable income. The evaluation of the need for a valuation allowance is performed on a jurisdiction-by-jurisdiction basis and includes a review of all available positive and negative evidence. Factors reviewed include projections of pre-tax book income for the foreseeable future, determination of cumulative pre-tax book income after permanent differences, earnings history and reliability of forecasting. The Company recognized a valuation allowance on deferred tax assets as of December 31, 2021 and 2020 after evaluating that it is more likely than not that deferred tax assets will not be realized as of those dates.

The Company evaluates the accounting for uncertainty in income tax recognized in the consolidated financial statements and determines whether it is more likely than not that a tax position will be sustained upon examination by the appropriate taxing authorities before any part of the benefit is recorded in its consolidated financial statements. For those tax positions where it is "not more likely than not" that a tax benefit will be sustained, no tax benefit is recognized. Where applicable, associated interest and penalties are also recorded. The Company has not accrued any liabilities for any such uncertain tax positions as of December 31, 2021 or 2020. The Company is subject to U.S. federal and state tax authority examinations for all the years since inception due to net operating loss and tax credit carryforwards. The net operating losses and tax credits are subject to adjustment until the statute closes on the year the attributes are ultimately utilized.

The Company's income tax returns are based on calculations and assumptions that are subject to examination by the Internal Revenue Service and other tax authorities. In addition, the calculation of the Company's tax liabilities involves dealing with uncertainties in the application of complex tax regulations. The Company recognizes liabilities for uncertain tax positions based on a two-step process. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount that is more than 50% likely of being realized upon settlement. While the Company believes it has appropriate support for the positions taken on its tax returns, the Company regularly assesses the potential outcomes of examinations by tax authorities in determining the adequacy of its provision for income taxes. The Company continually assesses the likelihood and amount of potential revisions and adjusts the income tax provision, income taxes payable and deferred taxes in the period in which the facts that give rise to a revision become known.

The Company is required to file federal and state income tax returns in the United States, United Kingdom, Germany and Netherlands. The preparation of these income tax returns requires the Company to interpret the applicable tax laws and regulations in effect on such jurisdictions, which could impact the amount of tax paid. An amount is accrued for the estimate of additional tax liabilities, including interest and penalties, for any uncertain tax positions taken or expected to be taken in an income tax return. The accrual for uncertain tax positions is updated when more definitive information becomes available.

Comprehensive (Loss) Income

All components of comprehensive (loss) income, including net (loss) income, are reported in the consolidated financial statements in the period in which they are recognized. Comprehensive (loss) income is defined as the change in equity during a period from transactions and other events and circumstances from non-owner sources, including unrealized gains and losses on marketable securities and foreign currency translation adjustments.

Operating Segments

Operating segments are defined as components for which discrete financial information is available for evaluation by the chief operating decision maker to make resource allocation decisions and conduct performance assessments. The Company determined that it operates and manages its business (including its non-US subsidiaries) in one reportable segment: the research and development, manufacture and sale of light adjustable lenses and related capital equipment.

Emerging Growth Company Status

The Company is an emerging growth company, as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act. Under the JOBS Act, emerging growth companies can delay adopting new or revised accounting

standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies. The Company has irrevocably elected to not take this exemption and, as a result, will adopt new or revised accounting standards on the relevant effective dates on which adoption of such standards is required for other public companies that are not emerging growth companies.

Recent Accounting Pronouncements

Changes to GAAP are established by the Financial Accounting Standards Board ("FASB") in the form of accounting standards updates ("ASU"). ASUs not listed below were assessed and determined not to be applicable or are expected to have minimal impact on the Company's consolidated financial statements.

In August 2018, the FASB issued ASU 2018-15, "*Intangibles – Goodwill and Other – Internal Use Software (Subtopic 350-40): Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract*," ("ASU 2018-15") which changes the accounting for implementation costs incurred in a cloud computing arrangement that is a service contract. The update aligns the requirements for capitalizing implementation costs incurred in a hosting arrangement with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software. The implementation costs should be presented as a prepaid expense in the balance sheet and expensed over the term of the hosting arrangement. This standard was effective for the Company beginning January 1, 2021, and early adoption is permitted. The Company adopted ASU 2018-15 effective January 1, 2021, and the adoption did not have a material impact on the Company's consolidated financial statements.

In June 2020, the FASB issued ASU No. 2020-06, "*Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging — Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity*," ("ASU No. 2020-06") which is intended to simplify the accounting for convertible instruments. This new guidance eliminates certain models that require separate accounting for embedded conversion features and eliminates certain of the conditions for equity classification for contracts in an entity's own equity. Accordingly, a convertible debt instrument will be accounted for as a single liability measured at its amortized cost, as long as no other features require bifurcation and recognition as derivatives. The new guidance can be adopted through either a modified retrospective method of transition or a fully retrospective method of transition. ASU 2020-06 is effective for public business entities for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years. Early adoption is permitted for fiscal years beginning after December 15, 2020, including interim periods within those fiscal years. The Company adopted ASU 2020-06 effective January 1, 2022, and the adoption does not have a material impact on the Company's consolidated financial statements.

In May 2021, the FASB issued ASU 2021-04, "*Earnings Per Share (Topic 260), Debt—Modifications and Extinguishments (Subtopic 470-50), Compensation—Stock Compensation (Topic 718), and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40)*", which to clarifies and reduces diversity in an issuer's accounting for a modification or an exchange of a freestanding equity-classified written call option that remains equity being classified after modification or exchange as (1) an adjustment to equity and, if so, the related earnings per share (EPS) effects, if any, or (2) an expense and, if so, the manner and pattern of recognition. This will be effective for fiscal years beginning after December 15, 2021, and interim periods within those years. An entity should apply the amendments prospectively to modifications or exchanges occurring on or after the effective date of the amendments. Early adoption is permitted for all entities, including adoption in an interim period within those fiscal years. If an entity elects to early adopt the amendments in this update in an interim period, the guidance should be applied as of the beginning of the fiscal year that includes the interim period. The Company adopted ASU 2021-04 effective January 1, 2021, and the adoption did not have a material impact on the Company's consolidated financial statements.

In October 2021, the Financial Accounting Standards Board, or FASB, issued Accounting Standards Update No. 2021-08, *Business Combinations (Topic 805), Accounting for Contract Assets and Contract Liabilities from Contracts with Customers*, which requires an entity (acquirer) to recognize and measure contract assets and liabilities acquired in a business combination in accordance with Topic 606, Revenue from Contracts with Customers. This update is effective for fiscal years beginning after December 15, 2022, and interim periods within those fiscal years, with early adoption permitted. The amendments should be applied prospectively to business combinations occurring on or after the effective date of the amendments. The Company is currently evaluating the impact the standard will have on its consolidated financial statements.

Note 3 – Short-Term Investments

Short-term investments, principally U.S. Treasury bills, are available-for-sale and consisted of the following (in thousands):

	As of December 31, 2021		
	Amortized Cost	Unrealized Loss, Net	Estimated Fair Value
Government securities	$ 134,980	$ (9)	$ 134,971

	As of December 31, 2020		
	Amortized Cost	Unrealized Loss, Net	Estimated Fair Value
Government securities	$ 54,983	$ (2)	$ 54,981

All available-for-sale securities held as of December 31, 2021and 2020 had a maturity of less than one year. The Company has classified all marketable securities, regardless of maturity, as short-term investments based upon the Company's ability and intent to use any and all of those marketable securities to satisfy the Company's liquidity requirements.

Note 4 – Inventories

Inventories consisted of the following (in thousands):

	December 31,	
	2021	2020
Finished goods	$ 4,451	$ 5,092
Raw materials	2,828	1,827
Work-in-process	868	1,685
	8,147	8,604
Less: reserve for excess and obsolete inventory	(115)	(316)
	$ 8,032	$ 8,288

At December 31, 2021 and 2020, finished goods included $1.8 million and $2.7 million of inventory held on consignment at customer sites, respectively.

Note 5 – Property and equipment

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

	December 31,	
	2021	2020
Machinery and equipment	$ 12,421	$ 11,153
Leasehold improvements	10,334	10,152
Construction in progress	1,118	1,474
Computer hardware and software	1,536	1,101
Production molds	1,268	867
Furniture and fixtures	853	855
Right-of-use equipment	32	58
	27,562	25,660
Less: Accumulated depreciation and amortization	(16,345)	(12,373)
	$ 11,217	$ 13,287

The Company recorded $4.0 million and $3.9 million in depreciation and amortization expense for the years ended December 31, 2021 and 2020, respectively.

Note 6 – Fair Value Measurements

The table and disclosures below (in thousands) present the Company's assets and liabilities measured at fair value on a recurring basis and indicate the fair value hierarchy of the valuation techniques utilized by the Company to determine such fair value. See Note 9—Common Stock Warrant Liability and Note 11—Convertible Preferred Stock Warrants for more information on the inputs used for the fair value measurements of the warrant liabilities, including quantitative information about the significant unobservable inputs used in the fair value measurements of the warrant liabilities.

Money market funds are liquid investments and are actively traded. The pricing information on these investment instruments is readily available and can be independently validated as of the measurement date. This approach results in the classification of these securities as Level 1 of the fair value hierarchy. U.S. Government securities are measured at fair value using Level 2 inputs. The Company reviews trading activity and pricing for these investments as of each measurement date. When sufficient quoted pricing for identical securities is not available, the Company uses market pricing and other observable market inputs for similar securities obtained from various third-party data providers. These inputs represent quoted prices for similar assets in active markets or these inputs have been derived from observable market data. This approach results in the classification of these securities as Level 2 of the fair value hierarchy.

The carrying amounts of certain financial instruments such as cash and cash equivalents, accounts receivable, prepaid expenses, other current assets, accounts payable, accrued expenses and other current liabilities as of December 31, 2021 and 2020 approximate their related fair values due to the short-term maturities of these instruments.

	As of December 31, 2021			
	Level 1	Level 2	Level 3	Total
Assets:				
Money market securities	$ 21,390	$ —	$ —	$ 21,390
Government securities	—	134,971	—	134,971
Total assets at fair value	$ 21,390	$ 134,971	$ —	$ 156,361

	As of December 31, 2020			
	Level 1	Level 2	Level 3	Total
Assets:				
Money market securities	$ 11,822	$ —	$ —	$ 11,822
Government securities	—	54,981	—	54,981
Total assets at fair value	$ 11,822	$ 54,981	$ —	$ 66,803
Liabilities:				
Common stock warrant liability	$ —	$ —	$ (5,018)	$ (5,018)
Redeemable convertible preferred stock warrant liability	—	—	(3,828)	(3,828)
Total liabilities at fair value	$ —	$ —	$ (8,846)	$ (8,846)

The Series W warrant fair value was determined by management, with input and assistance from a third-party valuation specialist, upon issuance and was revalued as of each reporting date until expiration. The valuation specialist utilized a Monte Carlo Simulation ("MCS") under the income method utilizing assumptions and financial data prepared by the Company. This valuation approach uses a discounted cash flow ("DCF") method to calculate the starting equity value of the Company based upon future cash flow generation. The starting equity value of the Company was determined utilizing significant unobservable inputs, including (1) forecasted financial projections for the next five years developed by management, (2) a terminal value assigned using an exit multiple method, and (3) a discount rate based on the weighted average cost of capital. Then a simulated equity value of the Company as of the expected exercise date was determined using the MCS method. The MCS inputs included: (1) the assumed amount of time until the exercise of the warrant, (2) the risk-free interest rate over the period until the assumed warrant exercise, (3) the assumed volatility in the value of the equity of the company, and (4) the starting equity value of the Company as determined from the discounted cash flow method. In order to determine the overall value of the

warrant, the valuation specialists also simulated the payments for sales-based, operating and regulatory milestones based upon similar inputs to determine the expected overall purchase price of the Company. The net difference between the expected purchase price and the average simulated equity value determines the "option payoff". Finally, management assigned a probability that the warrant would be exercised, which was applied to the present value of the "option payoff" to arrive at the recorded value reflected in the accompanying consolidated financial statements. The Series W warrant expired unexercised on March 31, 2021 and the remaining fair value of $5.0 million was recorded in the Consolidated Statement of Operations and Comprehensive (Loss) Income for the twelve months ended December 31, 2021.

The fair value of the preferred stock warrants was determined by management, with input and assistance from a third-party valuation specialist using a PWERM/OPM hybrid valuation model. This method essentially utilizes a combination of market and income method approaches for each part of the calculation of enterprise value using assumptions and financial data prepared by the Company and combines them in a probabilistic manner. The valuation considered several future scenarios for the Company, each of which assumed a shareholder exit either through initial public offering, sale ("M&A") or dissolution. Based upon the current initial public offering market, M&A values for private companies and the historical likelihood of dissolution or no exit, the Company concluded that the probabilities and time frames were reasonable. Implicit in the timing used in the application of the PWERM/OPM Hybrid Method is also the possibility of no exit. The option pricing model's significant unobservable inputs included: (1) the assumed time until a liquidity event, (2) the risk-free interest rate over the period until the assumed liquidity event, (3) the assumed volatility in the value of the equity of the company (which corresponds to the model's underlying asset volatility), (4) the enterprise value and preferred investment amount and (5) the key price points in the Company's capital structure in terms of exit levels on the assumed liquidation date. A significant increase (decrease) in any of these inputs in isolation, particularly the estimated price of the Company's preferred stock, would have resulted in a significantly higher (lower) fair value measurement.

The following table sets forth changes in the estimated fair values for the Company's warrant liabilities measured using significant unobservable inputs (in thousands):

	Year ended December 31,	
	2021	2020
Beginning of period	$ 8,846	$ 71,881
Exercise of preferred stock warrants	(1,111)	(24)
Expiration of common stock warrant	(5,018)	—
Change in fair value of common stock warrant	—	(64,628)
Change in fair value of preferred stock warrants	(2,717)	1,617
End of period	$ —	$ 8,846

Note 7 – Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities consisted of the following (in thousands):

	December 31,	
	2021	2020
Employee compensation and benefits	$ 5,916	$ 2,943
Vendor invoices	871	745
Contract liabilities	618	417
Accrued interest	319	—
Other	135	69
	$ 7,859	$ 4,174

Note 8 – Term Loan

On October 29, 2020, the Company entered into a loan facility ("Term Loan") with an initial draw of $25.0 million. Proceeds were used to help fund the Company's ongoing operations. In March 2021, the Company drew an additional $5.0 million from the facility for the purpose of funding ongoing operations. In June 2021, the Company drew an additional $10.0 million from the facility for the purpose of funding ongoing operations. Another $10.0 million of the term-loan facility was available for additional draws during 2021, which were not borrowed and $10.0 million is to be available in the first quarter of 2022, if the Company reaches certain sales milestones.

The Term Loan is secured by substantially all of the Company's assets, including a negative lien on the Company's intellectual property assets. The Company is subject to various standard covenants, such as quarterly reporting, annual audits, submission of annual projections and limitations on dividends, further investments and indebtedness. The Term Loan also contains a covenant ("Performance to Plan") that provides that, beginning on March 31, 2022 and measured monthly, the Company must achieve trailing twelve-month revenue equal to or greater than 50% of the Company's annual operating budget as approved by the Company's Board of Directors and the lender. In July 2021, the Company completed its initial public offering with greater than $70.0 million in proceeds, which allowed the Company to continue either the Performance to Plan covenant or may replace it with a positive lien on its intellectual property.

Interest for all borrowings under the Term Loan is determined as the greater of (1) 9.25% or (2) 9.09% plus the greater of 30-day LIBOR published in the Wall Street Journal and 0.16%. The Company may elect an interest rate equal to 10.25% plus the greater of (1) the Wall Street Journal Prime rate or (2) 7%. The interest rate resets monthly on the last day of the month prior to the month in which interest accrues, and an actual/360-day convention applies. If the Company is considered to be in default as defined by the Term Loan, additional interest of 5% applies. The LIBOR rate is subject to change to another basis, presently undetermined, when LIBOR ceases to exist.

The Term Loan requires 36 months of interest-only payments, followed by 23-months of amortization. If the Company is in compliance with the Performance to Plan covenant through October 31, 2023, the interest-only period is extended by 12 months, and the amortization period is reduced by 11 months. Payments are due on the first day of each month in arrears. All unpaid amounts under the Term Loan mature on October 1, 2025.

The Term Loan is prepayable at any time without penalty; however, the loan must be prepaid in full or in specific increments, and amounts prepaid may not be subsequently reborrowed. The loan may also be accelerated by the lender in the event of a default.

As the loan was not fully prepaid by December 31, 2021, the Company became subject to an additional fee (the "Exit Fee"). The fee is 3% of the original draw amount if prepaid between January 1, 2022 and October 31, 2022 ($750,000), 4% if prepaid between November 1, 2022 and October 31, 2023 ($1.0 million) and 5% ($1.25 million) if paid subsequently, including at maturity. The Exit Fee is being accreted to the carrying value of the debt as a debt premium and interest expense over the life of the loan using the effective interest method. Third-party professional service fees totaling $819,000 were incurred by the lender and the Company that are directly attributable to execution of the Term Loan transaction. These issuance costs have been recorded as a discount to the carrying amount of the debt and are being amortized to interest expense over the effective term of the debt using the effective interest method.

As of December 31, 2021, annual principal payments due under the Term Loan were as follows (in thousands):

Year Ended December 31,	
2022	$ —
2023	1,739
2024	20,870
2025	17,391
2026	—
Total	40,000
Less: unamortized issuance costs and exit fee	(240)
Term loan, net	$ 39,760

During 2021 and 2020, cash interest paid for all borrowings under the Term Loan was 9.25%. The effective interest rate for the year ended December, 31 2021 and 2020 was 10.90% and 11.31%, respectively. As of December 31, 2021 and 2020, the Company was in compliance with all covenants.

Note 9 – Common Stock Warrant Liability

Warrant agreement and share purchase agreement

On October 12, 2017, the Company issued a "Strategic Partner" a warrant to purchase Series W common stock (the "Warrant Agreement") for a non-refundable payment of $60.0 million. This Series W common stock warrant (the "Series W Warrant") had an initial expiration date of December 31, 2018 unless extended as provided for in the Warrant Agreement. On December 27, 2018, the Strategic Partner chose to extend the expiration date of the Series W Warrant, by making an additional non-refundable payment of $40.0 million, until the sooner of the achievement of performance milestones (as defined in the Warrant Agreement) or November 22, 2021. On March 18, 2020, the Company and the Strategic Partner signed an amendment to the Warrant Agreement that removed the milestone triggers for early exercise and changed the expiration date to March 31, 2021.

Concurrent with the Warrant Agreement, the Strategic Partner and the Company entered into a Share Purchase Agreement (the "Purchase Agreement"). Under the Purchase Agreement, the Strategic Partner purchased one share of the Company's non-voting $0.001 par value per share Series G common stock for $0.01. Upon exercise of the Series W Warrant, the Strategic Partner will receive one share of voting, $0.001 par value, Series W common stock. Per the Warrant Agreement, the exercise price of the Series W Warrant is $630.0 million plus adjustments for the Company's cash, working capital, indebtedness and transaction expenses, subject to an escrow holdback of $92.0 million and a shareholder representative holdback of $500,000. The Warrant Agreement also provided for potential aggregate milestone payments of up to $827.0 million for various sales-based and operating milestones and $185.0 million for certain regulatory milestones, either at the time of the Series W Warrant's exercise or at dates subsequent, as defined in the Warrant Agreement. Upon notice of exercise of the Series W Warrant by the Strategic Partner and receipt of the required funds, a Special Redemption, as defined in the Company's Articles of Incorporation, will trigger automatic redemption of all the Company's outstanding capital instruments, except for the Series G common stock and Series W common stock, and the Strategic Partner will acquire the Company.

The following table presents the assumptions used in the DCF and MCS calculations to determine the fair value of the Series W warrant:

	Year ended December 31, 2020
Terminal value—exit multiple	7.0
Weighted average cost of capital discount rate	22.0%
Expected life (in years)	0.25 year
Risk-free interest rate	0.9%
Expected volatility	56.9%

Special Redemption

On October 25, 2017, the Company adopted the 12th Amended and Restated Articles of Incorporation (the "Amendment"). Under Article IV of the Amendment, if the Strategic Partner had exercised the Series W Warrant, an automatic redemption, conversion, termination and cancellation of all then outstanding shares of the Company's capital stock, options and warrants would have occurred without any further action required. Immediately prior to the automatic redemption, all outstanding preferred shares would have converted to common shares, unvested stock options would have accelerated and became fully vested and all stock options would have terminated along with any preferred stock warrants outstanding. Stockholders, option holders and warrant holders would have had the right to receive the initial per share price less the strike price as defined in the Warrant Agreement. The Strategic Partner would have advanced (through an exchange agent) the funds to the Company, which would then have disbursed the

funds to all shareholders, option holders and warrant holders. If the Series W Warrant was terminated or expired unexercised, Article IV of the Amendment would terminate and would be of no further force and effect.

In December 2020, management determined that exercise of the Series W Warrant was no longer probable, at which point further accretion to redemption value of common stock, preferred stock and stock options ceased.

On March 31, 2021, the Series W Warrant terminated as the Strategic Partner did not provide notice of exercise. A gain of $5.0 million was recorded on the expiration of the Series W Warrant in the accompanying consolidated statements of operations and comprehensive (loss) income for the year-ended December 31, 2021. Upon termination, amounts recorded in temporary equity for common stock and stock options were reclassified to common stock and additional paid-in capital within permanent equity as these instruments were no longer redeemable.

Note 10 – Stockholders' Equity (Deficit)

On July 29, 2021, the Company restated its certificate of incorporation and bylaws which provide for, among other things, the Company's authorized capital stock to consist of 900,000,000 shares of common stock, par value $0.001 per share, and 100,000,000 shares of convertible preferred stock, par value $0.001 per share. The restated certificate defines the voting rights, dividends, liquidation, rights and preferences of each class of stock.

There are 900,000,000 shares of common stock authorized, 27,366,746 issued and outstanding at December 31, 2021, and 24,545,966 shares authorized, 3,813,450 shares issued and outstanding as of December 31, 2020.

There are 100,000,000 shares of preferred stock authorized and none issued or outstanding at December 31, 2021 and 2020.

Prior to the IPO, the Amendment authorized eight classes of preferred stock, Series A through F, the "Prior Preferred Stock" and Series G and H, the "Senior Preferred Stock". All of the Company's redeemable convertible preferred stock were classified as temporary equity on the accompanying December 31, 2020 consolidated balance sheets, as all such preferred stock is redeemable either at the option of the holder or upon an event outside the control of the Company (i.e., a change in control). The redeemable convertible preferred stock was redeemable per the Special Redemption (see Note 9 - Common Stock Warrant Liability) or upon certain change in control events (including liquidation, sale or transfer of control of the Company); however, the Special Redemption was not a certain event, and all change in control events are outside of the Company's control. In the event of the Special Redemption, the holders were entitled to receive redemption proceeds as defined in the Warrant Agreement. In the event of liquidation, holders of the convertible preferred stock might have had the right to receive its liquidation preference under the terms of the Company's Amendment.

As a result of management's determination that the Special Redemption was probable, but not certain, the Company began accreting to the expected redemption value of the redeemable convertible preferred stock in October 2017. In December 2020, management determined that the Special Redemption was no longer probable, at which point accretion to redemption value ceased. As of March 31, 2021 the Series W Warrant expired unexercised, and all redemption provisions of the Special Redemption lapsed.

The following table summarizes information related to issuance of the Company's preferred stock (in thousands, except number of shares and per share amounts):

	As of December 31, 2020						
	Par Value	Date of Issuance	Shares Price at Issuance	Shares Authorized(1)	Shares Issued and Outstanding(1)	Liquidation Preference	Carrying Value (2) Share Capital
Series A	$ 0.001	Feb-2000	$ 40.81	355,921	355,903	$ 14,523	$ 13,535
Series B	$ 0.001	May-2003	$ 9.07	1,741,452	1,741,399	15,795	39,715
Series C	$ 0.001	Feb-2007	$ 12.92	1,168,344	1,168,311	15,086	28,136
Series D	$ 0.001	Aug-2009	$ 18.08	663,808	663,728	12,000	18,503
Series E	$ 0.001	Oct-2011	$ 20.66	353,339	353,327	7,300	10,350
Series F	$ 0.001	May-2012	$ 25.83	507,744	499,159	12,891	18,305
Series G	$ 0.001	Jun-2015	$ 12.40	5,832,685	5,788,878	71,759	135,682
Series H	$ 0.001	Feb-2017	$ 12.40	5,949,499	3,805,567	47,174	89,074
				16,572,792	14,376,272	$ 196,528	$ 353,300

(1) The shares authorized, issued and outstanding do not reflect any anti-dilution provisions of Series C, Series D, Series E and Series F as a result of the Series G financing.
(2) The carrying value reflects the gross proceeds received from the sale of the preferred stock less issuance costs and the fair value at issuance of preferred stock warrants classified as a liability, plus accretion of redemption value.

Preferred stock was convertible at the option of the holder into common stock on a one-for-one basis and was converted upon completion of the Company's IPO on July 29, 2021. Immediately prior to the completion of the IPO, 14,376,272 outstanding shares of the Company's convertible preferred stock were converted into an aggregate of 14,850,993 shares of common stock and 225,945 warrants to purchase Series H convertible preferred stock were exercised and converted into 225,945 shares of common stock.

The following table shows the common stock equivalent of preferred stock which was converted as a result of the anti-dilution provisions enacted during the Series G financing.

Converted Shares	Fully Diluted on Conversion (1) 12/31/2020
Series A	355,903
Series B	1,741,399
Series C	1,197,590
Series D	772,963
Series E	429,766
Series F	758,941
Series G	5,788,878
Series H	3,805,567
Total	14,851,007

(1) Excludes preferred stock warrants see Note 11 – Convertible Preferred Stock Warrants.

Common stock reserved for future issuance consisted of the following:

	December 31, 2021	December 31, 2020
Conversion of preferred stock	—	14,851,007
Preferred stock warrants	—	225,945
Common stock warrant	—	1
Stock options issued and outstanding under the 2006, 2015 and 2021 plans	5,754,005	4,201,935
Restricted stock units	640,479	—
Employee stock purchase plan	484,027	—
Total shares of common stock issued or reserved	6,878,511	19,278,888

Note 11 – Convertible Preferred Stock Warrants

Series F, G and H convertible preferred stock warrants were recorded at fair value at issuance and were revalued as of each reporting date until exercised or expired. The fair value of Series F, G and H convertible preferred stock warrants was determined with the assistance of valuation specialists using a PWERM/OPM hybrid method. This method essentially utilizes a combination of market and income method approaches for each part of the calculation of enterprise value and combines them in a probabilistic manner. The valuation considered several future scenarios for the Company, each of which assumes a shareholder exit either through initial public offering, sale ("M&A") or dissolution. Based upon the current initial public offering market, M&A values for private companies and the historical likelihood of dissolution or no exit, the Company concluded that the probabilities and time frames were reasonable. Implicit in the timing used in the application of the PWERM/OPM Hybrid Method is also the possibility of no exit. The model's inputs included: (1) the assumed time until a liquidity event, (2) the risk-free interest rate over the period until the assumed liquidity event, (3) the assumed volatility in the value of the equity of the company (which corresponds to the model's underlying asset volatility), (4) the enterprise value and preferred investment amount and (5) the key price points in the Company's capital structure in terms of exit levels on the assumed liquidation date. A significant increase (decrease) in any of these inputs in isolation, particularly the estimated price of the Company's preferred stock, would have resulted in a significantly higher (lower) fair value measurement.

The following scenario probability-weighted assumptions were used to revalue the convertible preferred stock warrants to fair value:

	Year ended December 31, 2020	
	Range	**Weighted average**
Expected volatility	83.4% to 97.4%	94.6%
Risk adjusted discount factor	16% to 31%	25%
Expected life (in years)	0.4 to 2.0 years	1.1 years
Expected dividend yield	0.0%	0.0%

In February and March 2017, the Company issued 260,434 warrants to purchase shares of Series H convertible preferred stock with an exercise price of $12.40. Series H warrants were initially issued with a five-year life; in November 2017, they were extended another five years to 2027. As of December 31, 2020, the Company had 225,945 Series H warrants outstanding. The fair value of Series H warrants was $16.95 per share as of December 31, 2020. Thus, outstanding Series H warrants had an estimated fair value of $3.8 million as of December 31, 2020. There were 225,945 exercises of Series H warrants which were converted into 100,261 shares of common stock during the year ended December 31, 2021. During the year ended December 31, 2020, 1,817 Series H warrants were exercised.

As of December 31, 2020, the Series H warrants were classified as liabilities on the accompanying consolidated balance sheets and re-measured at fair value as of each balance sheet date. Changes in fair value were recognized as a component of other income (expense) in the accompanying Consolidated Statements of Operations and Comprehensive (Loss) Income. As of December 31, 2021, no Series H convertible preferred stock warrants are outstanding.

Note 12 – Stock-based compensation expense

The Company has three equity incentive compensation plans, the Calhoun Vision, Inc. 2015 Equity Incentive Plan, the Calhoun Vision, Inc. 2006 Stock Plan, and the 2021 Equity Incentive Plan (collectively the "Plans").

2006 Stock Plan

The Company's 2006 Stock Plan (the "2006 Plan") was originally adopted by the Company's Board of Directors and approved by the Company's stockholders in 2006. The Company's 2006 Plan was terminated in 2015 in connection with the adoption of the Company's 2015 Plan and as a result no new awards may be issued under the

2006 Plan. However, the 2006 Plan will continue to govern the terms and conditions of the outstanding awards previously granted under the 2006 Plan.

2015 Equity Incentive Plan

The Company's 2015 Equity Incentive Plan (the "2015 Plan") was originally adopted by the Company's Board of Directors and approved by the Company's stockholders in 2015. The 2015 Plan was most recently amended in March 2021. In July 2021, upon completion of the IPO, the 2015 Plan terminated immediately prior to effectiveness of the 2021 Equity Incentive Plan with respect to the grant of future awards. However, the 2015 Plan will continue to govern the terms and conditions of the outstanding awards previously granted under the 2015 Plan.

2021 Equity Incentive Plan

On July 28, 2021, the Company's 2021 Equity Incentive Plan (the "2021 Plan"), was adopted and approved by the Company's Board of Directors and stockholders prior to the IPO and became effective. The 2021 Plan provides for the grant of incentive stock options to employees and any subsidiary corporations' employees, and for the grant of nonstatutory stock options, stock appreciation rights, restricted stock, restricted stock units, or ("RSUs"), and performance awards to employees, directors, and consultants and subsidiary corporations' employees and consultants. The number of shares of the Company's common stock available for issuance under the 2021 Plan is equal to 2,420,135 shares of common stock plus any shares subject to awards granted under the 2015 Plan and the 2006 Plan that, after the effectiveness of the 2021 Plan, expire or otherwise terminate without having been exercised in full, are tendered to or withheld by the Company for payment of an exercise price or for tax withholding obligations, or are forfeited to or repurchased by the Company due to failure to vest, with the maximum number of shares to be added to the 2021 Plan from the 2015 Plan and 2006 Plan is equal to 4,569,530 shares of common stock.

The number of common shares reserved for issuance under the 2021 Plan will be increased automatically on the first day of each fiscal year beginning with the 2022 fiscal year and ending on the ten year anniversary of the date the Board of Directors approved the 2021 Plan, by a number equal to the least of: (i) 7,260,406 shares of our common stock; (ii) 4% of the outstanding shares of our common stock on the last day of our immediately preceding fiscal year; or (iii) such lesser number of shares of our common stock as the administrator may determine. The 2021 Plan is administered by the Company's Board of Directors.

2021 Employee Stock Purchase Plan

On July 28, 2021, the Company's Board of Directors and stockholders adopted and approved the Company's 2021 Employee Stock Purchase Plan ("2021 ESPP"). The number of shares of the Company's common stock available for issuance under the 2021 ESPP is equal to 484,027 shares of common stock.

The 2021 ESPP provides eligible employees of the Company and its subsidiaries with the opportunity to purchase shares of the Company's Common Stock at a purchase price equal to 85% of the common stock's fair market value on the first trading day or last trading day of each purchase period, whichever is lower. The 2021 ESPP generally provides for two six-month purchase periods every twelve months: May 1 through October 31 and November 1 through April 30. The initial purchase period began on November 1, 2021.

The number of common shares reserved for issuance under the 2021 ESPP plan will be increased automatically on the first day of each fiscal year beginning with our 2022 fiscal year, by a number equal to the least of: (i) 1,452,081 shares; (ii) 1% of the outstanding shares of our common stock on the last day of our immediately preceding fiscal year; or (iii) such other amount as the administrator may determine. The 2021 ESPP is administered by the Board of Directors.

Stock-Based Compensation Expense

The purpose of the 2021 Plan and 2021 ESPP is to provide a means by which eligible recipients of stock awards may be given an opportunity to benefit from increases in the value of the common stock in order to retain or procure the services of the employees, members of the Board and consultants and provide them with an incentive to promote the Company's success and accomplish corporate goals.

Stock option awards are generally granted with an exercise price of no less than 100% of estimated fair market value on the date of grant. Time based awards generally vest over four years as follows: one fourth of the total

number of shares vest and become exercisable on the one-year anniversary; 1/48th of the total number of shares subject to the option vest and become exercisable on each monthly anniversary thereafter for the remaining three years.

A summary of the stock option activities related to the Plans, as of and for the year ended December 31, 2021 and 2020 is presented below:

	Number of Options	Weighted Average Exercise Price	Weighted Average Grant Date Fair Value	Weighted Avg Remaining Contractual Life (Years)
Options outstanding as of December 31, 2019	3,473,757	$ 7.76		6.00
Granted	1,156,078	$ 15.09	$ 8.39	
Exercised	(249,566)	$ 3.98	$ 2.08	
Forfeited	(168,831)	$ 18.53	$ 8.96	
Expired	(9,503)	$ 4.14		
Options outstanding as of December 31, 2020	4,201,935	$ 9.57		6.46
Granted	2,057,113	$ 14.88	$ 8.53	
Exercised	(364,504)	$ 4.26	$ 2.13	
Forfeited	(111,748)	$ 15.67	$ 10.63	
Expired	(28,791)	$ 16.06		
Options outstanding as of December 31, 2021	5,754,005	$ 11.64		6.88
Exercisable as of December 31, 2021	3,316,356	$ 9.20		5.20

A summary of non-vested restricted stock unit activities for the year ended December 31, 2021 is as follows:

	Number of Shares	Weighted Average Grant Date Fair Value
Unvested at December 31, 2020	—	—
Granted	657,729	$ 15.46
Vested	—	—
Forfeited	(17,250)	15.38
Unvested at December 31, 2021	640,479	$ 15.46

As of December 31, 2021 and 2020, the intrinsic value of options vested was $14.7 million and $26.2 million, respectively, and of all options outstanding was $14.7 million and $26.4 million, respectively. During the year ended December 31, 2021 and 2020, the total cash received from the exercise of stock options was $1.6 million and $1.0 million, respectively. The total fair value less strike price of these options was $4.0 million and $2.8 million, respectively.

Stock-based compensation expense was classified in the accompanying consolidated statements of operations and comprehensive income (loss) as follows (in thousands):

	Twelve Months Ended December 31,	
	2021	2020
Research and development	$ 2,620	$ 2,200
Selling, general and administrative	4,061	1,344
Cost of sales	894	641
	$ 7,575	$ 4,185

As of December 31, 2021 and 2020, there were 2,437,649 and 1,177,165 unvested options, respectively. Total unrecognized expense related to unvested stock options was approximately $20.1 million and $9.8 million as of December 31, 2021 and 2020, respectively. Amounts are expected to be recognized over a weighted average period of approximately 3.0 years and 2.9 years, respectively.

As of December 31, 2021, there was $8.8 million of total unrecognized compensation costs related to non-vested restricted stock units granted under the Plans. The unrecognized compensation cost is expected to be recognized over a weighted average period of 3.5 years.

The following table presents the range and weighted-average assumptions, used in the Black-Scholes option pricing model to determine the fair value of stock options:

	Year ended December 31,			
	2021		2020	
	Range	Weighted Average	Range	Weighted Average
Expected volatility	61.6% to 63.7%	63.2%	83.4% to 97.4%	94.6%
Risk-free interest rate	0.6% to 1.7%	1.0%	16% to 31%	24.9%
Expected life (in years)	5.52 to 10.00 years	6.09 years	0.4 to 2.0 years	1.1 years
Expected dividend yield	0.0%	0.0%	0.0%	0.0%
Grant date fair value	$12.08 to $19.94	$15.02	$0.81	$0.81

On July 30, 2021, the Board of Directors approved the issuance of 640,567 equity awards to the Company's named executive officers and certain non-employee directors, consisting of 17,577 restricted stock units and 622,990 stock option awards. The awards will vest over one to four years of service.

On August 3, 2021, the Board of Directors approved the issuance of equity awards to certain non-employee directors, consisting of 40,134 restricted stock units. The awards will vest over one to three years of service.

On January 3, 2022, the Board of Directors approved the issuance of 19,196 restricted stock units to a non-employee director. The award will vest over three years of service.

Note 13 – Income Taxes

The components of (loss) income before income taxes are as follows (in thousands):

	December 31, 2021	December 31, 2020
U.S. (loss) income before taxes	$ (48,694)	$ 27,577
Foreign income before taxes	14	55
(Loss) income before income taxes	$ (48,680)	$ 27,632

Income tax expense for the years ended December 31, 2021 and 2020 consists of the following (in thousands):

	Year ended December 31,	
	2021	2020
Current:		
Federal	$ —	$ —
State	7	46
Foreign	1	11
	8	57
Deferred:		
Federal	(9,950)	(7,179)
State	(3,241)	(2,642)
Foreign	—	—
	(13,191)	(9,821)
Change in valuation allowance	13,191	9,821
Income tax expense	$ 8	$ 57

The significant components that comprised the Company's net deferred taxes are as follows (in thousands):

	Year ended December 31,	
Deferred tax assets:	2021	2020
Net operating loss	$ 62,347	$ 52,127
Amortization	117	134
Stock-based compensation	2,829	2,297
Research and development credit	7,902	6,663
Right-of-use liability	1,290	1,585
Depreciation	536	298
Other	1,745	740
Gross deferred tax assets	76,766	63,844
Less: valuation allowance	(75,546)	(62,355)
Total net deferred tax assets	$ 1,220	$ 1,489
Deferred tax liabilities:		
Right-of-use asset	(1,220)	(1,489)
Total deferred tax liabilities	(1,220)	(1,489)
Net deferred tax assets	$ -	$ -

A reconciliation of the provision for income taxes with the expected income tax computed by applying the federal statutory income tax rate to loss before provision for income taxes was calculated as follows (amounts in thousands):

	December 31, 2021		December 31, 2020	
	Rate	Amount	Rate	Amount
Income tax provision at the federal statutory tax rate	21.0%	$ (10,223)	21.0%	$ 5,793
State taxes, net of federal benefit	4.1%	(1,989)	(5.3)%	(1,468)
Research and development credits	2.6%	(1,241)	(4.7)%	(1,306)
Stock-based compensation	(1.4)%	677	0.4%	122
Other non-deductible permanent items	2.6%	(1,252)	(47.9)%	(13,204)
Expired tax attributes	(2.0)%	960	1.5%	426
Other	0.2%	(113)	(0.5)%	(127)
Change in valuation allowance	(27.1)%	13,189	35.6%	9,821
Income tax expense	0.0%	8	0.1%	$ 57

The tax effects of items that give rise to significant portions of deferred tax assets are primarily net operating loss carryforwards. The Company evaluates the recoverability of deferred tax assets and assesses all available positive and negative evidence to estimate if sufficient future taxable income will be generated to use the existing deferred tax assets. Based on the weight of all the evidence, including a history of operating losses and the Company's ability to generate future taxable income to realize these assets, a full valuation allowance has been recorded to offset the net deferred tax asset as realization of such asset is uncertain. The Company's valuation allowance increased by $13.2 million and $9.8 million in 2021 and 2020, respectively.

As of December 31, 2021, the Company had federal net operating loss carryforwards of $270.4 million and state net operating loss carryforwards of $100.2 million which may be available to offset future taxable income for tax purposes. Of the $270.4 million in federal NOLs, $154.0 million will not expire and will be able to offset 80% of taxable income in future years. Of the $100.2 million in state NOLs, $17.8 million will not expire and will be able to offset 80% of taxable income in future years. The remaining federal NOL carryforwards will expire between 2022 and 2037, and the remaining state NOL carryforwards will expire between 2028 and 2041. In addition, the Company also had federal credit carry forwards of $7.3 million and state credit carry forwards of $7.2 million as of December 31, 2021, which may be available to offset future tax liabilities. The federal credits will expire between 2037 and 2041, and the state credits do not expire.

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") was enacted in response to the COVID-19 pandemic. The CARES Act, among other things, permits NOL carryovers and

carrybacks to offset 100% of taxable income for taxable years beginning before 2021. In addition, the CARES Act allows NOLs incurred in 2018, 2019 and 2020 to be carried back to each of the five preceding taxable years to generate a refund of previously paid income taxes. Due to the Company's history of net operating losses, the CARES Act is not expected to have a material impact on the Company's consolidated financial statements.

On December 27, 2020, the United States enacted the Consolidated Appropriations Act, 2021 (the "Appropriations Act"). Included in the tax provisions are a number of items directly related to COVID-19 relief such as a provision allowing recipients of Paycheck Protection Program (the "PPP") loans to deduct associated costs and an extension and significant expansion of the employee retention credit originally enacted in the CARES Act. There was no material impact to the Company from the provisions of the Appropriations Act in 2021 and 2020.

On June 29, 2020, the state of California enacted Assembly Bill No. 85 (AB 85) suspending California net operating loss utilization and imposing a cap on the amount of business incentive tax credits companies can utilize, effective for tax years 2020, 2021 and 2022. There was no material impact from the provisions of AB 85 in 2021 and 2020.

Utilization of the net operating loss carryforwards may be subject to substantial annual limitation due to ownership change limitations that may have occurred or that could occur in the future, as required by Section 382 of the Internal Revenue Code of 1986, as amended (the "Code"), as well as similar state provisions. These ownership changes may limit the amount of net operating loss carryforwards that can be utilized annually to offset future taxable income and tax, respectively. In general, an "ownership change," as defined by Section 382 of the Code, results from a transaction or series of transactions over a three-year period resulting in an ownership change of more than 50 percentage points of the outstanding stock of a company by certain stockholders or public groups.

Pursuant to Internal Revenue Code ("IRC") Sections 382 and 383, annual use of the Company's net operating loss and R&D credit carryforwards may be limited in the event a cumulative change in ownership of more than 50% occurs within a three-year period. The Company has not completed an IRC Sections 382 and 383 analysis regarding the limitation of net operating loss and R&D credit carryforwards as of December 31, 2021. The Company has not completed a formal R&D study but has estimated the federal and California credit for purposes of the tax footnote as of December 31, 2021. However, the Company has not reflected a benefit in the consolidated financial statements due to the recorded valuation allowance.

The following changes occurred in the amount of unrecognized tax benefits (in thousands):

	Year ended December 31,	
	2021	2020
Beginning balance of unrecognized tax benefits	$ 2,554	$ 2,056
Additions for current year tax positions	459	486
Reductions for prior year tax positions	—	12
Ending balance	$ 3,013	$ 2,554

None of the unrecognized tax benefits, if recognized, would impact the annual effective rate, due to the valuation allowance. The Company's unrecognized tax benefits are recorded as a reduction in deferred tax assets. The Company does not expect any significant increases or decreases to the Company's unrecognized tax benefits within the next 12 months. Due to the existence of the valuation allowance, future changes in the Company's unrecognized tax benefits will not impact the Company's effective tax rate. The Company has not incurred any material interest or penalties as of the current reporting date with respect to income tax matters.

The Company is subject to U.S. federal and various states' income taxes. The federal returns for tax years 2018 through 2021 remain open to examination and the state returns remain subject to examination for tax years 2017 through 2021. Carryforward attributes that were generated in years where the statute of limitations is closed may still be adjusted upon examination by the Internal Revenue Service or other respective tax authorities. All other state jurisdictions remain open to examination. There are no cumulative earnings in our foreign subsidiaries as of December 31, 2021 and 2020 that would be subject to U.S. income tax or foreign withholding tax. The Company plans to indefinitely reinvest any future earnings of its foreign subsidiaries.

Note 14 – Notes Receivable for Redeemable Common Stock

During 2016 and 2017, the Company entered into or renewed full recourse promissory notes with former or current Board Members and certain other parties with an aggregate principal of $693,000, which included unpaid principal and accrued interest thereon. The notes bore interest at 7%, compounded annually. The initial maturity of the notes was amended to extend the maturity dates into 2021 and 2022 in exchange for payments totaling $105,000. Common stock was originally issued as consideration for the promissory notes and was held as collateral. As of December 31, 2021 and 2020, accrued interest was $0 and $110,000, respectively.

On July 29, 2021, the Company completed its IPO and immediately prior to the completion of the IPO, 11,011 outstanding shares of the Company's common stock were surrendered to satisfy the promissory note and accrued interest. The promissory notes and outstanding interest thereon were reported as a component of temporary equity in the accompanying consolidated balance sheets and statements of redeemable common stock, stock options, preferred stock and stockholders' deficit as of December 31, 2020.

Note 15 – Leases

The Company has operating and finance leases for facilities and certain equipment. Leases with an initial term of 12 months or less are not recorded on the consolidated balance sheets. Lease expense for operating leases is recognized on a straight-line basis over the lease term. The Company does not combine lease and non-lease components in the recognition of lease expense.

The Company's leases have remaining non-cancelable lease terms of approximately 1 year to 4 years, some of which include options to extend the leases for up to 10 years. The exercise of lease renewal options is at the Company's sole discretion. The Company recognizes rent expense for minimum lease payments on a straight-line basis over the expected lease term, including rent holidays, rent escalation clause and/or cancelable option periods where failure to exercise such options would result in an economic penalty.

As of December 31, 2021 and 2020, the Company held three leases for office, manufacturing and warehouse facilities in Aliso Viejo, California. The three leases are for 19,680, 42,106 and 48,036 square feet and expire on June 30, 2023, September 30, 2024 and January 31, 2026, respectively. For one of the facilities operating leases, the lessor provided $900,000 in tenant allowances.

The following table presents the lease balances within the consolidated balance sheets (in thousands):

Leases	Classification	December 31, 2021	December 31, 2020
Assets			
Operating	Operating leases right-of-use assets	4,284	$ 5,319
Finance	Property and equipment, net	33	58
Total lease assets		4,317	5,377
Liabilities			
Current			
Operating	Lease liabilities	1,509	1,247
Finance	Lease liabilities	20	27
Noncurrent			
Operating	Long-term lease liabilities	3,625	5,042
Finance	Long-term lease liabilities	17	37
Total lease liabilities		$ 5,171	$ 6,353

As the implicit rates in the Company's leases were not readily available, the incremental borrowing rate was determined based upon information available at the lease commencement date in determining the present value of future lease payments.

For the years ended December 31, 2021 and 2020, the components of operating and finance lease expenses were as follows (in thousands):

Lease Cost	Classification	Year Ended December 31, 2021	2020
Operating lease cost	Cost of sales	$ 14	$ 13
	Research and development	297	180
	Selling, general and administrative	1,608	1,544
Finance lease cost	Research and development	—	115
	Selling, general and administrative	25	44
Finance lease cost	Interest expense	5	14

Maturities of the Company's operating and finance lease liabilities as of December 31, 2021, were as follows (in thousands):

Year Ended December 31,	Operating Leases	Finance Leases
2022	1,976	23
2023	1,683	18
2024	1,456	—
2025	951	—
2026	79	—
Total lease payments	6,145	41
Less: imputed interest	1,011	4
Total lease liabilities	$ 5,134	$ 37

The weighted average remaining lease term and weighted average discount rate used to determine lease liabilities related to the Company's operating and finance leases as of December 31, 2021 and 2020 were:

Lease Term and Discount Rate	December 31, 2021	December 31, 2020
Weighted average remaining lease term (years)		
Operating leases	3.30	4.21
Finance leases	1.72	2.42
Weighted average discount rate		
Operating leases	10.5%	10.5%
Finance leases	10.5%	10.5%

Note 16 – Commitments and Contingencies

Letter of credit

The Company has a standby letter of credit, expiring September 30, 2024, issued by a financial institution as required security for one operating lease. The aggregate amount of the letter of credit was $310,000 and $360,000 as of December 31, 2021 and 2020, respectively.

Legal matters

From time-to-time, the Company may be involved in certain legal proceedings or regulatory matters arising in the ordinary course of business, including without limitation, actions with respect to intellectual property, employment, regulatory, product liability and contractual matters. In connection with these proceedings or matters, the Company regularly assesses the probability and amount (or range) of possible issues based on the developments

in these proceedings or matters. A liability is recorded in the consolidated financial statements if it is determined that it is probable that a loss has been incurred, and that the amount (or range) of the loss can be reasonably estimated. Because of the uncertainties related to any pending proceedings or matters, the Company is currently unable to predict their ultimate outcome and, with respect to any legal proceeding or regulatory matter where no liability has been accrued, to make a reasonable estimate of the possible loss (or range of loss) that could result from an adverse outcome. At December 31, 2021 and 2020, there were no legal proceedings, regulatory matters, or other disputes or claims for which a material loss was considered probable or for which the amount (or range) of loss was reasonably estimable. However, regardless of the outcome, legal proceedings, regulatory matters, and other disputes and claims can have an adverse impact on the Company because of legal costs, diversion of management time and resources, and other factors.

Note 17 – Employee benefit plan

401(k) retirement savings plan

The Company maintains a defined contribution 401(k) retirement savings plan for the benefit of its employees, including its named executive officers, who satisfy certain eligibility requirements. Under the 401(k) plan, eligible employees may elect to defer a portion of their compensation, within the limits prescribed by the Code, on a pre-tax or after-tax (Roth) basis, through contributions to the 401(k) plan. The 401(k) plan is intended to qualify under Sections 401(a) and 501(a) of the Code. As a tax-qualified retirement plan, pre-tax contributions to the 401(k) plan and earnings on those pre-tax contributions are not taxable to the employees until distributed from the 401(k) plan, and earnings on Roth contributions are not taxable when distributed from the 401(k) plan. In July 2021, the Company began making matching contributions of up to 2% of eligible compensation, as contributed by eligible participating employees. Employer matching contributions vest 25% per year over four years. The Company contributed $228,000, net of forfeitures, to the 401(k) plan for the year ended December 31, 2021.

Note 18 – Subsequent events

On March 7, 2022, the Company (Lessee) entered into a twenty-eight-month lease agreement with BML Management, LLC (Lessor) for 125 Columbia, Suite B in Aliso Viejo, CA. The lease commencement date is May 1, 2022 and will expire on August 31, 2024. The base rent payable is $15,738 per month.

Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

In designing and evaluating our disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Evaluation of disclosure controls and procedures

As of December 31, 2021, our management, with the participation and supervision of our principal executive officer and our principal financial officer, evaluated our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act). Based on this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level as of December 31, 2021. The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost benefit relationship of possible controls and procedures.

Management's annual report on internal control over financial reporting

This Annual Report does not include a report of management's assessment regarding internal control over financial reporting or an attestation report of the company's registered public accounting firm due to a transition period established by rules of the Securities and Exchange Commission for newly public companies.

Changes in internal control over financial reporting

There were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the quarter ended December 31, 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Limitations on the effectiveness of controls

Control systems, no matter how well conceived and operated, are designed to provide a reasonable, but not an absolute, level of assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. Because of the inherent limitations in any control system, misstatements due to error or fraud may occur and not be detected.

Item 9B. Other Information.

On March 3, 2022, the compensation committee (the "Compensation Committee") of the board of directors approved increases in the base salaries and annual target cash incentive payments (the "Target Bonuses") for each of our named executive officers for the fiscal year 2022, effective March 1, 2022. The Compensation Committee approved (i) an increase in the base salary of each of Eric Weinberg, Ilya Goldshleger and Shelley Thunen from $375,000 to $425,000 and (ii) an increase in the Target Bonuses of each of Mr. Weinberg, Dr. Goldshleger, and Ms. Thunen from 50% to 55% of each of their base salaries. The Compensation Committee also approved, effective March 1, 2022 (i) an increase in the base salary of our Chief Executive Officer, Ron Kurtz, from $500,000 to $575,000 and (ii) an increase in Mr. Kurtz's Target Bonus from 75% of his salary to 85% of his salary.

This disclosure is provided in this Part II, Item 9B in lieu of disclosure under Item 5.02(e) of Form 8-K.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

The information called for by this item will be set forth in our Proxy Statement for the Annual Meeting of Stockholders to be filed with the SEC within 120 days of the fiscal year ended December 31, 2021 (the "Proxy Statement") and is incorporated herein by reference.

In July 2021, our Board of Directors adopted a Code of Business Conduct and Ethics that applies to all of our employees, officers and directors, including our Chief Executive Officer, Chief Financial Officer and other executive and senior financial officers. The full text of our Code of Business Conduct and Ethics is posted on the investor relations page on our website which is located at https://investors.rxsight.com/corporate-governance/governance-overview. We will post any amendments to our code of business conduct and ethics, or waivers of its requirements, on our website.

Item 11. Executive Compensation.

The information required by this item is incorporated by reference from the applicable information set forth in "Board of Directors and Corporate Governance", and "Executive Compensation" which will be included in our Proxy Statement.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

The information required by this item is incorporated by reference from the applicable information set forth in "Security Ownership of Certain Beneficial Owners and Management" which will be included in our Proxy Statement.

Item 13. Certain Relationships and Related Transactions, and Director Independence.

The information required by this item is incorporated by reference from the applicable information set forth in "Certain Relationships and Related Party Transactions" and "Board of Directors and Corporate Governance" which will be included in our Proxy Statement.

Item 14. Principal Accounting Fees and Services.

The information required by this item is incorporated by reference from the applicable information set forth in "Ratification of Independent Registered Public Accounting Firm" which will be included in our Proxy Statement.

PART IV

Item 15. Exhibits, Financial Statement Schedules.

(a) List the following documents filed as a part of this Annual Report on Form 10-K:

(1) Financial Statements: The financial statements included in Part II, Item 8 of this document are filed as part of this Annual Report on Form 10-K.

(2) Financial Statement Schedules: Schedule II – Valuation and Qualifying Accounts and Reserves.

All other schedules have been omitted because the information either has been shown in the financial statements or notes thereto, or is not applicable or required under this section.

(3) The exhibits listed in the following Exhibit Index are filed or incorporated by reference as part of this Annual Report on Form 10-K.

Exhibit Index

Exhibit Number	Description	Incorporated by Reference			
		Form	File No.	Exhibit	Filing Date
3.1	Amended and Restated Certificate of Incorporation of the Registrant.	10-Q	-	3.1	November 11, 2021
3.2	Amended and Restated Bylaws of the Registrant.	S-1	333-257790	3.3	July 9, 2021
4.1	Specimen stock certificate of the Registrant.	S-1/A	333-257790	4.2	July 26, 2021
4.2*	Description of common stock.				
10.1+	Form of Indemnification Agreement between the Registrant and each of its directors and executive officers.	S-1	333-257790	10.1	July 9, 2021
10.2+	2015 Equity Incentive Plan of the registrant, as amended, and forms of agreement thereunder.	S-1/A	333-257790	10.2	July 26, 2021
10.3+	2021 Equity Incentive Plan of the registrant, as amended, and forms of agreement thereunder.	10-Q	-	10.2	November 11, 2021
10.4+	2021 Employee Stock Purchase Plan of the registrant.	10-Q	-	10.3	November 11, 2021
10.5	Loan and Security Agreement, by and among the Registrant, Oxford Finance LLC and the lenders listed on Schedule 1.1 thereto, dated as of October 29, 2020.	S-1	333-257790	10.5	July 9, 2021
10.6	Consent and First Amendment to Loan and Security Agreement, by and among the Registrant, Oxford Finance LLC and the lenders listed on Schedule 1.1 thereto, dated as of July 6, 2021.	S-1/A	333-257790	10.6	July 26, 2021
10.7#	License Agreement by and between the Registrant and the California Institute of Technology, dated as of July 28, 2015.	S-1	333-257790	10.6	July 9, 2021

10.8#	Exclusive License Agreement between the Regents of the University of California and the Registrant, dated as of March 1, 2000, as amended on May 29, 2008, December 5, 2013, November 10, 2016, April 4, 2017, June 21, 2017 and May 21, 2019.	S-1	333-257790	10.7	July 9, 2021
10.9	License and Maintenance Agreement between QAD, Inc. and its subsidiaries and the Registrant, dated as of October 29, 2015.	S-1	333-257790	10.8	July 9, 2021
10.10	QAD Hosted On Premise Project Proposal between Strategic Information Group and the Registrant, dated as of October 29, 2015.	S-1	333-257790	10.9	July 9, 2021
10.11	Cloud Services Agreement between QAD, Inc. and its subsidiaries and the Registrant, dated as of May 28, 2021.	S-1	333-257790	10.10	July 9, 2021
10.12	Lease, dated as of October 27, 2015, by and between the Registrant and Accuride International Inc., as amended by that certain First Amendment to Lease, dated November 23, 2015, that certain Second Amendment to Lease, dated December 22, 2015, that certain Third Amendment to Lease, dated January 18, 2016, and that certain Fourth Amendment to Lease, dated November 12, 2016, for premises located at 100-150 Columbia, Suites 100 and 200, Aliso Viejo, California 92656.	S-1	333-257790	10.11	July 9, 2021
10.13	Lease, dated as of March 27, 2020, by and between Pacific Park Investments, Inc. and the Registrant, for premises located at 75 Columbia, Aliso Viejo, California 92656.	S-1	333-257790	10.12	July 9, 2021
10.14	Lease, dated as of January 10, 2018, by and between the Registrant and Clifford D. Downs, as amended b that certain Commencement Date Memorandum dated as of February 22, 2018, for premises located at 5 Columbia, Aliso Viejo, California 92656.	S-1	333-257790	10.13	July 9, 2021
10.15+	Confirmatory Employment Letter, by and between the Registrant and Ron Kurtz, dated as of July 8, 2021.	S-1	333-257790	10.14	July 9, 2021
10.16+	Confirmatory Employment Letter, by and between the Registrant and Shelley Thunen, dated as of July 8, 2021.	S-1	333-257790	10.15	July 9, 20211
10.17+	Confirmatory Employment Letter, by and between the Registrant and Eric Weinberg, dated as of July 8, 2021.	S-1	333-257790	10.16	July 9, 2021
10.18+	Confirmatory Employment Letter, by and between the Registrant and Ilya Goldshleger, dated as of July 8, 2021.	S-1	333-257790	10.17	July 9, 2021

10.19+	Change in Control and Severance Agreement, by and between the Registrant and Ron Kurtz, dated as of July 8, 2021.	S-1	333-257790	10.18	July 9, 2021
10.20+	Change in Control and Severance Agreement, by and between the Registrant and Shelley Thunen, dated as of July 8, 2021.	S-1	333-257790	10.19	July 9, 2021
10.21+	Change in Control and Severance Agreement, by and between the Registrant and Eric Weinberg, dated as of July 8, 2021.	S-1	333-257790	10.20	July 9, 2021
10.22+	Change in Control and Severance Agreement, by and between the Registrant and Ilya Goldshleger, dated as of July 8, 2021.	S-1	333-257790	10.21	July 9, 2021
10.23	Consulting Agreement, by and between the Registrant and Yelroc Consulting, Inc., dated as of January 1, 2019, as amended by that certain Amendment No. 1 to Consulting Agreement, dated as of December 16, 2020.	S-1	333-257790	10.22	July 9, 2021
10.24	Termination Agreement, by and between the Registrant and Yelroc Consulting, Inc., dated as of August 3, 2021.	S-1/A	333-257790	10.24	July 26, 2021
10.25	Consulting Agreement, by and between the Registrant and Daniel Schwartz, M.D., dated as of January 1, 2019, as amended by that certain Amendment No. 1, dated as of December 16, 2020.	S-1	333-257790	10.23	July 9, 2021
10.26	Amended and Restated Secured Full Recourse Promissory Note, by and between the Registrant and Daniel Schwartz, dated as of April 18, 2019.	S-1	333-257790	10.24	July 9, 2021
10.27	Share Forfeiture and Release Agreement, by and between the Registrant and Daniel Schwartz, dated as of July 23, 2021.	S-1/A	333-257790	10.27	July 26, 2021
10.28*	Lease, dated as of March 7, 2022, by and between BML Management, LLC, and the Registrant, for premises located at 125 Columbia, Aliso Viejo, California 92656.				
21.1*	Subsidiaries of the Registrant.				
23.1*	Consent of Independent Registered Public Accounting Firm.				
31.1*	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				

31.2*	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1†	Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2†	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because XXBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document.
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104	Cover page Interactive Data File (embedded with the Inline XBRL document).

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*	Filed herewith.
†	Furnished herewith.

+	Indicates a management contract or compensatory plan or arrangement.
#	Portions of the exhibit have been omitted as we have determined that: (i) the omitted information is not material; and (ii) the omitted information would likely cause competitive harm to us if publicly disclosed.

Item 16. Form 10-K Summary

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized**.**

RxSight, Inc.

Date: March 8, 2022

By: /s/ Ron Kurtz, M.D.
Ron Kurtz, M.D.
Chief Executive Officer
(Principal Executive Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this Report has been signed below by the following persons on behalf of the Registrant in the capacities and on the dates indicated.

Name	Title	Date
/s/ Ron Kurtz, M.D. Ron Kurtz, M.D.	President and Chief Executive Officer and Director (Principal Executive Officer)	March 8, 2022
/s/ Shelley Thunen Shelley Thunen	Chief Financial Officer (Principal Financial and Accounting Officer)	March 8, 2022
/s/ J. Andy Corley J. Andy Corley	Chairman of the Board	March 8, 2022
/s/ William Link, Ph.D. William Link, Ph.D.	Director	March 8, 2022
/s/ Juliet Tammenoms Bakker Juliet Tammenoms Bakker	Director	March 8, 2022
/s/ Julie Andrews Julie Andrews	Director	March 8, 2022
/s/ Robert Palmisano Robert Palmisano	Director	March 8, 2022
/s/ Robert Warner Robert Warner	Director	March 8, 2022
/s/ Shweta Singh Maniar Shweta Singh Maniar	Director	March 8, 2022
/s/ Tamara R. Fountain, M.D. Tamara R. Fountain, M.D.	Director	March 8, 2022

DESCRIPTION OF THE REGISTRANT'S SECURITIES REGISTERED PURSUANT TO SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934

As of March 8, 2022, RxSight, Inc. had one class of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended (the "Exchange Act") – our common stock, par value $0.001 per share ("common stock").

Description of Common Stock

The following description of our common stock is a summary and is qualified by reference to our amended and restated certificate of incorporation and amended and restated bylaws, copies of which are filed with the SEC as exhibits to the Annual Report on Form 10-K of which this Exhibit 4.2 is a part, as well as by the applicable provisions of the Delaware General Corporation Law (DGCL).

Authorized Capital Shares

Pursuant to our amended and restated certificate of incorporation, our authorized capital stock consists of 1,000,000,000 shares of common stock, par value $0.0001 per share, and 100,000,000 shares of preferred stock, par value $0.0001 per share.

Voting Rights

Each holder of common stock is entitled to one vote for each share on all matters submitted to a vote of the stockholders, including the election of directors. Our amended and restated certificate of incorporation and amended and restated bylaws do not provide for cumulative voting rights. Because of this, the holders of a plurality of the shares of our common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they should so choose. With respect to matters other than the election of directors, at any meeting of the stockholders at which a quorum is present or represented, the affirmative vote of a majority of the voting power of the shares present in person or represented by proxy at such meeting and entitled to vote on the subject matter shall be the act of the stockholders, except as otherwise required by law. The holders of a majority of the stock issued and outstanding and entitled to vote, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders.

Dividends

Subject to preferences that may be applicable to any then-outstanding convertible preferred stock, holders of our common stock are entitled to receive dividends, if any, as may be declared from time to time by our board of directors out of legally available funds.

Liquidation

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

Rights and preferences

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

Anti-takeover effects of certain provisions of Delaware law, our amended and restated certificate of incorporation and our amended and restated bylaws

Certain provisions of the DGCL and certain provisions in our amended and restated certificate of incorporation and amended and restated bylaws summarized below may be deemed to have an anti-takeover effect and may delay, deter or prevent a tender offer or takeover attempt that a stockholder might consider to be in its best interests, including attempts that might result in a premium being paid over the market price for the shares held by stockholders.

Preferred stock

Our amended and restated certificate of incorporation contains provisions that permit our board of directors to issue, without any further vote or action by the stockholders, 100,000,000 shares of preferred stock in one or more series and, with respect to each such series, to fix the number of shares constituting the series and the designation of the series, the voting rights (if any) of the shares of the series and the powers, preferences or relative, participation, optional and other special rights, if any, and any qualifications, limitations or restrictions, of the shares of such series.

Classified board

Our amended and restated certificate of incorporation provides that our board of directors is divided into three classes, designated Class I, Class II and Class III. Each class will be an equal number of directors, as nearly as possible, consisting of one third of the total number of directors constituting the entire board of directors. The term of initial Class I directors shall terminate on the date of the 2022 annual meeting, the term of the initial Class II directors shall terminate on the date of the 2023 annual meeting, and the term of the initial Class III directors shall terminate on the date of the 2024 annual meeting. At each annual meeting of stockholders beginning in 2022, successors to the class of directors whose term expires at that annual meeting will be elected for a three-year term.

Removal of directors

Our amended and restated certificate of incorporation provides that stockholders may only remove a director for cause by a vote of no less than a majority of the shares entitled to vote.

Director vacancies

Our amended and restated certificate of incorporation authorizes only our board of directors to fill vacant directorships.

No cumulative voting

Our amended and restated certificate of incorporation provides that stockholders do not have the right to cumulate votes in the election of directors.

Special meetings of stockholders

Our amended and restated certificate of incorporation and amended and restated bylaws provide that, except as otherwise required by law, special meetings of the stockholders may be called only by an officer at the request of a majority of our board of directors, by the Chair of our board of directors, by our President or by our Chief Executive Officer.

Advance notice procedures for director nominations

Our bylaws provide that stockholders seeking to nominate candidates for election as directors at an annual or special meeting of stockholders must provide timely notice thereof in writing. To be timely, a stockholder's notice generally will have to be delivered to and received at our principal executive offices before notice of the meeting is issued by the secretary of the company, with such notice being served not less than 90 nor more than 120 days before the meeting. Although the amended and restated bylaws will not give the board of directors the power to approve or disapprove stockholder nominations of candidates to be elected at an annual meeting, the amended and restated bylaws may have the effect of precluding the conduct of certain business at a meeting if the proper procedures are not followed or may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect its own slate of directors or otherwise attempting to obtain control of the company.

Action by written consent

Our amended and restated certificate of incorporation and amended and restated bylaws provide that any action to be taken by the stockholders must be effected at a duly called annual or special meeting of stockholders and may not be effected by written consent.

Amending our certificate of incorporation and bylaws

Our amended and restated certificate of incorporation may be amended or altered in any manner provided by the Delaware General Corporation Law, or the DGCL. Our amended and restated bylaws may be adopted, amended, altered or repealed by stockholders only upon approval of at least majority of the voting power of all the then outstanding shares of the common stock, except for any amendment of the above provisions, which would require the approval of a two-thirds majority of our then outstanding common stock. Additionally, our amended and restated certificate of incorporation provides that our bylaws may be amended, altered or repealed by the board of directors.

Authorized but unissued shares

Our authorized but unissued shares of common stock and preferred stock will be available for future issuances without stockholder approval, except as required by the listing standards of Nasdaq, and could be utilized for a variety of corporate purposes, including future offerings to raise additional capital, acquisitions and employee benefit plans. The existence of authorized but unissued and unreserved common stock and preferred stock could render more difficult or discourage an attempt to obtain control of the company by means of a proxy contest, tender offer, merger or otherwise.

Exclusive jurisdiction

Our amended and restated bylaws provide that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for any derivative action or proceeding brought on our behalf, any action asserting a claim of breach of fiduciary duty, any action asserting a claim arising pursuant to the DGCL, any action regarding our amended and restated certificate of incorporation or our amended and restated bylaws, or any action asserting a claim against us that is governed by the internal affairs doctrine. This Delaware forum provision does not apply to actions arising under the Exchange Act in which the federal courts have exclusive jurisdiction. Our amended and restated bylaws provide further, unless we consent to the selection of an alternative forum, that the federal district courts of the United States of America shall be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act of 1933 against any person in connection with any offering of the Company's securities, including but not limited to any auditor, underwriter, selling shareholder, expert, control person, or other defendant.

Business combinations with interested stockholders

We are governed by Section 203 of the DGCL. Subject to certain exceptions, Section 203 of the DGCL prohibits a public Delaware corporation from engaging in a business combination (as defined in such section) with an "interested stockholder" (defined generally as any person who beneficially owns 15% or more of the outstanding voting stock of such corporation or any person affiliated with such person) for a period of three years following the time that such stockholder became an interested stockholder, unless (i) prior to such time the board of directors of such corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder; (ii) upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of such corporation at the time the transaction commenced (excluding for purposes of determining the voting stock of such corporation outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned (A) by persons who are directors and also officers of such corporation and (B) by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer); or (iii) at or subsequent to such time the business combination is approved by the board of directors of such corporation and authorized at a meeting of stockholders (and not by written consent) by the affirmative vote of at least 66 2⁄3% of the outstanding voting stock of such corporation not owned by the interested stockholder.

Our amended and restated certificate of incorporation and our amended and restated bylaws provide that we must indemnify our directors and officers to the fullest extent authorized by the DGCL. We are expressly authorized to, and do, carry directors' and officers' insurance providing coverage for our directors, officers and certain employees for some liabilities. We believe that these indemnification provisions and insurance are useful to attract and retain qualified directors and executive directors.

The limitation on liability and indemnification provisions in our certificate of incorporation and bylaws may discourage stockholders from bringing a lawsuit against directors for breach of their fiduciary duty. These provisions may also have the effect of reducing the likelihood of derivative litigation against directors and officers, even though such an action, if successful, might otherwise benefit us and our stockholders. In addition, your investment may be adversely affected to the extent we pay the costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions.

Listing

Our common stock is listed on the Nasdaq Global Market under the trading symbol "RXST".

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company, LLC. The transfer agent and registrar's address is 6201 15th Avenue, Brooklyn, New York 11219, and its telephone number is 718-921-8300. Our shares of common stock will be issued in uncertificated form only, subject to limited circumstances.

AIRCRE contracts

STANDARD INDUSTRIAL/COMMERCIAL MULTITENANT LEASE NET

1. Basic Provisions ("Basic Provisions").

1.1 **Parties.** This Lease ("**Lease**"), dated for reference purposes only March 4, 2022 , is made by and between BML Management, LLC ("**Lessor**") and RxSight, Inc. ("**Lessee**"), (collectively the "**Parties**", or individually a "**Party**").

1.2(a) **Premises:** That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known as (street address, unit/suite, city, state, zip): 125 Columbia, Suite B, Aliso Viejo, CA 92656 ("**Premises**"). The Premises are located in the County of Orange , and are generally described as (describe briefly the nature of the Premises and the "Project"): approximately 10,854 square feet of two story office space in the larger 25,985 square foot R&D/Industtrial building . In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have nonexclusive rights to any utility raceways of the building containing the Premises ("**Building**") and to the Common Areas (as defined in Paragraph 2.7 below), but shall not have any rights to the roof, or exterior walls of the Building or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "**Project**." (See also Paragraph 2)

1.2(b) **Parking:** 43 unreserved vehicle parking spaces and 6 reserved vehicle parking spaces. (See also Paragraph 2.6)

1.3 **Term:** 2 years and 4 months ("**Original Term**") commencing May 1, 2022 ("**Commencement Date**") and ending August 31, 2024 ("**Expiration Date**"). (See also Paragraph 3)

1.4 **Early Possession:** If the Premises are available Lessee may have nonexclusive possession of the Premises commencing upon mutual lease execution, Lessor's receipt of the Monies Due Upon Execution of this Lease and Lessee's proof of Liability Insurance ("**Early Possession Date**"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** $15,738.30 per month ("**Base Rent**"), payable on the 1st day of each month commencing May 1, 2022 . (See also Paragraph 4)

If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 50 .

1.6 **Lessee's Share of Common Area Operating Expenses:** forty-two percent (42 %) ("**Lessee's Share**"). In the event that the size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

1.7 **Base Rent and Other Monies Paid Upon Execution:**

(a) **Base Rent:** $15,738.30 for the period May 1-31, 2022 .

(b) **Common Area Operating Expenses:** The current estimate for the period May 1-31, 2022 is $4,667.22 .

(c) **Security Deposit:** $16,829.90 ("**Security Deposit**"). (See also Paragraph 5)

(d) **Other:** for .

(e) **Total Due Upon Execution of this Lease:** $37,235.42 .

1.8 **Agreed Use**: General office for an optical medical products company . (See also Paragraph 6)

1.9 **Insuring Party.** Lessor is the "**Insuring Party**". (See also Paragraph 8)

1.10 **Real Estate Brokers.** (See also Paragraphs 15 and 25)

(a) **Representation**: Each Party acknowledges receiving a Disclosure Regarding Real Estate Agency Relationship, confirms and consents to the following agency relationships in this Lease with the following real estate brokers ("**Broker(s)**") and/or their agents ("Agent(s)"):

Lessor's Brokerage Firm CBRE, Inc. License No. 00409987 Is the broker of (check one): the Lessor; or both the Lessee and Lessor (dual agent).

Lessor's Agent Keith Black License No. 01266477 is (check one): the Lessor's Agent (salesperson or broker associate); or both the Lessee's Agent and the Lessor's Agent (dual agent).

Lessee's Brokerage Firm Lee & Associates License No. 01044791 Is the broker of (check one): the Lessee; or both the Lessee and Lessor (dual agent).

Lessee's Agent Guy Laferrara License No. 01012355 is (check one): the Lessee's Agent (salesperson or broker associate); or both the Lessee's Agent and the Lessor's Agent (dual agent).

(b) **Payment to Brokers.** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of or % of the total Base Rent) for the brokerage services rendered by the Brokers.

1.11 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by ("**Guarantor**"). (See also Paragraph 37)

1.12 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease: an

Addendum consisting of Paragraphs 54 through 58 ;

INITIALS

a site plan depicting the Premises; a

site plan depicting the Project;

a current set of the Rules and Regulations for the Project;

a current set of the Rules and Regulations adopted by the owners' association; a Work

Letter;

other (specify): Rent Adjustments (Paragraph 50); Option to Extend (Paragraph 51); Arbitration Agreement (Paragraph 52); Right of First Refusal to Lease Additional Space (Paragraph 53); Exhibit A - Site Plan .

2. Premises.

2.1 **Letting**. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **NOTE: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition**. Lessor shall deliver that portion of the Premises contained within the Building ("**Unit**") to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("**Start Date**"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("**HVAC**"), loading doors, sump pumps, if any, and all other such elements in the Unit, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Unit does not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a noncompliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such noncompliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Unit. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such noncompliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense (except for the repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls see Paragraph 7). Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and
(iii) any bankruptcy proceeding affecting the Premises.

2.3 **Compliance**. Lessor warrants that to the best of its knowledge the improvements on the Premises comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("**Applicable Requirements**") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a noncompliance with this warranty within 6 months following the Start Date, correction of that noncompliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Unit, Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("**Capital Expenditure**"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay Interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to nonvoluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

2.4 **Acknowledgements**. Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises; (b) it has been advised by

Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use; (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises; (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor; (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein; and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokershave made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

4.5 **Lessee as Prior Owner/Occupant**. The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

4.6 **Vehicle Parking**. Lessee shall be entitled to use the number of Parking Spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than fullsize passenger automobiles or pickup trucks, herein called "**Permitted Size Vehicles**." Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. In addition:

(a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

(b) Lessee shall not service or store any vehicles in the Common Areas.

(c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

4.7 **Common Areas Definition**. The term "**Common Areas**" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Unit that are provided and designated by the Lessor from time to time for the general nonexclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roofs, roadways, walkways, driveways and landscaped areas.

4.8 **Common Areas Lessee's Rights**. Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the nonexclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

4.9 **Common Areas Rules and Regulations**. Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("**Rules and Regulations**") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the noncompliance with said Rules and Regulations by other tenants of the Project.

4.10 **Common Areas Changes**. Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

5. Term.

5.1 **Term**. The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

5.2 **Early Possession**. Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a nonexclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent and Operating Expenses shall be abated, however Lessee shall be responsible for paying its proportionate share of the utilities for for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of Common Area Operating Expenses, Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

5.3 **Delay In Possession**. Lessor agrees to use commercially reasonable efforts to deliver exclusive possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If

possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

5.4 **Lessee Compliance**. Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

6. Rent.

6.1 **Rent Defined**. All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("**Rent**").

6.2 **Common Area Operating Expenses**. Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share (as specified in Paragraph 1.6) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) "**Common Area Operating Expenses**" are defined, for purposes of this Lease, as all costs relating to the ownership and operation of the Project, including, but not limited to, the following:

(i) The operation, repair and maintenance, in neat, clean, good order and condition, and if necessary the replacement, of the following: (aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, exterior walls of the buildings, building systems and roof drainage systems.

(bb) Exterior signs and any tenant directories. (cc) Any fire sprinkler systems.

(dd) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.

(ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.

(iii) The cost of trash disposal, pest control services, property management, security services, owners' association dues and fees, the cost to repaint the exterior of any structures and the cost of any environmental inspections.

(iv) Reserves set aside for maintenance, repair and/or replacement of Common Area improvements and equipment.

(v) Real Property Taxes (as defined in Paragraph 10).

(vi) The cost of the premiums for the insurance maintained by Lessor pursuant to Paragraph 8.

(vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.

(viii) Auditors', accountants' and attorneys' fees and costs related to the operation, maintenance, repair and replacement of the Project.

(ix) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month. Lessee shall pay Interest on the unamortized balance but may prepay its obligation at any time.

(x) The cost of any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Unit, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Unit, Building, or other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such overpayment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

(e) Common Area Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or insurance proceeds.

6.3 **Payment**. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any statement or invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of $25 in addition to any Late Charge to compensate Lessor for additional time and expenses incurred in handling the dishonored payment and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

7.Security Deposit. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after

written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodatea sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall bear interest or be considered prepayment for any monies to be paid by Lessee under this Lease. THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.

6. Use.

6.1 **Use**. Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the Building or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Project. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 **Hazardous Substances**.

(a) **Reportable Uses Require Consent**. The term "**Hazardous Substance**" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, byproducts or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "**Reportable Use**" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor**. If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation**. Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification**. Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification**. Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which are suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations**. Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to the Lessee taking possession, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option**. If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall

continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or $100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or $100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements**. Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits

and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

8.4 **Inspection; Compliance**. Lessor and Lessor's "**Lender**" (as defined in Paragraph 30) and consultants authorized by Lessor shall have the right to enter into Premises at any time in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting and/or testing the condition of the Premises and/or for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 9.1(e)) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (**MSDS**) to Lessor within 10 days of the receipt of written request therefor. Lessee acknowledges that any failure on its part to allow such inspections or testing will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to allow such inspections and/or testing in a timely fashion the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or $100, whichever is greater for the remainder to the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to allow such inspection and/or testing. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to such failure nor prevent the exercise of any of the other rights and remedies granted hereunder.

9. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.

9.1 **Lessee's Obligations**.

(a) **In General**. Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

(b) **Service Contracts**. Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler and pressure vessels, and (iii) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform**. If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement**. Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (i.e. 1/144th of the cost per month). Lessee shall pay Interest on the unamortized balance but may prepay its obligation at any time.

9.2 **Lessor's Obligations**. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises.

9.3 **Utility Installations; Trade Fixtures; Alterations**.

(a) **Definitions**. The term "**Utility Installations**" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "**Trade Fixtures**" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "**Lessee Owned Alterations and/or Utility Installations**" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent**. Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with asbuilt plans and specifications. For work whichcosts an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds**. Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of nonresponsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

9.6 **Ownership; Removal; Surrender; and Restoration**.

(a) **Ownership**. Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal**. By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration**. Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing and the provisions of Paragraph 7.1(a), if the Lessee occupies the Premises for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Project) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

10. Insurance; Indemnity.

10.1 **Payment of Premiums**. The cost of the premiums for the insurance policies required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), shall be a Common Area Operating Expense. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

10.2 **Liability Insurance**.

(a) **Carried by Lessee**. Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than $1,000,000 per occurrence with an annual aggregate of not less than $2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional InsuredManagers or Lessors of Premises" Endorsement. The policy shall not contain any intrainsured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "**insured contract**" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor**. Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

10.3 **Property Insurance Building, Improvements and Rental Value**.

(a) **Building and Improvements**. Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any groundlessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed $5,000 per occurrence.

(b) **Rental Value**. Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

(c) **Adjacent Premises**. Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements**. Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

10.4 **Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance**.

(a) **Property Damage**. Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed $5,000 $1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

(b) **Business Interruption**. Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **Worker's Compensation Insurance**. Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

(d) **No Representation of Adequate Coverage**. Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

10.7 **Insurance Policies**. Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may increase his liability insurance coverage and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

10.8 **Waiver of Subrogation**. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

10.9 **Indemnity**. Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, a Breach of the Lease by Lessee and/or the use and/or occupancy of the Premises and/or Project by Lessee and/or by Lessee's employees, contractors or invitees . If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

10.10 **Exemption of Lessor and its Agents from Liability**. Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places; (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project; or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

10.11 **Failure to Provide Insurance**. Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of

the then existing Base Rent or $100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

11. Damage or Destruction.

11.1 **Definitions**.

(a) "**Premises Partial Damage**" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) "**Premises Total Destruction**" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) "**Insured Loss**" shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) "**Replacement Cost**" shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) "**Hazardous Substance Condition**" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

11.2 **Partial Damage Insured Loss**. If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is $10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

11.3 **Partial Damage Uninsured Loss**. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense (subject to reimbursement pursuant to Paragraph 4.2), in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

11.4 **Total Destruction**. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

11.5 **Damage Near End of Term**. If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

11.6 **Abatement of Rent; Lessee's Remedies**.

(a) **Abatement**. In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or

restoration except as provided herein.

(b) **Remedies**. If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

11.7 **Termination; Advance Payments**. Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

12. Real Property Taxes.

12.1 **Definition**. As used herein, the term "**Real Property Taxes**" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

12.2 **Payment of Taxes**. Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

12.3 **Additional Improvements**. Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

12.4 **Joint Assessment**. If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

12.5 **Personal Property Taxes**. Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

13. Utilities and Services.

13.1 Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

13.2 Within fifteen days of Lessor's written request, Lessee agrees to deliver to Lessor such information, documents and/or authorization as Lessor needs in order for Lessor to comply with new or existing Applicable Requirements relating to commercial building energy usage, ratings, and/or the reporting thereof.

14. Assignment and Subletting.

14.1 **Lessor's Consent Required**.

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "**assign or assignment**") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "**Net Worth of Lessee**" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either:
(i)terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and nonfixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the

scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, i.e. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

14.2 **Terms and Conditions Applicable to Assignment and Subletting**.

(a) Regardless of Lessor's consent, no assignment or subletting shall : (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of $500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

14.3 **Additional Terms and Conditions Applicable to Subletting**. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

15. Default; Breach; Remedies.

15.1 **Default; Breach**. A "**Default**" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "**Breach**" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; the vacating of the Premises prior to the expiration or termination of this Lease without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism; or failure to deliver to Lessor exclusive possession of the entire Premises in accordance herewith prior to the expiration or termination of this Lease.

(b) The failure of Lessee to (i) make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, (ii) to provide reasonable evidence of insurance or surety bond, or (iii) to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a noncurable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the

rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "**debtor**" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

15.2 **Remedies**. If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination;
(ii)the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. Lessor and Lessee agree that the damages to be incurred by the Lessor in the event of Lessee's default of the Lease would be difficult or impossible to calculate and the parties therefore intend to provide by the foregoing for liquidated damages and not a penalty and agree

that the sum provided is a reasonable preestimate of the probable loss. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease
as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

15.3 **Inducement Recapture.** Any agreement for free or abated rent or other charges, the cost of tenant improvements for Lessee paid for or performed by Lessor, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "**Inducement Provisions**," shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

15.4 **Late Charges**. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a onetime late charge equal to 10% of each such overdue amount or $100, whichever is

greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

15.5 **Interest**. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

15.6 **Breach by Lessor**.

(a) **Notice of Breach**. Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor**. In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

16.Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the Unit, or more than 25% of the parking spaces is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

17. Brokerage Fees.

17.1 **Additional Commission**. In addition to the payments owed pursuant to Paragraph 1.10 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed. The provisions of this paragraph are intended to supersede the provisions of any earlier agreement to the contrary.

17.2 **Assumption of Obligations**. Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder.

Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

17.3 **Representations and Indemnities of Broker Relationships**. Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker, agent or finder (other than the Brokers and Agents, if any) in connection with this Lease, and that no one other than said named Brokers and Agents is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

18. Estoppel Certificates.

(a) Each Party (as "**Responding Party**") shall within 10 days after written notice from the other Party (the "**Requesting Party**") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "**Estoppel Certificate**" form published by AIR CRE, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or $100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide

the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

19. Definition of Lessor. The term "**Lessor**" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

20. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

21. Days. Unless otherwise specifically indicated to the contrary, the word "**days**" as used in this Lease shall mean and refer to calendar days.

22. Limitation on Liability. The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

23. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

24. No Prior or Other Agreements; Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

25. Notices.

25.1 **Notice Requirements**. All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

25.2 **Date of Notice**. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

25.3 **Options.** Notwithstanding the foregoing, in order to exercise any Options (see paragraph 39), the Notice must be sent by Certified Mail (return receipt requested), Express Mail (signature required), courier (signature required) or some other methodology that provides a receipt establishing the date the notice was received by the Lessor.

26. Waivers.

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

27. Disclosures Regarding The Nature of a Real Estate Agency Relationship.

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) *Lessor's Agent*. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: *To the Lessor*: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. *To the Lessee and the Lessor*: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) *Lessee's Agent*. An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by

agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. *To the Lessee*: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. *To the Lessee and the Lessor*: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) *Agent Representing Both Lessor and Lessee*. A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. (b) Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not, without the express permission of the respective Party, disclose to the other Party confidential information, including, but not limited to, facts relating to either Lessee's or Lessor's financial position, motivations, bargaining position, or other personal information that may impact rent, including Lessor's willingness to accept a rent less than the listing rent or Lessee's willingness to pay rent greater than the rent offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. Both Lessor and Lessee should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

28.No Right To Holdover. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. At or prior to the expiration or termination of this Lease Lessee shall deliver exclusive possession of the Premises to Lessor. For purposes of this provision and Paragraph 13.1(a), exclusive possession shall mean that Lessee shall have vacated the Premises, removed all of its personal property therefrom and that the Premises have been returned in the condition specified in this Lease. In the event that Lessee does not deliver exclusive possession to Lessor as specified above, then Lessor's damages during any holdover period shall be computed at the amount of the Rent (as defined in Paragraph 4.1) due during the last full month before the expiration or termination of this Lease (disregarding any temporary abatement of Rent that may have been in effect), but with Base Rent being 150% of the Base Rent payable during such last full month. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

29.Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

30.Covenants and Conditions; Construction of Agreement. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

31.Binding Effect; Choice of Law. This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located. Signatures to this Lease accomplished by means of electronic signature or similar technology shall be legal and binding.

32. Subordination; Attornment; NonDisturbance.

32.1 **Subordination**. This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "**Security Device**"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "**Lender**") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted

hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

32.2 **Attornment**. In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the nondisturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, for the remainder of the term hereof and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

32.3 **NonDisturbance**. With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable nondisturbance agreement (a "**NonDisturbance Agreement**") from the Lender which NonDisturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a NonDisturbance Agreement from the holder of any preexisting Security Device which is secured by the Premises. In the event that Lessor is unable to provide the NonDisturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and

attempt to negotiate for the execution and delivery of a NonDisturbance Agreement.

32.4 **SelfExecuting**. The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or NonDisturbance Agreement provided for herein.

33.Attorneys' Fees. If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach ($200 is a reasonable minimum per occurrence for such services and consultation).

34.Lessor's Access; Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

35.Auctions. Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

36.Signs. Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

37.Termination; Merger. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

38.Consents. All requests for consent shall be in writing. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

39. Guarantor.

39.1 **Execution**. The Guarantors, if any, shall each execute a guaranty in the form most recently published by AIR CRE.

39.2 **Default**. It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

40.Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

41. Options. If Lessee is granted any option, as defined below, then the following provisions shall apply.

41.1 **Definition**. "**Option**" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

41.2 **Options Personal To Original Lessee**. Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

41.3 **Multiple Options**. In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

41.4 **Effect of Default on Options**.

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

42.Security Measures. Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

43.Reservations. Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary; (ii) to cause the recordation of parcel maps and restrictions; and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

44.Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

45. Authority; Multiple Parties; Execution.

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

46.Conflict. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

47Offer. Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

48.Amendments. This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable nonmonetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

49.Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

50.Arbitration of Disputes. An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease is attached to this Lease.

51. Accessibility; Americans with Disabilities Act.

(a) The Premises:

is not

have not undergone an inspection by a Certified Access Specialist (CASp). Note: A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable constructionrelated accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of constructionrelated accessibility standards within the premises.

have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable constructionrelated accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this

Lease and agrees to keep such report confidential.

have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable constructionrelated accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential except as necessary to complete repairs and corrections of violations of construction related accessibility standards.

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In the event that the Premises have been issued an inspection report by a CASp the Lessor shall provide a copy of the disability access inspection certificate to Lessee within 7 days of the execution of this Lease.

(b) Since compliance with the Americans with Disabilities Act (ADA) and other state and local accessibility statutes are dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in compliance with ADA or other accessibility statutes, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY AIR CRE OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:
1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2.RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: Executed at:

On: 3/7/2022

On: 3/7/2022

By LESSOR:
BML Management, LLC

By: /s/ Irene Chuah
Name Printed: Irene Chuah

By LESSEE:
RxSight, Inc.

By: /s/ Ron Kurtz
Name Printed: Ron Kurtz

Title:
Title: President and CEO
Phone:
Fax:
Email: ichuah8@gmail.com

Phone:
Fax:
Email: rkurtz@rxsight.com

By:
Name Printed:
Title: Phone: Fax: Email:

Address:
Federal ID No.:

By:
Name Printed:

Title:_____ Phone:_____ Fax:_____ Email: _____

Address: ____
Federal ID No.: __
BROKER

CBRE, Inc.

Attn: Keith Black
Title: Vice President

Address: 3501 Jamboree, Suite 100, Newport Beach, CA 92660
Phone: 949.725.8500
Fax: ___
Email: keith.black@cbre.com
BROKER

Lee & Associates

Attn: Guy Laferrara
Title: Senior Vice President

Address: 9838 Research Drive, Irvine, CA
Phone: 949.727.1200
Fax: ___
Email: glaferrara@leeirvine.com
Federal ID No.: __

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Federal ID No.: ___
Broker DRE License #: 00409987
Agent DRE License #: 01266477
Broker DRE License #: 01044791
Agent DRE License #: 01012355

INITIALS

MTN26.30, Revised 10222020
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RENT ADJUSTMENT(S)
STANDARD LEASE ADDENDUM

Dated: March 4, 2022
By and Between
Lessor: BML Management, LLC
Lessee: RxSight, Inc.
Property Address: 125 Columbia, Suite B, Aliso Viejo, CA 92656
(street address, city, state, zip)

Paragraph: 50

A. RENT ADJUSTMENTS

The monthly rent for each month of the adjustment period(s) specified below shall be increased using the method(s) indicated below: (Check Method(s) to be Used and Fill in Appropriately)

I. Cost of Living Adjustment(s) (COLA)

a. On (Fill in COLA Dates):___the Base Rent shall be adjusted by the change, if any, from the Base Month specified below, in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for (select one): CPI W (Urban Wage Earners and Clerical Workers) or CPI U (All Urban Consumers), for (Fill in Urban Area):___, All Items (19821984 = 100), herein referred to as "CPI".

b. The monthly Base Rent payable in accordance with paragraph A.I.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.I.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one): the first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or (Fill in Other "Base Month"): ____ . The sum so calculated shall constitute the new monthly Base Rent hereunder, but in no event, shall any such new monthly Base Rent be less than the Base Rent payable for the month immediately preceding the Base Rent adjustment.

c. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. In the event that the Parties cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said Association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitration shall be paid equally by the Parties.

II. Market Rental Value Adjustment(s) (MRV)

a. On (Fill in MRV Adjustment Date(s):__the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:

1) Four months prior to each Market Rental Value Adjustment Date described above, the Parties shall attempt to agree upon what the new MRV will be on the adjustment date. If agreement cannot be reached within thirty days, then:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30 days. Any associated costs will be split equally between the Parties, or

(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in writing, to arbitration in accordance with the following provisions:

(i) Within 15 days thereafter, Lessor and Lessee shall each select an independent third party appraiser or broker ("Consultant" check one) of their choice to act as an arbitrator (Note: the parties may not select either of the Brokers that was involved in negotiating the Lease). The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

(ii) The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The

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submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, i.e., the one that is NOT the closest to the actual MRV.

2) When determining MRV, the Lessor, Lessee and Consultants shall consider the terms of comparable market transactions which shall include, but not be limited to, rent, rental adjustments, abated rent, lease term and financial condition of tenants.

3) Notwithstanding the foregoing, the new Base Rent shall not be less than the rent payable for the month immediately preceding the rent adjustment.

b. Upon the establishment of each New Market Rental Value:

1) the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and

2) the first month of each Market Rental Value term shall become the new 'Base Month' for the purpose of calculating any further Adjustments.

III. Fixed Rental Adjustment(s) (FRA)

The Base Rent shall be increased to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Date(s)):	The New Base Rent shall be:
May 1-31, 2022	$15,738.30
June 1, 2022 - August 31, 2022	$0.00
September 1, 2022 - April 30, 2023	$15,738.30
May 1, 2023 - April 30, 2024	$16,281.00
May 1, 2024 - August 31, 2024	$16,823.70

Lessee shall pay its proportionate share of the Operating Expenses, Utilities and Trash during months of June 2022 through August 2022.

B. NOTICE

Unless specified otherwise herein, notice of any rental adjustments, other than Fixed Rental Adjustments, shall be made as specified in paragraph 23 of the Lease.

C. BROKER'S FEE

The Brokers shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the Lease or if applicable, paragraph 9 of the Sublease.

OPTION(S) TO EXTEND TERM
STANDARD LEASE ADDENDUM

Dated: March 4, 2022
By and Between
Lessor: BML Management, LLC
Lessee: RxSight, Inc.
Property Address: 125 Columbia, Suite B, Aliso Viejo, CA 92656
(street address, city, state, zip)

Paragraph: 51 **OPTION(S) TO EXTEND TERM.** Subject to the terms, conditions and provisions of Paragraph 39, Lessor grants Lessee one (1) option(s) to extend the term of the Lease ("**Extension Option(s)**"), with each Extension Option being for a term of sixty (60) months, commencing when the prior term expires ("**Option Term(s)**"). In order to exercise an Extension Option, Lessee must give written notice of such election to Lessor and Lessor must receive such notice at least six (6) but not more than nine (9) months prior to the date that the applicable Option Term would commence, time being of the essence. If timely and proper notification of the exercise of an Extension Option is not given by Lessee and/or received by Lessor, such Extension Option shall automatically expire. Except as specifically modified, the terms, conditions and provisions of the Lease shall apply during Option Terms but the amount of Rent during Option Terms shall be established by using the method(s) selected below *(check method(s) to be used and fill in appropriately)*:

I. Consumer Price Index.

(a) During the Option Term(s) which start(s) on___, the monthly Base Rent shall be increased on___and every____months thereafter during such Option Term(s) ("**Option Term CPI Increase Date(s)**") commensurate with the increase in the Option Term CPI (as herein defined) determined as follows: the monthly Base Rent scheduled for the month immediately preceding the first occurring Option Term CPI Increase Date shall be multiplied by a fraction the denominator of which is the Option Term Base CPI (as herein defined), and the numerator of which is the Option Term Comparison CPI (as herein defined). The amount so calculated shall constitute the new Base Rent until the next Option Term CPI Increase Date during the applicable Option Term, but in no event shall any such new Base Rent be less than the Base Rent for the month immediately preceding the applicable Option Term CPI Increase Date.

(b) The term "**Option Term CPI**" shall mean the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for *(select one)*:

CPI W (Urban Wage Earners and Clerical Workers) or CPI U (All Urban Consumers), for (*fill in Urban Area*):___or the area in which the Premises is located, All Items (19821984 = 100). The term "**Option Term Comparison CPI**" shall mean the CPI of the calendar month which is 2 full months prior to the applicable

Option Term CPI Increase Date. The term "**Option Term Base CPI**" shall mean the CPI of the calendar month which is 2 full months prior to (*select one*):

Commencement Date of the Original Term, start of the applicable Option Term, or (*fill in month*)_.

(c) If compilation and/or publication of the CPI is transferred to another governmental department, bureau or agency or is discontinued, then instead the index most nearly the same as the CPI shall be used to calculate the Base Rent increases hereunder. If the Parties cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said association and the decision of the arbitrators shall be binding upon the parties, with the cost of such arbitration being paid equally by the Parties.

II. Fixed Percentage. During the Option Term(s) which start(s) on_, the monthly Base Rent shall be increased on___and every ____ months thereafter during such Option Term(s) ("**Option Term Percentage Increase Date(s)**") by_percent (_%) of the monthly Base Rent scheduled to be paid for the month immediately preceding the applicable Option Term Percentage Increase Date.

III. Fair Market Value.

(a) During the Option Term(s) which start(s) on September 1, 2024 , the amount of Rent shall be the amount forecasted to be the fair market rental value of the Premises during such Option Term established pursuant to the procedures, terms, assumptions and conditions set forth herein ("**Fair Market Value**"); provided, however, regardless of such Fair Market Value, Base Rent during an Option Term shall not be less than the Base Rent scheduled as of when the prior term expires. Starting as of Lessee's exercise of the applicable Extension Option (but not earlier than six (6) months before start of the applicable Option Term), the Parties shall for thirty (30) days ("**Negotiation Period**") attempt to agree upon the Fair Market Value. If during the Negotiation Period the Parties do not agree on the Fair Market Value, then the Fair Market Value shall be established pursuant to the procedures set forth herein, which shall be binding.

(b) Each Party shall, within fifteen (15) days after the end of the Negotiation Period, in writing submit to the other Party such Party's determination of the Fair Market Value ("**Submitted Value(s)**"). If a Party fails to timely provide a Submitted Value, then the other Party's Submitted Value shall be the Fair Market Value. If both Parties timely provide Submitted Values, then each Party shall, within fifteen (15) days after both Parties have exchanged Submitted Values, in writing notify the other Party of such Party's selected arbitrator who shall meet the qualifications set forth herein ("**Advocate Arbitrator(s)**"). Lessor and Lessee may select an Advocate Arbitrator who is favorable to such Party's position and may, prior to or after appointment of an Advocate Arbitrator, consult with such Party's Advocate Arbitrator. If a Party fails to timely and properly provide notice of such Party's chosen Advocate Arbitrator, then the other Party's Submitted Value shall be the Fair Market Value.

(c) If both Parties timely and properly designate Advocate Arbitrators, then such Advocate Arbitrators shall, within fifteen (15) days after their selection, choose a third (3rd) neutral arbitrator who shall meet the qualifications set forth herein ("**Neutral Arbitrator**"). The Neutral Arbitrator shall be engaged jointly by

Lessor and Lessee. If Advocate Arbitrators fail to agree upon and timely appoint a Neutral Arbitrator, then the President of AIR CRE shall appoint such Neutral Arbitrator within fifteen (15) days after request by either Party. If the President of AIR CRE does not timely appoint the Neutral Arbitrator, then either Party may file

an appropriate legal action for a judge with competent jurisdiction over the Parties to appoint the Neutral Arbitrator.

(d) The Advocate Arbitrators and the Neutral Arbitrator ("**Arbitrator(s)**") shall be duly licensed real estate brokers or salespersons in good standing in the state in which the Premises is located, shall have been active over the five (5) year period before their appointment in the leasing of properties similar to the Premises within the general real estate market of the Premises. The Neutral Arbitrator shall additionally not be related to or affiliated with either Party or Advocate Arbitrator, and shall not have previously represented in a real estate transaction a Party or anyone related to or affiliated with a Party. All matters to be determined by the Arbitrators shall be decided by a majority vote of the Arbitrators, with each Arbitrator having one (1) vote. The Arbitrators may, as the Arbitrators determine, hold hearings and require briefs, including market data and additional information.

(e) Within thirty (30) days after selection of the Neutral Arbitrator, the three Arbitrators shall first reach a decision as to their own independent opinion of the Fair Market Value established by taking into account the terms, assumptions and conditions set forth herein ("**Arbitrators' Market Value**"), then decide which Party's Submitted Value is closer in monetary amount to the Arbitrators' Market Value ("**Selected Market Value**"), then provide the Parties a copy of the Arbitrators' Market Value and finally notify the Parties of the Selected Market Value. The Selected Market Value shall be the Fair Market Value. The Arbitrators shall have no right to decide a Selected Market Value which is a compromise to (or modification of) the Submitted Values. The decision of the Arbitrators shall be binding upon the Parties. The Party whose Submitted Value is not the Selected Market Value shall, within ten (10) days after the Arbitrators decide the Selected Market Value, pay the fees and costs of all three (3) Arbitrators.

(f) If the Fair Market Value has not been established before the start of the applicable Option Term, then Lessee shall continue to pay to Lessor rent in the amount payable for the month immediately preceding the start of such Option Term and Lessor's acceptance of such rent shall not waive, adversely affect or prejudice the Parties' right to complete establishment of the Fair Market Value or Lessor's right to collect the full amount of the Fair Market Value once the Fair Market Value is established. Lessee shall, within ten (10) days after establishment of the Fair Market Value, pay to Lessor any deficiency in rent then due for the Option Term. Following establishment of Fair Market Value, the Parties shall, within ten (10) days after request by either Party, sign an amendment to this Lease to confirm the Fair Market Value and the expiration date of this Lease, but the Parties' failure to request or to sign such an amendment shall not affect establishment of the Fair Market Value or extension of the Lease term.

(g) The Arbitrators, in deciding the Arbitrators' Market Value, shall take into account rent rates, rent abatements, periodic rent increases, real property taxes, insurance premiums and other operating expenses, tenant improvement and other applicable allowances, building services, length of lease term and other factors professional real estate brokers and/or appraisers customarily consider in determining fair market rent of property in an arm's length transaction by ready, willing and able parties for space of comparable location, size, age, condition, quality, parking, visibility, view, signage and accessibility if the Premises were marketed in a normal and customary manner for a reasonable length of time on the open market to be leased to a tenant with financial strength and credit worthiness comparable to Lessee and guarantors (if any) of this Lease (as of Lessee's exercise of the Extension Option) for a term comparable to the length of the applicable Option Term and used for the Agreed Use (or other reasonably comparable uses). The Arbitrators, in deciding the Arbitrators' Market Value, shall not consider as a comparable transaction any of the following: a sublease, lease assignment, lease renewal or extension; lease with a tenant that has equity, is related to or affiliated with the landlord; or a lease of space that was subject to a right of first refusal, right of first offer, expansion option or other encumbrances. The Arbitrators, in deciding the Arbitrators' Market Value, shall reduce the Fair Market Value on account of Alterations and improvements made by Lessee to the extent the cost thereof was paid solely by Lessee (in excess of any applicable improvement allowance, abated rent in lieu of improvement allowance or other consideration provided by Lessor for Lessee's improvement of the Premises), shall not reduce the Fair Market Value on account of any real estate brokerage commission savings by Lessor, and shall not reduce the Fair Market Value on account of deferred maintenance or repair of the Premises for which Lessee was responsible under the Lease but did not perform.

IV. Fixed Rental Adjustment(s) ("FRA").

The monthly Base Rent shall be increased to the following amounts on the dates set forth below:

On (fill in FRA Adjustment Date(s)):	The new Base Rent shall be:

V. Continuation of Original Term Adjustments.

The monthly Base Rent during the Option Term(s) which start(s) on__shall be increased in accordance with the same formula provided in the Lease to be used to calculate increases in the Base Rent during the Original Term of the Lease.

BROKER'S FEE: For each adjustment in Base Rent specified above, the Brokers shall be paid a Brokerage Fee in accordance with paragraph 15 of the Lease or if applicable, paragraph 9 of the Sublease.

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ARBITRATION AGREEMENT
STANDARD LEASE ADDENDUM

Dated: March 4, 2022
By and Between
Lessor: BML Management, LLC
Lessee: RxSight, Inc.
Property Address: 125 Columbia, Suite B, Aliso Viejo, CA 92656
(street address, city, state, zip)

Paragraph: 52

A. **ARBITRATION OF DISPUTES**:

Except as provided in Paragraph B below, the Parties agree to resolve any and all claims, disputes or disagreements arising under this Lease, including, but not limited to any matter relating to Lessor's failure to approve an assignment, sublease or other transfer of Lessee's interest in the Lease under Paragraph 12 of this Lease, any other defaults by Lessor, or any defaults by Lessee by and through arbitration as provided below and irrevocably waive any and all rights to the contrary. The Parties agree to at all times conduct themselves in strict, full, complete and timely accordance with the terms hereof and that any attempt to circumvent the terms of this Arbitration Agreement shall be absolutely null and void and of no force or effect whatsoever.

B. **DISPUTES EXCLUDED FROM ARBITRATION**:

The following claims, disputes or disagreements under this Lease are expressly excluded from the arbitration procedures set forth herein: 1. Disputes for which a different resolution determination is specifically set forth in this Lease, 2. All claims by either party which (a) seek anything other than enforcement or determination of rights under this Lease, or (b) are primarily founded upon matters of fraud, willful misconduct, bad faith or any other allegations of tortious action, and seek the award of punitive or exemplary damages, 3. Claims relating to (a) Lessor's exercise of any unlawful detainer rights pursuant to applicable law or (b) rights or remedies used by Lessor to gain possession of the Premises or terminate Lessee's right of possession to the Premises, all of which disputes shall be resolved by suit filed in the applicable court of jurisdiction, the decision of which court shall be subject to appeal pursuant to applicable law 4. Any claim or dispute that is within the jurisdiction of the Small Claims Court and 5. All claims arising under Paragraph 39 of this Lease.

C. **APPOINTMENT OF AN ARBITRATOR**:

All disputes subject to this Arbitration Agreement, shall be determined by binding arbitration before: a retired judge of the applicable court of jurisdiction (e.g., the Superior Court of the State of California) affiliated with Judicial Arbitration & Mediation Services, Inc. ("**JAMS**"), the American Arbitration Association ("**AAA**") under its commercial arbitration rules, ____ , or as may be otherwise mutually agreed by Lessor and Lessee (the "**Arbitrator**"). In the event that the parties elect to use an arbitrator other than one affiliated with JAMS or AAA then such arbitrator shall be obligated to comply with the Code of Ethics for Arbitrators in Commercial Disputes (see: http://www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTG_003867). Such arbitration shall be initiated by the Parties, or either of them, within ten (10) days after either party sends written notice (the "**Arbitration Notice**") of a demand to arbitrate by registered or certified mail to the other party and to the Arbitrator. The Arbitration Notice shall contain a description of the subject matter of the arbitration, the dispute with respect thereto, the amount involved, if any, and the remedy or determination sought. If the Parties have agreed to use JAMS they may agree on a retired judge from the JAMS panel. If they are unable to agree within ten days, JAMS will provide a list of three available judges and each party may strike one. The remaining judge (or if there are two, the one selected by JAMS) will serve as the Arbitrator. If the Parties have elected to utilize AAA or some other organization, the Arbitrator shall be selected in accordance with said organization's rules. In the event the Arbitrator is not selected as provided for above for any reason, the party initiating arbitration shall apply to the appropriate Court for the appointment of a qualified retired judge to act as the Arbitrator.

D. **ARBITRATION PROCEDURE**:

1. **PREHEARING ACTIONS**. The Arbitrator shall schedule a prehearing conference to resolve procedural matters, arrange for the exchange of information, obtain stipulations, and narrow the issues. The Parties will submit proposed discovery schedules to the Arbitrator at the prehearing conference. The scope and duration of discovery will be within the sole discretion of the Arbitrator. The Arbitrator shall have the discretion to order a prehearing exchange of information by the Parties, including, without limitation, production of requested documents, exchange of summaries of testimony of proposed witnesses, and examination by deposition of parties and thirdparty witnesses. This discretion shall be exercised in favor of discovery reasonable under the circumstances. The Arbitrator shall issue subpoenas and subpoenas duces tecum as provided for in the applicable statutory or case law (e.g., in California Code of Civil Procedure Section 1282.6).

2. **THE DECISION**. The arbitration shall be conducted in the city or county within which the Premises are located at a reasonably convenient site. Any Party may be represented by counsel or other authorized representative. In rendering a decision(s), the Arbitrator shall determine the rights and obligations of the Parties according to the substantive laws and the terms and provisions of this Lease. The Arbitrator's decision shall be based on the evidence introduced at the hearing, including all logical and reasonable inferences therefrom. The Arbitrator may make any determination and/or grant any remedy or relief that is just and equitable. The decision must be based on, and accompanied by, a written statement of decision explaining the factual and legal basis for the decision as to each of

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the principal controverted issues. The decision shall be conclusive and binding, and it may thereafter be confirmed as a judgment by the court of applicable jurisdiction, subject only to challenge on the grounds set forth in the applicable statutory or case law (e.g., in California Code of Civil Procedure Section 1286.2). The validity and

enforceability of the Arbitrator's decision is to be determined exclusively by the court of appropriate jurisdiction pursuant to the provisions of this Lease. The Arbitrator may award costs, including without limitation, Arbitrator's fees and costs, attorneys' fees, and expert and witness costs, to the prevailing party, if any, as determined by the Arbitrator in his discretion.

Whenever a matter which has been submitted to arbitration involves a dispute as to whether or not a particular act or omission (other than a failure to pay money) constitutes a Default, the time to commence or cease such action shall be tolled from the date that the Notice of Arbitration is served through and until the date the Arbitrator renders his or her decision. Provided, however, that this provision shall NOT apply in the event that the Arbitrator determines that the Arbitration Notice was prepared in bad faith.

Whenever a dispute arises between the Parties concerning whether or not the failure to make a payment of money constitutes a default, the service of an Arbitration Notice shall NOT toll the time period in which to pay the money. The Party allegedly obligated to pay the money may, however, elect to pay the money "under protest" by accompanying said payment with a written statement setting forth the reasons for such protest. If thereafter, the Arbitrator determines that the Party who received said money was not entitled to such payment, said money shall be promptly returned to the Party who paid such money under protest together with Interest thereon as defined in Paragraph 13.5. If a Party makes a payment "under protest" but no Notice of Arbitration is filed within thirty days, then such protest shall be deemed waived. (See also Paragraph 42 or 43)

RIGHT OF FIRST REFUSAL TO LEASE ADDITIONAL SPACE
STANDARD LEASE ADDENDUM

Date: March 4, 2022
By and Between
Lessor: BML Management, LLC
Lessee: RxSight, Inc.
Property Address: 125 Columbia, Suite B, Aliso Viejo, CA 92656
(street address, city, state, zip)

Paragraph: 53

(a)Subject to the provisions of Paragraph 39 Lessee shall have a onetime right to lease (the "Right to Lease") the space described in subparagraph (b) if such space becomes available during the term of this Lease.

(b)This Right to Lease shall only apply to the following space in the Project: Approximately 7,035 square feet of warehouse space adjacent to the Premises (the "**Additional Space**").

(c)Prior to offering the Additional Space to anyone else Lessor shall give Lessee written notice of the availability of the Additional Space and the date the existing tenant or occupant, if any, is expected to vacate such space. For a period of three business days following delivery of such notice, time being of the essence, Lessee shall have the right to request from Lessor a written statement setting forth the basic economic terms, including, but not limited to, Lessor's determination of the monthly Base Rent, an improvement allowance, if any, and all other economic terms and conditions (collectively, the "Economic Terms"), upon which Lessor is willing to lease the Additional Space. Lessee must make such request in writing. If Lessor has not received such a request from Lessee within such time period Lessee shall be conclusively presumed to have elected not to lease the Additional Space and Lessee's Right to Lease the Additional Space will thereafter be null and void and of no further force or effect.

(d)In establishing the Economic Terms the Lessor will make a good faith determination of the fair market rental rate for the Additional Space. The term "fair market rental rate" as used in this subparagraph shall mean the rental rate that a willing, comparable, renewal tenant (excluding sublease and assignment transactions) would pay, and a willing owner of a comparable quality building located in the same vicinity would accept, for comparable space taking into account (i) the age, quality and layout of the existing improvements in the Additional Space, and (ii) items that real estate brokers customarily consider, including, but not limited to, rental rates, space availability, length of lease term, Lessee size, Lessee improvement allowances, operating expenses and allowance, and any other economic matters then being charged by Lessor or owners of similar buildings. In no event, however, shall the monthly Base Rent payable for the Additional Space be less, on a square foot basis, then the Base Rent payable with respect to the original Premises.

(e)For a period of three business days after receipt of the Economic Terms from Lessor, time being of the essence, Lessee shall have the right to give written notice to Lessor of Lessee's exercise of its Right to Lease the Additional Space upon the Economic Terms and the same nonEconomic Terms as set forth in this Lease with respect to the Premises. If Lessee timely exercises its Right to Lease as provided herein, the parties will promptly thereafter execute an amendment to this Lease to include the Additional Space in the Premises and to document the lease terms thereof. If Lessor has not received such notice from Lessee within such time period Lessee shall be conclusively presumed to have elected not to lease the Additional Space and Lessee's Right to Lease the Additional Space will thereafter be null and void and of no further force or effect.

ADDENDUM TO LEASE

Date: March 4, 2022
By and Between
Lessor: BML Management, LLC
Lessee: RxSight, Inc.
Property Address: 125 Columbia, Suite B, Aliso Viejo, CA 92656
(street address, city, state, zip)

Paragraph: 54-58

54.Improvement Allowance. Lessee shall lease the unit with all interior improvements "As-Is". Lessee shall utilize the funds that would be paid as Rent, from the Lessor provided free base rent, to complete the below referenced improvements. Lessee shall obtain Lessor's approval prior to any construction. Additionally, Lessee shall use a fully licensed and insured contractor. If required, all work shall be permitted by the City of Aliso Viejo at Lessee's sole cost and expense.

Lessee at Lessee's cost shall provide the following improvements included in the attached plan:

1) New Paint in the office areas.
2) New Flooring if needed.
3) Add Side Light windows to the offices along the window line.
4) Remove certain walls to open up areas.
5) Refresh kitchen and bathroom areas.

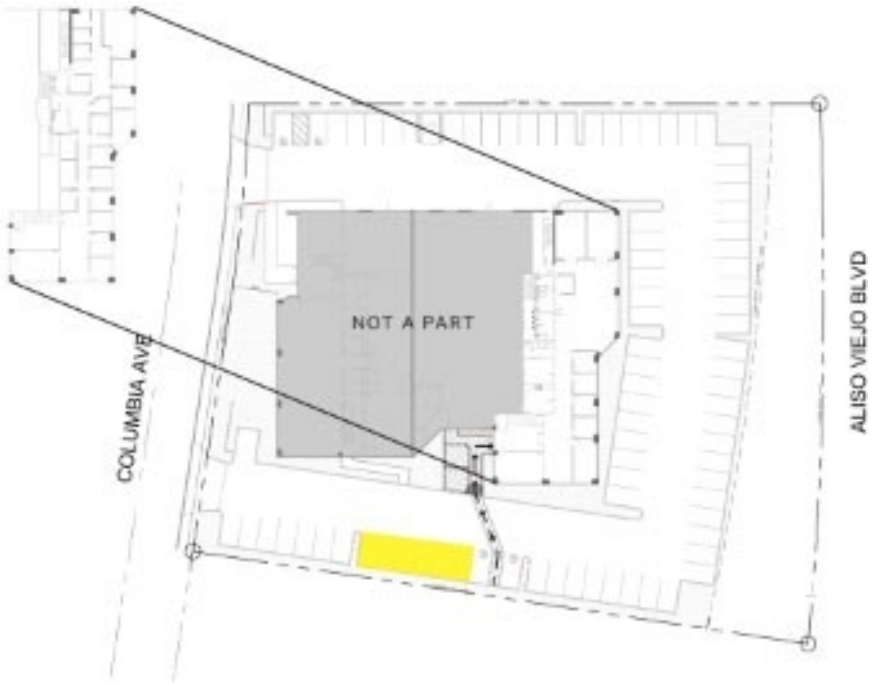
55.Condition of Premises. Prior to occupancy, Landlord shall warrant that all HVAC, Plumbing and electrical systems shall be in proper working condition upon occupancy. Landlord shall fully warranty the roof and HVAC systems for the first 2 years of the lease. Additionally, the property shall be presented in a clean "move in" condition. Lessee shall have exclusive access to the server room and shared to the electrical room.

56.Electricity. Lessee understands there is only one electricity meter for Unit B and the adjacent warehouse. Prior to installation of the E-Mon D-Mon, Lessor shall invoice Lessee $.22 per square foot each month for their proportionate share of the cost of electricity. Lessee shall have the right to install an E-Mon-D-Mon sub-meter provided all work is permitted and done by a licensed and bonded electrician. Lessor shall reimburse Lessee for the cost of the E-Mon D-Mon, not to exceed $1,500, after the work has been completed. Upon Lessee installing the E-Mon D-Mon and separating the circuits to the office and warehouse areas, Lessor shall invoice Lessee its specific share of the cost of electricity for the office space only.

57.Signage. Lessee shall have the right at their sole cost and expense to install Primary building top signage, eyebrow signage signage with Lessor's prior approval. All signage shall be in compliance with the development signage program, Lessor and City of Aliso Viejo ordinances. Building top signage above Suite A is already committed but not being used. Lessor must reserve this location for Suite A.

58. Trash. Lessee shall contract directly with a waste management company to haul Lessee's trash.

Exhibit A - Floor/Site Plan



Reserved Parking

In the event of any conflict between the provisions of this Addendum and the printed provisions of the Lease, this Addendum shall control.

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Exhibit 21.1

Subsidiaries of the Registrant

Name of Subsidiary	State/Country of Incorporation/Organization
RxSight B.V.	Netherlands
RxSight GmbH	Germany

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8 No. 333-258292), pertaining to the RxSight, Inc. 2021 Equity Incentive Plan, 2021 Employee Stock Purchase Plan, 2015 Equity Incentive Plan and 2006 Stock Plan of RxSight, Inc. of our report dated March 8, 2022, with respect to the consolidated financial statements of RxSight, Inc. included in this Annual Report (Form 10-K) for the year ended December 31, 2021.

/s/ Ernst & Young LLP

Irvine, California
Date: March 8, 2022

Exhibit 31.1

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Ron Kurtz, M.D., certify that:

(1) I have reviewed this annual report on Form 10-K for the year ended December 31, 2021 of RxSight, Inc.;

(2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

(3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

(4) The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and 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) Intentionally omitted;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

(5) The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 8, 2022

By: /s/ Ron Kurtz, M.D.
Ron Kurtz, M.D.
Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Shelley Thunen certify that:

(1) I have reviewed this annual report on Form 10-K for the year ended December 31, 2021 of RxSight, Inc.;

(2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

(3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

(4) The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and 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) Intentionally omitted;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

(5) The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 8, 2022

By: /s/ Shelley Thunen
Shelley Thunen
Chief Financial Officer
(Principal Accounting and Financial Officer)

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the annual report of RxSight, Inc. (the "Company") on Form 10-K for the year ended December 31, 2021, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Date: March 8, 2022

By: /s/ Ron Kurtz, M.D.
Ron Kurtz, M.D.
Chief Executive Officer
Director

Exhibit 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the annual report of RxSight, Inc. (the "Company") on Form 10-K for the year ended December 31, 2021, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Date: March 8, 2022

By: /s/ Shelley Thunen
Shelley Thunen
Chief Financial Officer
(Principal Financial and Accounting Officer)